The National Cybersecurity Strategy: A Guide for Critical Infrastructure Owners and Operators

Protecting critical infrastructure has become a national security priority. On March 2, 2023, the Biden administration released the National Cybersecurity Strategy, a far-reaching document that sets forth its vision for the nation's public and private cyberdefenses.

The initiative seeks to shift some of the burden of mitigating cybersecurity risks away from end users and critical infrastructure operators to the private sector enterprises that are best-positioned to make meaningful advancements in security and resiliency. The Strategy also emphasizes realigning incentives to favor long-term investments for the private sector.

The Strategy is organized around five pillars:

1. Defend critical infrastructure.
2. Disrupt and dismantle threat actors.
3. Shape market forces to drive security and resilience.
4. Invest in a resilient future.
5. Forge international partnerships to pursue shared goals.

Each pillar contains specific strategic objectives designed to build on prior programs and guide the implementation efforts of governmental and private sector entities.

The New Regulatory Wave

The Strategy seeks to usher in a new cybersecurity regulatory paradigm for critical infrastructure sectors by departing from voluntary guidelines to mandatory cyber regulations, which the Strategy concedes will require some legislative action. Driving this initiative is a demand for a "more intentional, more coordinated, and more well-resourced approach to cyber defense."

The Strategy also recognizes the heightened risks in the current era of global digitalization and deepening digital dependencies accelerated by emerging technologies. Rapid technological advancements are also forcing critical infrastructure sectors to grapple with the risks of converging informational technology and operational technology systems, which must be designed and secured in very different ways. A complicated geopolitical environment exacerbates those risks, as state-sponsored cyberthreats to critical infrastructure are on the rise.

While specifics of how the Strategy will be carried out are uncertain, implementing the objectives promptly will be key in an evolving world, where threats may outpace regulation and lawmaking. The Biden administration has alluded to some overarching principles in addition to mandatory

regulations, such as security by design as a core business principle, operational availability to avoid systemic interruptions, and the promotion of rulemaking harmony across jurisdictions.

The New Insurance

Cyber insurance is now offered as a standalone type of coverage that earns billions of dollars in premiums for the insurance industry. This relatively “new” type of insurance covers various types of liabilities or direct losses from events related to electronic activities and systems. Part of the Strategy involves exploring a federal cyber insurance backstop, reflecting a partnership between the government and insurance industry to support the issuance of cyber coverage for commercial entities, consistent with national goals. The benefits of a cyber insurance backstop could be multifold:

- **Benefits to Insurers:** Increased financial certainty and stability, and a potential mechanism for more standardization and data sharing.
- **Benefits to Insured Companies:** Potentially more affordable coverage, as well as potential standardization and improvement of terms.
- **Benefits to the Public:** Increased prevalence of cyber insurance, encouraging a more sophisticated, resilient society, with the potential for improved data sharing among public and private actors.

Challenges

For all of its benefits and forward-looking initiatives, there are some challenges with analyzing and implementing the Strategy. The first is harmonization of duplicative or overlapping requirements. Companies facing a cyber incident are often challenged with juggling multiple (sometimes conflicting) reporting requirements, which can divert personnel and resources away from remediating the actual threat. The Strategy recognizes the challenge of regulatory harmonization, but is scarce on implementation details.

One of the trickiest pieces for companies to navigate is understanding how the agencies may address the recommendations from the Strategy with the tools they have today—not just their processes and people, but also the extent of their legal authority. Some federal agencies already have significant and broad security and safety authority in the critical infrastructure sector, and the Strategy makes it clear that regulators should consider leveraging those powers to start executing outlined priorities.

Recent Federal Initiatives Targeting the US Cyber Posture

In addition to announcing the Strategy, the federal government has taken steps in other areas, while coordinating with state municipal authorities, private sector, and federal stakeholders to improve the national cyber posture and capabilities in the face of intensifying cybersecurity threats.

Among these efforts include guidance by the Cybersecurity & Infrastructure Security Agency (part of the US Department of Homeland Security) on software bill of materials and updating the cross-sector Cybersecurity Performance Goals; the proposed requirements by the US Securities & Exchange Commission for cybersecurity risks; the US Environmental Protection Agency’s memorandum for public water systems; and the expansion of the Transportation Security Administration’s pipeline-focused security directives to the aviation and rail sectors.

Assess. Plan. Monitor.

For critical infrastructure owners and operators, there are several key steps to take today:

- **Policy Advocacy**: Regulator education is critical. Consider participation in stakeholder opportunities to shape requirements before formal rulemaking, if possible.
- **Interdisciplinary:** Compliance can be achieved through coordination among IT/OT, security, compliance, and legal departments, as well as by supply chain management, human resources, finance, and other personnel. Shortchanging one area may increase a company's risk exposure.
- **Cultural Change:** Ensure that cybersecurity is taken seriously not only at the highest levels, but also throughout the entire organization. Use guidance, standards, best practices, and continuous training to shore up cyber posture.

Morgan, Lewis & Bockius LLP – Arjun Prasad Ramadevanahalli, Stephen M. Spina and Robert Jacques

June 23 2023

Hospital Cyber Attacks Surge, Risking Struggling Bottom Lines.

- **Hackers target health care to grab data on millions of people**
- **Large systems attacked with smaller facilities most at risk**

Cyberattacks on US hospitals are on the rise, adding a layer of financial pressure onto an industry still struggling to recover from the pandemic.

Health facilities have been hit with 226 digital incursions affecting 36 million people this year, on track to be more widespread than 2022 attacks, according to John Riggi, the national advisor for cybersecurity and risk at the American Hospital Association.

Cyber raids on hospitals more than tripled in the past five years and have become more sophisticated, just when hospitals are coping with higher costs for labor and supplies and grappling with staff shortages. The industry in 2022 had what Moody's Investors Service analyst Matthew Cahill called "arguably the worst year in health-care history" for financial performance.

Continue reading.

Bloomberg Technology & Cybersecurity

By Lauren Coleman-Lochner

June 23, 2023

State Coffers to Take a Hit With the End of Extra Federal Medicaid Funding.

During the pandemic, states received more than $117 billion in additional federal Medicaid funding in return for pausing disenrollments. That extra money is set to end this year.

Much of the attention on Medicaid these days is focused on how many people are losing their health care coverage, as states for the first time since the beginning of the pandemic and the end of the public health emergency go about reevaluating eligibility for the roughly 93 million people on the program.

But garnering less attention is the impact Medicaid will have on state coffers, notes a new study by the health care policy think tank KFF.

During the pandemic, states received more than $117 billion in additional federal Medicaid funding in return for states pausing disenrollments. That increased funding will be gradually going away over the next few months. And even though millions are expected to be removed from the rolls, the cost to states is still likely to be higher without the extra federal funds.

Continue reading.

