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## **Contracting Money Supply: A New Risk for Bond Investors**

**It's easy to be bullish on bonds and fixed income assets these days. Thanks to the Fed's rate hikes, bonds of all stripes are yielding the most they have in decades. Income choices are plentiful and they offer the chance for good returns versus stocks in the quarters ahead. With that, it's easy to forget about some of the risks that come with fixed income investments.**

And investment manager Putnam's latest report unveiled a big one: contracting money supply or M2.

For investors, it's a big risk waiting in the shadows that potentially could hinder a variety of bond asset classes and portfolios. For investors going gaga over bonds, it's something to consider and, perhaps, profit from.

[Continue reading.](#)

**dividend.com**

Aaron Levitt

Aug 31, 2023

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## **Muni Bonds Are Back In Fashion.**

**Finally, yields on municipal bonds have meaning. Considering all the interest rate hikes, it took time for munis to catch fire. The heat feels good.**

Just as the Treasury market has an inverted yield curve, so do munis. Municipal bond yields as a percentage of similarly maturing Treasuries are rich. Currently, there are no bargains to be had. But wait until September when the new issue market takes off.

### **Few Muni Defaults**

Muni default rates continue to be much lower than corporate bonds. Yes, we have seen some municipal bond defaults at a few small private colleges along with some small and medium size hospitals, crushed by post-Covid-19 overhead costs. Add to the short default list some sports-related centers. Nevertheless, the municipal bond market is solid with an overall low default rate.

[Continue reading.](#)

**Forbes**

by Marilyn Cohen

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## **[The FAF's Bridging the GAAP Podcast is Now Available. In Episode 1, GASB Chair Joel Black Talks About the Financial Data Transparency Act.](#)**

[Listen to the Podcast.](#)

[08/21/23]

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### **Muni Market's Performance Wilts in Worst Month Since February.**

- **Investors balk even as muni-bond issuance has dwindled**
- **'Munis are not cheap enough yet,' says BI's Kazatsky**

US state and city debt is poised for its worst month since February, with yields not far below multiyear highs. As the municipal market heads into a historically weak period, the worry is that it's still not attractive enough to lure buyers.

Munis have declined about 1.5% in August through Wednesday, on track for the grimmest performance since a 2.3% slide in February, according to Bloomberg index data. Fixed-income assets have declined broadly this month with the Federal Reserve signaling that it may keep hiking interest rates to muffle a still-robust economy.

The performance over the past decade argues against betting on an imminent rebound for the muni index: The gauge has dropped 0.4% in September on average in the period, the weakest return of any month. What's more, even after their August slump, munis are still on the costly side relative to alternatives like Treasuries, says Eric Kazatsky at Bloomberg Intelligence.

"Munis are not cheap enough yet," the senior US municipals strategist said in an interview. Treasuries, or "even single- or double-A corporate rates, they're much more attractive. They're much larger markets and have a lot more liquidity."

A gauge of relative value in munis has improved this month. But that measure, which compares the level of muni yields to those on Treasuries, still shows munis are costly on a historical basis. That's in part as sales of new US state and local-government bonds are poised to dwindle for a few weeks.

The ratio of benchmark 10-year muni yields to rates on 10-year Treasuries is about 70%, compared with the average of around 90% since 2000. Yields on munis, which typically offer tax-exempt income, tend to be lower than those on Treasuries.

With volatility in rates likely to be more muted going forward, it points to a better setup for reinvestment flows into fixed income, BI's Kazatsky and colleague Karen Altamirano wrote in a research report this week. Nonetheless, they still anticipate flat muni returns in September, in part as supply likely outpaces demand.

However, Eve Lando, portfolio manager at Thornburg Investment Management, sees promise.

There is pent-up demand, she says, for issuers to borrow for routine things like deferred maintenance, so supply should eventually pick up and improve the muni market's relative value. What's more, yields are looking attractive in some areas.

"We're talking about fixed income with yields that are similar to equity returns and highlighting the kind of the stability of the sector," she said. "So far we have not seen any reasons to have a credit worry. So I think there's lots of things working for the muni market as of now."

## **Bloomberg Markets**

By Lauren Coleman-Lochner

August 31, 2023

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### **[Why Dwindling Muni Sales May Provide Opportunities.](#)**

Sales of new US state and local government bonds are poised to dwindle according to forecasts. Christopher Brigati, Valley National Bank's former managing director of municipal investments, sees opportunities in the muni market. He speaks with Romaine Bostick and Katie Greifeld on "Bloomberg Markets: The Close."

[Watch video.](#)

## **Muni Moment - Bloomberg Markets: The Close**

August 30th, 2023

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### **[Hawaii Munis Plunge in Latest Investor Warning on Climate Risk.](#)**

- **Index of Hawaii debt is down 2.8% in August, most of any state**
- **State's 'sizable cash balances' help disaster support: Fitch**

Hawaii state and local municipal bonds have surrendered all their 2023 gains in the past three weeks after the deadly Maui wildfires delivered a fresh reminder of climate risk in the \$4 trillion market for state and local debt.

An index comprised of Hawaiian municipal securities has dropped 2.81% in August, the worst performance of any state and compared to a 1.8% loss for the broader market, according to data compiled by Bloomberg. Hawaii is one of only four states to post a negative performance this year. At the end of July, its municipal bonds were sporting a more than 2% gain for 2023.

"The Hawaii index was impacted by the large drop of bonds associated with the Maui catastrophe," said Tom Doe, president and founder of Municipal Market Analytics.

[Continue reading.](#)

## **Bloomberg Markets**

By Maxwell Adler

August 25, 2023

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### **Texas Port's \$55 Million Municipal Bonds Ruled Taxable by IRS.**

- **Port didn't spend enough proceeds within 3 years, IRS Says**
- **Port says it complied with tax rules and will defend position**

The U.S. Internal Revenue Service has concluded that interest on \$55 million of municipal bonds issued by a Texas port in 2017 is taxable because the issuer was too slow to spend money it raised, according to a securities filing.

The Port of Port Arthur Navigation District didn't comply with a section of the tax code that requires municipalities to spend 85% of tax-exempt bond proceeds within three years of the bonds being issued, according to the IRS, the filing said.

The port, which operates a shipping terminal on the Sabine Neches Waterway along the Gulf of Mexico, said it did comply with the federal tax code and intends to defend its position. After receiving a "proposed notice of adverse determination" an issuer has 30 days to request an administrative appeal of its case, according to the port's filing.

The section of the tax code in question is aimed at preventing state and local governments from issuing bonds when interest rates are low without any immediate need to use the funds, resulting in excess debt that isn't subject to income tax.

Judy Bettis, Port of Port Arthur's chief financial officer, didn't immediately respond to a call and email seeking comment.

## **Bloomberg Markets**

By Martin Z Braun

August 24, 2023

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### **BLX/Orrick 2023 Post-Issuance Compliance Workshop.**

#### **November 16-17, 2023 - Los Angeles and Virtual Webinar**

A Comprehensive Overview of Post-Issuance Compliance and Secondary Market Disclosure Rules and Regulations for 501(c)(3) Organizations and State and Local Government Issuers Who Utilize Tax-Exempt Financing.

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

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## **IRS Targets High-Income Individuals Illegally Claiming Puerto Rico's Tax Benefits.**

The Internal Revenue Service ("IRS") Commissioner Danny Werfel stated that the Agency is taking "swift and aggressive action" to strengthen enforcement efforts against high-income individuals. As part of these enforcement efforts, the IRS identified approximately 100 individuals, including crypto traders and fund managers suspected of illegally claiming Puerto Rico's tax benefits. According to the IRS, the enforcement efforts will include both civil audits and criminal investigations.

For taxpayers not in compliance with Puerto Rico Act 60 (formerly Acts 20 and 22) requirements, they must act swiftly to take corrective action. In July of this year, Puerto Rico's Secretary of Economic Development and Commerce stated he is actively cooperating with the IRS in their efforts to identify individuals that are abusing Puerto Rico's tax benefits.

On January 27, 2021, the IRS announced its compliance campaign that focused on Puerto Rico Act 60 ("Act 60"). Act 60 consolidated various tax decrees, incentives, subsidies, and benefits, including Acts 20 and 22. Acts 20 and 22 were intended to incentivize investment in Puerto Rico, promote the exportation of services from companies and individuals providing such services and attract high net-worth individuals to Puerto Rico.

Taxpayers that meet the requirements of Act 60 are eligible to receive significant tax savings. For example, Act 60 offers a corporate tax rate of 4% to Puerto Rico domiciled companies that export services performed in Puerto Rico to people or companies outside of the territory. Similarly, high net-worth individuals may qualify for a total exemption from Puerto Rico income taxes on all interest and dividends realized after the individual becomes a bona fide resident of Puerto Rico.

Puerto Rico is a United States territory (and generally subject to all US federal laws); however, for federal tax purposes, Puerto Rico is treated as a "foreign country." The Internal Revenue Code ("Code") states that US citizens and resident aliens are taxed on worldwide income; however, section 933 provides an exception to this general rule. Residents of Puerto Rico receive special tax treatment for Puerto Rico sourced income.

The IRS's new campaign targets taxpayers who have claimed benefits through Puerto Rico Act 60 without meeting the requirements of section 933, Residence and Source Rules Involving Possessions. Consequently, the IRS has identified certain individuals who may be excluding income subject to US tax on a filed US income tax return or failing to file and report income subject to US tax. As such, the IRS campaign will also address those individuals who have met the requirements of section 933 but may be erroneously reporting US source income as Puerto Rico source income in order to avoid US taxation.

To enhance voluntary compliance with the tax laws, the IRS partners with foreign jurisdictions, federal, state and municipal governmental agencies. These partnerships often involve some type of formal agreement such as a Memorandum of Understanding ("MOU") or Tax Coordination Agreement ("TCA") that allows for the exchange of taxpayer data. Article 4 of the TCA between the US and the Commonwealth of Puerto Rico allows for the exchange of information to administer and enforce the tax laws of the respective jurisdiction.

In this IRS campaign the IRS will utilize various methods to detect noncompliance, including examinations and outreach via soft letters. Consequently, it is reasonable to assume the IRS has started identifying those individuals who may fall under the scope of this audit campaign.

Taxpayers should review their reporting positions and, if appropriate, consider correcting past non-compliance before the IRS comes to their door. We have experience advising clients through a variety of IRS controversy matters including voluntary disclosures, civil audits and criminal investigations. Similarly, we are well versed in evaluating Puerto Rico-specific tax issues.

**Meadows Collier Reed Cousins Crouch & Ungerman LLP** – Michael A. Villa, Jr. and R. Damon Rowe

August 30 2023

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## **[Financing Essential Infrastructure: NLC 2023 Municipal Bond Market Update](#)**

Municipal bonds are the crucial tool cities use to finance essential projects — accounting for nearly 70% of all financing for public infrastructure like roads and water and sewer utilities. On **Monday, September 25 at 2:00 p.m. ET**, join NLC, Build America Mutual and market experts for an update on trends in the market and what city leaders should focus on when preparing to sell bonds.

The session will also highlight recent innovative transactions, like how the State of Connecticut was able to save \$200 million when it set up a trust fund to provide “baby bonds” for all Medicaid-eligible babies born in the State.

[Click here](#) to register.

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## **[Navigating the Next Frontier: AI's Role in Reshaping Local Governance - GFOA Webinar](#)**

Artificial intelligence (AI) will someday be ubiquitous in government operations. Should workers be threatened? No. What’s most important is to understand what AI is, the benefits, and the limits. Join this webinar, **October 12**, to hear from leading experts from Microsoft, Rutgers, and the City of Columbus on how they utilize AI. Participants will walk away with a better understanding of AI, why human interaction is still important, and how successful organizations in the future will manage AI to make better decisions.

[REGISTER](#)

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## **[Get Key Municipal Insights at GFOA's MiniMuni.](#)**

Registration is free for GFOA members! Join us online for GFOA’s 5th Annual MiniMuni Conference on **October 11-13**. Engage with experienced practitioners and regulators on topics influencing municipal issuers. Whether it’s ESG considerations or the Financial Data Transparency Act, participants will leave with a comprehensive grasp of the market’s most urgent concerns.

[LEARN MORE](#)

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- **Ed. Note:** We will be off next week due to court-mandated (in)sensitivity training. Double Dose O' Drivel 9/5!
  - [Issuers Urge Supreme Court to Review BABs Subsidies Case.](#)
  - [Additional ESG Disclosure Requirements Coming for Public Debt Issuers?](#)
  - [Wall Street's Most Hated 3 Letters Prove Too Risky to Ignore.](#)
  - [In Re City of Amarillo, Texas](#) – After city's voters defeated a proposition for issuance of \$275 million in general obligation bonds payable from ad valorem taxes to fund improvement and expansion of the city's civic center complex, the city council approved a plan in which city would fund the project via the issuance of tax anticipation notes and the future issuance of refunding bonds to refinance the debt, all of which was struck down by the Court of Appeals due to city's failure to adequately explain the details of this plan in the corresponding agenda item for the meeting at which this plan was approved.
  - And Finally, Zombie Apocalypse! is brought to us this week by [Linden v. City of Southfield, Michigan](#), in which, "Emergency medical personnel in Southfield, Michigan, pronounced Timesha Beauchamp dead when she was still alive. Beauchamp was placed in a body bag and transported to a funeral home, where an embalmer discovered that she was not dead." (Unlike most of our content, we are not making this up.) And spare a moment for the most-certainly-savage-y-traumatized embalmer, who is never even mentioned thereafter! The mind reels. Anyhoo, that's all. Sleep well.
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## **EMINENT DOMAIN - IDAHO**

### **[Day v. Idaho Transportation Department](#)**

**Supreme Court of Idaho, Boise, April 2023 Term - August 14, 2023 - P.3d - 2023 WL 5185613**

Property owners brought action against Idaho Transportation Department (ITD) asserting claims for inverse condemnation and breach of contract concerning ITD's alleged failure to provide alternative access to their property near a freeway interchange.

The Fourth Judicial District Court entered summary judgment in favor of Department. Owners appealed. The Supreme Court affirmed in part, and reversed and remanded district court's decision on ITD's statute of limitations defense. On remand, the Fourth Judicial District Court held a bench trial, and after conclusion of owners' case-in-chief, granted ITD's motion for involuntary dismissal, finding there was no breach of contract and that the inverse condemnation claim was untimely. ITD moved for attorney fees, and the District Court denied the motion. Owners appealed, and ITD cross-appealed. Both parties moved for attorney fees on appeal.

The Supreme Court held that:

- Owners' quasi-estoppel argument was preserved for appeal;
- District court's findings did not support conclusion that ITD took inconsistent positions on the statute of limitations defense;
- Facts found by the district court supported finding that ITD did not create an unconscionable disadvantage by asserting statute of limitations defense;
- Owners' conduct did not demonstrate that they relied on ITD's purported waiver of the limitations period;
- It was reasonable for ITD to believe agreement had been reached so as to cease tolling of

limitations;

- ITD was not entitled to prevailing party attorney fees; and
- Owners were not entitled to attorney fees related to their appeal.

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## **EMINENT DOMAIN - ILLINOIS**

### **[Luster v. Village of Ashmore](#)**

**United States Court of Appeals, Seventh Circuit - August 2, 2023 - F.4th - 2023 WL 4921532**

Putative purchaser of residential property, who was buying property on contract, brought § 1983 action against village, alleging village violated purchaser's due process rights when it acquired the property for a municipal park and required purchaser to vacate home.

The United States District Court for the Central District of Illinois, dismissed action. Purchaser appealed.

The Court of Appeals held that:

- Alleged availability of adequate post-deprivation remedies did not preclude purchaser's due process claim, and
- Damages were a permissible remedy for claim.

Alleged availability of adequate post-deprivation remedies did not preclude putative purchaser's § 1983 claim against village for procedural due process violation based on village acquiring home, which purchaser was buying on contract, for a municipal park and requiring purchaser to vacate home, where purchaser did not allege that he was deprived of his property interest by the random, unauthorized acts of any village employee but rather that village, as part of its plan to establish a municipal park, deliberately deprived purchaser of his property interest and attempted to remove him without prior notice and an opportunity to be heard.

Damages were a permissible remedy for putative purchaser's § 1983 claim against village for procedural due process violation based on village acquiring home, which purchaser was buying on contract, for a municipal park and requiring purchaser to vacate home; given that house was gone, damages were purchaser's only possible remedy.

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## **EMINENT DOMAIN - KANSAS**

### **[Kansas Fire and Safety Equipment v. City of Topeka](#)**

**Supreme Court of Kansas - June 30, 2023 - 317 Kan. 418 - 531 P.3d 504**

Multiple month-to-month tenants sued city for relocation benefits under Eminent Domain Procedure Act (EDPA) after they were forced to move once city bought property where they operated their businesses.

City filed motion for summary judgment. Tenants appealed. The District Court granted summary judgment to city. Tenants appealed. The Court of Appeals reversed and remanded. Tenants petitioned for review, which was granted. The Supreme Court affirmed decision of the Court of Appeals. On remand, city again sought summary judgment. The District Court granted summary



judgment to city. Tenants appealed and city cross-appealed, and the Court of Appeals reversed and remanded with directions. The Supreme Court granted petitions for review.

The Supreme Court held that:

- Eminent Domain Procedure Act (EDPA) does not provide a private right of action;
- EDPA did not provide the district court with jurisdiction over tenants' claims for relocation expenses;
- Tenants' failure to pursue administrative remedy within the Kansas Relocation Assistance for Persons Displaced by Acquisition of Real Property Act (KRA) deprived the district court of subject matter jurisdiction; and
- Statute generally authorizing the court to review final judgments and orders of a political or taxing subdivision when it exercises judicial and quasi-judicial functions did not apply.

Kansas Eminent Domain Procedure Act (EDPA) does not provide a private right of action to displaced persons to recover relocation costs following condemnation; instead, the Kansas Relocation Assistance for Persons Displaced by Acquisition of Real Property Act (KRA) provides a single, comprehensive administrative remedy to vindicate the statutory right to relocation benefits and assistance.

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## **EMINENT DOMAIN - LOUISIANA**

### **[3000-3032 St. Claude Avenue, LLC v. City of New Orleans](#)**

**Court of Appeal of Louisiana, Fourth Circuit - June 22, 2023 - So.3d - 2023 WL 4117342 - 2022-0813 (La.App. 4 Cir. 6/22/23)**

Owner of split-zoned lots filed a petition for judicial review of city council's denial of owner's request to rezone rear portions of lots, which were zoned commercial in front and residential in back, to apply a single commercial zoning designation to enable construction of hotel project.

The District Court remanded the matter back to city council for further review and to clarify basis for its decision. City filed a motion for suspensive appeal, which the District Court granted. After city filed appeal, the Court of Appeal converted the appeal to an application for supervisory writs, and the Court of Appeal issued writ opinion denying relief and remanding to city council. After city council again denied zoning amendment, lot owner filed amended petition for judicial review. The District Court granted the amended petition, and city timely filed a motion for suspensive appeal.

The Court of Appeal held that:

- Trial court improperly shifted burden from landowners to city council to demonstrate why its denial of rezoning request was in fact not arbitrary and capricious;
- As a matter of first impression, split-zoning is not per se invalid; and
- Denial of rezoning request was not arbitrary and capricious, or characterized by an abuse of discretion, and thus did not constitute a taking.

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## **IMMUNITY - MARYLAND**

### **[Williams v. Morgan State University](#)**

**Supreme Court of Maryland - August 14, 2023 - A.3d - 2023 WL 5198267**

Former university employee brought action in state court against university and former supervisor, alleging claims of wrongful termination in violation of Maryland public policy, defamation, and retaliation in violation of the National Defense Authorization Act (NDAA) and the American Recovery and Reinvestment Act (ARRA).

Defendants removed to federal court and the United States District Court for the District of Maryland granted defendants' motion to dismiss for failure to state a claim. Former employee appealed. The Court of Appeals affirmed in part, vacated in part, and remanded. On remand, the District Court granted defendants renewed motion to dismiss on the ground that the Maryland Tort Claims Act (MTCA) does not waive the state's sovereign immunity with respect to federal whistleblower claims. Former employee appealed. The Court of Appeals certified question of law to the Supreme Court, which the Supreme Court accepted.

The Supreme Court held that as a matter of first impression, MTCA's limited waiver of state's sovereign immunity for a "tort action," does not expressly or by necessary implication encompass federal statutory claims.

Based on the plain language of the Maryland Tort Claims Act (MTCA) and its statutory context, purpose, and legislative history, MTCA's limited waiver of state's sovereign immunity for a "tort action," does not expressly or by necessary implication encompass federal statutory claims; when the General Assembly has intended to waive state's sovereign immunity for purposes of a state statutory claim, it generally has done so directly within specific statutory scheme at issue, General Assembly has demonstrated that it knows how to waive sovereign immunity to federal claims when that is its intent, and extending scope of the waiver provision to federal statutory claims is inconsistent with both the key, neighboring provisions concerning interplay between state and state employee's immunity in certain suits, as well as MTCA's role as a gap-filler scheme.

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## **IMMUNITY - MICHIGAN**

### **[Linden v. City of Southfield, Michigan](#)**

**United States Court of Appeals, Sixth Circuit - July 26, 2023 - F.4th - 2023 WL 4758817**

Personal representative of patient's estate filed § 1983 action against city and emergency medical responders alleging deliberate indifference to patient's serious medical needs and violation of substantive due process after responders pronounced her dead and discontinued treatment while she was still alive.

The United States District Court for the Eastern District of Michigan dismissed complaint and affirmed order denying plaintiff's motion of leave to file third amended complaint. Plaintiff appealed.

The Court of Appeals held that:

- Responders were entitled to qualified immunity;
- City was not subject to municipal liability under § 1983; and
- District court did not abuse its discretion in denying plaintiff's motion for leave to file third amended complaint.

It was not clearly established in August 2020 that government officials' failure to treat patient based on their mistaken belief that patient was dead violated patient's substantive due process rights under state-created danger doctrine, and thus city emergency medical responders were entitled to qualified immunity from liability in § 1983 action alleging violation of substantive due process after

they pronounced patient dead and discontinued treatment while she was still alive, even if their mistake increased risk that funeral home employee would begin processing her presumed-dead body for funeral proceedings; patient was not in state custody, and responders did not prohibit any private party from seeking or rendering aid.

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## **CONTRACTS - MISSISSIPPI**

### **[Teeuwissen v. Hinds County , Mississippi, by and through its Board of Supervisors](#)**

**United States Court of Appeals, Fifth Circuit - August 14, 2023 - F.4th - 2023 WL 5200322**

Law firm and attorney brought § 1983 action against county and members of county board of supervisors who voted to terminate contracts entered into by predecessor board retaining law firm as special counsel for county and attorney as board attorney for one year, alleging contracts required county to pay fixed sum for entire year, even if county no longer wanted the contracted legal services after election flipped board's composition, asserting federal due process and state-law claims, and seeking declaratory and injunctive relief.

The United States District Court granted county's motion to dismiss federal causes of action for failure to state a claim, and declined to exercise supplemental jurisdiction over state-law claims. Plaintiffs appealed.

The Court of Appeals held that attorney and law firm had due-process-protected property interests in money that they were entitled to under early-termination provisions in contracts.

Attorney and law firm had due-process-protected property interests in money that they were entitled to under early-termination provisions in contracts entered into by predecessor county board of supervisors retaining law firm as special counsel for county and attorney as board attorney for one year, since Mississippi statute granting power to county board of supervisors, in its discretion, to employ counsel by the year at an annual salary at an amount that it deemed proper rendered contracts binding on successor board that had voted to terminate contracts after election had flipped board's composition.

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## **IMMUNITY - NEW JERSEY**

### **[Conforti v. County of Ocean](#)**

**Supreme Court of New Jersey - August 10, 2023 - A.3d - 2023 WL 5112899**

Wife of deceased county jail inmate, individually and as administratrix ad prosequendum of inmate's estate, and as parent natural guardian and guardian ad litem of their minor child, brought action against county, county Board of Chosen Freeholders, county Department of Corrections, retired warden, and corporal, alleging negligence and violation of New Jersey Civil Rights Act (NJCR) in connection with inmate's suicide.

The Superior Court denied defendants' summary judgment motion on negligence claims, and granted defendants' summary judgment motion as to NJCR claims. Following a jury's finding that defendants were negligent and award of damages to plaintiff, the Superior Court, 2018 WL 4676882, denied defendants' motions for judgment notwithstanding the verdict (JNOV), or, in the alternative, for a new trial and remittitur, and entered judgment for plaintiff. Defendants appealed. The Superior

Court, Appellate Division affirmed. The Supreme Court granted defendants' petition for certification.

The Supreme Court held that whether defendants were negligent as to conduct unrelated to any failure to examine, failure to diagnose or treat, or failure to confine a person for a mental health condition or drug dependence, were material fact issues.

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## **LIABILITY - NEW YORK**

### **[Methal v. Village of Ardsley](#)**

**Supreme Court, Appellate Division, Second Department, New York - July 12, 2023 - 192 N.Y.S.3d 545 - 2023 N.Y. Slip Op. 03775**

Property owners brought action against village, company that constructed retaining wall, and engineer of retaining wall alleging that village's storm drain system broke and caused damage to property and that retaining wall contributed to system's deterioration.

Company and engineer asserted cross-claims against village. The Supreme Court, Westchester County, granted in part village's motion for summary judgment on certain cross-claims and denied it in part with respect to owners' negligent design claim and with respect to complaint and engineer's cross-claim to extent they sought damages, contribution, or indemnification for injuries to property that occurred 90 days prior to service of second notice of claim. Village appealed and company and engineer cross-appealed.

The Supreme Court, Appellate Division, held that:

- Limitations period for owners' negligent design claim began to run when system was designed and installed;
- Village failed to establish prima facie entitlement to judgment as a matter of law that trespass and negligent maintenance claims were untimely; and
- Owners' notice of claim to village sufficiently complied with statutory requirements.

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## **EMINENT DOMAIN - NEW YORK**

### **[Niagara Falls Redevelopment, LLC v. City of Niagara Falls](#)**

**Supreme Court, Appellate Division, Fourth Department, New York - July 28, 2023 - N.Y.S.3d ----2023 WL 4837104 - 2023 N.Y. Slip Op. 04050**

Property owners commenced proceeding seeking to annul city's determination authorizing the condemnation of their property for the development of a park and associated recreational facilities.

The Supreme Court, Appellate Division, held that:

- Condemnation determination was rationally related to a conceivable public purpose, supporting confirmation of the determination;
- Contention that condemnation determination should have been annulled for city's failure to establish how it planned to pay for project and failure to conduct market study fell outside of scope of judicial statutory review;  
Annulment of condemnation determination on basis of alleged failure to comply with city's comprehensive plan was not warranted;

- Annulment of condemnation determination on ground that it was excessive was not warranted; City's identification of tax parcel numbers and street addresses of property it was condemning was sufficient to comply with statutory condemnation-notice requirements; and
- Property owners were not prejudiced by untimeliness of publication of synopsis of condemnation determination and city's findings, and thus untimeliness did not support the annulment of condemnation determination.

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## **PUBLIC MEETINGS - TEXAS**

### **In Re City of Amarillo, Texas**

#### **Court of Appeals of Texas, Amarillo - August 16, 2023 - Not Reported in S.W. Rptr. - 2023 WL 5279473**

In November 2020, more than 60% of the City's voters defeated a proposition for issuance of \$275 million in general obligation bonds payable from ad valorem taxes to fund improvement and expansion of the City's civic center complex. Per statute, this meant the City could not issue certificates of obligation to fund the proposed civic center project for three years.

After conferring with legal counsel, two officials and city staff put into place a three-step plan. First, they proposed the city council pass Ordinance 7980 to designate the existing civic center and another building as part of the City's Tax Increment Reinvestment Zone (TIRZ #1) project plan. Second, they met behind-the-scenes with lenders and legal counsel to pre-negotiate a \$260.525 million financing deal and language for proposed Ordinance 7985 wherein the City would issue tax anticipation notes. This method of funding requires no voter approval, but also carries a short repayment schedule: seven years. So, to try to avoid risk of an enormous tax increase this project would pose, they planned a third step: future issuance of 30-year refunding bonds to "refinance" the debt authorized under Ordinance 7985.

The city council passed Ordinances approving this plan on May 24, 2022. The agenda item regarding the Ordinances read:

This item is the discussion and consideration of an ordinance authorizing the issuance of the City of Amarillo, Texas Combination Tax and Revenue Notes, Series 2022A resolving other matters incident and related thereto including the approval of a paying agent/registrar agreement and a purchase contract.

Taxpayer filed a declaratory judgment action under Texas Civil Practice and Remedies Code Chapter 37 (UDJA) seeking to void the Ordinances and the anticipation notes.

Taxpayer alleged several violations of the Texas Open Meetings Act (TOMA) in his petition and counterclaim. He requested declaratory relief under the UDJA, injunctive relief, and a direct violation of TOMA. Because of these alleged violations, taxpayer requested the trial court declare Ordinances 7985 and 7980 to be voidable.

On October 25, 2022, the court signed a final judgment which, among other things, invalidated the two ordinances and the anticipation notes. Both parties appealed.

Generally, TOMA is satisfied when written notice of the date, time, place, and subject of each meeting held by a governmental body has been posted in a place readily-accessible to the general

public at least seventy-two hours before the scheduled time of the meeting. The primary disagreement in the appeal centered on whether the City substantially complied with TOMA by sufficiently describing the “subject” to be discussed in the city council meeting.

The Court of Appeals held that the City’s notice regarding Ordinance 7985 failed to substantially comply with TOMA because it failed to give the reader adequate notice of the action the City sought to take.

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## **S&P Credit Trends: Improving Finances Drive U.S. Public Finance Credit Quality In The Second Quarter**

### **Key Takeaways**

- The credit quality of rated U.S. public finance (USPF) companies improved for the ninth consecutive quarter in second-quarter 2023, with 465 upgrades and 76 downgrades, compared to 186 and 56 in the first quarter, respectively.  
There were three defaults, up from zero in the first quarter.
- We raised the ratings on the debt of three states in the second quarter: New Jersey, Massachusetts, and Kentucky. There have been no state-level downgrades since June 2020.
- Improved finances were the leading reason for upgrades (285), and deteriorating finances the leading reason for downgrades (26).

[Continue reading.](#)

15 Aug, 2023

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## **Fitch: State Tax Cut Wave Has Peaked with Modest Revenue Effects for Most States**

Fitch Ratings-New York-17 August 2023: Tax cuts enacted by US states in 2023 are not likely to have a meaningful effect on most states’ revenues or affect credit ratings in the short term, says Fitch Ratings. We expect that states implementing the largest structural tax changes will adjust spending accordingly, though states that have underestimated the potential revenue impact of cuts made near the peak of the economic cycle may face fiscal deterioration and credit challenges.

The wave of tax cuts passed by U.S. states beginning in 2021 appears to have crested. Although 24 states adopted tax reduction measures of some kind in their fiscal 2024-25 budgets, the scope of changes narrowed versus prior years, with fewer states opting for major restructurings of tax brackets or deep cuts to tax rates.

For the most part, tax cuts enacted in 2023 will have more modest effects on revenues than cuts made in prior years, as most 2023 changes took the form of temporary rate reductions, tax holidays, or expanded tax credits. Tennessee’s four-month sales tax holiday will reduce fiscal 2024 collections

by \$400 million, equal to 1.3% of state-source revenues. Wisconsin's permanent cuts to its two lower personal income tax (PIT) rates will reduce biennial general fund revenues by only 0.8% (\$175 million). However, when combined with larger PIT cuts enacted in the last biennium, this will reduce collections by \$2.2 billion, or about 2.5% of state revenues.

[Continue reading.](#)

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## **S&P U.S. Not-For-Profit Health Care Rating Actions, July 2023.**

[View the rating actions.](#)

15 Aug, 2023 |

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## **S&P U.S. Transportation Infrastructure Toll Sector Report Card: Resilient Demand And Higher Tolls Underpin Credit Strength**

### **Key Takeaways**

- We expect the ratings on U.S. not-for-profit toll road operators will remain stable, given the almost-complete rebound in demand, supported by steady commercial vehicle traffic and toll-rate increases. Toll roads have been among the most resilient transportation infrastructure asset classes in recent years, with no downgrades during the pandemic.
- Revenue growth will be accompanied by increased operations and maintenance expenses, as well as capital spending for capacity expansions and continued conversions to all-electronic toll collection against a backdrop of higher financing costs.
- Our economic outlook no longer includes a recession but projects a shallower and more attenuated slowdown, which could translate into more muted transaction growth with remote work trends and a normalizing post-pandemic e-commerce trucking industry adding to uncertainty.
- Our analysis of fiscal 2022 financial metrics—including debt service coverage, debt to EBIDA, and liquidity—for U.S. not-for-profit toll road and toll bridge issuers that we rate, shows relatively stable performance that we expect will remain so.

[Continue reading.](#)

17 Aug, 2023

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## **Wall Street's Most Hated 3 Letters Prove Too Risky to Ignore.**

- **ESG risks have dragged down shares of TUI, UPS this month**
- **GOP attacks are leading bankers to avoid talking about 'ESG'**

As the label "ESG" ends up among the most hated on Wall Street, the financial cost of ignoring it is making headlines.

In just the past few weeks, a string of textbook environmental, social and governance issues —



spanning workers' rights to extreme weather — erupted in a number of major stocks.

The world's biggest publicly traded package courier, United Parcel Service Inc., was forced to issue a profit warning that drove down its shares, after it said a tentative labor agreement will add to its costs. The firm agreed to raise wages for some workers, bump up the amount of paid vacation and improve working conditions. That includes installing air conditioning in new vehicles rendered unbearably hot by extreme heat.

[Continue reading.](#)

## **Bloomberg Markets**

By Saijel Kishan

August 16, 2023

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### **[Issuers Urge Supreme Court to Review BABs Subsidies Case.](#)**

A bevy of city, state and public finance advocates is urging the U.S. Supreme Court to take up a case challenging the subjection of Build America Bond subsidies to federal budget sequestration.

The [amicus brief](#), filed by groups including the Government Finance Officers Association, the National Association of Bond Lawyers, the National League of Cities and the American Public Transportation Association, argues that allowing the BABs decision to stand would have “grave ramifications” for federalism and “significant and adverse practical consequences” for states and local government finances.

“It’s frustrating that this has to go through the courts,” said John Godfrey, senior director of government relations for the American Public Power Association, which is filing its own amicus brief in the case. “I think we have a strong legal case and the bottom line is, if we prevail in court, all the money stays in the communities and it’s the communities where the bonds were issued that will benefit.”

The case stems from a three-year-old lawsuit brought against the United States by six Midwestern public power agencies, led by the Indiana Municipal Power Agency. The agencies, which together had floated \$4 billion in direct-pay Build America Bonds before 2011, argued that the federal government’s reductions of the 35% direct-pay subsidies – under Office of Management and Budget’s sequestration calculations – violated the American Recovery and Reinvestment Act and represented a breach of contract. The group was seeking the full 35% subsidy on interest payments from 2013 through 2030.

The Court of Federal Claims sided with the U.S. when it ruled that no statutory claim existed because sequestration applied to the payments and that ARRA did not create a contract.

The agencies appealed to the U.S. Court of Appeals for the Federal Circuit, which on Feb. 17 ruled that the BABs subsidies are subject to federal budget sequestration, and that the public power agencies are not eligible for refunds.

The power agencies on July 13 filed a petition asking SCOTUS to take up the case, saying it arises from a “multi-billion-dollar broken promise by the federal government.” The questions presented are



whether a payment obligation imposed by Congress can be reduced without congressional repeal by agencies and whether a statutory provision creates a contractual obligation.

For the issuer groups, the stakes are both constitutional and financial, according to its amicus brief.

“The import of this case extends far beyond the group of public power providers that have sued,” the brief says. “If this court permits the Federal Circuit’s reasoning to stand, it will have adverse long-term implications for state and local governance in the United States.”

Allowing a federal agency like the Internal Revenue Service to interpret generic statutory language “raises constitutional alarm bells,” the issuers argue.

The decision will undermine federal policies and programs that the federal government relies on locals to implement, the issuers said.

“This case is of acute concern not only to the thousands of state and local governmental entities that issued Build America Bonds but to the 40,000 state and local governments in the United States cooperating with the federal government to implement critical programs and deliver essential services.”

The GFOA’s federal liaison Emily Brock notes that SCOTUS opts to review only a small number of the volume of requests it receives.

“That said, GFOA and our fellow Amici have a good feeling about this one due to the variety and expanse of interest here,” Brock said. “Although preemption has been on the docket quite a bit in the last several years, it’s been a while since it’s been in the muni context, so fingers crossed.”

By Caitlin Devitt

BY SOURCEMEDIA | MUNICIPAL | 08/16/23 02:27 PM EDT

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## **[Husch Blackwell Authors U.S. Supreme Court Amicus Brief in Public Finance Litigation.](#)**

Husch Blackwell prepared and filed an *amicus curiae* brief on behalf of 11 major state and local government organizations, including the International Municipal Lawyers Association, Government Finance Officers Association, and the National League of Cities, urging the U.S. Supreme Court to grant certiorari in *Indiana Municipal Power Agency v. United States*. The case addresses whether the federal government can renege on its binding commitments to state and local governmental entities under the Build America Bonds program—the first-ever direct federal subsidy program for general-purpose state and local borrowing.

In 2009, the Build America Bonds program was created by the American Recovery and Reinvestment Act (ARRA), a stimulus package in response to the Global Financial Crisis that began in 2007. The program was an unprecedented federal intervention in the municipal bond market that induced thousands of state and local entities to issue taxable bonds, giving up the considerable advantages of tax-exempt bonds. State and local issuers made this election in reliance on Congress’s promise to refund 35% of the interest payments on the bonds.

The petitioners—Indiana Municipal Power Agency, Missouri Joint Municipal Electric Utility

Commission, Northern Illinois Municipal Power Agency, American Municipal Power, Illinois Municipal Electric Agency, and Kentucky Municipal Power Agency—were among the 2,275 state and local governmental entities that issued over \$181 billion in Build America Bonds in 2009 and 2010. These entities used the proceeds to invest in capital infrastructure projects that created thousands of new jobs, just as Congress intended.

In 2013, Congress had not repealed the ARRA, but federal agencies—specifically, the Office of Management of Budget, the Department of the Treasury, and the Internal Revenue Service—decided to stop making direct cash payments to issuers to cover the full 35% of interest payments, maintaining that these payments qualified as direct spending subject to sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985, Budget Control Act, and American Taxpayer Relief Act of 2012.

The Petitioners appealed to the Federal Circuit, which affirmed the trial court’s ruling that the IRS did not improperly decrease the payments for sequestration.

Husch Blackwell’s brief was written by attorneys Danny Solomon, Kate David, Sebastian Waisman, Ben Stephens, and Spencer Tolson. The petition for writ of certiorari was filed on August 16, and the justices are scheduled to consider the petition shortly after returning from their summer recess next month.

August 18, 2023

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## **Additional ESG Disclosure Requirements Coming for Public Debt Issuers?**

In a world where deadly heat waves, droughts, storms, wildfires and floods are becoming more widespread and more frequent every year, investors want to know about environmental, social and governance (ESG) risks when buying securities. To ensure transparency, the U.S. Securities and Exchange Commission (SEC) has proposed rules on ESG disclosure for corporate securities. And, where the private sector goes, public finance is usually close behind.

The investment community’s push for guidance on ESG came from two fronts: the desire to invest in ventures with a focus on environmental, social and governing sustainability, and a need to understand risks that these factors pose to the overall security of any investment. In 2021, the SEC announced priorities addressing climate-related risks, and proposed rules in 2022 regarding the corporate disclosure of environmental, social and governing risks and the impact on publicly traded securities.

The Government Finance Officers Association (GFOA), a membership organization of government finance professionals, which provides resources, education and best practices, followed suit by releasing voluntary ESG disclosure guidelines in 2021, and we recommend that officers responsible for municipal debt disclosures take note to avoid the potential litigation risks of non-disclosure. It will only be a matter of time before the SEC issues ESG disclosure rules for the municipal sector. Public agency officers should review what’s happening on the corporate side now to be ahead of the game. See “The Evolving Word of ESG Disclosure,” webinar presented by Best Best & Krieger [here](#).

### **What environmental risks municipal issuers should disclose**

Environmental risks have significant material impact on municipal securities. If a community is located in a fire-risk area and the property taxes secure bonds, casualty loss of a group of houses in

a wildfire could reduce the community's ability to collect sufficient property taxes to pay that debt. Investors want to know that risk.

A discussion of risks can be complex, but public entities would be wise to take the time to assess them during the early stages of planning public issuances. Such a discussion may appease investors, reduce the likelihood of claims that such risks were undisclosed in the event of some unforeseen event and ensure success of the agency in its ongoing communications with investors.

Issuers should identify physical risks that could impact a debt-financed project. Are there risks of wildfire, tornados, flooding, wind damage or coastal erosion? Could natural disasters wipe out the project itself, or the tax base that services the debt?

Some questions to address are: Could higher temperatures, changing climate, or the increased frequency and intensity of natural disasters disrupt power generation or farming? Could climate-related changes, such as the rise of sea level, change the consumer or tax base that will service the debt? Could these changes impact prices for real estate in the area? Will current residents leave as a result of the climate related change? How might these risks impact business operations or services?

Additionally, a discussion of resiliency might be needed. How will the agency mitigate climate-related risks? Is there technology investment needed to offset such risk? What would be the cost of researching and developing these offsets? Has the agency implemented prevention measures, such as wildfire cameras or detection systems?

Comprehensive disclosure could also involve discussions about greenhouse gas emissions. The SEC's proposed rules identify three scopes of emissions. For example, if you have a toy factory in your city, Scope 1 includes direct emissions out of the factory's smokestack; Scope 2 includes indirect emissions, such as for purchasing energy to run the plant; and Scope 3 includes downstream emissions, such as those from transporting the toys to retailers.

Finally, for environmental risks, the GFOA recommends including cautionary language similar to what issuers include on financial projections in official statements for bond issuances. This language should reflect the importance that no one knows what the actual impacts of climate change will be, and these disclosures are forward-looking projections based on facts available to date. The issuer cannot guarantee any results from mitigation measures or impacts as assumed.

### **Recommendations for disclosure on social and governance risks**

The GFOA recommends disclosing information about demographics, income level and wealth disparity, housing availability and affordability, the availability and affordability of services, access to and quality of education, and other resources. Investors want to know about employment statistics, labor relations and challenges for public entities, and the long-term costs related to labor such as pension and other post-employment benefit liabilities.

For example, investors want to know about social risks that could impact service to general obligation bonds, such as a sudden decline in population. Or, if a school district issues debt, investors want to know if a drop in enrollment will impact the ability to service bonds for a new facility.

Governance is the ESG factor that is already widely discussed in most offering documents. Issuers should include a description of the entity's organizational structure and offer transparency about debt management policies and how financial policies are implemented. Investors want to know when a budget is adopted each year and when financial reports are issued. They also want to know about

budget controls and how an entity generates revenue assumptions.

Issuers should also disclose any governance instability that poses risk. For example, continuity in administration is important. Investors want to know the composition and term of board or council membership, and they want to know if there have been departures in executive management or significant turnover in operating staff.

Naturally, issuers should always be transparent about any lawsuits, federal or state investigations or other actions against the agency.

Increased investor scrutiny of ESG factors will force governmental agencies to improve their own due diligence for bond-financed projects. Public officials have a variety of resources at their disposal, such as regional climate change impact studies, local developers, real estate appraisers and economists, who can help evaluate the risks. Analyzing risk will help municipal issuers better plan their future projects and manage their finances over time. Environmental, social and governance factors impact everyone, and before long, issuers will need to provide comprehensive disclosure regarding these risks.

## **Reuters**

### **Best Best & Krieger LLP**

By Mrunal M. Shah and Kimberly A. Byrens

August 17, 2023

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## **[McGuireWoods: California Proposes Rules Clarifying Notice and Review Requirements for Health Care Transactions](#)**

On July 31, 2023, the California Office of Health Care Affordability (OHCA) issued [proposed regulations](#) requiring health care entities to notify OHCA about material transactions at least 90 days prior to closing. McGuireWoods previously published an alert on California's advance notice and review requirements and the potential implications for health care transactions occurring in California on or after April 1, 2024.

California is one of many states to implement reporting requirements for health care transactions. Several other states such as New York, Oregon and Washington have similar laws and requirements. McGuireWoods continues to monitor these developments and analyze the impacts of such laws, most recently on [June 5](#) and [May 8, 2023](#).

### **Key Takeaways**

1. By expanding the definition of "health care entity" to include entities like management services organizations, broadening of the definition of "material transactions" and potentially extending review timelines, OHCA will play an extensive role in future transactions.
2. Health care providers and entities operating in California that are planning or considering entering into a transaction now must consider the advance notice filing requirement, review process and additional timing components when planning a transaction. This will include preparing documents and compiling significant amounts of information to submit the notice filing in advance of the 60-day initial waiting period for OHCA to determine whether to conduct a cost

and market impact review (CMIR), and a potential additional 90-day waiting period if OHCA chooses to undertake a CMIR.

3. Health care providers and entities subject to the advance notice and review requirements must provide information about the entities undergoing the proposed transaction and submit copies of documents such as structure charts and transaction agreements. By default, OHCA will consider such information and documents as public records, but a submitter may mark certain documents as confidential or redact certain information, and OHCA will deem confidentially marked documents such as purchase agreements, financial documents and unredacted resumes as confidential.
4. Parties making filings must consider the antitrust and other market implications of a transaction in advance of their submission and be able to credibly address the impact of the transaction on competition, cost of care, quality of care, health equity, innovation and access to care. Failing to adequately develop a strategy that takes account of these aspects of a transaction in an initial filing can increase the odds that OHCA will undertake a CMIR, which involves significant additional delay, expense, disruption and the risk that OHCA may refer the matter to the Office of the Attorney General for additional action.
5. These proposed regulations provide additional details on the requirements and process, and they provide more details to the language of the statutes. Stakeholders may submit comments on the proposed regulations to CMIR@HCAI.CA.GOV until 5 p.m. on Aug. 31, 2023. It is unclear if the public should expect further changes, but OHCA intends to submit the finalized regulations as an emergency rulemaking package in October 2023.

[Continue reading.](#)

**McGuireWoods LLP** – H. Holden Brooks, Trey Andrews, Kristen H. Chang and Tom Siwula

August 14 2023

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## **LA School System Kicks Off School Year With Municipal Bond Sale.**

- **Proceeds from \$384 million sale to also fund campus security**
- **Balance will finance electric bus, student enrollment efforts**

The nation's second-largest K-12 district is kicking off the new school year with a municipal bond offering while it contends with attacks from hackers, a dwindling student body and soaring labor costs.

The Los Angeles Unified School District, which begins the school year Monday, plans to borrow about \$384 million to tackle cyberattacks, school safety and climate change, according to the bond offering prospectus. The series of bonds carries a sustainability label.

"The district is constantly facing a variety of persistent and evolving cybersecurity threats," said the prospectus, which details previous incidents, including a ransomware attack last year that exposed some student data.

[Continue reading.](#)

**Bloomberg**

By Lauren Coleman-Lochner

August 14, 2023

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## **Hollywood Strikes Pose a Credit Risk for \$113 Million Muni Deal.**

- **Oscars ceremony is major source of revenue to repay the debt**
- **Moody's grades deal 2 steps below top rank with stable outlook**

Municipal-bond investors have to assess an unusual risk as part of a \$113 million bond offering next week: The historic strikes that are paralyzing business for much of Hollywood.

The seller of the debt, a group affiliated with the Academy of Motion Picture Arts and Sciences, is familiar to muni-market participants because it has issued bonds several times for its Los Angeles museum, which opened in 2021.

However, this offering, which will refinance old, higher interest-rate debt, comes against a troubled backdrop for the industry. The Writers Guild of America went on strike May 2, seeking higher pay and other changes amid the rise of streaming TV and artificial intelligence. The strike, coupled with one by screen actors that began in July, has largely halted production of new films and scripted TV shows.

[Continue reading.](#)

### **Bloomberg Markets**

By Amanda Albright and Maxwell Adler

August 16, 2023

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## **Save the Tax-Exemption, A Call to Action for U.S. Public Finance.**

- A convergence of risk has the potential to result in the elimination of new tax-exempt municipal bond issuance.
- For the public finance community this analysis is meant to be a call-to-action.
- This is a potential policy threat for investors to monitor, for now.
- The rising U.S. debt-to-GDP ratio along with climbing interest costs are among the leading reasons why there is an even greater threat to the municipal bond tax-exemption today compared to recent decades.
- Reinforcement of this increased threat was recently delivered in the form of Fitch Ratings' U.S. downgrade (August 1) and the CBO's July Monthly Budget Review (August 8).
- The public finance community should escalate support for tax-exempt bonds by educating and informing D.C. lawmakers now, even though we may experience a federal budget cycle or two and a Presidential election before the true threat is imminent. If an educational process does not begin soon, it could be too late to save the tax-exemption by the time potential deficit reduction measures are proposed.

[Continue reading.](#)

**AdvisorHub**

by Tom Kozlik, Hilltop Securities

August 18, 2023

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## **Opinion: How Toxic Fertilizers Create Toxic Municipal Bonds**

**Spreading sewage sludge on farms is a bad environmental move. It's also a bad economic one.**

Two environmental hazards are emerging in tandem with the promise of disruptions to municipal financial markets. One, global warming, has received widespread attention; the other, toxic waste, less so.

Sea level rise due to a climate change presents an existential threat to coastal towns and cities as they experience a steady gnawing away of their land boundaries, and with it the tax revenue of washed away property and infrastructure. They also face additional costs for maintenance and renovation.

Agricultural communities, like their seaside sisters, also face an existential threat from land permanently rendered toxic because of toxic-laden industrial and urban sewage sludge, also known as biosolids, used as fertilizer.

[Continue reading.](#)

### **Environmental Health News**

by Stephen Stevick

August 16, 2023

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## **Bond Villains: How a Little-Understood Feature of Urban Finance - Municipal Bonds - Fuels Racial Inequality.**

Municipal governments today hold around \$4 trillion in outstanding debt. For many cities, the growing costs of simply servicing their debt is cannibalizing their annual budgets. When municipalities get in trouble, it's not uncommon for around a fifth of a big city budget to go to debt service alone. This is far from a new development. Since the birth of the modern city in the nineteenth century, cities have turned to the private sector to fulfill their immediate cash needs by issuing what are known as municipal bonds.

The bond market, despite its invisibility to the public, has long been the oil in the gears of our society. If a city needs a dilapidated bridge secured, a school building updated, a transit expansion funded, or, in the case of Flint, Michigan, in 2013, a new water pipeline built, they issue a bond. The bond—a kind of loan, in essence—is bought from the municipality by a bank or a syndicate of banks and bond dealers. Together they raise the money necessary for the project through a process called underwriting, offering shares to investors and in turn making money from transaction fees and interest rate spreads—the difference between the price they paid and the premium they will charge.

In most cases, the bond itself is guaranteed by the taxation of residents, or the fees they will pay to access the service. The conveyor belt of highway toll stations to get from New York to New Jersey is one such example: residents bear the financial burdens of the municipal debt taken on in the construction of the city's streets, parks, schools, and hospitals.

[Continue reading.](#)

## **Boston Review**

by Clark Randall

August 16, 2023

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## **[Maui Wildfires Put Hawaiian Electric On Hedge Fund Radars.](#)**

**California utility PG&E went bankrupt after raking up billions in wildfires liabilities**

### **Wildfire Liabilities**

Distressed debt investors are circling Hawaiian Electric and have zeroed in on a set of rarely traded bonds following deadly wildfires in Maui.

While the company's municipal bonds have sunk to distressed prices, Jefferies sent out quotes this week on the company's private placement notes at levels between 40 cents and 60 cents on the dollar. These notes are primarily held by insurance companies and are rarely traded. Meanwhile, traders at Seaport are also gauging interest from some investors in hopes of making a market in the bonds.

[Continue reading.](#)

## **Bloomberg**

By Rachel Butt and Reshmi Basu

August 18

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## **[Brokers Ready Trading in Discounted Bonds of Hawaiian Electric.](#)**

- **Jefferies quoted private placement notes at distressed levels**
- **Some holders have held calls on potential fallout, recovery**

Some Wall Street bond brokers are soliciting interest in a series of rarely traded notes tied to Hawaiian Electric Industries, as market participants assess potential liabilities for the utility following deadly wildfires in Maui, according to people with knowledge of the situation.

Jefferies Financial Group sent out quotes this week on Hawaiian Electric Co.'s private placement notes at deeply distressed levels, between 40 cents to 60 cents on the dollar, said the people, who asked not to be named because the matter is private. Meanwhile, traders at Seaport Group are



gauging interest from some investors, the people said.

The solicitation is among a number of early indications that both investors and the utility have started to take steps to determine potential losses stemming from the wildfires. The notes quoted by Jefferies are rarely traded, privately-placed securities primarily held by insurance companies, the people said. Several banks are also making markets in the company's municipal bonds.

[Continue reading.](#)

## **Bloomberg Markets**

By Rachel Butt and Reshmi Basu

August 17, 2023

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### **Hawaiian Electric Muni Debt Risks Junk Cut, Barclays Says.**

A unit of Hawaiian Electric Industries that is under scrutiny for its possible role in the deadly Maui wildfires could end up seeing its municipal bonds slashed to high-yield from investment-grade, according to Barclays Plc muni and ESG strategists.

Hawaiian Electric Co. and its subsidiaries have roughly \$500 million in special purpose municipal debt and it's "quite possible" those bonds could be downgraded to below investment-grade in the near future, reads Barclays' note out Wednesday. S&P Global Ratings cut Hawaiian Electric Industries to junk earlier this week.

"In that case we might see heavy forced selling from investors that are not able to hold high yield muni debt," strategists led by Clare Pickering wrote. "If this happens in late August or early September, the secondary market might not be deep enough to absorb heavy selling if it materializes, which might cause outsize price swings."

[Continue reading.](#)

## **Bloomberg Markets**

By Amanda Albright

August 17, 2023

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### **Hawaiian Electric's Municipal Bonds Tumble Amid Maui Fire Probe.**

- **Utility's subsidiary has \$495 million of munis outstanding**
- **Hawaiian Electric cut to junk Tuesday by S&P over lawsuits**

Municipal bonds sold by a unit of Hawaiian Electric Industries, which operates the utility that serves Maui, are plunging amid scrutiny over the company's possible role in the island's deadly wildfire.

Investment-grade muni bonds sold by Hawaiian Electric Co. due in 2039 traded at about 65.7 cents

on the dollar on Monday. That compares with above 80 cents in the days before the catastrophe, according to data compiled by Bloomberg.

[Continue reading.](#)

## **Bloomberg Markets**

By Amanda Albright

August 15, 2023

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### **TAX - WISCONSIN**

#### **[Wisconsin Property Taxpayers, Inc. v. Town of Buchanan](#)**

**Supreme Court of Wisconsin - June 29, 2023 - 408 Wis.2d 287 - 2023 WI 58 - 992 N.W.2d 100**

Plaintiff brought action for declaratory and injunctive relief from “transportation utility fee” that town imposed to fund its transportation utility district.

The Circuit Court entered summary judgment for plaintiff, finding that the fee was a property tax subject to the town’s levy limit, and permanently enjoining the town from levying, enforcing, or collecting the fee in any amount above its levy limit. Town appealed, and the parties filed a joint petition for bypass of the Court of Appeals, which the Supreme Court granted.

The Supreme Court held that:

- Pursuant to statute allowing the creation of utility districts, town could not base the fee on class of property and its commercial characteristics;
- State law precluded town from imposing the fee on tax-exempt properties; and
- The fee counted against town’s levy limit as set by state law.

When imposing “transportation utility fee” to fund its transportation utility district, which was fee that constituted property tax, town could not base fee on class of property and its commercial characteristics; statute allowing certain municipalities to set up utility districts and to fund them through “taxation of property” did not authorize such taxation to be based on anything other than property value.

“Transportation utility fee” that town imposed to fund its transportation utility district, which fee constituted property tax, counted against town’s levy limit as set by state law; despite argument that utility district had assumed responsibility for public improvement, town itself levied taxes to fund district.

Taxation of property funding utility district under statute allowing certain municipalities to set up utility districts is subject to municipal levy limits.

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### **TAX - GEORGIA**

#### **[Columbus, Georgia Board of Tax Assessors v. Medical Center Hospital](#)**

## **Authority**

### **Court of Appeals of Georgia - June 28, 2023 - S.E.2d - 2023 WL 4228280**

Taxpayer, a hospital authority, brought action against board of tax assessors, seeking declaration that its leasehold interest in certain property, on which residential retirement community was operated, was exempt from ad valorem taxation.

The Superior Court granted summary judgment in favor of taxpayer, and the Court of Appeals affirmed. The Supreme Court granted certiorari, reversed decision, and remanded, and the trial court again entered summary judgment in favor of taxpayer. Board appealed.

The Court of Appeals held that leasehold interest was public property exempt from ad valorem taxation.

Leasehold interest of hospital authority taxpayer in continuing care residential retirement community, which taxpayer operated on land leased from property owner, was “public property,” and thus was exempt from ad valorem taxation; community, which provided elderly individuals with room and board and nursing care, addressed public need of identifiable class of citizens, bond validation proceedings established that taxpayer financed and paid for construction of community through revenue bonds issued in furtherance of public purpose for which taxpayer was established, community’s audited financial statements treated operating profits as those of taxpayer, and income derived from operating community was used to repay bonds.

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## **New York City Debt Offering Shows Attractiveness of Munis.**

The 2023 bond comeback is rife with opportunities for fixed income investors. New York City’s recent issuance, in particular, highlighted the attractiveness of municipal bonds.

“The City of New York (“the City”) announced the successful sale of approximately \$1.56 billion of General Obligation Bonds, comprised of \$1.41 billion of tax-exempt fixed rate bonds and \$151 million of taxable fixed rate bonds,” a public [press release](#) stated. “Proceeds of the bond sale will be used to refinance outstanding bonds for savings. The transaction achieves over \$108 million in total debt service savings, spread primarily across Fiscal Years 2024 through 2027.”

Munis receive praise for their ability to offer fixed income investors with a tax-free alternative. When you combine that with the high yields of today, along with quality debt with low rates, it’s a win-win.

“The Big Apple — rated AA by two ratings companies — sold 30-year debt that was priced to yield 4.35%,” a [Wealth Management article](#) said. “It sounds modest, but with tax adjustments, the richest New Yorkers snapping up the securities earned yields equivalent to 10% taxable debt, an online tool from Eaton Vance Management shows.”

That combination of high yield and quality makes munis even more appealing for high-net-worth individuals. The higher the tax bracket, the more beneficial munis become.

“The \$4 trillion municipal bond market is offering elevated yields not seen in years,” the article added. “But the state and local debt market has an added allure that other asset classes don’t: the income is tax-exempt. That means that the yields on muni bonds are even higher after adjusting for taxes. And the higher your tax bracket, the more attractive the bonds look.”

## Access to Munis in One ETF

Rather than sifting through countless muni options available on the U.S. market, the Vanguard Tax-Exempt Bond ETF (VTEB) is an easier way for all-encompassing exposure. With a 0.05% expense ratio, the fund offers low-cost exposure to municipal debt. It also offers a 3.45% 30-day SEC yield as of August 10.

VTEB 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. 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 (AMT).

### ETF TRENDS

by BEN HERNANDEZ

AUGUST 16, 2023

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## [Munis Maintain Summer Heat in July.](#)

### July update

- Demand outpaced supply and prompted strong absolute and relative performance.
- Rich valuations and waning seasonal trends warrant some near-term caution going forward.
- Any prolonged weakness would offer the opportunity to add duration and lock in attractive yields.

### Market Overview

Municipal bonds maintained their seasonal strength and extended gains for the second consecutive month in July. Interest rates rose amid heightened volatility as economic data exceeded expectations, and the Federal Reserve resumed its tightening cycle and communicated a commitment to data dependence. Favorable supply-and-demand dynamics and the more stable nature of the asset class prompted outperformance versus Treasuries. The S&P Municipal Bond Index returned 0.25%, bringing the year-to-date total return to 2.78%. Triple-B-rated credits and the 15-year part of the yield curve performed best.

[Continue reading.](#)

**advisorperspectives.com**

by Peter Hayes, James Schwartz, Sean Carney of BlackRock, 8/15/23

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## [Positive Trends in the Municipal Debt Outlook.](#)

**With the Fed's continuous fight against inflation, the interest rate environment has been quite attractive for new municipal debt investments.**

Investors are capitalizing on high coupon offerings with the hope that when rates start to come

down, their current investment may yield additional income in the form of capital gains.

In the third quarter of this year, we have witnessed several key factors behind the municipal debt performance. First, municipal bonds are likely to benefit from consistent coupon payments and reinvestment funds, as well as a slower rate of new bond issuances. While there will be more new bonds introduced compared to the first half of the year, it likely won't outweigh the impact of reinvestment funds. However, the combination of higher borrowing costs and substantial reserves means that borrowing needs are expected to remain restrained in the near future.

In this article, we will take a closer look at some positive trends we are seeing in fixed income markets and potential opportunities for municipal debt investors.

[Continue reading.](#)

**dividend.com**

by Jayden Sangha

Aug 15, 2023

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## **[Why it's Time to Rethink Reserves: GFOA Webinar](#)**

**THU, 24 AUG | 1 PM ET**

Governments are subject to financial shocks, including natural catastrophes, recessions, and more. Financial reserves (a "rainy day" fund) are essentially a form of self-insurance that governments use to buffer themselves against these risks. But what are the risks governments should be concerned about and what size of reserves are appropriate to those cover risks?

Speakers in this session will answer these questions and more. Participants will leave with resources and strategies to apply risk-aware and risk-savvy thinking to reserves in their own organizations.

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

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## **[Muni Buyers Can Find Bargains in Unlevered Closed-End Funds.](#)**

- **Discounts on the funds are wider than historical average**
- **Retail buyers may still be shellshocked from bond-market slide**

Investors looking for bargains in the municipal-bond market may find opportunities in closed-end funds that don't borrow to boost returns.

Unlevered municipal bond closed-end funds traded at a discount to their net asset value of as much 12.6%, according to data compiled by Bloomberg. The biggest, Nuveen LLC's \$1.9 billion Municipal Value Fund, is trading at a 7.2% discount with a tax-exempt yield of 3.97%. Over 20 years, its average discount is 2.3%.

Meanwhile, the DTF Tax-Free Income fund, which terminates in 2028, last month eliminated its leverage and is trading at a discount of 12.6%, or 87 cents on the dollar. As the fund moves closer to

liquidation, the discount will disappear, said Ryan Paylor, a portfolio manager at Thomas J. Herzfeld Advisors, which focuses on the closed-end fund market.

[Continue reading.](#)

## **Bloomberg Markets**

By Martin Z Braun

August 18, 2023

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### **[Senior-Living Operator Files for Bankruptcy Due to Pandemic.](#)**

- **Nashville Senior Care operates five facilities in three states**
- **Company has \$213 million in municipal bond debt outstanding**

A senior-living company filed for bankruptcy this week after it exhausted an emergency loan, the latest to falter because of Covid-19.

Nashville Senior Care LLC's plight illustrates the pressures bearing down on the senior-living sector. Higher staff and supply costs on top of tepid demand for such facilities have caused defaults to outpace the rest of the municipal bond market this year. About 8% of the \$43 billion in outstanding senior-living bonds is in default, compared with less than 1% of the total municipal bond market, according to data compiled by Bloomberg.

At Nashville Senior Care, the pandemic shutdown lowered the number of residents "precipitously," while expenses rose "dramatically," leaving the facilities without the means to make needed investments, executive director Thomas Johnson said in a court filing.

[Continue reading.](#)

## **Bloomberg Markets**

By Lauren Coleman-Lochner

August 18, 2023

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### **[Muni Market Update \(Bloomberg Audio\)](#)**

Joe Mysak, Editor of the Bloomberg Municipal Market Brief, joins to discuss the latest on the muni bond market. Hosted by Paul Sweeney and Matt Miller.

[Listen to audio.](#)

Aug 18, 2023

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## **Hedge Fund Paradise Hides Puerto Rico's Crisis In the Making.**

**A failing power grid and affordability strains are dividing the island into haves and have-nots.**

If you walk in certain circles, it's easy enough to believe that Puerto Rico has moved past devastating hurricanes and the largest municipal bankruptcy in US history.

Ritzy hotels and luxury restaurants are sprouting up along the island's white-sand beaches and crystalline waters. Dinner for two can cost \$500 at those high-end spots. Hedge fund executives and crypto exiles are moving in, lured by lucrative tax breaks.

But it's the hum of privately owned generators that makes those lifestyles possible, and shields this set of the island's inhabitants from the reality experienced by the vast majority.