ROUTE FIFTY

by KERY MURAKAMI

JUNE 22, 2023

Wall Street Sours on America's Downtowns.

The pessimism from investors who bet on office buildings and mass transit can be seen in market signals that are flashing red

Wall Street is betting against America's downtowns.

Investors are paying less for bonds linked to New York subways and buses. Downtown-focused real-estate investment trusts trade at less than half their prepandemic levels. Bondholders are demanding extra interest to hold office-building debt.

Downtowns have been a mother lode for American cities over the years, providing billions of dollars in tax revenue along with their distinctive skylines. In turn, investors who bet on downtown office towers, or on the trains and buses delivering workers to them, could generally trust they held a winning hand.

Continue reading.

The Wall Street Journal

By Heather Gillers

June 20, 2023

The Best and Worst Run Cities in America.

By comparing the operating efficiency of 149 of the largest U.S. cities, experts at WalletHub, the personal finance firm, have come up with a score for which ones are managed best.

The U.S. has over 100,000 cities and towns, including 317 that have a population over 100,000. Everybody has a favorite, but which ones operate the most efficiently? That's the question

WalletHub, the personal finance firm, set out to answer. They wanted to learn how well city officials manage and spend public funds by comparing the quality of services residents receive against the city's total budget.

Looking at 149 big and small cities in the country, researchers were able to quantify the complexities of city management. They constructed a "Quality of Services" score made up of 36 metrics grouped into six service categories, which was then measured against the city's per capita budget.

The result? The city of Nampa, Idaho, came out with the highest score, followed by Lexington, Ky.; Nashua, N.H.; and Boise. At the bottom of the list were New York City, Chattanooga and San Francisco.

Continue reading.

governing.com

by Governing News Staff

June 23, 2023

S&P: Could Empty Offices Lead To Empty Coffers For U.S. Cities?

Key Takeaways

- Large U.S. cities face the looming trifecta of pressures stemming from remote work: Falling commercial property valuations, the potential for weaker tax collections in urban cores, and struggling public transit systems.
- We believe the most affected cities will see general obligation credit pressures amplify within the next few years, requiring management actions to preserve credit stability and enhance the economic vitality of many downtown spaces amid depressed activity.
- Although we believe that most large cities are equipped to meet near-term challenges if they are proactive in identifying potential revenue shortfalls and formulating timely solutions to sustain structural budgetary balance, significant outyear uncertainty remains, given that conditions in the commercial real estate market are still evolving.

Continue reading.

22 Jun, 2023

Brookings: Big Cities Are Showing Signs of Recovery after Historic Population Losses, New Census Data Shows

America's biggest cities endured brutal population losses during the early part of the pandemic—a result, in large measure, of an exodus of residents due to a fear of close proximity to others as well as a broader shut down of offices, commercial activities, and transit options. Lower immigration from abroad, a rise in Covid-related deaths, and a downturn in fertility also contributed.

Previous Census Bureau statistics showed that between July 2020 and July 2021 (referred to here as the “prime pandemic year”), well over half of the nation’s 88 largest cities lost population—many for the first time in decades. And among those that gained population, those gains tended to be smaller than in previous years.

Recently, the Census Bureau updated these statistics through July 2022—a year still impacted by the pandemic, but one in which most large cities, especially the largest, showed signs of demographic recovery. This trend was hinted at in a previous census release for county populations. The new data permits an examination of recent population changes across the nation’s cities, including comparisons with each other and over time.

Continue reading.

The Brookings Institute

by William H. Frey

Thursday, June 22, 2023

Exploring the Complex Interplay of Municipal Debt Markets and Political Shifts.

The municipal debt market is a critical component of local government financing, serving as a means for municipalities to fund infrastructure projects, public services, and other essential initiatives. However, the dynamics of this market are not immune to the influence of political shifts. When political tides change, whether at the local, regional, or national level, it sets in motion a series of interconnected consequences that reverberate through the municipal debt market.

This article delves into the intricate relationship between political shifts and the municipal debt markets, examining how changes in political power, policies, and ideologies can significantly impact borrowing costs, investor confidence, and market stability.

The Power Shift Paradigm & Potential Policy Reforms
A political shift, such as a change in party control or leadership, can create a paradigm shift in the municipal debt market. The political party in power often introduces new policies and reforms that align with its ideological agenda. These changes may directly impact the financial landscape for municipalities, leading to shifts in borrowing costs and altering market dynamics. For instance, a party focused on fiscal conservatism may implement policies that prioritize debt reduction and austerity measures, potentially constraining borrowing options for municipalities.

Furthermore, policy reforms play a crucial role in shaping the municipal debt market. Changes in tax regulations, infrastructure spending, public-private partnerships, and environmental initiatives are just a few examples of policies that can significantly impact municipal borrowing. When a political shift occurs, new policies and regulations may be implemented or repealed, influencing the perceived creditworthiness of municipalities and altering investor sentiment. This, in turn, can lead to fluctuations in interest rates, bond yields, and demand for municipal bonds. Along the same lines, any changes to the tax code can/will impact the attractiveness of municipal debt for investors and whether the investment carries the same tax-exempt income benefit.

Market Volatility, Investor Confidence, and Risk Appetite

The municipal debt market is not immune to broader market volatility, particularly during periods of political transition, how the new political party views the current market environment, and whether it needs any interventions (i.e., potential economic stimulus). Hence, fluctuations in interest rates, market sentiment, and credit spreads can affect borrowing costs for municipalities. Uncertainties surrounding political shifts can lead to increased market volatility, resulting in higher yields and borrowing costs for municipal issuers. Consequently, these higher costs can put additional pressure on already strained municipal budgets, potentially impacting the affordability and feasibility of projects.

Political shifts can also significantly impact investor confidence and risk appetite within the municipal debt market. Investor sentiment is sensitive to political stability, economic outlook, and policy continuity. A change in political power can introduce uncertainties and market volatility, affecting the willingness of investors to allocate funds to municipal bonds. Moreover, shifts in policy direction may alter the risk profiles associated with different municipal projects, leading to variations in investor demand and pricing.

Creditworthiness and Ratings

For municipal debt markets, credit rating agencies play a crucial role when assessing the creditworthiness of municipal debt issuers. When rating municipal debt, these agencies evaluate various factors to determine the likelihood of timely repayment of principal and interest. The assessment process includes an examination of a municipality's financial health, economic conditions, revenue sources, budgetary practices, debt profile, and governance. Additionally, rating agencies consider the legal framework governing the municipality's debt obligations and any potential risks associated with the specific project or purpose for which the debt is being issued. Based on their analysis, credit rating agencies assign a rating to the municipal debt, typically using a standardized rating scale, which helps investors gauge the relative risk and expected return associated with investing in those securities. The ratings provided by these agencies serve as an important tool for investors, as they guide investment decisions and influence borrowing costs for municipalities in the debt market.