[Continue reading.](#)

### **Bloomberg Economics**

By Jim Wyss and Michelle Kaske

August 18, 2023 at 3:00 AM PDT

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## **Neuberger's Iselin Sees Pockets of Opportunity in Munis.**

Jamie Iselin, Neuberger Berman's head of municipal fixed income, says he sees investment opportunities in the municipal bond market on "Bloomberg Markets: The Close."

[Watch video.](#)

### **Bloomberg Markets: The CloseMuni Moment**

August 16th, 2023, 12:39 PM PDT

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## **Municipal Bonds Outperform as Investors Rush to Buy Dwindling Supply.**

- **July deals oversubscribed by 5.2 times on average: BlackRock**
- **New muni debt sales year-to-date are slowest since 2019**

A reluctance by states and cities to borrow is making municipal debt a star performer among credit assets and driving investors to scour the market for bonds.

Municipalities issued \$218 billion of long-term debt year to date, 9% less than at the same point last year and the slowest pace of sales since 2019, according to data compiled by Bloomberg. The Federal Reserve's interest-rate increase regime since March 2022 to fight inflation at least partly explains the dropoff.

The scarcity is fueling outperformance in the asset class. Municipal bonds returned 0.4% in July, better than a 0.35% decline in US Treasuries, according to data compiled by Bloomberg. Month to date, munis lost 0.8%, less than Treasuries and corporates, which lost 1.2% and 1.8% respectively.

[Continue reading.](#)

## **Bloomberg Markets**

By Nic Querolo and Amanda Albright

August 15, 2023

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### **Ohio Budget Bill Adopts Municipal Net Profits Tax Safe Harbor Statute.**

Companies that have individuals (whether an employee or an owner) that work out of their home now have the choice of filing a net profits tax return with that individual's city of residence. In brief, if the company chooses to not file a net profits tax return with that individual's city of residence, then the company's property, payroll and sales associated with that individual are assigned to the company's office location. The statute is not a model of clarity, so companies are well advised to study the associated procedural rules very carefully. The statute is effective for tax years ending on or after December 31, 2023.

Vorys understands the General Assembly may amend this statute's effective date to make it effective for tax years ending on or after January 1, 2022. Companies should monitor further legislative developments accordingly.

**Vorys Sater Seymour and Pease LLP** – David A. Froling

August 10 2023

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### **Shorter Term Munis Continue to Win Over Longer Dated Munis.**

BlackRock, one of the largest muni bond managers, recently released their update on muni bond market performance for the month of July. It offers a nuanced view that combines optimism about the current strong performance with caution regarding the near future. The firm provides clear insights into strategic investment, highlighting both opportunities and potential risks, all while considering recent shifts in the credit landscape. Their guidance seems aimed at navigating the complexities of the market while recognizing the underlying stability of municipal bonds, particularly in comparison to the federal fiscal landscape.

The July update on municipal bonds paints a picture of strong performance with a warning of caution due to rich valuations and waning seasonal trends. The update emphasizes that municipal bonds maintained their seasonal strength, extending gains for the second consecutive month, driven by favorable supply-and-demand dynamics. Interest rates rose as the Federal Reserve resumed its tightening cycle, leading to a return of 0.25% for the S&P Municipal Bond Index, and a year-to-date total return of 2.78%. The performance of Triple-B rated credits and the 15-year part of the yield curve was particularly strong.



Issuance for July totaled \$27 billion, down 17% from the five-year average, while the year-to-date total reached \$198 billion, a decrease of 12% compared to the previous year. The reinvestment income outpacing issuance created a net-negative supply environment, resulting in deals being oversubscribed by 5.2 times on average. However, the report also advises a more cautious approach in the near term, suggesting that performance may soften in August, although prolonged weakness could present opportunities to lock in attractive yields.

[Continue reading.](#)

## **dividend.com**

by Shauvik Haldar

Aug 17, 2023

- 
- [Municipal Securities Regulation and Enforcement: 2023 Mid-Year Review – Ballard Spahr](#)
  - [NFMA Advanced Seminar on Transportation.](#)
  - [Lawmakers Probe Nonprofit Hospitals, Challenge Tax-Exempt Status.](#)
  - [Wall Street’s Projected Tab on Muni Price-Fixing Suits Expected to Plunge.](#)
  - [Analysis Suggests Municipal Bond Market Prices Race But Not Climate Risk.](#)
  - And Finally, I Know You Are But What Am I? is brought to us this week by [Brandy v. City of St. Louis, Missouri](#), in which we learned that open and constructive dialogue can help bridge the gap between parties with divergent interests and viewpoints, creating the conditions for the understanding and forgiveness necessary to heal this fractured nation of ours. Specifically, a potentially violent civil rights protest was defused when a protestor noted Officer Olsten’s “pepper spray fogger” and declaimed, “If you put that s\*\*\* in my face, I’ll f\*\*\* you up.” After which, Officer Olsten, “stepped toward protestor and [decorously] responded, “Come f\*\*\* me up then.” Perhaps not the soaring oratory of the Lincoln/Douglas debates, but the message was indeed succinctly conveyed. This of course calmed the crowd and led to the peaceful... Ha! The protestors were summarily treated to the wafting aroma of weapons-grade capsaicin. Can’t we all get along?

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## **CHARTER AMENDMENT - CALIFORNIA**

### **[Coalition of County Unions v. Los Angeles County Board of Supervisors](#)**

**Court of Appeal, Second District, Division 3, California - July 28, 2023 - Cal.Rptr.3d - 2023 WL 4862020**

Coalition of county employee unions and two individuals filed petition for peremptory writ of mandate prohibiting county board of supervisors and county chief executive officer (CEO) from enforcing voter-adopted county charter amendment, which required board to annually allocate at least 10% of locally generated unrestricted revenues in general fund to direct community investment and alternatives to incarceration and prohibited such funds from being allocated to any carceral system or law enforcement agency.

The Superior Court, Los Angeles County, granted petition. Respondents appealed.

The Court of Appeal held that:

- Amendment was authorized by constitutional provision allowing counties to provide for powers and duties of local officers and operation of local governments;
- Amendment comported with constitutional requirement that county charters provide for performance of statutorily mandated functions;
- Voters were authorized to approve ballot measure amending county charter;
- Amendment did not incapacitate county from performing state-delegated public functions;
- County Budget Act did not reflect legislative intent to exclusively delegate county budgeting to boards of supervisors; and
- Statutes governing Public Safety Augmentation Fund did not reflect legislative intent to preclude local referenda and initiatives on public safety budgeting.

Voter-adopted amendment to county charter which required county board of supervisors to allocate portion of general fund revenues to community investment and incarceration alternatives and prohibited such funds' allocation to carceral and police uses defined power and duty of county's governing body, and thus, was authorized by constitutional provision allowing counties to provide for powers and duties of local officers and operation of local governments, even though amendment limited board's discretion as to budgeting duty; "power" set forth in amendment was allocation of locally generated unrestricted revenues, "duty" was directing 10% of such revenues to particular purposes, and Constitution did not preclude charter amendments from restricting or reassigning governing body's powers.

Voter-adopted amendment to county charter which required county board of supervisors to allocate portion of locally generated unrestricted revenues in general fund to direct community investment and alternatives to incarceration and prohibited such funds from being allocated to any carceral system or law enforcement agency comported with constitutional provision requiring county charters to provide for performance of functions required by statute; County Budget Act required county boards of supervisors to adopt county budgets on annual basis, and amendment guided board in such process by describing how portion of budget was to be allocated.

Constitutional provisions on local government authorized voters to approve ballot measure amending county charter to require county board of supervisors to allocate at least 10% of certain revenues in general fund to direct community investment and other specified purposes and precluding board from allocating such funds to carceral or police uses, even though Constitution did not expressly allow voters to have any role in county budgeting; Constitution required county charter to be amended only "in the same manner" as it was originally adopted, namely by majority vote of county's voters, such that voters had constitutional right to amend charter on any topic that was proper subject of county charter, which included budgeting.

Voter-adopted amendment to county charter, which required county board of supervisors to allocate 10% of locally generated unrestricted revenues in general fund to direct community investment and alternatives to incarceration and prohibited such funds' allocation for carceral or police uses, did not incapacitate county from performing public functions delegated to it by state, and thus, did not exceed scope of county's constitutionally permissible self-governance; amendment increased budgetary stability for certain expenditures that voters prioritized, board could reduce 10% set-aside in event of fiscal emergency or voters could amend charter again if amendment proved unduly constraining, and amendment, which was meant to reduce crime, did not facially impair public safety.

County Budget Act's references to "board of supervisors" as entity responsible for adopting county budget did not unambiguously indicate Legislature meant to exclusively delegate budgeting

decisions to county boards of supervisors and preclude local electorates from exercising initiative and referendum powers on issues of county budgeting; Act, which applied only to counties, simply referred to boards because no other local legislative or governing body could enact county budget.

Voter-adopted ballot measure, which amended county charter to require county board of supervisors to allocate certain portion of revenue from general fund to direct community investment and other purposes and precluded such funds' allocation for carceral or police uses, did not allow electorate to exercise any powers or duties which County Budget Act granted to board and other county officials, including board's power to expend money to fund programs it deemed advisable or necessary, and thus, measure did not conflict with Act; measure did not allow voters to engage in statutory procedures for preparing recommended budget and adopting final budget or preclude board or officials from undertaking such duties, and board retained power to decide recipients and amounts of funding.

County Budget Act did not reflect legislative intent to delegate setting of budget priorities exclusively to local governing bodies in order to fulfill Act's statewide objectives, and thus, state's general interest in county budgeting, as reflected in Act, did not weigh in favor of finding that Legislature intended to preclude voters in county from amending county charter by initiative or referendum so as to require board of supervisors to annually expend certain funds on direct community investment and incarceration alternatives and preclude board from allocating such funds to carceral and police uses; Act set forth some general, procedural parameters for county budgeting, but left substance of budget allocations entirely to individual counties.

Voter-adopted ballot measure that required county board of supervisors to allocate 10% of locally generated unrestricted revenues in general fund to incarceration alternatives and other purposes and precluded board from allocating such funds to carceral or police uses did not conflict with statutes governing Public Safety Augmentation Fund, and thus, statutes did not reflect legislative intent to preclude voters' exercise of initiative and referendum rights regarding counties' public safety budgets; statutes were not abstract declarations of interest in public safety, but rather, set up concrete framework for collection of sales tax revenues and distribution to local governments through Fund, whereas measure concerned only locally generated, unrestricted revenues, not Fund revenues.

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## **PREEMPTION - CALIFORNIA**

### **[Chevron U.S.A. Inc. v. County of Monterey](#)**

**Supreme Court of California - August 3, 2023 - P.3d - 2023 WL 4940263**

Mineral rights holders brought action for declaratory and injunctive relief challenging validity of county ordinances banning land uses in support of new oil and gas wells and land uses in support of wastewater injection in unincorporated areas of county.

The Superior Court entered judgment striking down the ordinances. County appealed, the Court of Appeal affirmed. The Supreme Court granted review.

The Supreme Court held that ordinance conflicted with state statute granting state oil and gas supervisor authority to supervise drilling operations and thus was preempted.

Local law enters an area that is "fully occupied" by general law, and is thus preempted, when the Legislature has expressly manifested its intent to fully occupy the area, or when it has impliedly

done so in light of one of the following indicia of intent: (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality.

County ordinance banning oil and gas wastewater injection and impoundment and the drilling of new oil and gas wells conflicted with state statute granting state oil and gas supervisor authority to supervise drilling operations and thus was preempted, as while statute mandated that the state "shall" supervise oil operation in a way that permitted well operators to "utilize all methods and practices" the state oil and gas supervisor has approved, the county ordinance provided that certain oil production methods could never be used.

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## **IMMUNITY - CONNECTICUT**

### **[Adesokan v. Town of Bloomfield](#)**

**Supreme Court of Connecticut - August 1, 2023 - A.3d - 347 Conn. 416 - 2023 WL 4915906**

Motorist, individually and on behalf of her two minor children, brought action against town, police department, and police officer, alleging negligence, negligent supervision, and respondeat superior in connection with personal injuries sustained in collision when police officer's vehicle, that was traveling southbound in response to a possible abduction with emergency lights and siren activated, collided with driver's side of motorist's vehicle that was also traveling southbound, when motorist made a left turn at intersection at the same time that police officer attempted to pass motorist in northbound lane.

The Superior Court granted defendants' summary judgment motion. Motorist appealed.

Upon transfer from the Appellate Court, the Supreme Court held that defense of discretionary act qualified immunity does not apply to claims arising from the manner in which an emergency vehicle is operated under the privileges provided by the emergency-vehicle statute.

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## **ZONING & PLANNING - MAINE**

### **[Upstream Watch v. City of Belfast](#)**

**Supreme Judicial Court of Maine - August 3, 2023 - A.3d - 2023 WL 4939323 - 2023 ME 43**

Environmental organization that was dedicated to restoration of mid-coast rivers and streams to their natural habitats sought review of city zoning board of appeals' (ZBA) dismissal of organization's appeal of city planning board's issuance of site plan permit, zoning permits, groundwater wells permit, and water intake/discharge pipes permit to applicant for proposed land-based salmon aquaculture project at site where highway crossed river.

The Superior Court affirmed. Organization appealed.

The Supreme Judicial Court held that:

- ZBA erred when it confined its review of organization's standing to information contained in application-to-appeal form, and
- Organization had associational standing to appeal to ZBA.

Whether city zoning board of appeals (ZBA) erred in confining its review of environmental organization's standing argument to organization's written response on its application-to-appeal form involved a legal interpretation of a land use regulation ordinance, and therefore Supreme Judicial Court would consider the issue de novo, in proceeding involving organization's challenge to city planning board's issuance of site plan permit, zoning permits, groundwater wells permit, and water intake/discharge pipes permit to applicant for proposed land-based salmon aquaculture project at site where highway crossed river.

City zoning board of appeals (ZBA) erred when it confined its review of environmental organization's standing argument to organization's written response on the application-to-appeal form for a challenge to city planning board's issuance of site plan permit, zoning permits, groundwater wells permit, and water intake/discharge pipes permit to applicant for proposed land-based salmon aquaculture project at site where highway crossed river, where land use regulation ordinance did not contain such a restriction and ordinance mandated that, when acting in an appellate capacity, the ZBA was to consider all evidence of record submitted in the underlying hearing.

Environmental organization that was dedicated to restoration of mid-coast rivers and streams to their natural habitats had associational standing to appeal to city zoning board of appeals (ZBA) to challenge city planning board's issuance of site plan permit, zoning permits, groundwater wells permit, and water intake/discharge pipes permit to applicant for proposed land-based salmon aquaculture project at site where highway crossed river, where at least one of organization's members was an aggrieved person, either as an abutter or as a possessor of land directly affected by the project, and land use regulation ordinance did not explicitly require that a party show a particularized injury to qualify as an aggrieved party.

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## **IMMUNITY - MISSISSIPPI**

### **[Phillips v. City of Oxford](#)**

**Supreme Court of Mississippi - August 3, 2023 - So.3d - 2023 WL 4943506**

Motorist, on behalf of herself and her minor child, brought action against city under Mississippi Tort Claims Act (MTCA), seeking to recover damages for injuries she and her child sustained when patrol car driven by police officer en route to emergency struck her vehicle in an intersection.

Following bench trial, the Circuit Court entered final judgment in favor of city. Motorist appealed. The Court of Appeals reversed. Writ of certiorari was granted.

The Supreme Court, en banc, held that evidence supported finding that city was entitled to police-protection immunity.

Evidence supported trial court's finding that police officer's conduct prior to automobile collision at intersection did not rise to high standard of reckless disregard, for purpose of determining city's entitlement to police-protection immunity under Mississippi Tort Claims Act (MTCA); officer exercised some measure of safety precaution by activating his lights and sirens throughout his response, he activated his horn for additional warning at intersections, he slowed as he approached intersections, and dash camera showed that all other cars at subject intersection yielded to officer

except car driven by plaintiff motorist.

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## **IMMUNITY - MISSOURI**

### **[Brandy v. City of St. Louis, Missouri](#)**

**United States Court of Appeals, Eighth Circuit - July 28, 2023 - F.4th - 2023 WL 4835028**

After city police officer deployed pepper spray against protestor and others in a crowd, protestor sued defendants including officer, city, and police chief, alleging various claims under federal and Missouri law, including First Amendment retaliation.

Defendants moved for summary judgment based on immunity grounds. The United States District Court denied officer's summary judgment motion in part, finding that he was not entitled to summary judgment on First Amendment retaliation claim based on qualified immunity, or on state-law claims based on official immunity, and reserved ruling on city's summary judgment motion based on sovereign immunity. Defendants appealed.

The Court of Appeals held that:

- Protestor's right to exercise his First Amendment rights without facing retaliation from government officials was clearly established;
- The Court of Appeals lacked jurisdiction to disturb district court's conclusion that fact issue existed as to whether protestor's taunts of officer amounted to a true threat;
- The Court of Appeals lacked jurisdiction to resolve whether fact issue existed as to whether deployment of pepper spray was motivated by protected First Amendment activity;
- The Court of Appeals lacked jurisdiction to reverse determination that fact issue existed as to whether officer acted maliciously; and
- District court would be required on remand to reach the merits of city's sovereign immunity defense.

Given that city was entitled to a thorough determination of its claims of sovereign immunity, district court would be required to reach the merits of city's sovereign immunity defense against protestor's claims arising from city police officer's deployment of pepper spray against him, on remand from city's interlocutory appeal from district court's order denying summary judgment, where district court had failed to rule on city's summary judgment motion, but had instead reserved ruling until after the conclusion of trial.

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## **REFERENDA - OHIO**

### **[State ex rel. LaChapelle v. Harkey](#)**

**Supreme Court of Ohio - August 7, 2023 - N.E.3d - 2023 WL 5012040 - 2023-Ohio-2723**

Member of committee that was attempting to place referendum on city ordinance related to nonowner-occupied residential property filed action seeking writ of mandamus to order city official to transmit referendum petition to county board of elections.

The Supreme Court held that:

- Committee member lacked adequate remedy in ordinary course of law as required for writ of

mandamus;

- City official had mandatory, ministerial duty to transmit referendum petition to county board of elections;
- Fact that there was dispute about whether copy of ordinance was properly certified copy did not remove city official's duty to transmit petition to county board of elections; and
- Fact that city ordinance may have been administrative in nature did not remove city official's duty to transmit referendum petition to county board of elections.

Member of committee that was attempting to place referendum on city ordinance related to nonowner-occupied residential property lacked adequate remedy in ordinary course of law, for purposes of obtaining writ of mandamus to compel city official to transmit referendum petition to county board of elections, due to proximity of election.

City official had mandatory, ministerial duty to transmit referendum petition for city ordinance related to nonowner-occupied residential property to county board of elections, thus warranting mandamus relief, where petition was filed with city official within 30 days of passing of ordinance

Fact that there was dispute about whether copy of ordinance governing nonowner-occupied residential property filed prior to circulating referendum petition related to ordinance was properly certified copy did not remove city official's duty to transmit petition to county board of elections; copy of ordinance contained certification attesting that it was true and exact replica of original ordinance, and city official's duty to certify sufficiency and validity of petition did not arise until after board of elections examined petition.

Fact that city ordinance related to nonowner-occupied residential property may have been administrative in nature and thus not subject to referendum did not remove city official's duty to transmit referendum petition to county board of elections; city official did not have discretion to withhold referendum petition on ground that required her to make judicial or quasi-judicial determination.

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## **ZONING & PLANNING - RHODE ISLAND**

### **[Green Development, LLC v. Town of Exeter](#)**

**Supreme Court of Rhode Island - July 28, 2023 - A.3d - 2023 WL 4832121**

Solar field project owner brought action for declaratory and injunctive relief after town paused, and subsequently amended, its zoning ordinance, preventing the development of three commercial solar field projects.

The Superior Court denied relief, and project owner appealed.

The Supreme Court held that:

- Owner's submissions were pre-applications rather than applications for development which had vested under provisions of the Zoning Enabling Act;
- Town had authority under town charter to issue moratorium;
- Statute did not preempt town's ability under town charter to adopt 60-day moratorium; and
- Vesting clause in town's emergency moratorium was not an improper modification of vesting requirements for zoning applications enacted outside ordinary notice and hearing procedures.

Solar field project owner's submissions to town planner for development of three solar field projects



were pre-applications under Land Development and Subdivision Review Act, rather than applications for development which had vested under provisions of the Zoning Enabling Act, where project owner had selected the “pre-application” box on each of its three submissions and further included a letter of transmittal identifying the submissions as application materials for a pre-application plan review of its project, and town planner catalogued the submissions as “pre-applications” upon receipt.

Town had authority under town charter to issue moratorium on pending submissions for development of solar field projects; moratorium ordinance clearly characterized the emergency as a threat of an overdevelopment of solar-field projects in residential zones, and ordinance complied with the 60-day limitation for such emergency ordinances and affected only applications that had not vested under the applicable laws.

Statute authorizing a municipality to implement a “one-time moratorium, for the purpose of providing interim protection for a planned future land use or uses” for the first 12 months after a municipality adopts its local comprehensive plan was not exclusive and did not preempt town’s ability, under town charter provision regarding emergency ordinances, to adopt 60-day moratorium on solar field project approvals.

Vesting clause in town’s emergency moratorium ordinance prohibiting further solar field projects was not an improper modification of vesting requirements for zoning applications enacted outside ordinary notice and hearing procedures required for zoning amendments; valid and temporary emergency ordinance did not rise to the level of a de facto zoning ordinance, and town clearly provided vesting clause in an attempt to delineate which applications would proceed throughout the duration of the moratorium and which applications the town would place on hold.

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## **EMINENT DOMAIN - WASHINGTON**

### **[Maslonka v. Public Utility District No. 1 of Pend Oreille County](#)**

**Supreme Court of Washington - August 3, 2023 - P.3d - 2023 WL 4939152**

Landowners brought action against public utility district, alleging district’s operation of dam entitled landowners to damages based on inverse condemnation, trespass, nuisance, and negligence.

District counterclaimed for declaration of prescriptive easement. On summary judgment, the Superior Court declared a prescriptive easement in favor of utility district and dismissed landowners’ claims. Landowners appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. Review was granted.

The Supreme Court held that:

- As a matter of apparent first impression, the “subsequent purchaser rule,” prohibiting landowners from suing, through an inverse condemnation action, for property damage caused by governmental conduct that occurred prior to their ownership, is a doctrine of standing rather than an affirmative defense;
- Landowners were subsequent purchasers as to taking that occurred when dam was built, supporting finding that they were precluded from bringing an inverse condemnation claim;
- There was no evidence that alleged increase in flooding on property was attributable to district, as could render increased flooding a new taking that would allow inverse condemnation claim; and
- Landowners were precluded from asserting a nuisance claim against district based on same flooding as “backup” for inverse condemnation claim.



The “subsequent purchaser rule,” prohibiting landowners from suing, through an inverse condemnation action, for property damage caused by governmental conduct that occurred prior to their ownership, is a doctrine of standing rather than an affirmative defense.

Landowners were “subsequent purchasers” as to taking that occurred when dam was built and thus were precluded from bringing an inverse condemnation claim arising from public utility district’s dam operations that had flooded landowners’ property, where landowners bought property at a purchase price that represented known seasonal flooding from dam operations.

There was no evidence that alleged increase in flooding on landowners’ property was attributable to public utility district, as could render increased flooding a new taking that would allow inverse condemnation claim by landowners, as subsequent purchasers whose purchase of property was at a price that reflected known flooding from district’s dam operations.

Landowners were precluded from asserting a nuisance claim against public utility district, based on flooding of landowners’ property from district’s dam operations, as “backup” for landowners’ inverse condemnation claim, which was barred by subsequent-purchaser rule given that landowners had purchased property at a price that accounted for known flooding due to dam operations, where parties did not dispute that a taking occurred.

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## **[2023 State Budget Trends.](#)**

A look at the top trends emerging in state governments, from new taxes to planning for the next budget cycle.

[Download the eBook.](#)

### **Route Fifty**

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## **[Muni Implications of Fitch Surprise Downgrade.](#)**

**The UBS Chief Investment Office comments on the surprise downgrade by Fitch of the US’ sovereign credit rating, muni market implications, and portfolio positioning ideas.**

We believe that investors should allocate some space to durable tax-exempt income to portfolios through longer-duration, high-quality municipal bonds. (UBS)

- On 1 August 2023, Fitch Ratings surprised the financial markets by downgrading its long-term foreign currency issuer rating of the United States to AA+ from AAA. The rating agency cited a “deterioration in the standards of governance” and “repeated debt-limit political standoffs and last-minute resolutions” to recurring debt ceiling stalemates as contributing factors in its decision to reduce its assessment of the credit quality of US government securities.
- Following this rating revision, Fitch also downgraded certain municipal bonds that are linked to the US government debt rating due to their reliance on the sovereign credit for repayment. The related downgrades include USD 21.5bn of power bonds issued by the Tennessee Valley Authority, USD 3.5bn of pre-refunded municipal bonds, and USD 1.8bn of municipal housing bonds, as reported by Bloomberg. We do not expect the Fitch downgrade of the muni linked credits to have a

material impact on spreads. Despite the rating action, we view AA+ rated municipal bonds as high credit quality fixed income investments.

- Last week, munis sold off taking their cues from weakness witnessed in the US Treasury market. Yields on high grade munis increased by 17bps to 22bps across the curve. Despite the sell-off, tax-exempt munis (+2%) have outperformed taxable government related debt (+0.6%) on a year-to-date basis.
- In the new issue market, the largest deal expected to price this week is ~USD 1.015bn New York City general obligation bonds. Overall, net supply remains negative this month, representing a tailwind for the market.
- Short-dated tax-exempt municipal bonds have cheapened relative to their taxable fixed income counterparts. As a point of reference, the 2-year AAA muni-to-Treasury yield ratio now sits at 65%, up from only 60% in mid-July. That said, muni investors can obtain better relative values further out on the curve (12-year spot and beyond).

### **Buy high-quality munis**

We continue to favor positioning muni assets in high-quality sectors rather than lower-rated high yield munis in the face of macroeconomic uncertainty. Municipal electric utilities, state governments, and essential service water and sewer debt are all good examples of muni sectors that we believe should exhibit credit quality resilience in an economic slowdown. By contrast, not-for-profit hospital bonds and pockets of the private higher-education sector face more challenges from a credit standpoint. That said, our credit team has identified select opportunities from larger obligors with strong credit metrics within the higher risk hospital sector.

### **Add some duration**

Rather than waiting for the Fed to confirm an end to the rate hiking cycle, we believe that investors should allocate some space to durable tax-exempt income to portfolios through longer-duration, high-quality municipal bonds. Yields on longer-dated 20-year high grade AA munis now sit at about 3.8%. By comparison, these yields are roughly 35 basis points higher than the average over the past 20 years, and 250bps higher than the all-time historical low (1.3%) witnessed in 2021 July.

**by UBS Editorial Team**

08 Aug 2023

Main contributor: Kathleen McNamara

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## **Office Exodus: Can US Cities Survive?**

**Flagging office occupancy rates have municipal bond investors concerned. But US cities have more than one card to play in the revenue game.**

From the Bay Area to Boston, shrinking office footprints have been generating gloomy headlines. With talk of downtown death spirals, some municipal bond investors fear that declining office occupancy—a side effect of increased workplace flexibility—could deplete large cities' coffers. But while office vacancies remain a concern, most US cities have mechanisms to protect their finances—and those of municipal bondholders.

**Cities Have a Wide Range of Funding Sources**

First off, we need to address a misconception: US cities aren't nearly as dependent on commercial and office taxes as many believe. It's true that property taxes are typically the largest source of tax revenue for large cities, but they account for just 30% of total revenue, on average, according to the Urban Institute—with office contributing just a portion of that. In fact, of the largest US cities by debt outstanding, commercial or office property taxes account for just 6.8% of total revenues, on average.

[Continue reading.](#)

## **Alliance Bernstein**

by Richard Schwam, CFA| High Yield Research Analyst—Municipal Credit

AUGUST 10, 2023

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## **[Regulate AI? Here's What States Need to Know.](#)**

**A new report by the National Conference of State Legislatures provides a primer for lawmakers on how they might approach oversight of artificial intelligence.**

An increasing number of state legislatures are grappling with what to do about the rapid rise of artificial intelligence.

In the absence of federal legislation, some states have been passing laws to protect citizens from the potential harms of AI, such as assessing whether its use is leading to discrimination or requiring public disclosure when it is being used.

But the majority of AI measures passed by legislatures have simply created task forces to advise states as they get up to speed on the complex issues involved, according to a [new report](#) by the National Conference of State Legislatures released Thursday.

[Continue reading.](#)

ROUTE FIFTY

by KERY MURAKAMI

AUGUST 11, 2023

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## **[Wall Street's Projected Tab on Muni Price-Fixing Suits Expected to Plunge.](#)**

- **BI analyst Stein sees banks settling for about \$900 million**
- **Illinois settled near-decade of litigation on VRDO pricing**

Wall Street banks' potential bill to settle bond price-fixing lawsuits has been slashed, falling to around \$900 million from about \$2.5 billion penciled in just a month ago.

That's the thinking of Elliott Stein, senior litigation analyst at Bloomberg Intelligence, after Illinois settled for \$68 million, roughly 20% of damages last month, likely setting a template for other

settlements of the three remaining False Claims Act lawsuits.

Stein estimates that lawsuits in California, New Jersey and New York will cost the dozen banks involved — including Bank of America Corp., Citigroup Inc. and JPMorgan Chase & Co. — around \$220 million in total. A class action case filed in New York with similar allegations could be resolved for as much as \$600 million. Before the Illinois settlement, Stein had estimated the tab on all five suits at \$2.5 billion.

[Continue reading.](#)

## **Bloomberg Markets**

By Joseph Mysak Jr

August 10, 2023

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### **[Analysis Suggests Municipal Bond Market Prices Race But Not Climate Risk.](#)**

DURHAM, N.C. — The U.S. municipal bond market does not consider physical climate risks when deciding where to invest, but it generally requires higher interest payments from predominantly Black communities seeking to borrow, according to an [analysis](#) published Aug. 9.

The findings from researchers at Duke University, Northeastern University and Breckinridge Capital Advisors appear in the open-access journal PLOS ONE.

“The results of our study point to mispricing of risk in the municipal bond market — climate risk should matter to investors, but the racial makeup of communities should not,” said lead author Erika Smull, a 2022 Ph.D. graduate of the Nicholas School of the Environment who now works as a research analyst at Breckinridge Capital Advisors.

“Our analysis shows that climate risk is not priced, but that a ‘Black Tax’ exists in the market,” Smull said. “That is problematic for a country that has to grapple with both increasing climate risks and racial disparities.”

States, cities, counties and other governmental entities rely on the \$4 trillion municipal bond market to help fund essential infrastructure and services, such as schools, roads and water and sewer systems. Bond issuers repay investors through taxes or fees collected within their service areas. How much investors charge borrowers in interest depends on their perception of each service area’s unique environmental, economic or demographic risks.

Few studies have examined the relationships between municipal bond pricing and two particular factors: climate risk and race. The analysis in PLOS ONE used data from price at issue of more than 700,000 municipal bonds to better characterize those relationships. The authors focused on a measure called credit spread — the difference between a bond issuer’s interest cost to borrow and a benchmark “risk-free” municipal rate.

When adjusting for both bond structure and other service area characteristics, the analysis found that communities with majority Black residents face larger credit spreads on municipal bonds than communities with non-Black majorities. Applying this borrowing penalty to the entire municipal bond market results in Black Americans paying an estimated \$900 million in additional interest costs each

year.

“There are numerous reasons that could explain why we find race to be meaningful for municipal bond spreads, including implicit and explicit biases of organizations or individual investors, statistical discrimination, where risk perceptions of decades past have proliferated, and/or circular reasoning on the part of investors who expect others to hold a bias and therefore price accordingly,” the authors write. “Regardless of any sort of explanation, race alone should not influence municipal credit spreads.”

In contrast, no statistically meaningful penalty emerged from the analysis for climate risk. All other factors being held equal, communities at higher risk from climate effects, such as sea level rise or wildfires, pay roughly the same rate as lower-risk communities to issue debt for needed infrastructure improvements.

“Municipal bonds are long-term financial liabilities, so any biases priced into the market have profound implications for communities and their residents,” said coauthor Martin Doyle, director of the Water Policy Program at Duke’s Nicholas Institute for Energy, Environment & Sustainability and professor of river science and policy at the Nicholas School of the Environment.

“While the effects of climate change are manifesting more frequently, bond buyers are still treating cities with as wide a range of risk as Miami and Omaha the same,” Doyle said. “Meanwhile, Black communities that are often on the front lines of climate risks and disasters appear to face higher costs to make their infrastructure more resilient.”