Political shifts can potentially influence the creditworthiness and credit ratings of municipalities. Changes in political power and associated policies may affect the overall fiscal position of municipalities, leading to credit rating upgrades or downgrades. These rating changes can have significant implications for borrowing costs, as lower credit ratings may result in higher interest rates and reduced access to credit markets.

The Bottom Line

Political shifts have far-reaching consequences that extend beyond the realm of policy and governance. The interconnectedness between politics and the municipal debt markets is a complex web, wherein changes in political power, policy reforms, and investor confidence can impact borrowing costs, market stability, and creditworthiness. It is imperative for policymakers, market participants, and investors to navigate these intricacies and understand the implications of political shifts to make informed decisions in the municipal debt market. By recognizing the interplay between political dynamics and market forces, stakeholders can better adapt to changes and work toward maintaining a stable and resilient municipal debt market.

Municipal debt investors should carefully review the strength of revenue sources backing their holdings and how they can be impacted in a political transition.

dividend.com

by Jayden Sangha

Jun 22, 2023

Getting Started: New Elective Pay Option for Local Clean Energy Projects

On June 14, the Internal Revenue Service (IRS) released proposed regulations for elective pay, previously referred to as "direct pay," a provision of the Inflation Reduction Act (IRA). These proposed regulations provide tax-exempt entities such as municipalities the ability to monetize clean energy tax credits they would not otherwise be able to use because of their status as a tax-exempt entities. If a tax-exempt entity places a project in service that utilizes a clean energy credit from IRA, they will get refunded for the full amount of the credit by filing a tax form with the IRS.

Municipalities looking to take advantage of the elective pay provision have been waiting for these proposed regulations from the IRS to begin planning their clean energy projects. It is important to note that the regulations are not final – the IRS is accepting public comments through August 14, 2023. It is possible the final regulations could be out by the end of the year.

Below, we detail the four most important things local leaders need to know about these proposed regulations.

What are the steps to make a successful elective payment election?

There are several steps to making a successful elective payment election. Not all steps need to occur in the order displayed below.

- **Identify and pursue the qualifying project or activity.** You will need to know what applicable credit you intend to earn and use elective pay for. This NLC blog provides an overview of the clean energy investment and production tax credits eligible under elective pay and some project examples.
- **Determine your tax year, if not already known**. Your tax year will determine the due date for your tax return.
- **Complete pre-filing registration with the IRS.** This includes providing information about your municipality, which applicable credits your municipality intends to earn and each eligible project/property that will contribute to the applicable credit, among other information . Upon completing this process, the IRS will provide you with a registration number for each applicable credit property. Your municipality will need to provide that registration number on its tax return as part of making the elective pay election. Please note, you must complete pre-filing registration in sufficient time to have a valid registration number at the time you file your tax return.
- **Satisfy all eligibility requirements for the tax credit and any applicable bonus credits, if applicable, for a given tax year.** For example, to claim an energy credit on a solar energy generating project, you would need to place the project in service before making an elective payment election. You will need the documentation necessary to properly substantiate any underlying tax credit, including if bonus amounts increased the credit. See additional links below for further guidance related to bonus credits.
- **File a timely return.**

How do I make an election to receive an elective payment from the federal government?

A municipality will make an election on its annual tax return. Municipalities do not typically file tax returns because they are tax-exempt entities but will need to in order to receive payment. The IRS will prescribe how the return is to be filed, along with what relevant forms will be needed and other

additional information, including supporting calculations. This is a multi-step process as outlined above and requires completing the pre-filing registration process. Additional information and forms will be available from the IRS at a later date.

When is the tax form due and is there a deadline for claiming elective pay?

An elective pay election may only be made on the original tax return (including extensions). Elections are not allowed on amended returns and there is no relief under the Procedure of Administrative Regulations for an elective payment not filed timely. This means the deadline is the due date (including extensions of time) for the tax return for the taxable year for which the election is made. For most tax exempt and government entities, this is generally 4.5 months after the end of the entity's tax year.

What is the effect of choosing to make an elective payment election?

A municipality that makes an election is treated as having made a payment against federal income taxes for the taxable year with respect to which an applicable credit was determined, in the amount of such credit. Since a municipality has no tax liability, the municipality will receive a refund equal to the full amount of the applicable credit.

Additional Resources

The IRS has a number of resources available to local leaders, including FAQs and fact sheets that outline key information contained in the proposed guidance. The White House has more details available at cleanenergy.gov/directpay.

The IRS Inflation Reduction Act website includes links to the guidance documents for the bonus credit considerations under elective pay, including prevailing wage and apprenticeship, domestic content, low-income communities and energy communities.

The IRS will hold a stakeholder briefing on the proposed guidance for elective pay on **Thursday, June 29 at 3 pm ET/12 pm PT**. Register here.

NLC continues to review the proposed guidance. Local leaders should be on the lookout for additional resources.

National League of Cities

by Carolyn Berndt & Michael Gleeson

Bonding Time: A Discussion with Tom Kozlik, HilltopSecurities

The BDA's most recent episode of Bonding Time features a discussion with Tom Kozlik of HilltopSecurities. The podcast was led by Brett Bolton of the BDA and covers:

- The debt ceiling compromise and what the legislation includes;
- An outlook on the potential for continued legislative drama heading into budget season; and
- Municipal bond legislative outlook for the remainder of 2023.

Listen to audio.

Bond Dealers of America

June 21, 2023

16th Amendment's Pruskowski Sees Opportunities in Credit.

James Pruskowski, 16th Amendment Advisors CIO, discusses finding value in the municipal bond market with Romaine Bostick and Scarlet Fu on "Bloomberg Markets: The Close."

Watch video.

June 23rd, 2023

Bloomberg Markets: The Close

Muni Headlines and Outlook (Bloomberg Audio)

Joe Mysak, Editor of Bloomberg Brief: Municipal Markets, joins to discuss muni bonds. Hosted by Paul Sweeney and Madison Mills.

Listen to audio.

Jun 23, 2023

JPMorgan Sued by American Dream Mall Builder for Unpaid Work.

- **Bank provided construction loan and backstopped payments**
- **PCL Construction Services is seeking more than $30 million**

The construction manager for the beleaguered American Dream mall and entertainment complex in New Jersey's Meadowlands is suing JPMorgan Chase & Co. to recover more than $30 million of unpaid work and accrued interest for the project.

Denver-based PCL Construction Services alleges JPMorgan, which arranged a construction loan and serves as administrative agent for American Dream's developer, Ameream, is obligated to pay the bill if the developer doesn't, according to the lawsuit filed June 15 in a New York federal court.

"Ameream is now in financial distress," PCL Construction Services said in the lawsuit. "Agent now has a contractual obligation to advance the amounts due and owing that Ameream failed to pay as they became due. Yet, agent has failed to do so."

Continue reading.

Bloomberg Markets

By Martin Z Braun

June 20, 2023

Why IG Munis Present an Opportunity for the Second Half.

Chip Hughey, Truist managing director of fixed income, discusses the outlook for municipal bonds in the second half of the year. Speaking with Scarlet Fu and Romaine Bostick on "Bloomberg Markets: The Close," Hughey also explains why he favors investment grade municipals.

Watch video.

Muni Moment | Bloomberg Markets: The Close

June 21st, 2023, 12:44 PM PDT

Swarthmore Leverages Its Rare AAA Rating to Borrow for Campus Renovations.

- **College will issue $125 million of municipal bonds Thursday**
- **Funds will be used to refinance debt, campus improvements**

Swarthmore College is expected to tap the $4 trillion municipal bond market for more than $125 million of debt, hoping to lure buyers with its top-tier credit rating.

The Swarthmore Borough Authority will issue tax-exempt bonds in a competitive auction Thursday. The proceeds will fund capital projects on the Pennsylvania campus and will be used to refinance outstanding debt, according to preliminary bond documents. Improvements include the renovation of Martin Hall, an academic building that houses the school's computer science and media studies departments.

Both Moody's Investors Service and S&P Global Ratings granted Swarthmore their highest rating of AAA, a rare distinction among colleges. S&P currently designates 29 of about 450 colleges and universities as AAA, the company said. Other educational institutions that boast the rating include the nation's wealthiest schools like Harvard University, Yale University and the University of Texas.

Continue reading.

Bloomberg Markets

By Jordan Fitzgerald

June 21, 2023

Upcoming Changes to EMMA User Accounts.

The Municipal Securities Rulemaking Board ("MSRB") is implementing changes to login accounts for its Electronic Municipal Market Access System ("EMMA") that may affect issuers and other obligors

making continuing disclosure submissions to EMMA. The MSRB has announced that "individual accounts" will be deactivated on July 13, 2023. Thereafter, an "organization account" will be required for issuers and other obligors to make continuing disclosure submissions through the EMMA Dataport.

Instructions on how to determine whether a current account is an individual account or an organizational account, how to upgrade an individual account to an organizational account, and how to consolidate individual accounts into an organization account is available on the MSRB's website here.

Foster Garvey PC

June 23, 2023

TAX - MISSISSIPPI

Board of Supervisors for Lowndes County v. Lowndes County School District By and Through Lowndes County School Board

Supreme Court of Mississippi - June 1, 2023 - So.3d - 2023 WL 3748109

School district brought action against county board of supervisors for declaratory relief on claim that board's decision to reject $3,350,000 of district's requested tax effort, which was an amount that the board calculated to represented ad valorem taxes on properties previously subject to an expired fee-in-lieu of ad valorem tax agreement (FILOT), was based on an improper determination that the requested effort violated state's statutory limit on increases in school property taxes.

The Chancery Court entered summary judgment for district, finding that the statutory limit did not apply to the properties for the fiscal year at issue. Board appealed.

The Supreme Court held that:

- Pursuant to statute governing appeals from a judgment or decision by municipal authorities, which required the filing of a timely notice of appeal in the circuit court, the chancery court lacked subject-matter jurisdiction;
- Board's representation in its meeting minutes that it would file its own declaratory-judgment action did not preclude the statute governing appeals from a judgment or decision by municipal authorities from being district's exclusive remedy; and
- The defense of lack of subject-matter jurisdiction cannot be waived.

Chancery court lacked subject-matter jurisdiction to enter declaratory judgment in school district's action against county board of supervisors for declaratory relief on claim that board's decision to reject $3,350,000 of district's requested tax effort, which was an amount that the board calculated to represented ad valorem taxes on properties previously subject to an expired fee-in-lieu of ad valorem tax agreement (FILOT), was based on an improper determination that the requested effort violated state's statutory limit on increases in school property taxes; district did not file a notice of appeal in the circuit court as required by statute governing appeals from a judgment or decision by municipal authorities, which provided for district's exclusive remedy.

Representation by county board of supervisors, as stated in meeting minutes, that it would file a declaratory action to determine whether it was lawful for it to reject $3,350,000 of school district's requested tax effort, which was an amount that represented ad valorem taxes on properties

previously subject to an expired fee-in-lieu of ad valorem tax agreement (FILOT) and which was an amount that allegedly violated statutory limit on increases in school property taxes, did not preclude statute governing appeals from a judgment or decision by municipal authorities from being school district's exclusive remedy for board's rejection of the tax effort, and thus school district, in order to challenge the board's decision, had to follow the statutory requirement of timely filing a notice of appeal in the circuit court.

TAX - WISCONSIN

Greenwald Family Limited Partnership v. Village of Mukwonago

Supreme Court of Wisconsin - June 21, 2023 - N.W.2d - 2023 WI 53 - 2023 WL 4140327

Taxpayer brought challenge to village's special assessment against taxpayer's property in a newly created special-assessment district.

The Circuit Court granted village's motion to dismiss. Taxpayer appealed. The Court of Appeals affirmed in a summary disposition order. Taxpayer petitioned for review.

The Supreme Court held that:

- Taxpayer's service on village attorney did not constitute serving village clerk with required written notice of appeal of the special assessment, and
- Village attorney's admission of service of summons and complaint did not preclude taxpayer from having to comply with statutory requirement to serve village clerk with written notice of appeal.

Taxpayer's service on village attorney did not constitute serving village clerk with required written notice of appeal of village's special assessment against taxpayer's property in newly created special-assessment district; clerk was not "party" to appeal, and statute governing appeals from special assessments unambiguously required service of notice of appeal upon clerk, which meant that something had to be presented or delivered to clerk.

Village attorney's admission of service of summons and complaint did not preclude taxpayer from having to comply with statutory requirement to serve village clerk with written notice of appeal from special assessment; taxpayer's attorney had asked village attorney if he would accept service for village, village attorney accepted service of summons and complaint on behalf of village only, and village attorney never told taxpayer's attorney that he was accepting such service on behalf of village clerk as well.

Muni Bonds Coming Back Into Style.

In what's a positive sign for conservative, income-seeking investors, muni bonds are trending higher in 2023. That's supporting upside for a variety of exchange traded funds, including the Vanguard Tax-Exempt Bond ETF (VTEB).

VTEB, which follows the Standard & Poor's National AMT-Free Municipal Bond Index and yields 3.48% on a 30-day SEC basis, is higher by 1.39% year-to-date. Home to 7,419 municipal bonds, VTEB has the diversification investors crave in aggregate muni strategies. Moreover, VTEB is an investment-grade fund, so its credit risk is low.

Speaking of the credit outlook for munis, the primary avenue for assessing credit quality of municipal bonds is to evaluate the tax-collecting capabilities of issuers (cities and states). Broadly speaking, tax collections are solid across most of the country.