Funding for the analysis by the Duke researchers was provided by Spring Point Partners.

[Read full paper.](#)

## **Nicholas Institute for Environmental Policy Solutions**

AUGUST 9, 2023

CITATION: “Climate, Race, and the Cost of Capital in The Municipal Bond Market,” Erika Smull, Evan Kodra, Adam Stern, Andrew Teras, Michael Bonanno, and Martin Doyle. PLOS ONE, August 9, 2023.

DOI: 10.1371/journal.pone.0288979

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## **[S&P: What U.S. CDFI Ratios’ Resilience Through Changing Economic Landscapes Means For Long-Term Credit Quality.](#)**

### **Key Takeaways**

- We expect U.S. CDFIs’ net equity will decrease modestly in the near term but remain strong and sufficient to absorb additional leverage, reducing the likelihood of widespread negative rating actions.
- CDFIs will continue to employ diligent underwriting standards to limit repayment risk, protecting their capital and supporting asset quality as a key credit strength.
- Increasing interest rates could relieve institutions of recent spreads compression, with stronger profitability expected in the near term.

[Continue reading.](#)

10 Aug, 2023 | 18:02

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## **Revisiting WIFIA Sub-UST Interest Rates for SRFs.**

The WIFIA loan program offers an interest rate derived from current U.S. Treasury (UST) yields at loan closing. Other large-scale federal infrastructure loan programs like TIFIA and CIFIA do the same. The underlying idea is that the loan should cover the government's interest cost of funding it. The program's appropriations can then be devoted primarily to offset expected credit losses. Since very few losses are expected from investment-grade loans to infrastructure projects, WIFIA's surprisingly small annual appropriations can go a long way. It's not a bad approach to federal infrastructure lending in general.

For most borrowers, a rate based on the federal government's own cost of borrowing should be attractive. It's a little more complicated for WIFIA because nearly all the program's borrowers so far are highly rated water agencies that can issue very cost-effectively in the tax-exempt municipal bond market where yields are often close to (or even below) the UST curve. Still, if a WIFIA loan's interest rate is at least roughly comparable to a borrower's muni bond alternatives, the loan's other features (term, flexibility, construction rate lock and reset, etc.) are highly beneficial for financing large-scale, long-lived infrastructure projects. For this class of WIFIA borrower, a sub-UST rate isn't necessary.

### **SRF-WIN Sub-UST Proposals**

WIFIA's base UST rate has worked well so far, but it's not intrinsic to the program's mission. In 2018, the proposed SRF-WIN Act included a 20 percent discount to WIFIA's base UST rate (subject to certain adjustments and limitations) for those SRFs which receive less than 2 percent of annual federal grant funding. This is a significant discount, amounting to about 10 percent of loan principal on an NPV basis. As you'd expect, there was a lot of support for the proposal among qualifying SRFs and related stakeholders. But two serious objections were raised by advocacy groups representing WIFIA's water agencies, which as noted above are by far the largest component of program borrowers to date:

[Continue reading.](#)

**waterfm.com**

By John Ryan

JULY 31, 2023

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## **EPA Announces \$50 million in Grants for Stormwater, Sewer Needs.**

The U.S. Environmental Protection Agency (EPA) recently announced the availability of nearly \$50 million in regular funding through the Sewer Overflow and Stormwater Reuse Municipal Grant program to help communities address stormwater and sewer infrastructure needs.

States may now apply for grant assistance to fund projects that will help municipalities strengthen their stormwater collection systems against increasingly intense rain events made worse by the climate crisis and prevent contaminants from polluting waterways. Thanks to program updates made by the Biden-Harris Administration's Investing in America Agenda, the Sewer Overflow and Stormwater Reuse Municipal Grant program will also ensure small and financially distressed communities receive grant assistance at no cost.

"Against the backdrop of extreme weather fueled by the climate crisis, heavy rainfall can flood communities, overload facilities that treat wastewater, and contaminate our waterways with sewage and pollution. Through President Biden's Investing in America agenda, we're providing communities with critical resources to manage stormwater and sewer overflows with resilient infrastructure to prevent these serious challenges," said EPA Assistant Administrator for Water Radhika Fox. "With \$50 million in grant funding and new requirements under the Bipartisan Infrastructure Law, the Biden-Harris Administration is helping address the threat of stormwater inundation in communities that need it most."

Stormwater management is a complex environmental challenge for communities across the country. The cost to construct, operate, and maintain stormwater infrastructure can be significant, which can strain ratepayers, especially those in small and financially distressed communities. This investment follows changes made by the Bipartisan Infrastructure Law to prioritize projects for small and/or financially distressed communities and prevent cost share requirements from being passed on to these communities. Learn more about the [Sewer Overflow and Stormwater Reuse Municipal Grant](#) program.

## **Stormwater**

Per EPA, stormwater can be a significant source of water pollution and a public health concern. Stormwater can collect various pollutants including trash, chemicals, oils, and dirt/sediment and convey them to nearby waterways. When mixed with domestic and industrial wastewater in combined sewers, stormwater can also contribute to combined sewer overflows during heavy storm events.

EPA is working with local and state partners to leverage the resources of the federal government to meet the needs of these communities. In the past, states and communities shared a fixed portion of the costs associated with all projects funded through the Sewer Overflow and Stormwater Reuse Municipal Grant program. The Bipartisan Infrastructure Law changed the program so that 25% of Sewer Overflow and Stormwater Reuse Municipal Grant program funds go to available projects in small and/or financially distressed communities; it also limited states' abilities to pass on the burden of cost sharing to these communities.

To encourage investment in these critical projects, EPA modified the Sewer Overflow and Stormwater Reuse Municipal Grant program so that state grantees are not required to contribute cost share money for Sewer Overflow and Stormwater Reuse Municipal Grant program projects located in small or financially distressed communities. However, grant portions that go to communities other than small or financially distressed communities will include a cost share requirement.

WATER FINANCE & MANAGEMENT

BY WFM STAFF

AUGUST 14, 2023



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## **Public Pensions: Double-Check Those ‘Shadow Banker’ Investments**

**Private credit has gained a growing share of pension portfolios over the past decade. It's time to take a second look under the hood.**

For almost a decade leading up to 2021, bond yields were suppressed by low inflation and central bank stimulus. To make up for scanty interest rates on their bond investments, many public pension funds followed the lead of their consultants and shifted some of their portfolios into private credit funds. These “[shadow bankers](#)” have taken market share from traditional lenders, seeking higher interest rates by lending to non-prime borrowers.

Even during the pandemic, this strategy worked pretty well, but now [skeptics are warning](#) that a tipping point may be coming if double-digit borrowing costs trigger defaults. It's time for pension trustees and staff to double-check what's under the hood.

For the most part, the worst that many will find is some headline risk with private lending funds that underwrite the riskiest loans in this industry. Even for the weakest of those, however, the problem will not likely be as severe as the underwater mortgages that got sliced, diced and rolled up into worthless paper going into the global financial crisis of 2008. And until and unless the economy actually enters a full-blown recession, many of the underwater players will still have time to work out their positions.

[Continue reading.](#)

**governing.com**

Aug. 8, 2023 • Girard Miller

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## **MSRB Demystifies Structured Data with Newest Addition to EMMA Labs.**

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today debuted its third entry on EMMA Labs – the MSRB's free innovation sandbox for transparency enhancements to the municipal securities market – with a new lab aimed at demystifying structured data. The lab explains what structured data is, features case studies from municipal issuers who have prepared their financial statements in a machine-readable format and illustrates potential future capabilities of the Electronic Municipal Market Access (EMMA®) website.

“Our goal with this Lab is first and foremost education,” said Chief Product Officer Brian Anthony. “Issuers and other market participants need a common understanding of structured data as technology continues to evolve and new legislation is being implemented to require the greater use of structured data in regulatory filings with the MSRB.”

The Lab features case studies from two early adopters of structured data for financial management: the City of Flint and the College of DuPage. The Lab also illustrates how the EMMA website could be enhanced with dynamic comparison tools leveraging structured data.

“Since EMMA Labs launched in 2022, it has served as a place for market participants to collaborate on innovative prototypes and ideas that have the power to improve transparency in our market,”



Anthony said.

EMMA Labs is free to use. The structured data lab is one of three “Active Labs” that serve as a proving ground for functional prototypes that could eventually be deployed on the EMMA website. The first Lab is a powerful search engine that the MSRB plans to bring to future-state EMMA to enable keyword searches across the hundreds of thousands of disclosure documents submitted to EMMA as unstructured PDFs. The second Lab is a dynamic dashboard for market data analysis that empowers users to discover and visualize market trends. An additional Idea Labs section provides a forum for users to submit and provide feedback on ideas for potential future Active Labs.

Date: August 07, 2023

Contact: Leah Szarek, Chief External Relations Officer  
202-838-1500  
lszarek@msrb.org

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## **[Buying Opportunity Now in Munis: Pearce Fitts](#)**

Appleton Partners Fixed Income Portfolio Manager Whitney Pearce Fitts discusses why there is now a buying opportunity in munis and why issuance has fallen in 2023. She speaks to Bloomberg’s Romaine Bostick and Katie Greifeld on “Bloomberg Markets: The Close.”

[Watch video.](#)

August 9th, 2023, 1:26 PM PDT

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## **[Lawmakers Probe Nonprofit Hospitals, Challenge Tax-Exempt Status.](#)**

- **Grassley, Warren ask IRS, Treasury to investigate charity care**
- **Senators say they’re concerned about abuse of tax exemption**

A bipartisan group of four US senators wants the Internal Revenue Service and Treasury Department to investigate whether nonprofit hospitals are abusing their tax-exempt status.

The lawmakers pointed to cases of nonprofit hospitals charging full price for services that should have been free or discounted. They also said some of these institutions pursued indigent patients for medical debt, including placing liens on their homes.

More than half of approximately 5,200 community hospitals in the US are nonprofit, and are supposed to provide charity care in return for their tax-exempt status.

“We are alarmed by reports that despite their tax-exempt status, certain nonprofit hospitals may be taking advantage of this overly broad definition of ‘community benefit’ and engaging in practices that are not in the best interest of the patient,” senators including Elizabeth Warren of Massachusetts and Chuck Grassley of Iowa wrote in a letter this week. Bill Cassidy, a Republican from Louisiana, and Democrat Raphael Warnock of Georgia were also signatories.

There aren’t explicit rules for what constitutes meeting charity-care guidelines. Lawmakers have

previously said that disclosure requirements are vague, allowing institutions to duck their responsibilities. The hospital industry has disputed these findings.

In the Monday letter, the senators called for the government to update the forms hospitals file to disclose charity care. They also want to identify hospitals whose tax-exempt status was revoked, as well as those that were audited or deemed at risk for non-compliance.

Lawmakers had addressed this issue at a House Ways and Means hearing in April, calling for more clarity and consistency in how hospitals disclose and meet their charity contributions.

States and municipalities have also pushed back on nonprofit hospitals. Colorado has a new law requiring more extensive reporting on the community care these institutions provide. Pittsburgh has questioned the tax-exempt status of some of the property owned by the University of Pittsburgh's medical center, which has outlined its disagreement. And the New York City Council in June voted unanimously to establish an Office of Healthcare Accountability that would scrutinize the prices hospitals charge and the charity-care provisions they have in place.

More than three quarters of the 1,773 nonprofit hospitals examined by health-care think tank Lown Institute spent less on charity care and community investment than the estimated value of their tax break, according to the most recent Fair-Share Spending report. This created what Lown called a "fair-share deficit" of \$14.2 billion in 2020.

## **Bloomberg Politics**

By Lauren Coleman-Lochner

August 9, 2023

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### **[Muni Selloff Is an Opportunity: Appleton's Pearce Fitts](#)**

Whitney Pearce Fitts, Appleton Partners fixed income portfolio manager, discusses the decline in municipal bond issuance and the selloff in the municipal bond market with Romaine Bostick and Katie Greifeld on "Bloomberg Markets: The Close."

[Listen to audio.](#)

#### **Muni Moment - Bloomberg Markets: The Close**

August 9th, 2023, 12:45 PM PDT

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### **[State Budget Creates Uncertainty in Local Michigan ARPA Project Commitments.](#)**

In late June, Michigan passed a bipartisan \$81.7 billion budget for Fiscal Year 2024, which included \$26.7 million to provide a 5% increase in statutory revenue sharing to counties, cities, townships and villages. This is great news for local governments which have often felt slighted by Michigan's fractured municipal finance system.

However, the press release proclaiming budget victory contained only a single sentence on the revenue sharing increase (See “Gov. Whitmer Applauds Passage of ‘Make it in Michigan’ Budget,” press release, Executive Office of the Governor, (June 28, 2023), <https://rb.gy/ikv21>.)

As always, the devil is in the details. In this case, the details could leave some communities scrambling to obligate millions of dollars in federal funding before year end.

[Continue reading.](#)

**By: BridgeTower Media Newswires//August 10, 2023**

**By Brandon M. Grysko**

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## **[A Top-Performing Muni Fund That Ventures Where Others Don't.](#)**

Avoiding big losses is much more important to bond investors than scoring significant wins. “They’re in the market for principal preservation and tax-free income,” says Lyle Fitterer, who has been a municipal bond fund manager for over 30 years.

Fitterer, the co-lead manager of the \$644.5 million Baird Strategic Municipal Bond fund (ticker: BSNSX), manages to both avoid losses and deliver wins, though his strategy might strike some as unconventional. The no-load fund’s largest position is five-year U.S. Treasury note futures, for example, and it holds a significant amount of high-yield issues.

The fund saw inflows during 2022’s bond rout when other muni bond funds saw outflows. That allowed Fitterer to add some higher-yielding bonds with slightly lower-quality credits, which has helped Strategic Muni outperform this year.

[Continue reading.](#)

**Barron’s**

By Debbie Carlson

Updated Aug. 9, 2023

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## **TAX - OHIO**

### **[Stingray Pressure Pumping, L.L.C. v. Harris](#)**

**Supreme Court of Ohio - August 2, 2023 - N.E.3d - 2023 WL 4913160 - 2023-Ohio-2598**

Taxpayer challenged decision of Ohio Board of Tax Appeals (BTA) concluding that some of taxpayer’s equipment used in its fracking operations did not qualify for exemption from Ohio’s sales and use tax for equipment used directly in the production of crude oil and natural gas.

The Supreme Court held that:

- Blender was exempt from sales and use tax;
- Hydration unit was exempt from sales and use tax;

- Chemical-additive unit was exempt from sales and use tax;
- Sand king was exempt from sales and use tax;
- T-belt was exempt from sales and use tax;
- Data van was not exempt from sales and use tax; and
- Equipment, aside from data van, was used directly in production of oil and gas.

Primary use of taxpayer's blender equipment was to mix together water, chemicals, and sand, notwithstanding blender's holding function, and thus blender was directly used in performing taxpayer's hydraulic fracking services for the production of crude oil and natural gas, and therefore blender qualified as a "thing transferred" directly in production of crude oil and natural gas for sale, such that blender was exempt from Ohio's sales and use tax; blender mixed critical ingredients in fracking recipe seconds before mixture was inserted into well.

Primary use of hydration unit was in mixing water and various chemicals, not storage, and thus hydration unit was directly used in performing hydraulic fracking services for the production of crude oil and natural gas, and therefore hydration unit qualified as a "thing transferred" directly in production of crude oil and natural gas for sale, and thus taxpayer's hydration unit equipment was exempt from Ohio's sales and use tax.

Taxpayer's chemical-additive unit was not primarily used for holding, but rather, primary function of unit was to provide chemicals to hydration unit and blender by way of hoses, and therefore chemical-additive unit was tangible personal property directly used in hydraulic fracking services, such that chemical-additive unit qualified as a "thing transferred" directly in production of crude oil and natural gas for sale, and thus chemical-additive unit was exempt from Ohio's sales and use tax.

Primary use of taxpayer's sand king equipment, which holds sand for a brief period before it is injected into pressurized mixture that is immediately injected into well, was to feed sand into blender, and thus sand king was tangible personal property directly used in hydraulic fracking services, such that sand king qualified as a "thing transferred" directly in production of crude oil and natural gas for sale, and therefore sand king was exempt from Ohio's sales and use tax.

Taxpayer's data van equipment, a motor vehicle containing various screens and monitoring devices did not act directly on fluid and material and did not control production equipment, and thus data van did not qualify as a "thing transferred" directly in production of crude oil and natural gas for sale, and therefore data van was not exempt from Ohio's sales and use tax.

Taxpayer's equipment used in taxpayer's fracking operations, including blenders, hydration units, chemical-additive units, sand kings, and t-belts, which was used in unison with manifold and pumps to create injection of mixture that was sent downhole to free oil and gas was used directly in production of oil and gas, and thus equipment qualified for exemption from Ohio's sales and use tax, even if equipment's use was preliminary and preparatory to production.

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## **TAX - RHODE ISLAND**

### **[Apex Oil Company, Inc. v. State by and through Division of Taxation](#)**

**Supreme Court of Rhode Island - July 14, 2023 - 297 A.3d 96**

Oil trader brought two tax aggrievement actions challenging Division of Taxation's denial of trader's claim for a refund of \$4,280,039.44 paid for Motor Fuel Tax assessed on the purchase and sale of 300,000 barrels of oil, as part of chain transaction in which oil trader was contractually responsible

to its seller for the tax.

The Sixth Division District Court dismissed. Oil trader petitioned for writ of certiorari, which was granted.

The Supreme Court held that:

- Oil trader demonstrated it suffered injury in fact in order to establish standing to bring tax aggrievement action challenging
- Division's denial of trader's claim for a refund of Motor Fuel Tax;
- There was causal connection between Division's imposition of Motor Fuel Tax on trader's purchase of oil and trader's injury in fact, as required to establish standing to bring tax aggrievement actions challenging Division's denial of trader's claim for a refund of Motor Fuel Tax;
- Seller of oil's assignment of its rights to oil trader did not establish that they were in privity at time settlement was reached between seller and Division, and thus, claim preclusion did not apply to trader's challenge to Division's denial of claim for refund of Motor Fuel Tax; and
- Doctrine of administrative finality did not apply to bar trader's challenge to Division's denial of its claim for refund for Motor Fuel Tax.

Doctrine of administrative finality did not apply to bar oil trader's challenge to Division of Taxation's denial of trader's claim for a refund of \$4,280,039.44 paid for Motor Fuel Tax assessed on purchase and sale of 300,000 barrels of oil as part of chain transaction in which oil trader was contractually responsible to its seller for the tax; seller's request for relief in the initial agency proceedings sought only penalty and interest abatement, while oil trader's request for relief requested a refund of the tax itself based upon its assertion that the tax was improperly imposed, thus, the two requests were not the same or substantially similar.

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### **Fitch: U.S. Home Price Declines Concentrated in the West; Tax Effects Limited**

Fitch Ratings-New York-10 August 2023: Significant home price declines from peak levels following the pandemic are concentrated in a dozen counties in western states, Fitch Rating says. The price drops have varied, but there are limited downside implications for property tax revenues in the impacted municipalities due to property tax formulas that smooth home price swings.

National home prices have begun to level off after declining from peaks during the pandemic, showing resilience amid constrained supply and relatively stable demand. Fitch expects U.S. nominal home prices to fall between 0% and 5% in 2023 relative to 2022, per our Global Housing and Mortgage Outlook.

We expect broad property tax collections to remain healthy, as roughly half of U.S. counties have not seen home price declines in the post-pandemic period. Property valuations take roughly 18 months to two years to feed through to property tax assessments, and local governments have time to adjust tax rates and budgets in response to changes in property valuations. Aggregate U.S. property taxes are likely to grow to varying degrees in 2023 and 2024, reflecting high 2021 and 2022 home values.

[Continue reading.](#)

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## **[New York City, New York: Fitch New Issue Report](#)**

The 'AA' Issuer Default Rating (IDR) and GO bond rating reflect the city's exceptionally strong budget monitoring and controls, supporting Fitch's high assessment of operating performance. Federal stimulus aid relieved fiscal pressure that would have otherwise resulted from the city's lagged economic recovery from the pandemic and has supported structural budgetary balance. The record revenue performance and strong recovery, as well as improvement in reserve levels will help management navigate through future economic downturns, including near-term challenges due to an expected deceleration of revenue growth, rising labor costs and other uncertainties associated with a high-inflation environment.

### **[ACCESS REPORT](#)**

Tue 08 Aug, 2023

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## **[Municipal Securities Regulation and Enforcement: 2023 Mid-Year Review - Ballard Spahr](#)**

In the first half of 2023, several rule changes have been proposed by the Municipal Securities Rulemaking Board (MSRB) and the U.S. Securities and Exchange Commission (SEC), including changes to "Best Execution" requirements and new data transparency requirements. The SEC's "Regulation Best Execution" proposal has been met with particularly strong pushback, with many in the municipal market encouraging that it be dropped altogether.

**[View the Ballard Spahr Mid-Year Review.](#)**

August 1, 2023

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## **[California Lawyers Association 2023 State and Local Tax Annual Meeting Roundup: Greenberg Traurig](#)**

### **Go-To Guide:**

- California Lawyers Association's SALT Committee held its first fully in-person annual meeting since the start of the pandemic.
- California taxing agencies provided legislative, regulatory, and litigation updates of interest.

The Taxation Section of the California Lawyers Association held its annual State and Local Tax Meeting on July 27, 2023, at the Franchise Tax Board (FTB)'s Central Office in Rancho Cordova, California. This meeting provided practitioners and industry members an opportunity to hear from several leaders at the FTB, California Department of Tax and Fee Administration (CDTFA), California Board of Equalization (BOE), and the Office of Tax Appeals (OTA).

For those who missed the event or who want a double serving of tax, keep reading for the latest developments in California state and local tax.

[Continue reading.](#)

**Greenberg Traurig LLP** – Bradley R. Marsh, Shail P. Shah, James T. Smith and Jennifer A. Vincent

August 8 2023

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## **State of Tennessee: Fitch New Issue Report**

Revenue Framework – ‘aaa’ Consistent with Tennessee’s recent experience, Fitch expects long-term state revenue growth, predominantly sales tax, to be in line with or above national economic growth. The state retains an unlimited legal ability to raise operating revenues. Expenditure Framework – ‘aaa’ Spending is dominated by Medicaid and education. The natural pace of spending growth in Tennessee is expected to equal or marginally exceed expected revenue growth over time, requiring ongoing cost control. The state retains ample flexibility to cut spending throughout the economic cycle. Long-Term Liability Burden – ‘aaa’ The state’s liability position is among the lowest of the states, driven by a historical reluctance to rely on debt issuance to fund capital projects and a consistently disciplined approach to pension funding. Operating Performance – ‘aaa’ Tennessee retains exceptional gap-closing capacity stemming from a willingness to cut spending (even in high-priority areas) and strong reserves, including both a budgetary reserve and a separate Medicaid program reserve.

### **ACCESS REPORT**

Thu 10 Aug, 2023

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## **Bankrupt Arizona Sports Park Wins Ruling Backed by Bondholders.**

- **Judge rejects US request for independent supervision of venue**
- **Park’s sale staying on track benefits \$280 million muni bonds**

Legacy Cares Inc., the non-profit owner of a bankrupt Phoenix-area sports complex, won a court fight to keep the venue’s planned sale on track after an Arizona judge rejected a federal monitor’s plea to appoint a trustee for the site.

The decision is a victory as well for holders of \$280 million in municipal bonds, unsecured creditors and the landlord of the 320-acre complex. The trustee for Vanguard Group, AllianceBernstein Holding LP and other bondholders and other creditors opposed the federal monitor’s request.

Judge Daniel Collins of the US Bankruptcy Court for the District of Arizona ruled that naming a trustee for the complex would “gravely jeopardize” the sale of the facility and it’s ability to continue as a going concern. Legacy Cares asked the court to set a Sept. 18 deadline for bids on the venue and to complete the sale in early October.

[Continue reading.](#)

## **Bloomberg Markets**

By Martin Z Braun

August 10, 2023

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## **[The Mid-August Muni Bond Market \(Bloomberg Audio\)](#)**

Eric Kazatsky, Senior Municipal Bond Strategist at Bloomberg Intelligence, joins to discuss the latest on the muni bond market. Hosted by Matt Miller and Simone Foxman.

[Listen to audio.](#)

### **Bloomberg**

Aug 11, 2023

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## **[The Higher Your Tax Bracket, the More Attractive Municipal Bonds May Look.](#)**

- **The \$1 billion bond deal drew retail, institutional buyers**
- **Muni bonds' tax-exempt status promises rich yields for wealthy**

US investors looking to match the long-term returns provided by equities need look no further than the seemingly modest municipal bond market.

Case in point: the \$1 billion deal sold by New York City this week. The Big Apple — rated AA by two ratings companies — sold 30-year debt that was priced to yield 4.35%. It sounds modest, but with tax adjustments, the richest New Yorkers snapping up the securities earned yields equivalent to 10% taxable debt, an online tool from Eaton Vance Management shows.

The \$4 trillion municipal bond market, like other parts of the fixed income universe, is offering elevated yields not seen in years. But the state and local debt market has an added allure that other asset classes don't: the income is tax-exempt. That means that the yields on muni bonds are even higher after adjusting for taxes. And the higher your tax bracket, the more attractive the bonds look.

[Continue reading.](#)

### **Bloomberg Markets**

By Amanda Albright

August 11, 2023

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## **[NFMA Advanced Seminar on Transportation.](#)**

The NFMA will hold an Advanced Seminar on Transportation in **Chicago on October 12 & 13**. This event is open to members and non-members, but not the press.

To view the program, [click here](#).



To register, [click here](#).

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## **Overview of a Bond Issuance: GFOA eLearning Course**

**August 15, 16, 17 2023 | 1-4 p.m. ET**

### **Details:**

Governmental entities have been using debt for over 200 years to fund public infrastructure such as government buildings, water distribution systems, schools, police stations, and many other projects that require significant capital investment.

Debt issuance is a significant undertaking for governments, whether an entity frequently or infrequently issues debt. This includes engaging in a great deal of work prior to the transaction and ongoing for the lifetime of the bond. Issuers must manage the financing, make decisions about the structure and type of debt being issued, understand market conditions and the timing of the issuance, select and manage a number of external professionals during this process, and execute all post issuance debt management requirements. This course will provide an overview of the debt issuance process and explain the obligations finance officers must address when taking on a bond issuance, with a focus on GFOA's best practices as guidance.

**Who Will Benefit:** CFO/Finance Director, Controller, Budget Manager, Treasurer, Debt Manager

### **Learning Objectives:**

Those who successfully complete this seminar should be able to:

- Learn about GFOA's Debt Management Best Practices and Debt Issuance Checklist
- Be aware of the internal and external professionals involved in a debt issuance
- Understand how to evaluate and select the method of sale
- Know the factors in determining timing, structure and type of bonds to issue
- Understand the process of obtaining a credit rating
- Identify post issuance responsibilities, including those related to federal tax and securities laws

Member Price: \$315.00

Non-member Price: \$630.00

[\*\*REGISTER\*\*](#)

- 
- [US Downgrade Hits Muni Market as Fitch Cuts Billions of Debt.](#)
  - [Fitch: U.S. Downgrade Has Limited Effect on Public Finance Ratings](#)
  - [Muni Bank Loans Top \\$200 Billion to Near Record.](#)
  - [Illinois Feared Losing to Wall Street Banks Over Muni Price-Fixing Case.](#)
  - [New GFOA Video: Legacy Lease Accounting](#)
  - [BDA Forms Fixed Income Technology Clearinghouse to Facilitate Information Sharing, Tech Intel, and Deliverables for US-Focused Bond Dealers.](#)
  - Interesting tax case out of New Mexico [here](#).
  - [Matter of Oklahoma Turnpike Authority](#) - Supreme Court of Oklahoma holds that Oklahoma

Turnpike Authority was authorized by statute to issue additional bonds for the construction of two connections to finalize outer loop around city; while statute restricted bonds for construction of any of four proposed turnpikes to one issue under one bond indenture, that provision only applied to initial bond issue to begin construction of the four proposed turnpikes, and Authority had statutory authorization to pay “all or any part of the cost of any one or more turnpike projects,” which allowed authority to later issue bonds for the two connectors. **Ed. Note:** To truly understand this case, don’t miss the dissent filed by three of the Justices.

- And Finally, Oh. Crap. is brought to us this week by [Sunrise Resort Association, Inc. v. Cheboygan County Road Commission](#), in which the Supreme Court of Michigan informed us that the state has a “sewage-disposal-system-event exception to governmental immunity.” We don’t know about you (and, frankly, have no interest in doing so), but could there possibly be a more glorious phrase than “sewage-disposal-system-event?” We were planning to clue you in on the dirty little secret that we will henceforth be blaming sewage-disposal-system-events for any/all BCB disruptions in service. But it quickly occurred to us that we should not be crying wolf on this one, given the near certainty that the BCB workplace will soon be experiencing an all-too-real one. Crap.

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## IMMUNITY - KENTUCKY

### [New Albany Main Street Properties v. Watco Companies, LLC](#)

**United States Court of Appeals, Sixth Circuit - July 27, 2023 - F.4th - 2023 WL 4777172**

Lessee of port facility brought action against riverport authority’s executive director in her official capacity, alleging state claims of tortious interference with contractual and business relationships, civil conspiracy, and defamation, and seeking damages and an injunction.

The United States District Court for the Western District of Kentucky denied director’s motion to dismiss. Director filed interlocutory appeal.

The Court of Appeals held that:

- Director was not entitled to pure sovereign immunity;
- Authority performed a function integral to state government;
- Authority performed a statewide function; and
- Lessee brought action against director in her official, rather than individual, capacity.

Kentucky’s rule of pure immunity does not apply to cities, which the Kentucky Supreme Court treats as municipal corporations, rather than arms of the government, and it does not apply to state or county employees sued in their individual capacities who must instead rely on the distinct doctrine of qualified immunity.

Executive director for riverport authority, a quasi-government agency, was not entitled to pure sovereign immunity under Kentucky common law, in action by lessee of port facility, alleging state-law claims against director for tortious interference with contractual and business relationships, civil conspiracy, and defamation.

The development of transportation infrastructure qualifies as a government, not a proprietary, task, for purposes of establishing that a corporate entity performs a function integral to state government for governmental sovereign immunity to apply; this transportation infrastructure includes not just the airports that planes use or the roads that cars use, but also the docks and wharves that ships use.

Riverport authority, a quasi-government agency that leased industrial property for public purpose of developing ports, performed a function integral to state government, rather than a proprietary function, as would support finding that authority's executive director was entitled to governmental sovereign immunity in lessee's action alleging state claims of tortious interference with contractual and business relationships, civil conspiracy, and defamation; authority did not act with a profit motive as it could only charge reasonable rates for use of port facility, was required to devote any surplus revenue to maintaining facility, and was eligible to rely on revenue bonds and taxpayer funds to subsidize its activities, and authority did not own the ships that hauled cargo, but rather owned transportation infrastructure of port facility that shippers used.

Riverport authority, a quasi-government agency that leased industrial property for public purpose of alleviating a statewide concern relating to developing ports, performed a statewide function, rather than a regional function, as would support finding that authority's executive director was entitled to governmental sovereign immunity in lessee's action alleging state claims of tortious interference with contractual and business relationships, civil conspiracy, and defamation, even though authority had a limited regional jurisdiction; need to ensure that individuals living in state had adequate means to ship their cargo to the other side of the commonwealth represented a classic governmental problem that extended beyond any one region.

Port facility lessee brought action against executive director of riverport authority, a quasi-government agency, in her official, rather than individual, capacity, as would support finding that director was entitled to governmental sovereign immunity in lessee's action alleging claims including defamation, absent argument that anything in course of proceedings would have put director on notice that lessee sued her in her personal capacity; claim was ambiguous in that it merely identified director as "Executive Director of Louisville/Jefferson County Riverport Authority," and claim never alleged that it sought money damages from director in her individual capacity.

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## **ZONING & PLANNING - SOUTH DAKOTA**

### **[Dakota Constructors, Inc. v. Hanson County Board of Adjustment](#)**

**Supreme Court of South Dakota - July 26, 2023 - N.W.2d - 2023 WL 4778243 - 2023 S.D. 38**

Quarry owners filed petition for writ of certiorari, contesting conditions which county board of adjustment attached to conditional use permit and arguing that quarry was a prior nonconforming use in agricultural district.

The Circuit Court denied the writ, and quarry owner appealed.

The Supreme Court held that:

- As a matter of first impression, in passing on the meaning of a zoning ordinance, the courts will consider and give weight to the construction of the ordinance by those administering the ordinance, and
- Determination that previous operation of quarry had ceased for more than one year and was thus not a prior nonconforming use was not wrong or erroneous.