“Income tax collections were mixed in April, but sales and property taxes continue to grow. Also, most state and local governments still have plenty of cash on reserve in case the economy performs worse than our economists expect. That cash comes from all the aid that the federal government provided, several hundred billion dollars, in fact, to municipal issuers in response to COVID,” noted Mark Schmidt, Morgan Stanley head of municipal strategy.

Rate Pause Could Help VTEB
VTEB’s holdings have an average duration of 5.8 years, putting the fund in intermediate-term territory, with an average stated maturity of 13.3 years. In other words, the longer the Federal Reserve goes without raising interest rates and the more Treasury yields decline, the more VTEB stands to benefit.

“Longer maturity bonds generally offer higher returns, but of course, with higher risk as well. Right now, we actually see superior risk adjusted returns in a 1 to 5 year or 1 to 10 year ladder,” added Schmidt.

Investors looking for lower duration and short maturities with municipal bonds can consider the Vanguard Short-Term Tax-Exempt Bond ETF (VTES). That ETF debuted in March and follows the S&P 0-7 Year National AMT-Free Municipal Bond Index, meaning its holdings have maturities ranging from one month to seven years. The average stated maturity of the 966 bonds residing in VTES is 3.1 years, according to issuer data.

Another point in favor of munis, whether accessed by VTEB or VTES, is that the beneficial tax treatment offered by the asset class — federal and state deductions — isn’t likely to change anytime soon.

“Major tax reforms tend to happen once in a generation, and they tend to need one party to control both the White House and both chambers of Congress. And even then, a big tax code change needs to be their priority. So, the earliest this could possibly happen again would be after the 2024 election, so call it 2025,” noted Michael Zezas, global head of fixed income and thematic research for Morgan Stanley.

ETFTRENDS.COM

by TOM LYDON

JUNE 26, 2023

Florida Sells Bonds to Backstop Its Homeowner’s Insurance Industry.

- **The $600 million bond sale is the first of its kind since 1993**
- **Insurers had to close after Hurricane Ian, deluge of lawsuits**

A Florida state agency is selling municipal bonds to backstop the state’s homeowner’s insurance industry after a surge of claims and litigation drove some insurers to shutter.

The Florida Insurance Guaranty Association, which handles the claims of insolvent insurers, plans to borrow $600 million of bonds, according to preliminary offering documents. It is the first time in three decades the agency has tapped the municipal bond market to help support insurance claims.

The borrowing provides the agency with needed liquidity. “Our funding sources are somewhat limited,” said Corey Neal, FIGA’s executive director.

Continue reading.

BLoomberg CityLab

By Nic Querolo

June 26, 2023

GFOA and Rutgers University Announce Joint Project to Leverage the Power of AI.

This project aims to revolutionize the way financial data is extracted from financial reports and used to support decisions.

GFOA and Rutgers University are pleased to announce a groundbreaking joint project that leverages the power of artificial intelligence (AI) to extract select financial data from local government financial reports.

Download Full Press Release.

Publication date: June 2023

Bank of America Seeks Texas Muni Revival After Two-Year Halt.

- **Bank had suspended underwriting in state due to GOP law**
- **Letter sent to AG’s office says BofA plans to resume business**

Bank of America Corp. is seeking to resume its municipal-bond underwriting in Texas after a nearly two-year pause because of a Republican-backed law targeting banks over their gun policies, according to public records obtained by Bloomberg.

Bank of America, the nation’s biggest muni underwriter, hasn’t managed debt sales by Texas or its cities since two GOP measures went into effect in September 2021. One of the laws, known as Senate Bill 19, bars governmental entities from working with companies that “discriminate” against firearm entities.

The legislation caused a major pullback of Texas business by Bank of America and other Wall Street banks that have restrictions on dealings with gun companies. In 2018, Bank of America said it would stop making new loans to companies that make military-style rifles for civilian use. That policy remains in place.

The bank intends to continue its work with clients in Texas, a lawyer for Bank of America wrote in a May 17 dated letter to Texas Attorney General Ken Paxton and Leslie Brock, who leads the office's public finance division.

"Even though BoA had suspended entry into any contracts requiring the SB 13 and 19 verifications, we believe BoA can appropriately make such written verifications based on an application of its current risk-based framework and policies," the letter said.

A spokesperson for Bank of America declined to comment. The Texas Attorney General's Office did not respond to a phone call requesting comment.

Paxton was impeached and suspended by the Republican-dominated House of Representatives in late May. Former Texas Secretary of State John Scott was named the state's interim attorney general.

Aside from the firearms legislation, a separate Texas law restricts certain public contracts with financial companies that boycott the energy industry. The Texas Comptroller's office has released a list of companies that it considers to do so, and Bank of America isn't on that list.

The lawyer at Foley & Lardner LLP, Ed Burbach, said in a separate email to the Attorney General's office that the bank is not on that list, nor does it discriminate against a firearm entity or firearm trade association. Burbach did not immediately respond to a phone call requesting comment.

The letter did say that the bank generally considers the firearms industry as "high-risk, with clients subject to a heightened due diligence requirement." Because of that, the bank avoids certain business transactions based on "traditional business reasons."

The letters and emailed correspondence were obtained via public records request.

"BoA has longstanding business relationships with public and private entities operating in Texas, including many energy sector participants and firearms industry participants," the letter said. "BoA anticipates continuing such relationships into the future. These commercial relationships are extremely important to BoA, its clients, and counterparties in Texas."

Other banks initially affected by the GOP laws have sought to revive their public finance businesses in the state. In January, the Texas Attorney General's Office said it wouldn't approve state or local debt deals managed by Citigroup Inc. JPMorgan Chase & Co., meanwhile, has underwritten Texas muni deals this year.

Bloomberg Markets

By Amanda Albright

June 27, 2023

Fitch: Puerto Rico's 2021 Audit Release a Key Administrative Step

Fitch Ratings-San Francisco/New York-21 June 2023: Puerto Rico's recent release of its fiscal 2021 audited basic financial statements indicates improved administrative capacity, according to Fitch Ratings. The commonwealth has also improved on the reliability, robustness, timeliness and

accessibility of other supplementary information. Puerto Rico's ability to sustain improved budgetary, financial, and economic collection and reporting capabilities is a key component of any reasonable investigation Fitch would undertake in forming a credit view.

The June 12 release of Puerto Rico's fiscal 2021 audit (year-ended June 30) is a key component of the commonwealth's push to bring disclosures current following the restructuring of most of its debt in recent years. This follows fiscal 2019 and 2020 audits releases in Q2 and Q4 of 2022, respectively. The commonwealth anticipates publishing its fiscal 2022 audit by Q3 2023, and achieving a one-year audit lag with publication of its fiscal 2023 audit in Q2 2024.

A one year timeline would be a marked improvement for the commonwealth, but still lag peers in the municipal market. A recent study of release dates for annual comprehensive financial reports (ACFR's) by the University of Illinois, Chicago's Government Finance Research Center (UIC-GFRC) and Merritt Research Services found the median release time across the municipal market was 164 days for fiscal 2020. The National Association of State Comptrollers reports that for U.S. states, the average release time was 228 days for fiscal 2021. The median audit timeline for municipal governmental bond sectors has grown from 147 days in 2009 to 164 in 2020, according to the UIC-GFRC and Merrit Research Services study.

Anecdotally, several governments have reported to Fitch that pandemic disruptions, including steep declines in state and local government employment in 2020, contributed to longer audit timeframes. State and local government employment has since recovered, although it is still down slightly relative to 2019 averages.

Habitually delayed publication of audited financial reports beyond 270 days past the end of the fiscal year can indicate management weakness. GAAP-based financial reports are an objective and important source that Fitch and other market participants typically rely on to understand a government's financial performance. They provide a set of financial statements that comply with accounting requirements established by the Governmental Accounting Standards Board (GASB) and audited by an independent auditor using generally accepted accounting principles.

Audited financial statements present an official account of a government's financial condition for the last fiscal year, comparing it to prior fiscal years, and some include management discussion and analysis of the results.

When financial audits are delayed, Fitch typically relies on additional municipal transparency to perform its forward-looking analyses and continue assessing creditworthiness. Such transparency may include unaudited actuals, periodic revenue and expenditure budget performance reports, clear budget documents, economic reportage and forecasting, and other disclosures.

Puerto Rico officials attribute the establishment of a timelier audit release schedule to post-PROMESA reform efforts executed in concert with the Oversight Board. Major commonwealth reforms include stronger budgetary policies, institutional budgetary reforms, wholesale modernization of financial collection and reporting systems, civil service reforms, and stronger internal controls. Together, these initiatives greatly bolster transparency and accountability, allowing external parties greater insight into major factors of the commonwealth's credit quality.

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Additional information is available on www.fitchratings.com

Los Angeles, California: Fitch New Issue Report

Key Rating Drivers Strong Security Resilience: Pledged revenues are resilient to cyclical revenue declines. Even assuming leverage to 2.0x, maximum annual debt service (MADS) coverage from the current 8.2x, the structure can easily absorb a revenue decline expected to result from a moderate recession scenario. The strong resilience assessment also considers the city’s ability to raise the fee to the level needed to cover debt service and operational costs. Stagnant Natural Revenue Growth Prospects: The prospects for natural revenue growth (absent fee increases) are limited to new residential property development within the largely built-out city. There is no ratepayer concentration risk. Capped at City’s IDR: Fitch does not assume that the SWR fee and other pledged revenues would be considered special revenues in the unlikely event the city declared bankruptcy. Therefore, Fitch caps the rating at the city’s IDR of ‘AA’/Outlook Stable.

ACCESS REPORT

Thu 22 Jun, 2023

State of Georgia: Fitch New Issue Report

Revenue Framework: ‘aaa’: Georgia’s revenues, primarily comprising income and sales taxes, will continue to reflect the breadth of the economy and its solid long-term growth potential. The state has complete control over its revenues, with an essentially unlimited legal ability to raise operating revenues as needed, despite constitutional limitations on the individual income tax rate. Expenditure Framework: ‘aaa’: Consistent with most states, expenditure growth in Georgia is likely to marginally exceed revenue growth over time. Carrying costs for long-term liabilities are low but slightly above average for a U.S. state. Georgia retains broad expense-cutting ability. Medicaid is a key expense driver, but Fitch expects the state will continue to successfully manage it to contain expense growth. Long-Term Liability Burden: ‘aaa’: Georgia’s long-term liability burden is low, and overall debt management is conservative. The state regularly issues bonds for capital needs and principal amortization is rapid. Georgia fully funds its actuarially determined contributions (ADCs) for pensions supporting a modest net pension liability (NPL) burden.

ACCESS REPORT

Fri 23 Jun, 2023

- How the A's Stadium Revenue 'Waterfall' Will Repay Public Funds.
- *In re Credit Default Swaps Auctions Litigation* – In putative class action brought by plaintiffs (quasi-state funds that manage state and state-employee asset funds and retirement accounts) asserting that defendant investment banks impermissibly colluded and conspired to manipulate — or "fix" or "rig" — Credit Default Swap auctions in an anticompetitive manner, District Court denies defendants' motions to dismiss, finding the plaintiffs adequately pled their claims (e.g. antitrust conspiracy, unjust enrichment, etc.). **Ed Note:** The first half of this opinion is an excellent primer on the world of CDS.
- *In re Gaskill* – In action brought by voters dissatisfied with the results of an election approving a school board Independent Schoo. Board's authority to issue $228MM in school bonds, who filed a writ of mandamus almost six months after the election seeking to compel the Magnolia Independent School District's Board President to "take such actions as necessary to conduct" a recount, Court of Appeals holds that waiting 171 day after the election to challenge the result, the election became final and the school board president's duty to duty to order a recount had expired. **Ed. Note:** This one is interesting in that the plaintiffs were primarily seeking to examine the voting machines used in the bond election, rather than necessarily challenging the bond election itself.
- And Finally, Ya' Don't Say – Law Enforcement Division is brought to us this week by *Martin v. Tovar*, in which it required no less an authority than the frickin' Supreme Court of Iowa to arrive at the complex, controversial conclusion that a police offer's sexual assault of an intoxicated woman in his care was outside the scope of of his employment. In what conceivable world would this behavior lie *within* the scope of his employment? In what conceivable world does it require a state supreme court to arrive at this conclusion? This one belongs on Judge Dredd's docket.

MUNICIPAL GOVERNANCE - CALIFORNIA

San Bernardino County Board of Supervisors v. Monell

Court of Appeal, Fourth District, Division 2, California - May 25, 2023 - Cal.Rptr.3d - 2023 WL 3643245 - 2023 Daily Journal D.A.R. 4954

County board of supervisors filed a combined complaint and writ petition in which board sought a declaration that voter-approved initiative that amended county charter to limit a supervisor to a single four-year term and to limit a supervisor's compensation to $5,000 a month was invalid and an injunction and writ of mandate preventing initiative's enforcement.

After a trial as a writ petition, the Superior Court entered a ruling that granted the mandate petition and struck down the initiative in its entirety. Proponent of initiative appealed, and board cross-appealed.