In passing on the meaning of a zoning ordinance, the courts will consider and give weight to the construction of the ordinance by those administering the ordinance; however, an administrative construction is not binding on the court, which is free to overrule the construction if it is deemed to be wrong or erroneous.

County board of adjustment determination that previous operation of quarry in agricultural district had ceased for more than one year and was thus not a prior nonconforming use under zoning ordinance that could continue without a conditional use permit was not wrong or erroneous, nor was it in willful disregard of the indisputable proof; extraction of sand, gravel, or minerals was not a permitted principal use within an agricultural district under the ordinance, board differentiated between the extraction of material from the ground and the removal of previously extracted and stockpiled material from the site, and there was no evidence contradicting reports filed by quarry owner's predecessor that zero tons of gravel were removed from their natural state on the site for 17 years, but rather predecessor removed stockpiled aggregate.

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## **IMMUNITY - MICHIGAN**

### **[Sunrise Resort Association, Inc. v. Cheboygan County Road Commission](#)**

**Supreme Court of Michigan - July 24, 2023 - N.W.2d - 2023 WL 4713823**

Real property owners brought action against county road commission arising from damage to their properties allegedly caused by an overflow and backup of a storm water drainage system, seeking monetary damages under the sewage-disposal-system-event exception to governmental immunity and injunctive relief to abate the ongoing trespass or nuisance.

The Circuit Court granted commission's motion for summary disposition. Owners appealed, and the Court of Appeals reversed and remanded. The Supreme Court granted leave to appeal.

The Supreme Court held that:

- Claim under the sewage-disposal-system-event exception to immunity was timely, and
- County commission had immunity from common law trespass-nuisance claim.

Sewage overflow or backup was a distinct event which occurred within three years of filing complaint, and thus property owners' complaint against county road commission under the sewage-disposal-system-event exception to immunity under the Government Tort Liability Act (GTLA) was timely, even if other overflow or backup events also had occurred more than three years before the complaint.

County road commission had immunity under the sewage-disposal-system-event (SDSE) exception to Government Tort Liability Act (GTLA) from landowners' common law trespass-nuisance claim arising from overflow or backup of a sewage disposal system, and thus landowners were prohibited from seeking injunctive relief in connection with that claim.

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## **ZONING & PLANNING - NEW HAMPSHIRE**

### **[Raymond, Trustee of J&R Realty Trust v. Town of Plaistow](#)**

**Supreme Court of New Hampshire - July 28, 2023 - A.3d - 2023 WL 4831447**

Real property owner appealed decision of the zoning board of adjustment denying variance request to convert property from non-conforming residential use to commercial use to house home improvement business engaged in the sale, service, and installation of windows, siding, roofing, decks, and gutters.

The Superior Court upheld the denial, and property owner appealed. The Supreme Court remanded for articulation, and the Superior Court issue order determining that the decision was reasonable.

The Supreme Court held that proposed use of property fell with definition of a “trade business” permitted in commercial zone.

Proposed use of property fell with definition of a “trade business” permitted in commercial zone, rather than a contractor’s storage yard; primary purpose of building would be to house home improvement business engaged in the sale, service, and installation of windows, siding, roofing, decks, and gutters, and allow business to operate a retail showroom to provide trade services directly to the public, ordinance expressly provided examples of a trade business that included “electricians, plumbers, and HVAC contractors,” and company intended to store all materials inside a 3,400 square foot warehouse building.

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## **REVENUE BONDS - OKLAHOMA**

### **Matter of Oklahoma Turnpike Authority**

**Supreme Court of Oklahoma - August 1, 2023 - P.3d - 2023 WL 4881238 - 2023 OK 84**

Oklahoma Turnpike Authority brought original proceeding seeking approval of revenue bonds to finance the construction of three turnpike projects, update and repair turnpike facilities and infrastructure, refund prior revenue bonds and notes, and pay other costs.

The Supreme Court held that:

- Authority was statutorily authorized to construct proposed southern extension of turnpike, and
- Authority was authorized by statute to issue additional bonds for the construction of two connections to finalize outer loop around city.

Oklahoma Turnpike Authority was statutorily authorized to construct proposed southern extension of turnpike, even if extension did not begin or end in exact locations specified in statute; proposed extension moved easterly from beginning point at spur and crossed river as required in statute, and ended in the vicinity of city as stated in statute, and Turnpike Authority had broad authority to determine the route, as well as the discretion to determine routes that were feasible and economically sound.

The interpretation or construction of an undefined statute by the agency charged with its administration is entitled to the highest respect from the courts, especially when the administrative construction is settled and uniformly applied for several years; in such cases, the administrative construction will not be disturbed except for very cogent reasons, provided that the construction so given was reasonable.

Oklahoma Turnpike Authority was authorized by statute to issue additional bonds for the construction of two connections to finalize outer loop around city; while statute restricted bonds for construction of any of four proposed turnpikes to one issue under one bond indenture, that provision only applied to initial bond issue to begin construction of the four proposed turnpikes, and Authority had statutory authorization to pay “all or any part of the cost of any one or more turnpike projects,” which allowed authority to later issue bonds for the two connectors.

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## **SCHOOLS - RHODE ISLAND**

### **[Purcell v. Johnson](#)**

**Supreme Court of Rhode Island - July 18, 2023 - A.3d - 2023 WL 4567587**

Unelected candidate for school committee brought a petition in quo warranto against town council, its appointee to school committee, and school committee, seeking a determination that she was entitled to be appointed to fill a vacancy on school committee.

Appointee and town council also brought a petition in quo warranto for a determination that appointee had the right and title to the position on the school committee.

The Supreme Court held that:

- Town charter was inconsistent with and could not be reconciled with legislative act regarding appointments to vacancies on regional school committee, and
- More specific town charter governed, and unelected candidate was entitled to be appointed to regional school committee.

Town's charter that specified that, in the event of a vacancy on the regional school committee, the town council "shall appoint the unelected candidate who received the greatest number of votes for that office in the most recent general or special election" was inconsistent with and could not be reconciled with legislative act authorizing towns to incorporate and form a regional school district, where act placed no limitation on whom the council could elect to fill a vacancy on the regional school committee.

Unelected candidate for regional school committee who had received the greatest number of votes for that office in the most recent election was entitled to be appointed by town council to fill vacancy on school committee, as provided by town charter, where town charter was more specific in its outline of a substantive procedure to fill a vacancy on regional school committee and was precise in who the appointee would be, and thus controlled over legislative act authorizing towns to incorporate and form a regional school district which placed no limitation on whom the council could elect to fill a vacancy.

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## **PUBLIC CONTRACTS - GEORGIA**

### **[City of Brookhaven v. Multiplex, LLC](#)**

**Court of Appeals of Georgia - July 27, 2023 - S.E.2d - 2023 WL 4779591**

City brought action against contractor for breach of contract to replace park and build new elementary school, seeking attorney fees and liquidated damages under contract's delay clause. Contractor asserted counterclaims.

The Superior Court granted contractor's motion for summary judgment on city's claim for liquidated damages and denied city's cross-motion for summary judgment, finding that delay clause was unenforceable penalty. City appealed.

The Court of Appeals held that:

- Undisputed difficulty of estimating damages did not preclude summary judgment on enforceability

of delay clause;

- Parties intended that delay clause create penalty; and
- At time of contracting, delay clause did not set forth reasonable estimate of damages that might result from breach.

Undisputed difficulty of estimating damages that might result from any breach of public works contract between city and contractor, which called for swift replacement of public park, did not preclude contractor from showing, on its motion for summary judgment on city's claim seeking liquidated damages for breach of contract, that liquidated damages clause was unenforceable penalty, even though contractor would have burden at trial to show that provision was penalty; at summary judgment, contractor only had to point to absence of evidence on any one of the three factors provision needed to satisfy in order to constitute enforceable liquidated damages clause rather than penalty, and difficulty in estimating damages was only one of those three factors.

City and contractor intended that delay clause in contract to demolish public park, build new park, and build new elementary school, which provided for "Liquidated Damages at the rate of \$1,000.00 per calendar day" in event of delay, would deter breach, and thus, clause was unenforceable penalty; contract contained no language indicating that liquidated damages were not intended as penalty, city testified that timely construction of new park was important to minimize time that area residents would need to go without a park, and city conceded that intent of delay clause was to "disincentivize delays" by requiring contractor to pay \$1,000 per day from its net profits if project were not completed on time.

At time of contracting, delay clause in contract between city and contractor for demolition of old park, swift construction of new park, and construction of elementary school, which provided for "Liquidated Damages at the rate of \$1,000.00 per calendar day" of delay, was not reasonable estimate of probable loss that might result from contractor's delay in construction of park, and thus, clause constituted unenforceable penalty; city did not attempt to estimate damages that might result from late completion of construction before contract was executed, and city representative testified that \$1,000-per-day number was not project-specific, but rather, was chosen because it was "standard" number for liquidated damages clauses, which city stated were very common in its construction contracts.

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## **[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 July) \$207.6 billion, -15.8% Y/Y
- Trading (as of July) \$12.6 billion ADV, -10.4% Y/Y
- Outstanding (as of 1Q23) \$4.0 trillion, -0.8% Y/Y

[Download xls](#)

August 2, 2023



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## **How Fitch's US Debt Downgrade Impacts Municipal Bonds.**

Arlene Bohner, Fitch Ratings head of US public finance, says most municipal bond ratings won't be affected by Fitch's downgrade of its US credit rating by one level on "Bloomberg Markets: The Close."

[Watch video.](#)

### **Muni Moment - Bloomberg Markets: The Close**

August 2nd, 2023

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## **Fitch's US Credit Downgrade Sparks Criticism Along With Unease.**

- **Decision reflects expected fiscal deterioration, Fitch says**
- **Bond market shrugs off downgrade, eyes Wednesday US refunding**

Fitch Ratings' downgrade of US government debt sparked criticism from Washington and Wall Street even amid unease that swollen fiscal deficits risk eventual turbulence in markets, the economy and next year's presidential election.

Fitch cut the US's sovereign credit grade one level from AAA to AA+. The move comes just two months after it warned the rating was under threat as lawmakers flirted with default by battling over raising the nation's debt limit.

The credit grader justified the shift by arguing the country's finances will likely deteriorate over the next three years given tax cuts, new spending initiatives, economic shocks and repeated political gridlock.

[Continue reading.](#)

### **Bloomberg Markets**

By Benjamin Purvis and Simon Kennedy

August 1, 2023

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## **US Downgrade Hits Muni Market as Fitch Cuts Billions of Debt.**

Fitch Ratings downgraded billions of dollars worth of public finance credits that are linked to the rating company's landmark decision to strip US government debt of its AAA status.

Thursday's move lowers the credit ratings of the local debt by one notch to AA+, the second-highest ranking, according to Fitch. The cut affects \$21.5 billion of the federally-owned Tennessee Valley Authority's global power bonds.

It also includes \$3.5 billion of pre-refunded municipal bonds with repayments that are wholly



dependent on US government and agency obligations held in escrow as well as \$1.8 billion of municipal housing bonds that are mainly secured by mortgage-backed securities issued by Ginnie Mae, Fannie Mae or Freddie Mac, according to Fitch. The outlook is stable.

The municipal-bond downgrades weren't a surprise. In May, Fitch had warned it could downgrade some public finance credits because of their dependence on sovereign credit for repayment. About \$42.5 million of debt related to the Federal Home Loan Banks of Atlanta and Des Moines is still on watch negative, according to Fitch.

On Tuesday, Fitch lowered the US government debt rating to AA+, citing its outlook that the country's finances will likely deteriorate over the next three years given tax cuts, new spending initiatives, economic shocks and repeated political gridlock.

A spokesperson for the Tennessee Valley Authority, which provides electricity for power companies serving Tennessee and surrounding states, said in an emailed statement that the authority doesn't expect any material impact from the downgrade. "This is not driven by any TVA credit event," the statement said.

## **Bloomberg Markets**

By Nic Querolo and Amanda Albright

August 3, 2023

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### **Fitch: U.S. Downgrade Has Limited Effect on Public Finance Ratings**

Fitch Ratings-New York-04 August 2023: The recent downgrade of the U.S. sovereign Long-Term Foreign Currency Issuer Default Rating (IDR) to 'AA+'/Stable from 'AAA'/Rating Watch Negative does not directly affect the risk profile of most state, local government, and revenue-supported entities' ratings within the U.S. Public Finance (USPF) sector, Fitch Ratings says. Most USPF ratings are not affected, except where bond repayment depends on federal agencies or instruments.

U.S. state and local governments possess significant autonomy to provide services that they believe appropriate and impose the taxes needed to fund those services. The very high ratings assigned to many states and local governments reflect their record of using these powers to balance budgets and limit leverage. While the U.S. sovereign and U.S. sub-sovereigns share certain credit characteristics, the downgrade to 'AA+' does not lead Fitch to re-evaluate state or local government 'AAA' ratings absent a direct reliance on federal agencies or instruments.

Federal budgets directly support a wide range of functions carried out by USPF entities, and broader federal spending is meaningful to the economic activity that underpins the credit quality of issuers in the USPF sector. The ability of state and local governments to respond to changes in federal funding, primarily with their own spending adjustments, reflects their significant autonomy within the U.S. federal structure. States benefit from strong legal and fiscal powers enshrined in the U.S. Constitution, and states in turn delegate substantial fiscal powers to local governments. Local governments bear the added risk of having to absorb potential state tightening, although they typically have broad budgetary tools and reserves to cushion unforeseen developments. Additionally, many states and local governments exercise prudent fiscal management and currently benefit from unusually high reserves and solid liquidity given federal economic stimulus and extraordinary tax revenue growth in recent years. Rated revenue-supported USPF entities are also generally well-

positioned to adjust to federal funding fluctuations.

Bonds directly linked to the sovereign rating include municipal housing bonds primarily secured by mortgage-backed securities issued by Ginnie Mae, Fannie Mae and/or Freddie Mac, pre-refunded municipal bonds where escrowed funds deposited with a trustee to advance refund the bonds are invested in U.S. government treasuries or federal agency obligations, and bonds fully enhanced by FHLB letters of credit.

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## **[The Weekly Fix: No Country Has 'God-Given' Right To AAA Rating](#)**

Welcome to The Weekly Fix, the newsletter that's never been downgraded. I'm cross-asset reporter Katie Greifeld.

### **Your Move, Moody's**

Fitch Ratings' surprise move to strip US government debt of its top-tier rating this week sparked passionate criticism from Washington and Wall Street alike, with Treasury Secretary Janet Yellen deriding the downgrade as "arbitrary." But to David Beers, former head of S&P Global Ratings' sovereign debt scoring committee and one of the analysts behind the controversial ratings cut in 2011, it's an important reminder that the US isn't entitled to the top grade.

"The underlying fiscal position and underlying debt trajectory has picked up pace," Beers, who is now a senior fellow at the Center For Financial Stability, told Romaine Bostick and I on Bloomberg Television. "AAA is the top rating any rating agency can assign, but of course, the US and any other sovereign that's being rated has no god-given or automatic right to that."

[Continue reading.](#)

**Bloomberg**

By Katherine Greifeld

August 4, 2023 at 2:00 AM PDT

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## **America's Credit Rating Was Just Slashed. America Should Be Worried.**

Herbert Hoover famously said that "blessed are the young for they shall inherit the national debt". However, it is doubtful that even in his darkest moments, he would have imagined that the US public debt would reach the lofty heights that it has reached today. Nor could he have imagined that there would still be no serious constituency on either side of the political aisle to address the country's large budget deficit and dangerous public debt trajectory.

It is against this background that one should welcome the Fitch rating agency's decision to be the second rating agency, after Standard and Poor's, to strip the United States of its coveted AAA credit rating. Hopefully that might serve as a wake-up call to our political class to get serious about addressing the country's chronic budget deficit with a view to getting the country's debt back on to a sustainable path.

The non-partisan Congressional Budget Office (CBO) provides us with a good picture of the dismal state of our public finances. According to their most recent estimates, our public debt presently stands at close to 100 percent of GDP. That is a level similar to that reached in the immediate aftermath of the second world war. However, given the country's aging population and rising interest rates, there is little prospect that we can somehow grow our way out of our debt problem like we did in the 1950s.

As if to underline this point, the CBO estimates that on present policies, the country's debt as a share of GDP will rise to around 120 percent by 2033 and to 170 percent by 2050. Those are levels that are more reminiscent of a country like Greece than one that is wanting to remain the world's leading economy and to maintain the dollar as the world's dominant international reserve currency.

In citing the reasons for its decision to downgrade the US rating, Fitch pointed to the deterioration of US economic governance over the past twenty years. While to be sure, Fitch's assessment will be disputed, especially by the Biden Administration, there would seem to be much substance in Fitch's view.

The sad truth of the matter is that both political parties have become fiscally irresponsible though in different ways. The Republicans when in office are ever so keen to cut taxes but are loath to reduce public spending to finance the tax cuts. By contrast, the Democrats when in office are ever so keen to increase public spending but are loath to raise taxes to pay for their spending largesse. Meanwhile the nation's debt keeps growing.

Judging by the excessive budget stimulus policy response to the 2020 Covid-induced recession, our public finance matters seem to be going from bad to worse. Indeed, the total amount of government money thrown at the Covid problem amounted to close to a staggering \$5 trillion, or some 20 percent of GDP. Little wonder then that former Treasury Secretary Larry Summers characterized this response as the least responsible fiscal policy in the past forty years. Little wonder too that inflation surged to a multi-decade high of 9 percent by June 2022.

Although the United States is already heavily indebted to foreigners, including most notably China, it is fortunate in that it borrows in its own currency. As such, it is highly improbable that it will ever

default on its debt since the Federal Reserve can always print the dollars to pay the foreigners. However, before we take too much comfort in that fact, we should spare a thought to what massive Fed money printing would do to the dollar and to inflation.

Let us hope that Washington pays heed to Fitch's timely wake-up call before the dollar tanks and inflation takes off again. However, in Washington's currently polarized state, I do not recommend that you hold your breath for that to happen anytime soon.

## **American Enterprise Institute**

By Desmond Lachman

19fortyfive.com

August 03, 2023

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### **[Ratings Firms Struggle With Climate Risk in \\$133 Trillion Market.](#)**

**Global warming is poised to increase borrowing costs for cities, countries and companies as record heat waves emerge worldwide.**

With 46 straight days of 100-degree heat and coastal waters approaching hot-tub temperatures, Miami can seem like a clear example of the costs of a warming world. But analysts at S&P Global Inc. aren't sweating it.

They recently upgraded Miami's credit rating, citing a robust tax base and labor market. The city's "elevated" environmental risks, S&P says, are offset by mitigation projects such as those designed to counter rising sea levels.

As the world reels from the mounting impact of heat waves, droughts and fiercer storms, there is growing concern that credit rating analysts are misreading climate risks in the \$133 trillion global bond market, to the detriment of creditors and borrowers alike.

[Continue reading.](#)

## **Bloomberg Green**

By Gautam Naik

July 31, 2023

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### **[Most States End Fiscal 2023 With a Budget Surplus as Revenues Exceed Forecasts: NASBO Budget Blog](#)**

Most states ended fiscal 2023 with a budget surplus as tax collections once again came in above projections. Entering fiscal 2023, states assumed smaller revenue levels following double-digit growth in tax collections in both fiscal 2021 and fiscal 2022. While year-over-year revenue collections grew at record high levels of 16.6 percent in fiscal 2021 and 16.3 percent in fiscal 2022,

states forecasted fiscal 2023 revenues would decline 3.1 percent in their originally enacted budgets. States forecasted less revenue growth in fiscal 2023 due to several factors, including the high baseline established in fiscal 2022; the impact of both recurring and one-time tax policy changes; the assumption of slower economic growth, weaker capital gains, and modest declines in consumption; and consumer behavior shifting towards spending more on services (less often taxed) rather than goods. As fiscal 2023 progressed, many states saw higher than projected growth in tax collections and revised revenue forecasts upward for the remainder of fiscal 2023. Whereas original forecasts projected a 3.1 percent decline in revenue in fiscal 2023, revised forecasts assumed only a 0.3 percent annual decline, according to the [Spring 2023 Fiscal Survey of States](#).

To date, the vast majority of states who have reported full-year fiscal 2023 tax collections have come in above original forecasts, with many also seeing revenues above revised forecasts, leading to a third consecutive year of surpluses. While most states have reported budget surpluses, the amount in nearly all cases has been less than the substantial surpluses seen in fiscal 2022. States are examining the best use of these smaller surpluses, including further building up rainy day funds, reducing unfunded pension liabilities, paying down debt, investing in education and other spending priorities, and providing tax relief, while also focusing on ensuring one-time revenues are not used for ongoing obligations.

As states prepared to move into fiscal 2024, they were anticipating a small decline in tax collections partly due to economic uncertainty at the time revenue estimates were adopted. [Recommended budgets](#) for fiscal 2024 are based on general fund revenues totaling \$1.17 trillion, which would represent a slight decline of 0.7 percent compared to estimated fiscal 2023 levels. In recent years states have taken steps to prepare for a slowdown in tax collections through actions including using one-time funds for one-time purposes, paying down debt, making supplemental pension payments, and increasing the size of rainy day funds to record levels.

[Continue reading.](#)

by Brian Sigriz

NATIONAL ASSOCIATION OF STATE BUDGET OFFICERS

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## **[States Finalize Fiscal 2024 Budgets: NASBO Budget Blog](#)**

As of July 5th, 45 states have enacted a full-year budget for fiscal 2024. Overall, states remain in a strong fiscal position as they enter fiscal 2024. According to [NASBO's Spring 2023 Fiscal Survey of States](#), state general fund spending growth in fiscal 2024 is expected to slow following two consecutive years of sharp increases which were driven in part by an uptick in one-time expenditures. Similarly, revenue growth is expected to decline following double-digit percentage increases in both fiscal 2021 and fiscal 2022. While state spending and revenue growth are showing signs of returning to more normal levels, rainy day fund balances are projected to remain at or near all-time highs in fiscal 2024. As states begin fiscal 2024, they remain well positioned due to previous actions such as building up rainy day funds to record levels, paying down long-term debt, making additional pension payments, and using one-time funds for one-time purposes.

Governors in 47 states, the territories, and the District of Columbia are enacting a new budget for fiscal 2024. Thirty-one states are approving a one-year budget for fiscal 2024, while 16 states are enacting a two-year budget for fiscal 2024 and fiscal 2025. Kentucky, Virginia, and Wyoming

previously enacted a biennial budget for both fiscal 2023 and fiscal 2024, with Wyoming approving revisions to its current biennial budget. Forty-six states begin their fiscal year on July 1, while New York begins its fiscal year on April 1, Texas on September 1, and Alabama and Michigan on October 1.

Below is additional information on states that have yet to enact a full-year budget for fiscal 2024. Additionally, Table 12 of NASBO's [Budget Processes in the States](#) has information on procedures if no budget is enacted by the start of the fiscal year.

[Continue reading.](#)

By Brian Sigritz posted 06-30-2023

NATIONAL ASSOCIATIONS OF STATE BUDGET OFFICERS

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### **[Fitch: State Revenues Weakened in FY2023 but Resilience Remains High](#)**

Fitch Ratings-New York-01 August 2023: State financial resilience remains robust despite weakening tax revenue growth or revenue declines in fiscal 2023, Fitch Ratings says. A combination of conservative revenue forecasting and large surpluses accumulated in 2021 and 2022, due to extraordinary tax revenue growth fueled by high inflation and federal pandemic stimulus, cushioned the revenue contraction. This will enable most states to maintain spending plans without threatening their improved financial positions.

Through the 12 months ending in June 2023, tax revenue was down from the prior year in 17 states, while another six states had growth of less than 1%, based on Fitch's review of 37 states with reported collections. States' monthly revenue reports vary greatly and use different presentations of tax revenue. This data is timely and indicative, but not necessarily definitive.

Revenue tracked above or close to last year for most of fiscal 2023 (July 2022-June 2023 for 46 states) until the spring, when monthly state personal income tax collections fell at a median rate of more than 30% in April 2023 from record high collections in 2022, based on data from the Urban Institute. Almost every state with an income tax had a large drop in April collections, as taxpayers reflected 2022 stock market losses and lower non-wage income on their final returns. From July 2022 through May 2023, total state tax collections were about 5% below the prior year.

[Continue reading.](#)

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### **[Muni Bank Loans Top \\$200 Billion to Near Record.](#)**

- **Chicago Fed says governments tapping the debt seek flexibility**
- **Private lending attractive to borrowers facing revenue deficit**

State and local governments are increasingly turning to banks for capital during financial distress and market volatility.

Outstanding municipal bank loans are just \$1 billion away from the record \$210 billion reached in 2022, according to a Federal Reserve Bank of Chicago [working paper](#). Rather than issuing debt in

the public markets to raise money, US governments are going directly to banks as they did during the Great Recession and more recently, the Covid-19 pandemic.

Private lending comes in handy during periods of big change, said Chicago Fed senior economist Ivan Ivanov, one of the authors of the working paper, in an interview. He added that bank loans give borrowers a chance to adjust terms when credit quality changes and can provide local governments money when budget strains arise from pension and health care costs.

“The major take away is that bank loans give borrowers in this case local governments such as cities, counties, school districts and special districts substantial financial flexibility that they are not able to find in the municipal bond market,” said Ivanov, who declined to comment on the future trajectory of muni bank loans.

As governments face further fiscal pressure, access to capital in a way the \$4 trillion muni bond market can’t provide could be appealing. Revenue growth is expected to slow after billions in stimulus aid runs out, tax collections decline and costs rise from the Federal Reserve’s historic interest-rate hiking campaign.

Bank debt is “most attractive” to government borrowers that have stable revenue but are facing shortfalls, higher borrowing costs, reduction in bond market access and credit downgrades, according to the report. During the pandemic, for instance, Chicago tapped \$450 million from a revolving line of credit from JPMorgan Chase & Co. to cover revenue losses in 2020.

The Chicago Fed research shows that higher credit risk translates to more bank loans as governments with agency ratings of AA, A, and BBB, or lower, are as much as 9 percentage points more likely to take one than AAA-rated issuers.

Muni borrowers are following corporations in fueling the broader global growth in private credit. Along with bank loans, state and local governments are also using more private placements, in which an agent sells securities directly to investors to raise capital rather than selling them in the market, especially for riskier projects. But while these tools provide options, they aren’t a panacea for fiscal pressures.

Bank loans in particular “may be costlier than municipal bonds for some governments” due to fees, costs to renegotiate contracts or covenants, according to the report.

However, more environmental, social and governance rules and financial data transparency and disclosures regulations could push governments to bank loans and private placements, said David Erdman, a managing director at Baker Tilly Municipal Advisors.

Private lending “is not a win-win situation,” for municipalities, Erdman said.

## **Bloomberg Markets**

By Shruti Singh

August 4, 2023

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**[Bringing Local Government Budgeting Up to the Speed of Change.](#)**



**Current government budgeting processes are not up to the demands of a world where the future looks less and less like the past.**

**In Brief:**

- It's been the norm for governments to make budget plans based on past decisions.
- This "backward-looking" approach is not well suited to the present speed of change in society, or the emergence of environmental and public health impacts that have not been seen before.
- Government associations and technology companies are working to develop data-driven systems that can be agile in the face of the unexpected.

[Continue reading.](#)

**governing.com**

by Carl Smith

Aug. 4, 2023

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**[S&P U.S. Public Finance Housing Rating Actions, Second-Quarter 2023.](#)**

[View the S&P Ratings Actions.](#)

31 Jul, 2023

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**[Illinois Feared Losing to Wall Street Banks Over Muni Price-Fixing Case.](#)**

- **Trial featuring JPMorgan, Citigroup was scheduled for Aug. 7**
- **Attorney General says no evidence of VRDO price-fixing claim**

Illinois is defending its decision to accept a \$68 million settlement from a cohort of Wall Street banks to conclude an almost decade-long lawsuit over municipal bond price-fixing by questioning the claims of the firm that filed the case on its behalf.

The lawsuit, originally filed under seal in 2014 by an entity called the Edelweiss Fund LLC, sought around \$349 million in pre-trebled damages and another \$350 million in statutory damages. Edelweiss brought the False Claims Act lawsuit as a "relator," or someone filing a lawsuit on behalf of an injured party — in this case, the state of Illinois — in return for a portion of any recovery.

Edelweiss alleged that a group of banks inflated interest rates on bonds that finance public projects to discourage investors from returning them for cash and also colluded in setting the rates. Bank of America Corp., Barclays Capital Inc., BMO Financial Corp., William Blair & Co. LLC, Citigroup Inc., Fifth Third Bancorp, JPMorgan Chase & Co. and Morgan Stanley were expected to go to trial in Illinois on Aug. 7 for this case.

While Illinois agreed to settle on July 17, this is the first time any state has defended its decision to do so. Not settling before the case went to trial "would almost certainly have resulting in a loss," according to a filing by Attorney General Kwame Raoul.

The motion for approval of the settlement says that “the actual language of the contracts at issue does not require Defendants to reset ‘at the lowest possible rate,’” as Edelweiss occasionally implies.

The filing also says that “testimony from State officials involved in managing and monitoring the bonds at issue would very likely rebut Relator’s claim that the State was even defrauded in this case.”

And it says that “the evidence in the record does not support any version of the Relator’s argument, including its basic assertions about the expectations issuers would have had for how the rate-reset process and liquidity facilities worked together in practice.”

Edelweiss, which represents Minnesota financial adviser Johan Rosenberg, has objected to the settlement, saying the \$15 million stipulated for expenses and attorneys’ fees is insufficient.

Daniel W. Levy, a principal with McKool Smith PC, counsel to Edelweiss, said “I will respond when able.”

Barclays, Citigroup, Morgan Stanley and William Blair & Co. all declined to comment. The other banks didn’t respond to emailed requests for comment.

### **‘Highlights Weakness of Claims’**

While it is common in motions seeking approval for a settlement to highlight the risk of not recovering, the one Illinois put forward “really seems to go beyond that in highlighting the weakness of the claims and the lack of evidence of any false claims act violations,” Elliott Stein, a senior litigation analyst with Bloomberg Intelligence, said in an email.

“This certainly explains the low settlement amount and will embolden the defendant banks to keep fighting the similar cases in other states until they win outright or get a sufficiently low settlement amount,” Stein said.

The Illinois lawsuit was the first of five such cases originally filed under seal in 2014. One of them, in Massachusetts, has been dismissed. The remaining lawsuits — in California, New Jersey and New York — seek a collective \$1.15 billion in damages and restitution of triple that amount. Another \$6.5 billion in damages is at stake in antitrust litigation in New York.

A dozen banks are defendants across the four lawsuits, which allege that from 2008 until relatively recently the banks — acting as remarketing agents for long-term bonds with periodic rate adjustments, called variable-rate demand obligations or VRDOs — failed to get issuers the lowest possible interest rates on securities where rates were typically reset on a daily or weekly basis to discourage investors from returning them for cash.

### **Bloomberg Markets**

By Joseph Mysak Jr and Shruti Singh

August 4, 2023

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**[S&P: Economic Momentum Expected To Wane For Mineral-Producing U.S.](#)**

## [States As Tailwinds Abate](#)

### **Key Takeaways**

- Oil and natural gas prices fell from a recent peak in 2022 as an economic slowdown takes hold, but many mineral-producing U.S. states are poised to lead economic (real gross state product [GSP]) growth in calendar 2023, with five ranking among the top 10 for real GSP growth nationally.
- By 2024, however, S&P Global Market Intelligence forecasts that Texas will be one of only two states forecast to remain in the top 10, and it is projected to be the only state in the top 10 by 2025, with its GSP growth ranking third among all states.
- While we do not expect a sharp pull-back in oil exploration and production, mineral producing states may need to prepare financial tools, including tighter spending controls, conservative forecasting, and upkeep of high reserves to guard against potential strain on their economies and revenues.

[Continue reading.](#)

3 Aug, 2023

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## [S&P Sustainability Insights: California's Evolving Insurance Market Has Mixed Impacts - Spotlight On U.S. Public Finance](#)

### **Key Takeaways**

- The recent move by a few major insurers to discontinue writing new homeowners' business in California is not unique compared with the wider U.S. insurance market.
- Higher insurance premiums in California could exacerbate homeowner affordability pressures, potentially leading to weaker credit quality in the long term for USPF entities.
- Rising insurance premiums are unlikely to affect our credit ratings on RMBS because various aspects in the securitization serve as adequate risk mitigants.

[Continue reading.](#)

2 Aug, 2023

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## [As Water Reuse Expands, Proponents Battle the 'Yuck' Factor.](#)

**Treated wastewater could be the answer to communities' looming concerns over water shortages. Despite skepticism and, often, disgust at the idea, experts say reused water is a glass-half-full solution.**

When Janet Cruz lost an April election for a Tampa City Council seat, she became a political casualty of an increasingly high-stakes debate over recycled water.