The Court of Appeal held that:

- Passage of a superseding measure did not render the appeal and cross-appeal moot;
- Regulatory interests justified the term limit, which was not a severe restriction on rights under the First and Fourteenth Amendments;
- On its face, the compensation cap did not violate federal and state minimum-wage laws;
- Any conflict between the compensation cap and county ordinance that required elected county

officials to be provided with certain benefits was not a basis to find that the compensation cap was invalid;
- The terms of the newly elected supervisors began on the date provided by the county charter, i.e., the first Monday in December following the election;
- Pursuant to state statute, initiative went info effect ten days after the vote was declared by the board;
- Term limit did not kick out of office those supervisors who were already serving a term beyond their first time, but it would bar them from serving another term later; and
- Compensation cap could not apply to supervisors elected at the same election that approved the initiative.

WATER LAW - CALIFORNIA

Los Angeles Waterkeeper v. State Water Resources Control Board

Court of Appeal, Second District, Division 1, California - June 2, 2023 - Cal.Rptr.3d - 2023 WL 3774587

Environmental-advocacy organization filed petitions for writs of mandate against state water resources control board and regional water quality control board, alleging that boards violated duty under California Constitution and Water Code by permitting four publicly owned treatment works (POTWs) to discharge treated wastewater without evaluating whether quantities discharged were reasonable or whether treated wastewater could be recycled or otherwise put to better use, and that regional board issued permits without making findings required under California Environmental Quality Act (CEQA).

Boards demurred. The Superior Court sustained demurrer as to regional board but overruled demurrer as to state board. Following bench trial, the Superior Court entered judgment for organization, issued, writs of mandate, and awarded organization attorney fees. State board appealed and organization cross-appealed.

The Court of Appeal held that:

- Regional board had no duty to prevent purportedly unreasonable discharge of treated wastewater;
- Assuming state board had duty to prevent waste and unreasonable use of water, organization failed to allege that state board acted in derogation of duty and thus failed to state claim for mandamus; and
- CEQA did not require regional board to make findings regarding environmental impacts of wastewater discharge permits and whether there were feasible alternatives or mitigation measures.

Regional water quality control board had no duty, under section of California Constitution concerning conservation of water, to prevent purportedly unreasonable discharge of treated wastewater from four publicly owned treatment works (POTWs); regional board’s role in state water law was to regulate water quality, and although Water Code broadly delegated to state water resources control board “the adjudicatory and regulatory functions of the state in the field of water resources” and power to “take all appropriate proceedings or actions…to prevent waste [and] unreasonable use” of water, nothing in Water Code granted regional board equivalent powers or suggested that regional board’s role in regulating water quality included regulation of wasteful or unreasonable use of water.

CHARTER SCHOOLS - WEST VIRGINIA

Blair v. Brunett

Supreme Court of Appeals of West Virginia - June 8, 2023 - S.E.2d - 2023 WL 3881272

Public school teachers filed a lawsuit against Governor of West Virginia, alleging that allowing the West Virginia Professional Charter School Board (PCSB) to create public charter schools without a majority vote of the citizens where the schools would be located violated the West Virginia Constitution, and seeking a writ of mandamus and declaratory relief or, in the alternative, injunctive relief.

The Circuit Court granted teachers' motion for a preliminary injunction and denied Governor's motion to dismiss. Governor brought an interlocutory appeal.

The Supreme Court of Appeals held that:

- Teachers' alleged injury of being deprived of their constitutional right to vote was not causally connected to Governor's actions, as required for standing;
- Teachers' alleged injury was not redressable through injunctive relief against Governor, as required for standing; and
- Preliminary injunction issued against Governor by trial court did not bind the PCSB.

Public school teachers' alleged injury of being deprived of their constitutional right to vote by law allowing the West Virginia Professional Charter School Board (PCSB) to create public charter schools without a majority vote of residents was not causally connected to Governor's actions, and thus teachers lacked standing to seek injunctive relief against Governor; Governor's only role in relation to the law was signing it after its passage and appointing PCSB members, Governor had no veto authority over actions of PCSB, and Governor's alleged knowledge of the law's unconstitutionality when he signed it did not establish causation given that PCSB, a nonparty, exercised its own independent statutory authority to approve or reject charter school applications.

Public school teachers' alleged injury of being deprived of their constitutional right to vote by law allowing the West Virginia Professional Charter School Board (PCSB) to create public charter schools without a majority vote of residents was not redressable through injunctive relief against Governor, as required for standing; Governor did not control nonparty PCSB's ability to approve or reject charter school applications and thus could not be required to order PCSB to cease its activities.

Preliminary injunction issued against Governor by trial court in action brought by school teachers challenging the constitutionality of law allowing the West Virginia Professional Charter School Board (PCSB) to create public charter schools without a majority vote of residents did not bind the PCSB, where the PCSB was not a party to the action, was created by statute, and acted pursuant to its statutory authority and not on behalf of the Governor, and Governor could not direct or veto the PCSB's decision to approve a charter school application.

IMMUNITY - IOWA

Nahas v. Polk County

Supreme Court of Iowa - June 9, 2023 - N.W.2d - 2023 WL 3906488

Former county employee brought action against county and members of county board of supervisors asserting claims for libel per se, wrongful termination in violation of public policy, extortion, civil conspiracy, intentional infliction of emotional distress, and violations of open meetings and confidential records laws.

The District Court denied defendants' motion to dismiss, and they appealed.

The Supreme Court held that:

- Qualified immunity defenses were not available to members of board of supervisors;
- Employee's complaint had to comply with particularity and plausibility components of new heightened pleading standard for claims under the Iowa Municipal Tort Claims Act (IMTCA);
- Requiring compliance with "clearly established" component of new heightened pleading standard would be an impermissible retrospective application;
- Libel per se claim satisfied the particularity and plausibility pleading standards;
- Extortion claim failed the particularity and plausibility pleading standards;
- Civil conspiracy claim satisfied the particularity and plausibility pleading standards; and
- Open meetings violation claim failed the particularity and plausibility pleading standards.

PUBLIC MEETINGS - LOUISIANA

Livingston Parish School Board v. Kellett

Court of Appeal of Louisiana, First Circuit - May 18, 2023 - So.3d - 2023 WL 3556635 - 2022-1240 (La.App. 1 Cir. 5/18/23)

Parish school board sued elementary school student's mother seeking injunctive relief to stop her from publicly discussing school board, special education program, and other individuals after she allegedly made social media posts that defamed and slandered the reputations of school board and school staff, based on communications recorded by electronic devices in her child's clothing.

After school board obtained a temporary restraining order (TRO) and then a preliminary injunction prohibiting mother from using electronic devices and from making or publishing any defamatory, slanderous, libelous, frivolous, and/or fraudulent claims concerning school board and its employees, mother filed motion for dissolution of the preliminary injunction. The District Court granted the motion in part with respect to the prohibition on use of the electronic device and denied the motion in all other respects. Mother appealed. Court of Appeal issued and then recalled show cause order.

The Court of Appeal held that:

- Preliminary injunction against mother making defamatory statements was an unconstitutional prior restraint on speech, and
- Dissolution of portion of preliminary injunction prohibiting mother from engaging in any form of written or verbal disparagement was warranted.