During her time in the Florida Legislature, Cruz had supported a new law allowing the use of treated wastewater in local water systems. But many Tampa residents were staunchly opposed to a plan by their water utility to do just that, and Cruz was forced to backtrack, with her spokesperson asserting

she had never favored the type of complete water reuse known as “toilet to tap.” She lost anyway, and the water plan has been canceled.

Tampa’s showdown may be a harbinger of things to come as climate change and drought cause water shortages in many parts of the country. With few alternatives for expanding supply, cities and states are rapidly adding recycled water to their portfolios and expanding the ways in which it can be used. Researchers say it’s safe—and that it’s essential to move past the 20th century notion that wastewater must stay flushed.

[Continue reading.](#)

## **Route Fifty**

By Jim Robbins,  
KFF Health News

AUG 4, 2023

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## **[Arkansas Development Finance Authority: Fitch New Issue Report](#)**

**Portfolio Credit Risk:** The program exhibits higher concentration than similar ‘AAA’ pools rated by Fitch, and overall credit quality is about average. The pool consists of a relatively few 73 obligors, which contributes to high single- and top 10-obligor concentration. Implied pool quality, measured by the aggregate rating and loan term and as measured in Fitch’s Portfolio Stress Model, is ‘BBB’. Obligor security is solid with over 95% of the pool backed by water and/or sewer revenue pledges and the remaining 4% secured by sales or special tax revenues. **Financial Structure:** The program’s cash flows are very favorable, as minimum annual debt service coverage is about 3.4x. As a result, Fitch’s cash flow modeling demonstrates that program resources are sufficient to withstand hypothetical pool defaults in excess of Fitch’s ‘AAA’ liability rating stress hurdle without causing an interruption in bond payments. **Program Management:** The Arkansas Natural Resources Commission, which manages the program, maintains sound underwriting and loan monitoring procedures. To date, the pledged portfolio has not experienced a permanent loan default.

### **[ACCESS REPORT](#)**

03 Aug, 2023

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## **[The Risks Hidden in Public Pension Funds.](#)**

**Attracted by promises of high returns, many public pension funds have been loading up on private equity but may not fully appreciate the dangers, our columnist says.**

The Oregon Public Employees Retirement Fund prides itself on being open about its investments, publishing [monthly reports](#) that provide more timely information than most other state and local government pension plans across the country.

But like many plans, Oregon’s state pension fund is perpetually hungry for high returns on its investments — higher than it expects from stocks and bonds alone.

So Oregon's plan has been pouring money into private equity funds that are, by definition, illiquid and opaque. Those funds engage in debt-fueled takeovers of companies and promise their investors high returns. But the funds contain hidden risks that are not widely understood or clearly reported.

[Continue reading.](#)

## **The New York Times**

By Jeff Sommer

Aug. 4, 2023

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### **[State of Wyoming to Require Training to Reduce Mismanagement of Funds.](#)**

CASPER — To better guard against fraud in Wyoming's small towns, the state recently established its first training requirements for officials on how to manage public funds.

The state Legislature in 2022 directed the Department of Audit to develop the new rules amid growing concerns about rogue communities evading compliance with financial regulations.

"This was kind of borne out of findings and things that were coming out of audits of local governments and special districts and smaller towns and cities," said Department of Audit Public Funds Administrator Michael Hansen.

[Continue reading.](#)

## **Gillette News Record**

By Mary Steurer Casper Star-Tribune Via Wyoming News Exchange Aug 2, 2023

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### **[Rising Yields Are Making Municipal Bonds an Attractive Option.](#)**

Fixed income investors experienced the pull of rising yields during the first half of 2023, which included attractive options within the municipal bond market.

"With the highest yields in years, the muni bond market looks increasingly attractive," an [AllianceBernstein blog post](#) noted.

With an eye on yield, investors may have also sought out munis for their tax-free income advantages. Whatever the reason, major indicators of municipal bond activity portrayed upside that could continue through the rest of the year following a bearish turn in 2022.

"After the worst showing in four decades in 2022, the muni market regained some ground in 2023," the blog added. "There was some chop along the way, but the Bloomberg Municipal Bond Index etched a 2.67% return through June 30."

The expectation that the U.S. Federal Reserve would taper its interest rate hikes certainly played a factor in the increased demand for munis. However, the underlying fundamentals of the muni bond

space also propelled interest.

“Most were attracted by strong muni issuer fundamentals, the likelihood the Fed is nearing the end of its rate-hike cycle and historically high yields,” the blog said further.

[Continue reading.](#)

ETF TRENDS

by BEN HERNANDEZ

AUGUST 1, 2023

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## **TAX - NEW MEXICO**

### **[Process Equipment & Service Company, Inc. v. New Mexico Taxation Revenue Department](#)**

**Court of Appeals of New Mexico - July 25, 2023 - P.3d - 2023 WL 4874874**

Taxation and Revenue Department (TRD) appealed decision from the Administrative Hearing Office (AHO), Brian Van Denzen, Hearing Officer, which, as part of taxpayer’s administrative tax protest after Department denied taxpayer’s applications for tax credit, concluded that taxpayer met requirements for a tax credit under the Technology Jobs and Research and Development Tax Credit Act.

The Court of Appeals held that:

- As a matter of first impression, “cost accounting method” for tax credit purposes is a method for capturing a company’s total cost of production by assessing the variable costs at each step in production;
- Finding that taxpayer used a “cost accounting method” to allocate wages was grounded in a rational basis based on the record; and
- Substantial evidence supported finding that taxpayer’s “cost accounting method” was informally used in its other business activities.

A “cost accounting method” within meaning of the Technology Jobs and Research and Development Tax Credit Act’s definition of “qualified expense” is a method for capturing a company’s total cost of production by assessing the variable costs at each step in production.

Finding by hearing officer of the Administrative Hearing Office (AHO) that taxpayer used “cost accounting method” to allocate wages, as required under the Technology Jobs and Research and Development Tax Credit Act’s definition of “qualified expense,” was grounded in a rational basis based on the record; officer found that taxpayer’s accounting firm sent staff to inspect records, interview witnesses, and develop method to quantify and assess time and wage costs associated with taxpayer’s research and development activities, found that firm determined which projects qualified for tax credit by reviewing drafting logs created contemporaneously during time work was performed, and found that taxpayer used same method to apply for state and federal tax credits and that method only accounted for finished projects.

Substantial evidence supported finding by hearing officer of the Administrative Hearing Office (AHO) that taxpayer’s “cost accounting method” used to allocate wages, as required under the

Technology Jobs and Research and Development Tax Credit Act's definition of "qualified expense," was also informally used in taxpayer's other business activities; officer found that taxpayer informally used same methodology to determine continuing viability of research and development project by comparing drafting time shown on drafting logs against potential results/outcome/viability of project, and when asked at hearing if taxpayer used cost accounting methodology designed by its accounting firm, vice president of engineering and chairman of taxpayer's board stated that taxpayer did use this method.

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## **[SEC Adopts Significant Money Market Fund Reforms; Enhances Private Liquidity Fund Reporting on Form PF: Dechert](#)**

[View the pdf.](#)

**Dechert LLP** - Brenden P. Carroll, Nicholas Carroll, Stephen T. Cohen, Jonathan Blaha, Kathleen Hyer, Austin G. McComb, Devon Roberson and Ashley N. Rodriguez

August 2 2023

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## **[IRS Seeks States' Input On Its Direct File Pilot.](#)**

**States have until Sept. 4 to tell the IRS if they're interested in participating.**

States will have the chance to collaborate with the IRS on how they may integrate with the agency's forthcoming direct file pilot.

In a [July 16 letter to the Federation of Tax Administrators](#), which serves state tax collection agencies, IRS Commissioner Danny Werfel wrote that the tax agency is "interested in continuing to learn from states directly, and from [Federation of Tax Administrators], about the challenges they may face when integrating with a Direct File pilot, be they technological, policy-driven or other concerns."

States that want to be involved in the pilot have until Sept. 4 to tell the IRS, the letter states.

[Continue reading.](#)

### **Route Fifty**

By Natalie Alms,  
Staff Reporter, Nextgov/FCW

JULY 31, 2023

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## **[S&P Pension Spotlight: Ohio](#)**

**Key Takeaways**



- Ohio's pension plans' statutory contribution framework has generally followed actuarial recommendations, which helps maintain funded ratios as long as contribution increases continue.
- While we view the state's pension position as stable with adequate funding discipline, the state's current contribution amounts are likely insufficient to maintain funding levels going forward due to their fixed status (versus annual increases) and aggressive assumptions.
- Recent changes to retiree medical other postemployment benefits have helped control costs and limit risk to governments across the noneducation plans.

[Continue reading.](#)

31 Jul, 2023

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## **Muni Market Projection for August (Bloomberg Audio)**

Joe Myask, editor of Bloomberg Brief: Municipal Bonds with Bloomberg News joins us to discuss the muni bond market. Hosted by Paul Sweeney and Simone Foxman.

[Listen to audio.](#)

Aug 04, 2023

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## **BDA Forms Fixed Income Technology Clearinghouse to Facilitate Information Sharing, Tech Intel, and Deliverables for US-Focused Bond Dealers.**

Today, the Bond Dealers of America – Washington DC's only dedicated Fixed Income Advocate – is pleased to announce the creation of the Fixed Income Technology Clearinghouse intended to help US focused bond dealers navigate their technology and back-office options including costs and deliverables.

The Fixed Income Technology Clearinghouse will bring together professionals at BDA full member firms with responsibility for and focus on technology decisions and adoption.

This group will be managed by BDA staff working alongside outside consultant Stephen Winterstein of SP Winterstein & Associates LLC, a long-time municipal market leader, previously as Head of Capital Markets at Alphaledger and as the Head of Municipal Fixed Income at MarketAxess.

### **Mission**

To bring together fixed-income market leaders to address the most pressing fixed income technology issues of the day. Providing a platform to help facilitate solutions to technology and back office or operational challenges being faced by securities firms and banks active in the US bond markets.

Whether having a conversation with a vendor about issues with an existing product, or proposing a new idea, this group provides BDA members a forum to discuss issues, while working with industry professionals to identify and implement proper solutions.

The Fixed Income Technology Clearinghouse will also work with regulators where the membership sees fit, providing additional opportunities with dialogue with the MSRB, FINRA, and SEC to help

direct and better inform the respective staffs.

**The main objectives of the Clearinghouse include:**

- To collaborate and develop ideas to improve existing vendor products, or present new ideas
- Provide a unified voice and solutions to regulators on key issues such as the Financial Data Transparency Act and one-minute trade reporting
- Hold an annual Roundtable to discuss key technology topics and assist in drafting the agenda for key BDA events such as the NFIC to ensure proper topics are incorporated.

**Membership**

The BDA's Fixed Income Technology Clearinghouse will have cross-product representation from all BDA full member firms that wish to participate. Each full member interested in participating would select a delegate to represent them within the group.

We will also work to ensure BDA associate members are engaged while finding parity in representation from both the municipal and taxable markets and in sizes of firms.

If you or your firm is interested in participating in the BDA Fixed Income Technology Clearinghouse, please contact Mike Nicholas at [mnicholas@bdamerica.org](mailto:mnicholas@bdamerica.org).

**Bond Dealers of America**

August 3, 2023

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**[GASB Financial Accounting Foundation Board of Trustees.](#)**

[Meeting Notice](#)

07/28/23

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**[GASB Standards-Setting Process Oversight Committee Meeting.](#)**

[Meeting Notice](#)

07/28/23

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**[New GFOA Video: Legacy Lease Accounting](#)**

Our latest Timley Accounting Discussion video covers legacy lease accounting, including lease assets vs. leased assets, leases in the calculation of net investment in capital assets, and accounting and financial reporting for contracts that transfer ownership.

[WATCH](#)

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## **[Join GFOA's Women's Public Finance Network.](#)**

WPFN is a voluntary association of women, elected and appointed officials, and other women finance professionals, formed within GFOA to develop a core network of women GFOA members to coordinate communications and to encourage participation in GFOA and WPFN. The purpose of the network is to foster the careers of women in public finance through education, networking, and mentoring opportunities. Membership in WPFN is free.

[JOIN TODAY](#)

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## **[GFOA's 5th Annual MiniMuni Conference Free for Members.](#)**

Register now for this three-day virtual event, **October 11-13**. Don't miss the opportunity to hear from leading experts, seasoned practitioners, and regulators on a host of issues that impact municipal issuers.

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

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## **[MSRB Announces FY 2024 Board Leadership and New Members.](#)**

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) announced today that it has elected Fiscal Year 2024 officers and five new members who will join the Board on October 1, 2023. The MSRB also announced that Ernesto A. Lanza would join the senior staff of the MSRB to lead the Market Regulation department.

### **Board Leadership**

The Board re-elected public member Meredith L. Hathorn, Managing Partner, Foley & Judell, L.L.P. in Baton Rouge, LA, to serve a second one-year term as Chair of the Board.

Angelia Schmidt, a bank dealer representative on the Board, will serve as FY 2024 Vice Chair. Schmidt is Managing Director and Head of Underwriting at UBS.

"I am grateful for the opportunity to continue working alongside my fellow Board members to advance long-term initiatives that will profoundly shape the future of our market," said MSRB Chair Hathorn. "As we approach the midpoint of the organization's four-year strategic plan, we are making great strides toward modernizing our rule book, our technology systems and our data capabilities to better serve investors, issuers and the public interest."

Hathorn's and Schmidt's terms were set to end on September 30, 2023, but the Board tapped them, along with public member Thalia Meehan, to serve one additional year in the final phase of its transition plan to reduce the size of the Board from 21 members to its current size of 15 members.

### **Board Members**

The Board includes eight independent public members and seven members from MSRB-regulated

broker-dealers, banks and municipal advisors. Four new members will join the Board to serve four-year terms that will begin October 1, 2023. One new municipal advisor will join the Board on October 1 to serve the remaining three years of a vacancy created by the departure of a municipal advisor representative on the Board.

"Thanks to the tremendous efforts of the Nominating Committee, we have the pleasure of welcoming five individuals who will refresh our Board with new perspectives, relevant experience and a shared commitment to serving our market," Hathorn said.

New public members joining the MSRB Board in FY 2024 are Michael Craft, Senior Credit Analyst at Genworth Financial Inc. in Stamford, Connecticut; and Pamela M. Frederick, Chief Financial Officer and Treasurer for New York City's Battery Park City Authority. New regulated representatives are Alexander Chilton, Managing Director, Head of Municipal Securities, at Morgan Stanley's Municipal Bond Division in New York; and Christopher A. Kendall, Managing Director, Fixed Income Trading, at Charles Schwab and Company, Inc. in Denver, Colorado. Wendell G. Gaertner of Public Resources Advisory Group, Inc. in St. Petersburg, Florida is the municipal advisor representative joining the Board for a three-year term.

The new Board members were selected from more than 50 applicants this year.

### **MSRB Leadership**

Ernie Lanza returns to the MSRB this month to serve as Chief Regulatory and Policy Officer. His career as a securities regulatory and public finance attorney includes more than 15 years in leadership roles at the MSRB, serving as acting director of the SEC's Office of Municipal Securities, and private practice.

"I am delighted to welcome Ernie back to the MSRB, and I am confident that he is the right person at the right time to advance our regulatory agenda," said MSRB CEO Mark Kim.

The MSRB also said today that it has named John Toye, a 13-year veteran of the MSRB who has held several IT leadership roles, to serve in the new role of Chief Information Officer. Brian Anthony, who originated the role of Chief Data Officer at the MSRB, will transition to the new role of Chief Product Officer.

### **About the New MSRB Board Members**

**Alexander Chilton** is Managing Director, Head of Municipal Securities at Morgan Stanley's municipal bond division based in New York, NY, where he oversees municipal public finance, capital solutions, capital markets, and various sales and trading initiatives. Prior to joining Morgan Stanley in 2015, Chilton was a Partner at Whitehaven Asset Management working on an investment fund in the municipal market. Alexander began his career at Citigroup in the Municipal Bond Department. He holds bachelor's degrees in both economics and engineering, and a master's degree in engineering from the University of Pennsylvania.

**Michael Craft** evaluates and recommends municipal bond investments as Senior Credit Analyst at Genworth Financial, Inc., which provides guidance, products, and services that help people understand their caregiving options and fund their long-term care needs, and parent company of Enact, a leading U.S. mortgage insurance provider. Prior to joining Genworth Financial in 2017, Craft was Managing Director, Credit at Lumesis, Inc., and held several positions at Fidelity Investments. He began his career at Lehman Brothers researching and analyzing the municipal market. He holds a bachelor's degree in Economics and Russian Studies from Amherst College and

an MBA from NYU Stern School of Business. He is a Chartered Financial Analyst.

**Pamela M. Frederick** is the Chief Financial Officer and Treasurer of the Battery Park City Authority in New York, NY, where she is responsible for all financial aspects, including directing a \$1 billion investment portfolio, as well as structuring and negotiating \$1 billion senior lien and junior lien tax exempt municipal bonds. Prior to Battery Park City Authority, Frederick's 30 years as an experienced financial executive includes positions at Citigroup, GE Capital, Fieldstone Private Capital, Overseas Private Investment Corp. and Chase Manhattan Bank. She holds a bachelor's degree in economics and an MBA in finance from the University of Michigan and a Certificat de la Haute École de Commerce from Hautes Etudes Commerciales (France).

**Wendell G. Gaertner** is Senior Managing Director of Public Resources Advisory Group, Inc. (PRAG) in St. Petersburg, FL, where he provides municipal advisory services to clients including cities, counties, states, utilities, transportation agencies, and special districts. Prior to joining PRAG in 2013, Gaertner served as Director, Public Finance at Bank of America Merrill Lynch and Vice President, Public Finance at Raymond James & Associates, Inc. He began his finance career at Barnett Bank of Tampa. Gaertner holds a bachelor's degree in chemistry from the University of Miami and an MBA from Stetson University.

**Christopher A. Kendall** is Managing Director, Fixed Income Trading at Charles Schwab & Company, Inc. in Denver, CO, where he is responsible for all trading related activity related to fixed income products. In addition, he leads regulatory and compliance requirements that affect fixed-income products as well as development of electronic trading systems, including algorithmic pricing tools. Kendall has more than 30 years' financial experience, including serving on the MSRB's Retail Investor Advisory Group from 2018-2019 and Market Transparency Advisory Group in 2020. He began his career at Shawmut Bank. He holds a bachelor's degree in economics and psychology from St. Lawrence University.

Date: August 03, 2023

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- [NFMA Releases Draft Best Practices in Disclosure for State Revolving Fund Revenue Bonds.](#)
  - [MSRB Board Approves Shortening Timeframe for Trade Reporting at Quarterly Meeting.](#)
  - Somewhat interesting case concerning school impact fees [here](#).
  - [Anti-ESG Politicians Cost Their States and Cities Billions.](#)
  - [GFOA Accounting for Capital Assets: eBook Now Available](#)
  - And Finally, That Train Has Sailed is brought to us this week by [Save Our Fairgrounds v. Metropolitan Government of Nashville and Davidson County](#), in which the Court of Appeals spoke slowly and used small words when explaining why Save Our Fairground's challenge to the development of a sports stadium was well and truly moot. "Demolition has been completed. The stadium has been built. Soccer matches have been played." Sure, but has \$50 been paid to park on some random lawn in the general vicinity? Has a \$16 beer been spilled down your pants? Has a soccer player died operatically on the pitch before experiencing a miraculous recovery? You want the moot?!! You can't handle the moot!!

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## **ZONING & PLANNING - CALIFORNIA**

### **[Lafayette Bollinger Development LLC v. Town of Moraga](#)**

**Court of Appeal, First District, Division 1, California - July 19, 2023 - Cal.Rptr.3d - 2023 WL 4613300**

Landowners petitioned for writ of mandate and brought other claims against town after they unsuccessfully sought to amend their property's "Study" land use designation in town's general plan in order to develop housing.

The Superior Court issued a peremptory writ of mandate requiring town to give the property a legally compliant land-use designation, but otherwise entered judgment for town, granted town's motion to strike and tax costs, and denied landowners' motion for attorney's fees. Landowners appealed, and town cross-appealed.

The Court of Appeal held that:

- Designation of landowners' property as "Study" in general plan did not substantially comply with statutory requirements;
- Town's failure to comply with general plan statute by identifying landowners' property as "Study" on general plan did not require town to approve landowners' application for housing project;
- Designation of landowners' property as "Study" on general plan was not a per se regulatory taking;
- Rejection of landowners' proposal to construct 85 houses on land designated as "Study" on general plan was not a regulatory taking;
- Delay in adopting a permanent land-use designation for landowners' property was rational in light of the property's unique aspects and thus did not violate equal protection
- Town's failure to give landowners' property a valid designation on general plan was not so outrageous as to violate substantive due process;
- Landowners were not the "prevailing party" and thus were not entitled to award of costs; and
- Attorney's fees under the private attorney general doctrine were not warranted.

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## **EMINENT DOMAIN - FLORIDA**

### **[Sabal Trail Transmission, LLC v. 3.921 Acres of Land in Lake County Florida](#)**

**United States Court of Appeals, Eleventh Circuit - July 25, 2023 - F.4th - 2023 WL 4729037**

Natural gas company brought action pursuant to Natural Gas Act to condemn property for pipeline easement.

The United States District Court for the Middle District of Florida adopting report and recommendation of a magistrate judge awarded prejudgment interest to property owner under Florida law and, adopting report and recommendation of a magistrate judge, awarded attorney fees and costs to owner under Florida law. Company appealed.

The Court of Appeals held that state law applied in determining the measure of compensation in a condemnation proceeding under the Natural Gas Act.

Condemnation proceedings under the Natural Gas Act section authorizing private entities who have received a certificate of public convenience and necessity to acquire property by the exercise of the right of eminent domain must look to state law to determine the measure of compensation.

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## **SCHOOL IMPACT FEES - NORTH CAROLINA**

### **[Zander v. Orange County, NC](#)**

**Court of Appeals of North Carolina - July 5, 2023 - S.E.2d - 2023 WL 4339347**

Plaintiffs appealed from a summary judgment order dismissing their class action complaint brought against Defendants Orange County (County) and the Town of Chapel Hill<sup>1</sup> on behalf of persons: (1) who were assessed allegedly ultra vires school impact fees by the County (the “Feepayer Class”); or (2) who are allegedly entitled to a refund of some school impact fees due to a 2016 change in the fee schedule (the “Refund Class”).

Plaintiffs filed a complaint alleging, inter alia, that the County failed to comply with the Enabling Act’s fee-setting provisions and the fees were thus ultra vires.

TischlerBise, the County’s consultant included the following costs as “capital improvements” in drafting the 2007 Studies that served as the basis of the fees: (1) construction; (2) land acquisition; (3) portable/temporary classrooms; (4) support facilities; (5) buses; and (6) TischlerBise’s consulting fee.

The court held that “buses and TischlerBise’s consultant fees are not ‘capital improvements to ... schools’ because they are not themselves ‘capital improvements’ as the word is ordinarily understood. A bus and a consultant’s report simply are not ‘acqui[sitions] [of] or improve[ments] [to] a fixed asset.’”

The Court of Appeals held that:

- The County unlawfully included some costs not authorized by statute in calculating the impact fees and hold that the Feepayer Class is entitled to recoup the portion of the school impact fees that were assessed to cover those improper costs; and
- As to the Refund Class, the trial court properly granted summary judgment for the County because the forecast of evidence demonstrated that no refunds were owed under the applicable ordinance.

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## **EMINENT DOMAIN - OHIO**

### **[State ex rel. Balunek v. Marchbanks](#)**

**Supreme Court of Ohio - July 25, 2023 - N.E.3d - 2023 WL 4711688 - 2023-Ohio-2517**

Land owner sought a writ of mandamus ordering the Department of Transportation (DOT) to begin appropriation proceedings for the taking of real property owned by land owner.

The Supreme Court held that:

- DOT committed a taking of land owner’s property;
- Land owner was entitled to a writ of mandamus compelling the DOT to institute appropriation proceedings; and



- Attorney fees were not available in mandamus actions to compel appropriation proceedings.

The Department of Transportation (DOT) committed a taking of land owner's property, for the purpose of land owner's mandamus action seeking to compel the DOT to begin appropriation proceedings; prior to DOT's construction project, the property had access to abutting roads through driveways and an easement, during the project the DOT destroyed the property's driveways that connected it to East 93rd Street and did not replace those driveways or provide alternative curb-cut access, and the project also eliminated the property's easement access to Woodland Avenue, rendering the property currently inaccessible to lawful vehicular traffic.

The fact that land owner would "likely" be granted street-opening permit to rebuild driveways to access property and that such a permit "would effectively negate the underlying loss-of-access basis" of his eminent domain claim did not negate owner's entitlement to writ of mandamus ordering Department of Transportation (DOT) to begin appropriation proceedings, after DOT project destroyed property's two driveways and eliminated property's easement across neighboring property to access road; street-opening permit would be granted only if property met city's ordinances and standards, no evidence indicated if property met those standards, to obtain permit owner would have to pay fee and submit performance bond of up to \$250,000, and permit process could not compel DOT to begin appropriation proceedings, and thus was not adequate remedy.

Land owner was entitled to a writ of mandamus compelling the Department of Transportation (DOT) to institute appropriation proceedings for the taking of owner's property, where DOT project eliminated access to the property by lawful vehicular traffic, and DOT's action constituted a taking for which it owed compensation.

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## **PUBLIC PENSIONS - RHODE ISLAND**

### **[Beaudry v. Rossi](#)**

**Supreme Court of Rhode Island - June 9, 2023 - 295 A.3d 349**

Personal representative of firefighter's estate brought action against town arising from dispute over calculation of firefighter's disability retirement benefits. The Superior Court granted town's motion for summary judgment. Personal representative appealed.

The Supreme Court held that:

- Pension plan amendment providing for administrative remedy was not validly enacted by vote of town council;
- Town council did not implicitly ratify amendment via vote on subsequent amendment; and
- Town council did not implicitly ratify amendment via periodic votes ratifying collective bargaining agreement (CBA).

Amendment to town's pension plan that gave town council, sitting as plan administrators, the exclusive right to interpret and decide matters under plan was not validly enacted at time of firefighter's disability retirement, and therefore firefighter was not required to exhaust the administrative remedy set forth in amendment before pursuing action against town arising from dispute over calculation of his disability retirement benefits, where town charter reserved the power to change town's pension plan in town council, town council did not authorize any town official to act on its behalf, and council never voted on amendment.

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## **PUBLIC CONTRACTS - SOUTH CAROLINA**

### **[Buonaiuto v. Town of Hilton Head Island](#)**

**Court of Appeals of South Carolina - June 14, 2023 - S.E.2d - 2023 WL 3985220**

Protestant brought action against town, seeking declaration that town violated its procurement code because it failed to publicly bid or subject its contract with chamber of commerce to its code, rescission of town's contract, an injunction requiring town to subject any proposed contract to its code, and an award of costs and attorney's fees.

On cross-motions for summary judgment, the Court of Common Pleas entered summary judgment in favor of town. Protestant appealed.

The Court of Appeals held that town's procurement code did not govern town's contract with chamber of commerce to manage and direct expenditure of statutorily-mandated special fund for advertising and promotion of tourism.

Town's procurement code did not govern town's contract with chamber of commerce which, among other things, included managing and directing expenditure of a statutorily-mandated special fund for advertising and promotion of tourism, though contract required chamber to submit a budget of planned expenditures and subsequent accounting of expenditures, submit designated marketing organization report and marketing plan, and submit tourism metrics; town's intent in enacting procurement code was to enable bidding process for receipt of funds in exchange for services rendered to town, and town officials and chamber's president and chief operating officer stated that purpose of the contract was to ensure chamber met compliance and operating standards rather than to procure services.

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## **DEVELOPMENT - TENNESSEE**

### **[Save Our Fairgrounds v. Metropolitan Government of Nashville and Davidson County](#)**

**Court of Appeals of Tennessee - July 14, 2023 - Slip Copy - 2023 WL 4542524**

In 2017, Major League Soccer announced that it had awarded a soccer franchise to Nashville. To attract a franchise, the Metropolitan Government of Nashville and Davidson County (Metro) agreed to the construction of a soccer-specific stadium and an adjacent multi-use development at the Fairgrounds. It pledged to use half of the property taxes generated by the multi-use development to create a capital fund for the Fairgrounds.

Metro Council passed a resolution giving conditional approval to the Sports Authority of the Metropolitan Government of Nashville and Davidson County to issue bonds to construct and equip the stadium and related facilities.

Save Our Fairgrounds (Plaintiff) is a nonprofit corporation dedicated to promoting and preserving the Fairgrounds. Plaintiff sued Metro alleging that the soccer development violated various provisions of the Metro Charter.

Plaintiff moved for a temporary restraining order and/or injunction to keep "Metro from taking any actions to commence any phase of redevelopment of the Fairgrounds Nashville property until a referendum is approved by the voters." They argued, for the first time, that § 11.602(d) required

**both** a majority vote in Metro Council **and** a public referendum before any demolition or redevelopment could occur at the Fairgrounds.

After a hearing, the court denied the injunction request. The court ruled that § 11.602(d) unambiguously allowed demolition to occur after **either** a majority vote of Metro Council or a charter amendment.

The court concluded that the plaintiffs did not prove that the construction and operation of the soccer development were ultra vires, a breach of fiduciary duty, or a violation of the Metro Charter. Rather, Metro demonstrated that, when the new development was completed, (1) it would still be feasible to host a divisional fair on site and (2) the existing activities would be continued.

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## **ZONING & PLANNING - TEXAS**

### **[Consolidated Towne East Holdings, LLC v. City of Laredo](#)**

**Court of Appeals of Texas, San Antonio - July 12, 2023 - S.W.3d ----2023 WL 4482391**

Developer brought declaratory judgment and mandamus action against city, seeking declaration that city's refusal to issue living unit equivalences unless developer voluntarily annexed its land constituted a regulatory taking and that denial of services by city officials was an ultra vires act.

City and developer filed cross-motions for summary judgment, which the 406th District Court granted in favor of city and dismissed developer's claims with prejudice. Developer appealed.

The Court of Appeals held that:

- Developer's regulatory-takings claim was not ripe;
- Developer was not entitled to mandamus relief against city officials; and
- Dismissal without prejudice, rather than with prejudice, was appropriate disposition of developer's premature claims.

Developer's regulatory-takings claim against city, alleging that city's refusal to issue living unit equivalences unless developer voluntarily annexed its land as a precondition for water and sewer services amounted to an unconstitutional exaction, was not ripe, and thus trial court lacked subject matter jurisdiction over developer's declaratory judgment action, where city and developer had not even entered into discussions regarding cost of annexation, and without an authoritative determination of annexation costs, court could not assess whether costs assessed pursuant to annexation were roughly proportional to interests that city asserted.

Dismissal without prejudice, rather than with prejudice, was appropriate disposition of developer's premature, or unripe, claims against city, seeking declarations that city's refusal to issue living unit equivalences unless developer voluntarily annexed its land constituted a regulatory taking, and that city ordinance requiring annexation before issuance of permit for a sewer connection resulted in an unconstitutional taking as well.

Developer was not entitled to mandamus relief against city officials, seeking to compel them to sell living unit equivalences to developer without imposing requirement to annex its land to city as precondition for water and sewer services and alleging their denial to sell was an ultra vires act and amounted to an unconstitutional regulatory taking; developer failed to establish there was an

unconstitutional exaction, city officials' actions were not contrary to statute or city ordinance, so as to allow for prospective relief, and developer failed to argue that an exception was met to ordinances requiring annexation before city could issue sewer and plumbing permits.

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### **[GFOA Accounting for Capital Assets: eBook Now Available](#)**

In addition to the softcover, you can now purchase the Accounting for Capital Assets eBook from Amazon or Apple. The book's eleven chapters cover the gamut of capital asset-related issues. Each comes with a handy "chapter in brief" summary and multiple-choice questions. The book also offers an extensive set of sample journal entries, a detailed index, and a full glossary.

[PURCHASE](#)

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### **[Subscription Supposition: A GFOA Look at Practical SBITA Examples.](#)**

The authoritative accounting guidance in Governmental Accounting Standards Board (GASB) Statement No. 96, Subscription-Based Information Technology Arrangements (GASB 96), is effective for fiscal years beginning after June 15, 2022, and all reporting periods thereafter.

[LEARN MORE](#)

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### **[S&P U.S. Not-For-Profit Public College And University Fiscal 2022 Medians And Ratios: Road To Recovery Is Paved With Federal Funding; Hazards Remain](#)**

#### **Key Takeaways**

- Despite most institutions returning to full on-campus operations in fall 2021, S&P Global Ratings' rated U.S. public colleges and universities experienced a 1.9% decline in median full-time-equivalent (FTE) enrollment.
- Demand metrics softened across nearly all rating categories in fall 2021, indicative of an increasingly competitive marketplace and growing number of students questioning higher education's value proposition.
- A healthy rebound of auxiliary revenues, together with continued federal relief funding, helped offset rising expenses and slowing net tuition revenue growth, yielding a median full-accrual operating surplus of 2.9% in fiscal 2022.
- Market volatility throughout the fiscal year pared back some of the unprecedented investment gains recorded in fiscal 2021, while the return to campus and macroeconomic pressures pushed operating expenses up, softening certain financial resource metrics.
- State cash windfalls stemming from successful pandemic recoveries and significant federal relief funding have, in many cases, already bolstered support for higher education, demonstrated by a 10.2% increase in median state appropriations per FTE enrollment from fiscal 2021-2022.

[Continue reading.](#)

25 Jul, 2023

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## **S&P U.S. Not-For-Profit Private College And University Fiscal 2022 Medians And Ratios: As Pandemic Risks Abate, Enrollment Pressures Persist**

### **Key Takeaways**

- As U.S. not-for-profit private colleges and universities return to pre-pandemic operations, enrollment and demand pressures persist, except at higher-rated institutions, indicating widening divergence within the industry
- Bolstered by remaining federal pandemic relief funds, most institutions across all rating categories generated positive operating performance in fiscal 2022.
- Fiscal 2022 market volatility has weakened financial resources compared with fiscal 2021, though overall, investments are stronger than pre-pandemic levels.
- Despite rising borrowing costs, overall debt increased in fiscal 2022, specifically in the 'AA' to 'BBB' rating categories.

[Continue reading.](#)

25 Jul, 2023

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## **S&P Second Party Opinion: NHP Foundation Taxable Bonds Series 2023 (Social Bonds)**

NHPF's mission is to preserve and create sustainable, service-enriched multifamily housing that is affordable to low- and moderate-income families and seniors, as well as beneficial to their communities. It partners with various private and public stakeholders to acquire, build, and operate affordable housing projects offering deeply discounted rents that it preserves long term.

[Download](#)

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### **TAX - RHODE ISLAND**

#### **Gunvor USA, LLC v. State by and through Division of Taxation**

**Supreme Court of Rhode Island - July 14, 2023 - A.3d - 2023 WL 4536385**

Oil trader brought a tax aggrievement case challenging Division of Taxation's imposition of motor fuel tax on sale 300,000 barrels of gasoline, by an alleged unregistered distributor, as part of a chain transaction involving six entities including oil trader as a later buyer that was contractually responsible to its seller for the tax.

The Sixth Division District Court dismissed. Oil trader petitioned for writ of certiorari, which was granted.

The Supreme Court held that futility exception to administrative exhaustion requirement applied.

Futility exception to administrative exhaustion requirement applied to oil trader's tax aggrievement case challenging Division of Taxation's imposition of motor fuel tax on sale of 300,000 barrels of gasoline, by an alleged unregistered distributor, as part of a chain transaction involving six entities including oil trader as a later buyer that was contractually responsible to its seller for the tax, where it was certain, or nearly so, that tax administrator would have denied oil trader's request for a refund of motor fuel tax, had one been made, based on Division's inflexible position in a similar case that only the entity that paid the tax had standing to challenge it.

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## **California Nonprofit Hospitals Turn to Bankruptcy for Leverage Against State.**

**Distressed nonprofit hospitals in the state are using chapter 11 to gain leverage against the attorney general, whose office critics say has caused some sales to collapse**

Beverly Hospital near Los Angeles tried and failed for years to sell itself. It turned the corner when it filed for bankruptcy.

The chapter 11 filing in April gave the hospital operator some leverage against the state's attorney general, who has the authority to mandate prospective buyers to maintain costly services such as emergency and charity care, and to accept patients covered by government-backed healthcare programs.

Such requirements had stunted Beverly's earlier sale attempts. As its finances worsened, the hospital faced the rising possibility of shutting down, leaving tens of thousands of low-income patients in the city of Montebello without healthcare services.

[Continue reading.](#)

**The Wall Street Journal**

By Akiko Matsuda

July 30, 2023

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## **States Put Buying Power to Work for Local Governments.**

**When states drive cooperative procurements, local agencies can take advantage of volume discounts, experienced contracting officers and a streamlined process.**

As local governments look for ways to stretch their budgets, many are turning to cooperative purchasing, where they can take advantage of the volume discounts states negotiate for office supplies, laptops and even specialized applications. When states open their commodity purchases to local government buyers, they spread the benefits of the volume pricing, experienced procurement teams and the streamlined contracting process so communities can get the products and services they need faster and at a better price.

In Texas, for example, the Department of Information Resources, or DIR, issued a request for offer

June 9 asking respondents to provide Google products and services for not only state agencies, but local ones, too.

“While DIR is specifically charged with overseeing state government, countless local government entities—including K-12 education organizations and public colleges and universities—also depend on DIR’s services to keep their technology reliable, secure, and forward-looking,” the document states.

[Continue reading.](#)

## **Route Fifty**

By Stephanie Kanowitz

JULY 26, 2023

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### **[Public Sector Slow to Respond to Cyberattacks, Report Finds.](#)**

**It takes government agencies more than 225 days to identify a cyber threat and 92 days to contain it, but AI and automation could significantly reduce that time.**

Hackers pulled off one of the largest data breaches in Oregon’s history last month when they accessed 3.5 million drivers licenses and identification cards. State officials became aware of the breach on June 1. Oregonians learned about it two weeks later.

Initially, state officials didn’t have any information about what was stolen—that would take “days of analysis” to determine, according to Michelle Godfrey, spokesperson for the Oregon Driver and Motor Vehicle Services. It would take several more days to ready the resources that state residents would need to monitor their credit reports.

While the event is specific to Oregon, the need for a timely response from hacked agencies is not. Government agencies typically take more than 225 days to identify a cyber threat and 92 to contain that threat, according to a new report from IBM Security. By comparison, researchers found that companies in the private sector take 204 days to identify cyber threats and 73 days to contain them.

[Continue reading.](#)

## **Route Fifty**

by Chris Teale

JULY 25, 2023

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### **[S&P: California Housing Finance Agency 2023 Series A Bonds](#)**

CalHFA’s Preliminary Offering Statement (POS) clearly details that the proceeds of the bonds will be applied toward refinancing mortgage loans that previously financed the acquisition, construction, and rehabilitation of a portfolio of six multifamily rental developments in central and Northern



California. The properties comply with strict state-level green building standards across the portfolio, with additional energy-efficiency criteria applied to the portfolio's San Francisco-based rehabilitation projects.

[Download the report.](#)

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## **[Jobs Sit Empty in the Public Sector, So Unions Pitch In to Recruit.](#)**

**Shortages of state and city personnel, especially those who must work on site, are so dire that unions are helping to get people in the door.**

The State of Minnesota, like nearly every public-sector employer across the country, is in a hiring crunch.

Not just for any job, though. The desk jobs that can be done remotely, with flexible schedules? Applicants for those positions are relatively abundant. It's the nurses, groundskeepers, plumbers, social workers and prison guards — those who are on site, sometimes at odd hours — that the state really can't find.

"It's terrifying, if I'm being honest," said Mitchell Kuhne, a sergeant with the Department of Corrections staffing a table at a state jobs fair in Minneapolis this week. "People just don't know about the opportunities that exist. It's a great work force, it's a great field to be in, but it's a really intimidating thing that isn't portrayed accurately in the movies and media."

[Continue reading.](#)

### **The New York Times**

By Lydia DePillis

July 27, 2023

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## **[Florida's Flood of New Wealth Boosts High-Speed Train Bonds.](#)**

- **Private railroad's munis started year cheap, investor says**
- **Fortress has invested more than \$2 billion in project**

New York has Metro-North, London has the Network Southeast. Miami has the Brightline — and these days, people are climbing aboard.

Ridership on the five-year-old rail line, which connects Miami and West Palm Beach, has taken off as wealth has poured into South Florida, boosting the bonds that funded it by as much as about 20% this year. The number of passengers was up nearly 80% through June.

The high-speed line is one more reflection in the kaleidoscopic story of the new wealth pouring into Miami. Even the municipal bonds used to finance the privately owned railway have appreciated in value recently, much like South Florida real estate, private school fees and seemingly everything else in the Miami area. The soon to be 235-mile-long private rail is owned by the same company that

hopes to link Los Angeles and Las Vegas by train.

[Continue reading.](#)

## **Bloomberg**

By Martin Z Braun

July 27, 2023

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### **Anti-ESG Politicians Cost Their States and Cities Billions.**

**Supposed free-market champions are limiting the freedom of investment managers, leading to lower returns and higher interest rates on bonds.**

In the face of fires, record heat, floods and other extreme weather events across the country, House Republicans are using much of July to oppose financial transparency related to climate risks and to attack investor freedoms. Their reckless course endangers not just the planet but also the financial stability of Americans' retirement savings and pensions. One Republican went so far as to say consideration of climate risk by asset managers is "Satan's plan."

On July 12, leaders of the House Financial Services Committee launched hearings to attack environmental, social and governmental (ESG) practices by financial firms. They are also crafting legislation that would outlaw long-standing risk assessment practices. Just as dangerously, House Republicans intend to restrict shareholders' ability to hold corporate executives accountable by restricting rights to vote proxies and curbing shareholder resolutions related to corporate governance.

It's hardly surprising that oil companies and other fossil fuel businesses have poured tens of millions of dollars into the campaign coffers of committee members and other anti-ESG politicians across the country.

[Continue reading.](#)

## **Bloomberg Opinion**

By Brian Frosh and Nancy Kopp

July 25, 2023

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### **Salt Lake City, Utah: Fitch New Issue Report**

Revenue Framework: 'aaa': Fitch Ratings expects solid ongoing revenue growth, supported by significant new property development and economic expansion. The city has a substantial independent legal ability to raise revenues. Expenditure Framework: 'aa': Based on the city's current spending practices and recurring operating surpluses, Fitch expects the natural pace of expenditure growth to be generally in line with revenue growth. While the city has a somewhat elevated fixed-cost burden, its labor environment is flexible. The pace of spending is expected to be

marginally above revenue growth absent policy action. Carrying costs are moderate, and the city's ability to control wages and benefits is solid. Long-Term Liability Burden: 'aaa': The city's long-term debt and pension liabilities are low relative to its economic resource base. Operating Performance: 'aaa': Strong control over revenues and spending, along with solid reserves both within and outside the general fund, contribute to the city's superior gap-closing capacity, which Fitch expects the city will maintain throughout economic cycles.

#### [ACCESS REPORT](#)

Tue 25 Jul, 2023

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### **[Oklahoma Development Finance Authority: Fitch New Issue Report](#)**

Revenue Framework: 'aa': Fitch Ratings expects that Oklahoma's revenues, which are supported by broad-based sources, will continue to reflect above average economic volatility tied to the natural resource sector. While the Oklahoma Legislature has unlimited independent legal ability to raise operating revenues, tax rate increases require either a legislative supermajority vote or direct voter approval, limiting practical revenue-raising flexibility. Expenditure Framework: 'aa': The state maintains ample expenditure flexibility with a low burden of carrying costs for liabilities and the broad expense-cutting ability common to most U.S. states. Long-Term Liability Burden: 'aaa': On a combined basis, the state's debt and net pension liabilities are well below the median for U.S. states as a percentage of personal income and are a low burden on resources. Other post-employment benefit obligations are minimal compared with debt and net pension liabilities, accounting for 0.1% of personal income versus 2.9% for debt and pensions. Operating Performance: 'aa': A constitutional provision limiting appropriations to only 95% of expected general revenue fund revenues provides a cushion for revenue variability, while the state's proactive management of financial operations has historically offset volatility.

#### [ACCESS REPORT](#)

Wed 26 Jul, 2023

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### **[Long Island Power Authority, New York: Fitch New Issue Report](#)**

The Positive Outlook reflects Long Island Power Authority's (LIPA) improving leverage ratio and Fitch Ratings' expectation that the gradual but consistent deleveraging trend that began in 2015 will continue through 2027. Leverage, measured by net adjusted debt to adjusted funds available for debt service (FADS), improved to 8.1x at YE 2022 from 8.8x four years prior. The improvement is in part attributable to LIPA's strategy of budgeting to achieve higher fixed-obligation coverage. Fitch expects leverage ratios to trend below 8.0x in 2023/2024, consistent with a higher rating, as performance continues to benefit from LIPA's revenue-decoupling mechanism (RDM) and modest but consistent rate increases designed to achieve higher fixed-charge coverage. LIPA's very strong service area, more disciplined approach to rate setting and authorized RDM should sustain its very strong revenue defensibility and overall performance even through periods of stress, further supporting its financial profile. LIPA's operating cost burden remains comparatively high within the sector. However, ongoing efforts to moderate costs and operating risk, and improve the terms of its operating services agreement (OSA) with system operator PSEG Long Island (PSEGLI) were

reasonably successful in recent years, and are factored in the rating. The adoption of a public power model, whereby LIPA would directly operate the system upon termination of the OSA in 2025, is still under consideration. An upgrade of the rating is unlikely prior to a final decision related to management of the authority's assets.

## [ACCESS REPORT](#)

Thu 27 Jul, 2023

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### [NFMA Releases Draft Best Practices in Disclosure for State Revolving Fund Revenue Bonds.](#)

The NFMA's Disclosure Committee is pleased to release the following draft best practices in disclosure for comment.

- [Recommended Best Practices in Disclosure for State Revolving Fund Revenue Bonds](#), Draft Dated July 25, 2023. Comments due September 30, 2023
- [Press Release](#), Dated July 25, 2023

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### [MSRB Board Approves Shortening Timeframe for Trade Reporting at Quarterly Meeting.](#)

Washington, DC - The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) approved shortening the timeframe for trades to be reported to the MSRB at its July 26-27, 2023 quarterly meeting. The Board also approved the FY 2024 budget and discussed priorities for the next fiscal year, among other business.

#### **Market Regulation**

The Board approved seeking Securities and Exchange Commission (SEC) approval of amendments to MSRB Rule G-14 to shorten the timeframe for trades to be reported to the MSRB from 15 minutes to as soon as practicable, but no later than one minute, subject to certain exceptions for firms with limited trading volume in municipal securities and for manual trades.

"Moving to a one-minute standard for trade data reported to the MSRB will achieve greater price transparency for investors who rely on this information to make informed decisions when buying or selling municipal bonds," said MSRB CEO Mark Kim. "The proposal we plan to file with the SEC recognizes the role that small firms and manual trades play in the municipal securities market."

As a further step in its ongoing rulebook modernization, the Board approved seeking SEC approval of a proposal to amend Rule G-12, on uniform practice, to adopt requirements for the completion of allocations, confirmations and affirmations related to municipal securities transactions. The proposed amendments are consistent with those applicable to broker-dealers for other securities under newly adopted SEC Rule 15c6-2, which facilitates compliance with the transition to T+1 settlement.

#### **Public Trust**

The Board approved a \$47 million budget to fund the activities of the MSRB for FY 2024, beginning October 1, 2023. A budget summary detailing the MSRB's projected expenses, revenues and reserve levels will be published at the beginning of the fiscal year. The Board also approved designating an additional \$3.5 million of reserves for the Board's system modernization fund.

"The MSRB's FY 2024 budget effectively manages costs in an inflationary environment and reduces organizational reserves to within target levels, all while continuing to make the necessary investment in modernizing our rule book, our technology systems and our data capabilities to serve the market of the future," said MSRB Chair Meredith Hathorn. "Under the leadership of the Finance Committee and Committee Chair Angelia Schmidt, the Board has demonstrated the highest commitment to fiscal discipline and stewardship of industry dollars."

The annual budget is a factor in the MSRB's new fee-setting process, which is designed to ensure the MSRB's fees on regulated entities result in the collection of only the revenue needed to fund its activities without accumulating excess reserves. The Board plans to file a new rate card in the first quarter of FY 2024 to establish rates effective January 1, 2024.

The Board also held FY 2024 officer elections and considered candidates to fill a vacancy on the Board. Board leadership and the incoming class of new Board members will be announced in the coming weeks.

### **Market Transparency**

The Board received an update regarding work to modernize the Electronic Municipal Market Access (EMMA®) website and related market transparency systems to implement user-driven enhancements to the website and to the disclosure submission process.

### **Market Structure and Data**

The Board received a demonstration of a Structured Data Lab to be added to the EMMA Labs platform next month. Anyone who creates a free EMMA Labs account will be able to explore and provide feedback on the new Lab, which highlights the experiences of municipal issuers that have adopted structured data and features a prototype of what EMMA might be able to do in the future with additional structured data. The Lab also includes educational content to support market participants' common understanding of structured data.

Date: July 28, 2023

Contact: Leah Szarek, Chief External Relations Officer  
202-838-1500  
lszarek@msrb.org

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### **[Wells Fargo Gun Policies Probed by Texas, Risking Muni Work.](#)**

- **Texas AG's office probing bank's firearm policies, letter says**
- **Office will decide if bank is a 'discriminating company'**

Wells Fargo & Co.'s policies around the firearm industry are being probed by the Texas Attorney General's office, a potential threat to the bank's bond underwriting work in the state.

Leslie Brock, chief of the AG's public finance division, sent a July 26 letter to lawyers who work on bond deals in Texas saying that officials are studying whether Wells Fargo has a practice or policy that "discriminates against a firearm entity or firearm trade association."

The letter, obtained by Bloomberg News, is the latest salvo in the Lone Star State's fight with Wall Street over its environmental, social and governance policies. The probe is tied to legislation passed in 2021 that restricts certain government contracts with companies that the state deems as hostile to the gun industry. The AG determined Citigroup Inc. "discriminates" earlier this year.

[Continue reading.](#)

## **Bloomberg Markets**

By Amanda Albright and Danielle Moran

July 27, 2023

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### **Muni ETF Boom Stalls After Record Gains as Investors Seek Yield.**

- **Inflows drop to \$3.9 billion year-to-date from \$14.8 billion**
- **Vanguard's Malloy calls 2023 'a pause,' not a drop in flows**

Municipal exchange-traded funds, still a relatively new and small part of the \$4 trillion state and local debt market, have seen growth stall dramatically after record inflows last year as the shift away from mutual funds slowed.

These ETFs have garnered about \$3.9 billion so far this year, down from \$14.8 billion in the year-ago period, according to data compiled by CreditSights. This marks a slowdown from last year, when a record \$29 billion flowed into the funds, which had attracted investors with lower fees and the opportunity to tamp losses in the worst muni-market rout in decades.

Since they were first introduced into the muni market about 15 years ago, assets in such ETFs have surged to roughly \$110 billion, according to data compiled by Bloomberg. Morgan Stanley expects muni ETF assets to jump to \$200 billion by 2026, one-third of the time it took to reach the \$100 billion mark.

[Continue reading.](#)

## **Bloomberg Markets**

By Shruti Singh

July 27, 2023

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### **State of Texas: Fitch New Issue Report**

Texas' 'AAA' Issuer Default Rating (IDR) and GO rating reflect its growing economy and the ample fiscal flexibility provided both by its conservative approach to financial operations and maintenance

of substantial reserves, including in its budgetary reserve, the economic stabilization fund. The Texas Public Finance Authority is one of several state agencies that issues GO bonds payable from a constitutional appropriation of the first moneys coming into the state treasury not otherwise appropriated.

#### [ACCESS REPORT](#)

Tue 25 Jul, 2023

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### **[San Antonio, Texas Water System: Fitch New Issue Report](#)**

Key Rating Drivers Revenue Defensibility Very Favorable Service Area, Affordable Rates for Vast Majority of Population: The system retains the legal authority to adjust rates as needed without external oversight (other than that of the city council). Fitch considers the monthly residential water and sewer bill affordable for around 82% of the service area population based on standard monthly usage of 7,500 gallons for water and 6,000 gallons for sewer. The very favorable service area is characterized by midrange income levels, an average unemployment rate relative to the nation and strong customer growth. Customer growth registered a five-year CAGR of 2.3% as of fiscal 2022. Income levels are about 80% above the national median as of 2021. The unemployment rate was 3.6% in 2022, in line with the national average. Operating Risk Very Low Operating Cost Burden, Moderate Investment Needs: The system's operating cost burden was very low in fiscal 2022, at \$4,100 per million gallons (mg), consistent with the operating risk assessment. The life cycle ratio was very low at 27% in fiscal 2022. Annual capex relative to depreciation has been strong, with a five-year average of 217% from fiscal years 2018 to 2022. Planned capex for the next five years should generally outpace historical depreciation, supporting a continued very low life cycle ratio.

#### [ACCESS REPORT](#)

Fri 28 Jul, 2023

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### **[Reasons to Fall in Love With Municipal Bonds Right Now. How to Invest.](#)**

When a money-market fund yields more than 5%, what's so special about municipal bonds yielding 3%? A lot, it turns out. Take taxes into account and muni yields get much more appealing. And right now, it's a good time to lock in longer-term bonds.

BlackRock National Municipal, the money manager's flagship muni fund, has a current yield of 2.99%, which translates into a 5.05% taxable-equivalent yield for someone in the top federal income-tax bracket. "That gets people giddy about munis again," says Sean Carney, head of BlackRock's muni strategy team.

The effective muni yield is near 8% for people in the highest bracket in high-tax states who use a longer-term bond ladder—a rolling portfolio of bonds maturing in each of the next 10 to 20 years—in a separately managed account, according to Parametric Portfolio Associates.

[Continue reading.](#)



## **Barron's**

By Amey Stone

July 28, 2023

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### **[Expensive Muni Prices Threaten Buyer Shift to Treasuries.](#)**

- **Municipal-Treasury 10-year ratio is hovering around 62%**
- **Inside of the curve is 'a little bit too rich,' investor says**

Municipal bonds have gotten so rich that investors may be better off buying US Treasuries.

The 10-year municipal benchmark offers just 62% of the yield on similarly-dated Treasuries, well below the historical norm, according to data compiled by Bloomberg. The figure, a key gauge of relative value in the market, has averaged about 85% over the last five years, the data show.

Most municipal bonds typically offer less yield than Treasuries because the income generated on those investments is exempt from federal taxes – but that yield differential now has gotten more extreme. Shorter-term debt, which is popular with retail investors, is considered even more expensive.

[Continue reading.](#)

## **Bloomberg Markets**

By Jordan Fitzgerald and Amanda Albright

July 28, 2023

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### **[Muni Bond Market Outlook \(Bloomberg Audio\)](#)**

Eric Kazatsky, Senior Municipal Bond Strategist at Bloomberg Intelligence, joins to discuss the latest on the muni bond market. Hosted by Paul Sweeney and Matt Miller.

[Listen to audio.](#)

Jul 28, 2023

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### **[Financial Accounting Foundation Board of Trustees Notice of Meeting.](#)**

[Meeting Notice](#)

[07/28/23]

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## **GASB Standards-Setting Process Oversight Committee Meeting Notice.**

### Meeting Notice

[07/28/23]

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- [Orrick: IRS Issues Direct Pay and Transferability Proposed Regulations](#)
- [Replacement of London Interbank Offered Rate - GASB Update](#)
- [MSRB Proposes One-Time Exemption for Municipal Advisors to Requalify for Certification.](#)
- [U.S. Public Finance Long-Term Municipal Pools: Key Information And Characteristics - S&P](#)
- [Quantifying Climate Change Risks to the Cost of Municipal Borrowing.](#)
- [In a Bad State: Responding to State and Local Budget Crises](#)
- [XBRL US Hosts GovFin 2023: Empowering Governments, Modernizing Reporting](#)
- California public utilities case [here](#).
- And Finally, The Gaul! Wait, The Gall! is brought to us this week by [Sosa v. City of Woonsocket](#), in which a police officer admitted to multiple felonies, including breaking into his ex-girlfriend's house with a gun and assaulting her and other family members. [Hilariously, the Supreme Court of Rhode Island felt compelled to specify that he was, "off duty at the time of these offenses." Oh, well in that case...] Rather than simply slink off, this particular bozo takes his case all the way to the top, complaining that he couldn't be terminated yet 'cuz his admission to the court was not an official guilty plea. All publicity is good publicity? We can happily inform you that the fat lady has indeed sung and Officer Sosa has been thoroughly and properly sacked.

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### **EDUCATION - ARKANSAS**

#### **Arkansas Department of Education v. Jackson**

**Supreme Court of Arkansas - June 15, 2023 - 2023 Ark. 105 - 669 S.W.3d 1**

Plaintiffs, who were individuals connected either by employment, residence, or otherwise to public school district that had been taken over by the State Board of Education due to minimum-enrollment concerns, moved for a temporary restraining order (TRO) in its lawsuit for a declaratory judgment that the LEARNS Act's emergency clause, pursuant to which the Secretary of Education, who was acting as district's school board, entered into a transformation contract with charter school management company, was ineffective.

The Circuit Court entered order granting the TRO. Defendants appealed.

The Supreme Court held that:

- Payments that district would make to management company under transformation contract could not be irreparable harm;
- Nonrenewal of employment contracts and other adverse effects related to those nonrenewals could not be irreparable harm;
- Risk of district being involuntarily consolidated, dissolved, or divided in retaliation for lawsuit

- could not be irreparable harm;
- Alleged lack of an opportunity of district residents to participate in and provide feedback on transformation contract could not be irreparable harm; and
- Absence of a TRO would not impair right of ballot-question committee to pursue a citizen-initiated repeal of the LEARNS Act via referendum petition.

Payments that public school district would make to charter school management company under transformation contract could not be “irreparable harm” and thus could not support temporary restraining order (TRO) against the LEARNS Act’s emergency clause, pursuant to which the Secretary of Education, who was acting as district’s school board since district had been taken over by the State Board of Education due to minimum-enrollment concerns, had entered into the transformation contract; the payments were clearly monetary in nature.

Nonrenewal of employment contracts and other adverse effects related to those nonrenewals could not be “irreparable harm” and thus could not support temporary restraining order (TRO) against the LEARNS Act’s emergency clause, pursuant to which the Secretary of Education, who was acting as district’s school board since district had been taken over by the State Board of Education due to minimum-enrollment concerns, had entered into the transformation contract; the nonrenewals and related effects could adequately be compensated by money damages or redressed in a court of law.

Risk of public school district being involuntarily consolidated, dissolved, or divided in retaliation for lawsuit challenging validity of LEARNS Act’s emergency clause could not be “irreparable harm” and thus could not support temporary restraining order (TRO) against the clause, pursuant to which the Secretary of Education, who was acting as district’s school board since district had been taken over by the State Board of Education due to minimum-enrollment concerns, had entered into the transformation contract; the risks were entirely speculative.

Absent authority granting public school district residents the right to an opportunity to participate in and provide feedback on transformation contract, the denial of such an opportunity could not be “irreparable harm” and thus could not support temporary restraining order (TRO) against the LEARNS Act’s emergency clause, pursuant to which the Secretary of Education, who was acting as district’s school board since district had been taken over by the State Board of Education due to minimum-enrollment concerns, had entered into the transformation contract.

Even if there was authority granting public school district residents the right to an opportunity to participate in and provide feedback on transformation contract, residents did have that opportunity, and thus alleged denial of such an opportunity could not be “irreparable harm” and could not support temporary restraining order (TRO) against the LEARNS Act’s emergency clause, pursuant to which the Secretary of Education, who was acting as district’s school board since district had been taken over by the State Board of Education due to minimum-enrollment concerns, had entered into the transformation contract; meeting where State Board of Education approved the contract was open to the public.

Absence of a temporary restraining order (TRO) would not impair ballot-question committee’s right to pursue a citizen-initiated repeal of the LEARNS Act via a referendum petition, and thus alleged impairment of that right could not be “irreparable harm” and could not support temporary restraining order (TRO) against the LEARNS Act’s emergency clause, pursuant to which the Secretary of Education, who was acting as public school district’s school board since district had been taken over by the State Board of Education due to minimum-enrollment concerns, had entered into a transformation contract with charter school management company.

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**PUBLIC UTILITIES - CALIFORNIA**

**City of Hesperia v. Lake Arrowhead Community Services District**

**Court of Appeal, Fourth District, Division 1, California - July 12, 2023 - Cal.Rptr.3d - 2023 WL 4485099**

City brought action against water and wastewater district and district's board of directors seeking a writ of mandate prohibiting further pursuit of solar photovoltaic project to offset energy costs associated with district's operations and facilities under state renewable energy self-generation bill credit transfer program, alleging that proposed property site was not within district's water or wastewater service area, and challenging sufficiency of evidence supporting no-feasible-alternative determination so as to qualify for exemption from city's zoning regulations, among other claims.

The Superior Court denied petition. City appealed.

The Court of Appeal held that:

- Substantial evidence supported trial court's finding that city had unreasonably delayed issue relating to eligibility for program, as would support application of laches to bar city's claim;
- Substantial evidence supported trial court's finding that city's unreasonably delay prejudiced district, as would support application of laches;
- Evidence supported finding that proposed property site was within district's geographical boundary, and therefore was eligible for use under program; and
- Sufficient evidence supported district's determination of no feasible alternative, so as to avoid application of city's zoning regulations.

Substantial evidence supported trial court's finding, on review of denial of city's petition for writ of mandate, that city had unreasonably delayed raising issue that water and wastewater service district's solar energy project site did not qualify for state renewable energy self-generation bill credit transfer program, as would support application of laches to bar city's assertion that project was ineligible for program; evidence indicated that city failed to raise eligibility issue during prior lawsuit seeking writ of mandate against district, had been aware of district's plan to utilize program for at least five years, including size, location, and reason for project, offered no explanation for delay, and was on notice of facts from which it should have been aware of district's agreement with investor-owned utility company to participate in program.

Substantial evidence supported trial court's finding, on review of denial of city's petition for writ of mandate, that city's unreasonable delay in raising issue whether water and wastewater service district's solar energy project qualified for state renewable energy self-generation bill credit transfer program prejudiced district, as would support application of laches to bar city's claim of ineligibility; district had expended money, time, and effort to demonstrate that there were no feasible alternatives project so as to be exempt from city's zoning regulations, and city induced district to pursue project through lengthy and costly litigation and technical analysis, and by placing at risk district's ability to benefit from agreement with investor-owned utility company.

The "geographical boundary of a local government," for purposes of state renewable energy self-generation bill credit transfer program, refers to an area that is subject to the governing authority of the local government at issue; interpretation is consistent with the legislature's expressed purpose and concerns regarding program, to increase the number and type of entities that can benefit from program while at the same time avoiding complications that could arise if a governmental entity attempts to obtain energy credits from one electrical corporation but apply those credits to an

account serviced by a different electrical corporation.

On review of denial of city's petition for writ of mandate, evidence supported trial court's finding that proposed property site for water and wastewater service district's solar energy project was within district's geographical boundary, and therefore was eligible for use under state renewable energy self-generation bill credit transfer program to offset energy costs associated with district's operations and facilities, even though property was not located within district's service area boundaries; evidence indicated that district governed property in relation to wastewater service function by conveying treated effluent directly from district's wastewater treatment plant into percolation ponds at facility on property, district could not complete wastewater management function without having authority over property, and property was served by electrical corporation with which district entered into agreement that was necessary for participation in program.

City failed to demonstrate that there was insufficient evidence to support trial court's denial of city's petition for writ of mandate as to city's challenge to sufficiency of evidence to support water and wastewater service district's determination of no feasible alternative to proposed property site for district's solar energy project seeking to offset energy costs associated with district's operations and facilities pursuant to state renewable energy self-generation bill credit transfer program so as to qualify for exemption from application of city's zoning regulations.

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## **ZONING & PLANNING - GEORGIA**

### **[Hall County v. Cook Communities](#)**

**Court of Appeals of Georgia - June 29, 2023 - S.E.2d - 2023 WL 4246126**

Property developer filed lawsuit against county and its commissioners, in their individual capacities, challenging a rezoning decision and seeking declaratory, injunctive, and mandamus relief.

The Superior Court denied county's motion to dismiss developer's direct action, ultimately concluding that local zoning authority's decision on developer's request to rezone its property was legislative rather than quasi-judicial. County filed an application for interlocutory review, which the Court of Appeals granted.

The Court of Appeals held that county's rezoning decision was legislative, not quasi-judicial, and thus, proper method for property developer to challenge constitutionality of that decision was to file suit in Superior Court.

County's rezoning decision was legislative, not quasi-judicial, and thus, proper method for property developer to challenge constitutionality of that decision was to file suit in Superior Court, which could then conduct a de novo review, as developer was not limited to review of that decision by writ of certiorari; developer, alleging that rezoning conditions imposed an unconstitutional taking of its property and seeking declaratory, injunctive, and mandamus relief, presented a constitutional attack against conditions that county attached to approval of developer's application to rezone, which essentially amounted to a denial of its rezoning request.

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## **ZONING & PLANNING - INDIANA**

### **[Shinall v. Board of Zoning Appeals for Town of Ogden Dunes](#)**

**Court of Appeals of Indiana - June 16, 2023 - N.E.3d - 2023 WL 4038500**

Homeowners petitioned for judicial review of decision of town board of zoning appeals granting neighbors a variance of residential building height restriction.

The Superior Court granted board's and neighbors' motion to dismiss for lack of standing, concluding that homeowners were not aggrieved by any perceived hindrance to their prospective lake views. Homeowners appealed.

The Court of Appeals held that homeowners clearly established that they were aggrieved for purposes of establishing standing to seek judicial review of zoning decision.

Allegations in homeowners' petition clearly established they were aggrieved by town board of zoning appeals' decision granting neighbors' proposed variance of residential building height restriction established by town zoning code, and thus homeowners had standing to seek judicial review of board's decision; homeowners alleged that they had enjoyed a waterfront view of lake over roofline of neighbors' existing home for almost two decades, that they had a marketable interest in property value associated with waterfront view, and that neighbors' proposed height variance would obstruct homeowners' view of lake and diminish values of their property and adjacent properties, indicating that homeowners had a pecuniary injury beyond that which would be suffered by the community as a whole.

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## **MUNICIPAL GOVERNANCE - NEBRASKA**

### **[Dodge County Humane Society v. City of Fremont](#)**

**Supreme Court of Nebraska - July 14, 2023 - N.W.2d - 314 Neb. 714 - 2023 WL 4536101**

Humane society, a nonprofit organization, filed petition in error that named city, with which it had entered into contract for animal control services, and city council after council approved motion that authorized city mayor to send humane society letter regarding termination of contract, alleging that city had no cause to terminate and had failed to comply with contractual termination prerequisites.

The District Court denied motion to dismiss brought by city and council and ordered contract reinstated. City and council appealed.

The Supreme Court held that city council was not exercising judicial function when it voted to approve motion for mayor to send letter.

City council was not exercising judicial function when it voted to approve motion for mayor to send letter to county humane society regarding termination of animal control contract into which parties had entered, and thus trial court lacked jurisdiction to hear humane society's petition in error; while council, at meeting, opened floor for members of public to comment on agenda item concerning motion to send notice of termination, and several residents, as well as humane society's attorney, commented, such public comment was not required, and council did not receive evidence or testimony into official record or render decision in adversarial proceeding consistent with due process.

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## **EMINENT DOMAIN - NEW MEXICO**

### **[McFarland Land and Cattle Inc. v. Caprock Solar 1, LLC](#)**

**Supreme Court of New Mexico - July 13, 2023 - P.3d - 2023 WL 4523156**

Property owner sought injunction against limited liability company (LLC) and county related to the use of a road on property owner's land. County intervened and sought declaratory judgment against property owner.

Following a bench trial, the District Court concluded that LLC and county established the existence of a public prescriptive easement, permitting their use of the road. Property owner appealed, and the Court of Appeal reversed and remanded. County petitioned for writ of certiorari, which was granted.

The Supreme Court held that:

- When proving a public prescriptive easement claim, one does not need to prove a minimum number of users or frequency of use, but only need prove that use of the road in question was free and common to all who had occasion to use it as a public highway, and
- Evidence was sufficient to support finding that public used road at issue and that a public prescriptive easement existed over it at the low water crossing.

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## **BANKRUPTCY - PUERTO RICO**

### **[In re Financial Oversight and Management Board for Puerto Rico](#)**

**United States Court of Appeals, First Circuit - July 12, 2023 - F.4th - 2023 WL 4486289**

Financial Oversight and Management Board for Puerto Rico moved for confirmation of proposed plan of adjustment for Puerto Rico Highways and Transportation Authority (HTA) discharging claims of current and former Puerto Rico Highways and Transportation Authority (PRHTA) employees who received extra compensation in addition to their salaries for their service as project administrators or project supervisors.

The United States District Court for the District of Puerto Rico of the Southern District of New York, sitting by designation determined that group's claims for additional compensation were dischargeable under plan. Group appealed.

The Court of Appeals held that claims were based only on PRHTA regulation that did not implement federal health or safety program, and any applicable federal regulations did not include obligation to pay group additional compensation, and therefore those claims were not exempt from discharge.

Claims of current and former Puerto Rico Highways and Transportation Authority (PRHTA) employees who received extra compensation in addition to their salaries for their service as project administrators or project supervisors were based only on PRHTA regulation that did not implement federal health or safety program, and any applicable federal regulations did not include obligation to pay group additional compensation, and therefore those claims were not exempt from discharge, even if claims were valid federal constitutional claims and PROMESA created exception to discharge.

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## **EMPLOYMENT - RHODE ISLAND**

### **[Sosa v. City of Woonsocket](#)**

**Supreme Court of Rhode Island - July 14, 2023 - A.3d - 2023 WL 4536168**



Law enforcement officer who was fired after admitting before a Massachusetts court to a recitation of facts of the charged offenses of felony breaking and entering, felony assault with a dangerous weapon, and assault on a family member filed action against city for alleged violation of the Law Enforcement Officers' Bill of Rights (LEOBR).

The Superior Court granted officer's request for an order to show cause and ordered city to comply with LEOBR. City appealed.

The Supreme Court held that officer's admission to sufficient facts in Massachusetts court did not constitute a plea of guilty or nolo contendere sufficient to dismiss officer without a hearing under LEOBR.

Law enforcement officer's admission to sufficient facts for a finding of guilt, made pursuant to Massachusetts statute providing for continuation of felony charges against officer, did not constitute a plea of guilty or nolo contendere sufficient to dismiss officer without a hearing under Law Enforcement Officers' Bill of Rights (LEOBR); an admission to sufficient facts followed by a continuance without a finding was not a conviction under Massachusetts law, officer complied with the terms and the case was dismissed without a conviction, and LEOBR required a felony conviction to terminate officer without a hearing.

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## **IMMUNITY - SOUTH CAROLINA**

### **[Lockaby v. City of Simpsonville](#)**

**Court of Appeals of South Carolina - June 21, 2023 - S.E.2d - 2023 WL 4095956**

City councilmember filed suit against city, former mayor, and city council's sergeant-at-arms, alleging claims of gross negligence, false imprisonment, and § 1983 claims for violation of her First Amendment and Fourth Amendment rights in connection with her ejection from a city council meeting.

The Circuit Court granted defendants' motion for summary judgment. Councilmember appealed.

The Court of Appeals held that mayor's decision to eject councilmember from meeting was legislative act protected by legislative immunity.

Mayor's decision to eject city councilmember from city council meeting was a legislative act, and thus legislative immunity barred councilmember's suit against city, mayor, and city council's sergeant-at-arms alleging claims under § 1983 for First and Fourth Amendment violations and claims for gross negligence and false imprisonment, which claims stemmed from her ejection from the meeting.

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## **[Fitch: Labor Issues Cloud Otherwise Strong 2Q for U.S. Public Finance](#)**

Fitch Ratings-New York-20 July 2023: Ongoing inflationary pressures did little to stunt positive rating momentum for U.S. public finance overall last quarter, though Fitch Ratings' latest quarterly update points to labor woes being a continued sore spot for hospitals and life plan communities (LPCs).

Fitch upgraded 61 U.S. public finance ratings against 20 downgrades in 2Q23 with much of the positive rating activity emanating from state and local governments. Notable state upgrades were New Jersey and Kentucky, with Nassau County (NY), Las Vegas (NV), St. Louis (MO) and Cleveland (OH) of note for local government upgrades last quarter.

“Fiscal 2024 state budgets are largely in place, though we saw more challenges this year with five states still without enacted budgets, the most since the start of the pandemic over three years ago,” said Arlene Bohner, Fitch’s head of U.S. public finance. “Property taxes should continue to be a source of stability for local governments, however, we expect home price growth to decelerate in many areas given continued affordability challenges.”

Conversely, labor challenges are the proverbial thorn in the side for public finance, particularly with regard to Not-For-Profit hospitals (two upgrades and six downgrades in 2Q23) and, to a lesser extent, LPCs (one upgrade against two downgrades in 2Q23). “After the most operationally challenging year on record for many in 2022, we still expect operations to improve slowly, although margins will likely remain below pre-pandemic levels for 2023,” said Bohner.

Fitch’s “U.S. Public Finance Rating Actions Report and Sector Updates: Second-Quarter 2023” is available at [www.fitchratings.com](http://www.fitchratings.com).

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## **[U.S. Public Finance Long-Term Municipal Pools: Key Information And Characteristics - S&P](#)**

### **Key Takeaways**

- The U.S. long-term municipal pool sector enjoys strong credit fundamentals.
- Infrastructure Investment and Jobs Act (IIJA) funding allocations could boost grants and loans available to borrowers through 2026 using U.S. long-term municipal pools.
- After federal stimulus and IIJA funding allocations are exhausted, we believe needs will remain significant and continue to require U.S. long-term municipal pool funding for capital and economic development projects.

[Continue reading](#). [Free registration required.]

20 Jul, 2023

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## [Quantifying Climate Change Risks to the Cost of Municipal Borrowing.](#)

Climate change is, of course, a threat to the entire planet. At our recent Municipal Finance Conference, we focused on the impact that climate change has on municipal borrowing costs and the \$4 trillion muni bond market. You can read the three papers [here](#) and watch the video of the presentations [here](#). Here is a quick summary of three paper on climate.

Communities that are especially exposed to heat stress pay more to borrow on the muni bond market, according to [research](#) that Tim Johnson of the University of Illinois Urbana-Champaign [presented](#) on behalf of his co-authors. Heat stress, they argue, is the primary channel through which climate change is projected to damage the economy—increase in energy expenditures, increase in mortality, increase in wildfires, and a decrease in labor productivity. Hurricanes can be severe, but the damage is generally localized. Johnson and co-authors use county-level data on heat stress exposure from two sources and link that to measures of prices on municipal bonds, corporate bonds, and equities. For municipal bonds, they find that a one standard deviation increase in heat stress exposure is associated with a 5 basis point (0.05 percentage point) increase in borrowing costs. For the average municipality, annual heat-related damages amount to 0.83% of GDP by the end of the century. Annual heat stress-related damages equal to 1% of GDP are associated with 15 basis points (0.15 percentage point) higher borrowing costs compared to municipalities not exposed to such losses. “Our consistent finding across all three asset classes of an increasing trend in the cost of capital associated with heat stress may be attributable to a perceived increase in the risk itself, or to increasing investor awareness of the risk and of its systematic nature,” the authors write.

Investors are willing to pay more—or settle for slightly lower yields—for municipal green bonds, [according](#) to Baolian Wang of the University of Florida and his co-authors. Green bonds are defined as debt instruments designated to finance environmentally friendly projects. Looking at 1,027 pairs of bonds by the same issuer between 2013 and 2022, they find that the yield on green bonds was an average of 2.3 basis points (0.023 percentage point) lower than the yield on non-green bonds. They call the difference between the yield on a green bond and an otherwise identical conventional bond the “greenium,” short for “green premium.” They also find that before 2018, underwriters used to charge a higher fee in issuing green bonds as opposed to conventional bonds. In recent years, issuing green bonds has become cheaper.

Examining how and when natural disasters—more than 2,000 extreme weather events between 2005 and 2018—affect muni bond returns, Jun Kyung Auh of Georgetown University and his co-authors [find that](#) substantial price effects materialize in the weeks following a disaster. The average decline in returns is 31 basis points (0.31 percentage point) over the 20 weeks following a disaster. Between 1990 and 2020, the number of disaster and emergency declarations in the U.S. grew by almost 7% per year on average, and estimated physical damage from natural disasters caused by extreme weather events averaged over \$11 million per affected county—and it’s going to get worse, they say. Revenue bonds—as opposed to general obligation bonds—are hit harder. Although bigger disasters cause larger bond-price declines, federal disaster aid alleviates the negative price impacts substantially and seems to matter more than the physical damage; the largest price declines are in less-affected counties that subsequently do not receive disaster aid. “Our findings imply that, absent changes in federal aid policy, municipalities will find local financing increasingly expensive in a world where natural disasters are more frequent,” the authors conclude.

### **The Brookings Institution**

by David Wessel

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## **In a Bad State: Responding to State and Local Budget Crises**

**An authoritative review of the long history of federal responses to state and local budget crises, from Alexander Hamilton through the COVID-19 pandemic, that reveals what is at stake when a state or city can't pay its debts and provides policy solutions to an intractable American problem.**

What should the federal government do if a state like Illinois or a city like Chicago can't pay its debts? From Alexander Hamilton's plan to assume state debts to Congress's efforts to respond to the COVID-19 pandemic, many of the most important political disputes in American history have involved federal government responses to state or local fiscal crises.

In a Bad State provides the first comprehensive historical and theoretical analysis of how the federal government has addressed subnational debt crises. Tracing the long history of state and local borrowing, David Schleicher argues that federal officials want to achieve three things when a state or city nears default: prevent macroeconomic distress, encourage lending to states and cities to build infrastructure, and avoid creating incentives for reckless future state budgeting. But whether they demand state austerity, permit state defaults, or provide bailouts-and all have been tried-federal officials can only achieve two of these three goals, at best. Rather than imagining that there is a single easy federal solution, Schleicher suggests some ways the federal government could ameliorate the problem by conditioning federal aid on future state fiscal responsibility, spreading losses across governments and interests, and building resilience against crises into federal spending and tax policy.

Authoritative and accessible, In a Bad State offers a guide to understanding the pressing fiscal problems that local, state, and federal officials face, and to the policy options they possess for responding to crises.

[Click here](#) to order.

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## **Orrick: IRS Issues Direct Pay and Transferability Proposed Regulations**

On June 14, 2023, the IRS and Treasury issued proposed regulations (the "Proposed Regulations") under two novel provisions of the Inflation Reduction Act of 2022 (the "IRA") designed to promote capital investment in renewable energy: (1) "direct pay," allowing certain tax-exempt, taxable and government entities to elect to receive cash payments from the federal government in lieu of energy tax credits and (2) "transferability," allowing the transfer of energy tax credits to unrelated parties in exchange for cash payments.[1] Important details in the Proposed Regulations are summarized below. The Proposed Regulations are of interest to anyone thinking about developing or financing a renewable project or anyone interested in acquiring tax credits from another renewable energy project. The IRS and Treasury also issued temporary regulations ("Temporary Regulations") with an immediate effective date.

### **The Direct Pay Rules**

## Overview

The direct pay rules permit certain entities to receive a direct payment of certain tax credits. Eligible entities include tax-exempt organizations, states, and political subdivisions such as local governments, Indian tribal governments, Alaska Native Corporations, the Tennessee Valley Authority, rural electric co-operatives, U.S. territories and their political subdivisions. The Proposed Regulations clarify that agencies and instrumentalities are also eligible for direct pay.[2] These entities will find direct pay to be a particularly attractive financing mechanism.

The following twelve credits are eligible for direct pay:

1. The credit for alternative fuel vehicle refueling / recharging property (Section 30C);
2. The renewable electricity production credit (Section 45);
3. The carbon oxide sequestration credit (Section 45Q);
4. The zero-emission nuclear power production credit (Section 45U);
5. The clean hydrogen production credit (Section 45V);
6. The commercial clean vehicle credit (Section 45W);
7. The advanced manufacturing production credit (Section 45X);
8. The clean electricity production credit (Section 45Y);
9. The clean fuel production credit (Section 45Z);
10. The energy credit (Section 48);
11. The qualifying advanced energy project credit (Section 48C); and
12. The clean electricity investment credit (Section 48E).

[Continue reading.](#)

**Orrick, Herrington & Sutcliffe LLP** - Peter Connors, Christopher Moore, John Narducci, John Stanley, Eric Wall and Wolfram Pohl

July 21, 2023

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## **[S&P U.S. State Ratings And Outlooks: Current List](#)**

[View the Current List.](#)

21 Jul, 2023

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## **[S&P U.S. Charter Schools Rating Actions, Second-Quarter 2023.](#)**

[View the Rating Actions.](#)

18 Jul, 2023

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## **[Emission-Reduction Initiatives Prime City and State Agencies for Federal](#)**

## [Grants.](#)

### **Robust climate action plans are also helping governments mitigate the financial and human costs of natural disasters.**

So far in 2023, the National Oceanic and Atmospheric Administration has confirmed 12 climate-related disasters, including tornados, hailstorms, flooding and severe weather. Each event is estimated to cost the U.S. more than \$1 billion in infrastructure damages, and the total is likely to grow as climate-related events are expected to increase in frequency and severity.

To mitigate the financial and human costs of natural disasters, state and local governments are developing strategies and programs that encourage sustainable practices such as reducing greenhouse gas emissions. Climate action plans, one official says, can also set agencies up as ideal candidates for federal funding opportunities that support eco-friendly initiatives.

Like most states, Washington is pushing for a sustainable future as it faces the consequences of climate change. The Evergreen State is exploring how to financially motivate some of the state's biggest greenhouse gas producers to shrink their carbon emissions, said Claire Boyte-White, a policy relations lead at the state's Department of Ecology, during the "Funding Climate Action Planning" webinar hosted July 18 by GovExec and KPMG.

[Continue reading.](#)

### **Route Fifty**

By Kaitlyn Levinson,  
Assistant Editor, Route Fifty

JULY 20, 2023

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## [US Power Grid Faces Escalating Cyber Threats, Infrastructure Experts Warn.](#)

### **The power grid is experiencing heightened threats from foreign adversaries and domestic extremist groups that can pose devastating consequences for the nation's supply of electricity.**

Energy infrastructure experts testified that the U.S. power grid is facing a myriad of escalating cybersecurity risks and emerging threats from both foreign adversaries and domestic extremists amid an ongoing critical modernization journey.

The latest [annual threat assessment](#) out of the Intelligence Community identifies Chinese cyber operations against the U.S. homeland as a major national security threat and warns that Beijing is "almost certainly capable of launching cyber attacks that could disrupt critical infrastructure services" nationwide, including the power grid.

Meanwhile, domestic extremists have been charged in recent months with plotting to attack energy facilities and power grids across the country, as part of an apparent effort to promote white supremacist ideologies.

[Continue reading.](#)

## Route Fifty

Chris Riotta  
Staff Reporter, Nextgov/FCW

JULY 20, 2023

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### [\*\*GFOA: Navigating the Talent Shortage\*\*](#)

As demand for public finance officers grows, local governments are facing challenges in recruiting and retaining top talent. In this current environment, the use of virtual CFOs and just-in-time talent are becoming increasingly popular options.

[LEARN MORE.](#)

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### [\*\*Black Colleges With Boosted Ratings to See Borrowing Costs Drop.\*\*](#)

- **Rise in enrollments, donations contributed to rating upgrades**
- **North Carolina A&T is seeing more demand from bond investors**

A surge in enrollment and donations at Historically Black colleges and universities is leading to credit upgrades, potentially reducing borrowing costs from a bond market that has long discriminated against the schools.

Moody's Investors Service last week upgraded North Carolina Agricultural & Technical State University to a higher credit tier and improved its outlook on Howard University. Fitch Ratings Inc. upgraded Texas Southern University in Houston last month.

Higher credit ratings could lower costs for HBCUs, which have typically paid more than other schools with similar credit profiles and have been underfunded for much of their history.

[Continue reading.](#)

## Bloomberg

By Janet Lorin

July 20, 2023

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### [\*\*A Small City's Financial Crisis Leaves Virginia at a Loss.\*\*](#)

Most state and local governments file their financial statements on time, but there are some notable exceptions. Among those are the last two cities to declare bankruptcy—Fairfield, AL and Chester, PA—as well as Puerto Rico, the largest municipal bond issuer to ever file a bankruptcy petition. Now another perennially late financial statement filer is getting attention from local media and its state government.



Hopewell, VA, a city south of Richmond, with about 23,000 people, is four years behind in producing audited financial statements. Further, its audits for the years 2015-2018 did not receive “clean” opinions from the Certified Public Accountants hired to review them, suggesting serious irregularities. The 2018 opinion was especially negative, with the auditor observing:

There were material differences between the Treasurer Office’s June 2018 bank reconciliation and the City and Component Unit School Board’s adjusted general ledger and financial statements. The City, Treasurer’s Office and Component Unit School Board were unable to provide sufficient appropriate audit evidence for these material discrepancies in cash transactions.

In connection with federal grant oversight, the auditor also assessed Hopewell’s accounting systems and procedures and found them to be inadequate. City management accepted these findings and attributed the problems to “staff turnover, minimal documented procedures/guidelines.”

Hopewell last [issued municipal bonds](#) in 2011. At that time, it received strong ratings from all three of the major credit rating agencies. But the city’s mounting financial reporting challenges have compromised its credit. In 2017, both Moody’s and Standard and Poor’s withdrew their ratings due to Hopewell’s failure to provide timely disclosure. Fitch followed in 2018.

At a City Council meeting, Ward 1 Councilor Rita Joyner noted the lack of credit ratings and concluded that, as a result, the city could no longer fund capital expenditures. That is not necessarily the case. Many governments issue unrated bonds and Hopewell’s bonds traded in the secondary market multiple times (albeit at significantly elevated yields) in late 2022, suggesting that some investors are willing to shoulder the city’s elevated credit risk if the city chooses to issue “junk bonds”.

In recent months, the State of Virginia has been investigating Hopewell’s financial status and offering assistance. The state government took a largely hands-off approach to local government finance until the City of Petersburg suffered a financial crisis in 2016. (Petersburg is just a ten-mile drive from Hopewell.) In 2017, the state legislature directed the Virginia Auditor of Public Accounts (APA) to create a [local fiscal distress early warning system](#).

But, although the state can now identify distress situations, its intervention options are limited. [State law](#) allows the governor to allocate up to \$500,000 to provide technical assistance to distressed local government but cannot compel the governing body to accept this assistance.

After determining that Hopewell was in distress, the state hired the firm of Alvarez and Marsal to assess the situation and make recommendations. In May, the consultants issued a [161-page report](#) with 27 recommendations including the establishment of a fiscal turnaround project management office, the development of a multi-year financial plan, and the creation of new monthly and annual accounts closing processes.

In July, Virginia Secretary of Finance Stephen Cummings sent City Council members a [letter](#), offering to fund an interim City Manager and Finance Director to help implement the consultant’s findings if those individuals are approved by state officials. The Council rejected the state’s offer by a 4-3 vote. Without Hopewell’s cooperation, there is little more the state can do.

North Carolina has a much more aggressive [local intervention law](#). If the state’s Local Government Commission determines that a local government’s finances have become unsustainable, it can take over “all of the powers of the council as to the levy of taxes, expenditure of money, adoption of

budgets, and all other financial powers conferred upon the council by law.” Further, the Commission has the power to merge or dissolve local governments which lack a path back to sustainability.

Hopewell’s problems illustrate the need for Virginia to adopt a similar set of policies.

THE CATO INSTITUTE

by MARK JOFFE

JULY 24, 2023

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## **Three Things City Leaders Should Know About the Municipal Bond Market.**

After a slow start to 2023, municipal bond sales are expected to tick upward in the second half of the year, as cities, states, school districts, and other local governments are all ramping up their investments in essential infrastructure – often in conjunction with Federal financing through the Infrastructure Investment and Jobs Act (IIJA).

Most cities’ bond sales process is a well-oiled machine, drawing on the knowledge and skills of municipal finance officers, as well as outside experts like financial advisors, investment bankers, and bond counsel. Here are a few key factors for city leaders to keep in mind – and questions to ask — as communities prepare to join the ranks of municipal bond issuers.

### **Interest Rates Have Risen, But Remain Attractive**

Municipal bond yields rise and fall in connection with the overall interest-rate environment. As a result, today’s municipal bond interest costs are higher than they were during the pandemic – when the economy was less active. There was less demand for capital investment, and the Federal Reserve was offering very low yields to encourage growth.

But today’s rates remain relatively low in historical terms.

The Bond Buyer’s index of 20 actively traded “general obligation” bonds from highly rated states and cities currently stands at 3.66% — that’s higher than its pandemic-era low of 2.04% in July 2021 but only slightly above its 3.45% reading on July 18, 2019, and in line with its five-year average of 3.58% between 2015 and 2019.

### **Municipal Bonds are Widely Held by U.S. Individual Investors**

Over the last decade, the municipal bond market has provided as much as \$325 billion annually for “new money” investments. Most of that financing has come from U.S. individual investors, who can benefit the most from the fact that interest payments on most municipal bonds are exempt from Federal income taxes. Those “retail investors” have multiple options for adding munis to their portfolio: They can purchase directly in their brokerage accounts, receive professional advice through “separately managed accounts,” or buy shares in municipal bond mutual funds.

Developing investor relations programs and holding dedicated “retail order periods” can be useful tools for cities to give individual buyers access to their bonds.

### **Credit Quality Remains Important**

Municipal bond investors have always been focused on the credit quality of their investments. During the pandemic, that meant focusing on short-term questions about tax revenues and extraordinary expenses. Now, with many cities' balance sheets bolstered by the extraordinary Federal aid provided through ARPA and the CARES Act, they are focusing on longer-term concerns, like the potential for falling commercial real estate values to impact property tax collections or the potential impact of lagging stock market returns on pension funds.

Municipal finance officers should prepare to address those questions when they apply for bond ratings and sell new issues. And they may want to consider bond insurance or other forms of credit enhancement to help build investor confidence. BAM bond insurance is rated AA with a Stable outlook from S&P Global Ratings, and bonds sold with insurance carry those ratings, giving investors an added layer of protection and often delivering savings to the issuer.

### **About BAM:**

Build America Mutual is the preferred provider of bond insurance for the National League of Cities and has insured more than \$125 billion of bonds from issuers who finance essential public infrastructure in the United States since its 2012 launch. For more information, visit [www.buildamerica.com/united](http://www.buildamerica.com/united)

### **National League of Cities**

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## **[Calpers Posts 5.8% Gain Helped by Stocks and Private Debt.](#)**

- **Publicly traded equities give pension fund a 14% boost**
- **Private equity, a star in prior years, loses some ground**

Calpers swung to a 5.8% gain in its latest fiscal year as the stock market rally and private debt buoyed the largest traditional public pension fund in the US.

The preliminary return for fiscal 2023 reported on Wednesday is a sharp turnaround for the California Public Employees' Retirement System, whose 6.1% loss in the prior year was its worst showing in more than a decade. The gain left Calpers holding \$462.8 billion, enough to cover 72% of its future obligations, unchanged from a year earlier.

[Continue reading.](#)

### **Bloomberg Markets**

By Eliyahu Kamisher

July 19, 2023

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## **[Wealthy Newport Beach Splurges \\$26 Million to Hide Power Lines.](#)**

- **City district sold \$26 million of bonds in muni market**
- **Removing the power lines 'just looks better': Mayor Pro Tem**

Newport Beach, California is investing millions of dollars to remove unsightly power lines in an effort to boost its already sky-high property values.

The city tapped the municipal market for roughly \$26 million this week to bury the lines in two sections of the beach-side town, which will “enhance neighborhood aesthetics, safety, and reliability” according to bond documents.

In 2021, residents approved a ballot measure to carry out the renovations and they’ll pay special tax levies that will secure the bonds. Newport Beach is one of the wealthiest cities in the country, with a median household income of more than \$140,000 — double the US average — while the median home price is more than \$3 million.

[Continue reading.](#)

## **Bloomberg CityLab**

By Jordan Fitzgerald

July 19, 2023

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## **S&P Bulletin: Vermont Flooding And Storm Damage Unlikely To Have Negative Credit Implications**

CHICAGO (S&P Global Ratings) July 17, 2023-S&P Global Ratings today said that it does not expect an immediate negative credit impact on rated U.S. public finance obligors in Vermont in the wake of last week’s storm, which brought torrential downpours and heavy flooding in many parts of the state, including inundating Montpelier, the state capital.

Over a two-day period over July 9-11, parts of Vermont saw as much as nine inches of rain, triggering what state officials report as historic flooding, surpassing the damage experienced during Tropical Storm Irene in 2011 and destroying thousands of homes and businesses. On Tuesday, July 11, President Biden issued an emergency declaration authorizing the Federal Emergency Management Agency (FEMA) to coordinate the immediate disaster response and to provide federal disaster relief assistance. No official damage estimates are yet available.

S&P Global Ratings maintains a small number of credit ratings on Vermont issuers (see table), and we have been in contact with these issuers to assess near-term exposure. However, we do not believe that there is any imminent risk of credit deterioration. The state of Vermont (AA+/Stable) passed its fiscal 2024 budget in June and ended fiscal 2023 with budgetary stabilization reserves that were funded at the statutory maximum of 5% of appropriations in the general, education, and transportation funds. The state’s unrestricted cash balance was more than \$2.3 billion as of March, and management indicates that Vermont has sufficient cash on hand to meet immediate recovery needs without external borrowing.

[Continue reading.](#)

17 Jul, 2023

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## **TAX - CALIFORNIA**

### **[CSHV 1999 Harrison, LLC v. County of Alameda](#)**

**Court of Appeal, First District, Division 1, California - May 31, 2023 - 92 Cal.App.5th 117 - 309 Cal.Rptr.3d 322 - 2023 Daily Journal D.A.R. 5222**

Limited-liability companies (LLCs) that the California State Teachers' Retirement System (CalSTRS) had created for the purpose of purchasing and holding title to two investment properties filed a petition for writ of mandate to obtain refunds of documentary-transfer taxes that they had paid to county and city, which was based on argument that they, like their sole member, CalSTRS, were "political subdivisions" of the state and therefore exempt from the taxes.

Following a bench trial, the Superior Court denied petition. LLCs appealed.

The Court of Appeal held that the LLCs were not exempt from having to pay the documentary-transfer taxes.

Limited-liability companies (LLCs) that the California State Teachers' Retirement System (CalSTRS) had created for the purpose of purchasing and holding title to two investment properties were not exempt from having to pay documentary-transfer taxes to city and county.

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## **TAX - MARYLAND**

### **[Comptroller of Maryland v. Comcast of California](#)**

**Supreme Court of Maryland - July 12, 2023 - A.3d - 2023 WL 4482556**

Communications companies, as taxpayers, sought declaratory judgment that digital advertising tax violated Commerce Clause and First Amendment, as well as Internet Tax Freedom Act.

The Circuit Court granted declaratory judgment for companies. Comptroller appealed. Certiorari was granted before decision in Appellate Court.

The Supreme Court held that:

- Special statutory administrative remedies were exclusive with respect to challenge to digital advertising gross revenues tax;
- Declaratory judgment declaring digital advertising gross revenues tax unlawful violated Tax-General Article generally prohibiting judicial remedies that would prevent assessment or collection of taxes;
- Constitutional exception to administrative exhaustion requirement was not applicable to dispute; and
- Taxpayers disputing digital advertising gross revenues tax were required to exhaust their administrative remedies.

Special statutory administrative remedies were exclusive with respect to challenge to digital advertising gross revenues tax, since Tax-General Article generally prohibited judicial remedies that would prevent assessment or collection of taxes and Courts and Judicial Proceedings Article specifically prohibited use of declaratory judgment action as end-run around special statutory administrative remedies.

Tax-General Article broadly prohibiting judicial action that would interfere with the assessment or collection of taxes and the Courts and Judicial Proceedings Article prohibiting the use of declaratory judgment actions as an end-run around special statutory administrative remedies establish a legislative intent that the special statutory administrative remedies provided for the resolution of tax disputes are exclusive.

Declaratory judgment declaring digital advertising gross revenues tax unlawful violated Tax-General Article generally prohibiting judicial remedies that would prevent assessment or collection of taxes, since only reason for declaratory judgment was expectation that it would prevent Comptroller from assessing or collecting that tax.

Constitutional exception to administrative exhaustion requirement was not applicable to dispute over digital advertising gross revenues tax, since applicable special statutory administrative remedies were exclusive with respect to challenge to that tax.

Constitutional exception to administrative exhaustion requirement was not applicable to dispute over digital advertising gross revenues tax, since applicable special statutory administrative remedies were exclusive with respect to challenge to that tax.

Taxpayers disputing digital advertising gross revenues tax were required to exhaust their administrative remedies, and therefore trial court did not have jurisdiction to entertain their declaratory judgment action, since Tax-General Article provided special statutory administrative remedies for taxpayers to pursue their challenge.