Preliminary injunction enjoining elementary school student's mother from making certain public statements about school board and its employees that were purportedly defamatory, including allegations of criminal conduct, constituted an unconstitutional prior restraint on speech protected by the First Amendment, where there had been no judicial determination that words allegedly spoken by mother and accusations purportedly made by her were defamatory or defamatory per se, nor did the trial court, in considering school board's motion for preliminary injunctive relief, determine that mother in fact made the challenged statements and was liable for defamation.

EMINENT DOMAIN - FLORIDA

[D'Arcy v. Florida Gaming Control Commission]

District Court of Appeal of Florida, First District - May 24, 2023 - So.3d - 2023 WL 3608904

Owner of kennel business and business brought action against state Gaming Control Commission, alleging amendment to state Constitution forbidding racing of domesticated dogs for money violated takings clauses of state and federal Constitutions.

Commission filed motion for summary judgment, which the Circuit Court granted. Owner and business appealed.

The District Court of Appeal held that:

- Plaintiffs lacked reasonable expectation that their investment in dog racing could not be severely impacted by regulation, as would support takings claim, and
- Amendment was valid exercise of police power, rather than eminent domain, as would support takings claim.

Owner of kennel business and business lacked a reasonable expectation that their investment in dog racing could not be severely impacted by regulation, as would support owner and business's claim alleging the amendment to the state Constitution forbidding the racing of domesticated dogs in connection with a wager for money or other item of value violated the takings clauses of the state and federal Constitutions; amendment did not forbid dog racing per se, and it was not reasonable that owner had no expectation of future governmental interference with his and business's property investments, as pari-mutuel gambling had long been heavily regulated in the state.

Amendment to state Constitution forbidding the racing of domesticated dogs in connection with a wager for money or other item of value was a valid exercise of police power, rather than eminent domain, as would support claim brought by owner of kennel business and business, alleging that amendment violated the takings clauses of the state and federal Constitutions; amendment prevented a public harm.

MUNICIPAL ORDINANCE - IOWA

[Livingood v. City of Des Moines]

Supreme Court of Iowa - June 9, 2023 - N.W.2d - 2023 WL 3906367

Vehicle owners brought suit to challenge city's use of state income offset program to collect automated traffic citation penalties not reduced to judgment in municipal infraction proceedings.

The District Court denied owners' motion for summary judgment and granted city's motion for summary judgment. Owners appealed.

The Supreme Court held that:

- City's use of state income tax refunds to offset automated traffic citation penalties did not constitute "taking";
- Statute governing municipal infractions did not preempt ordinances allowing city to use state's income offset program to collect automated traffic citation penalties not reduced to judgment in

municipal infraction proceeding;
- Damages were not available for vehicle owners "claim" of preemption;
- Two owners were not entitled to declaratory and injunctive relief;
- City's attempts to enforce civil penalties for automated traffic citations did not violate vehicle owners' due process rights; and
- Penalties that city assessed and referred to income offset program were not legally enforceable.

City's use of state income tax refunds to offset automated traffic citation penalties did not constitute "taking"; city was not taking property for public use, but was instead collecting penalties allegedly owed for violation of its laws.

Statute governing municipal infractions did not preempt ordinances allowing city to use state's income offset program to collect automated traffic citation penalties not reduced to judgment in municipal infraction proceeding; ordinance provided that recipient of notice of violation could voluntarily pay penalty, ordinance provided that recipient of notice could request that city proceed with municipal infraction proceeding, and ordinance stated that city would file municipal infraction if recipient of notice did not pay citation and did not request that city file municipal infraction.

Statute governing municipal infractions preempted city ordinance providing that if vehicle owner did not request administrative hearing or municipal infraction proceeding following issuance of automated traffic citation, notice of violation would be deemed a debt subject to placement in city's debt offset program; ordinance's declaration that civil penalty was a debt due, owing, and payable without municipal infraction judgment was directly contrary to and irreconcilable with statute.

Vehicle owner was entitled to declaratory and injunctive relief following successful claim that statute governing municipal infractions preempted city ordinance deeming a notice of violation a debt subject to placement in city's offset program following issuance of automated traffic citation; owner would be entitled to assert preemption defense as to any claim of offset.

City's attempts to enforce civil penalties for automated traffic citations did not violate vehicle owners' due process rights, where owners were provided with notices of violation and afforded opportunity to request hearing, owners were provided notice of city's intent to transfer matter to income offset program and opportunity to challenge transfer, owners were provided with notices of intent to offset, and owners failed to seek hearings in response to each of those notices.

Penalties that city assessed for automated traffic citations and referred to income offset program were not legally enforceable, where city failed to file municipal infraction proceeding as required by its own ordinance and instead proceeded to extrajudicial collection efforts.

Remand of vehicle owners' claims against city for unjust enrichment, arising from city's attempts to enforce civil penalties for automated traffic citations, was warranted for consideration of whether there were any defenses to claim of unjust enrichment and whether there were any disputed issues of material fact necessitating trial on that claim.

LIABILITY - IOWA

Martin v. Tovar

Supreme Court of Iowa - June 9, 2023 - N.W.2d - 2023 WL 3906432

After city police officer sexually assaulted intoxicated victim to whom he had provided courtesy ride, victim brought action against city and police officer, alleging causes of action for sexual assault,

battery, intentional infliction of emotional distress (IIED), false imprisonment, and invasion of privacy.

The District Court granted city's motion for summary judgment. Victim appealed.

The Supreme Court held that:

- Sexual assault fell outside the scope of officer's employment;
- There was no evidence that sexual assault by officer was expected, foreseeable, or sanctioned by the city;
- Officer's poor performance evaluations were insufficient to create genuine issue of material fact regarding foreseeability of sexual assault;
- Accusation that officer had assaulted another victim did not create genuine issue of material fact regarding foreseeability of sexual assault; and
- The Supreme Court would decline to extend aided-by-agency theory to hold city vicariously liable for sexual assault.

CREDIT DEFAULT SWAPS - NEW MEXICO

In re Credit Default Swaps Auctions Litigation

United States District Court, D. New Mexico - June 5, 2023 - Slip Copy - 2023 WL 3821337

Plaintiffs – quasi-state funds that manage state and state-employee asset funds and retirement accounts – alleged that Defendants – *inter alia*, Investment Banks – impermissibly colluded and conspired to manipulate — or "fix" or "rig" — Credit Default Swap auctions in an anticompetitive manner, and that this conduct constituted: 1) a conspiracy to restrain trade in violation of the Sherman Act and the Clayton Act, 2) violations of the Commodity Exchange Act, and 3) unjust enrichment by civil conspiracy in violation of New Mexico law.

Defendants moved to dismiss.

The U.S. District Court held that:

- Plaintiffs adequately pled sufficient factual matter to invoke the fraudulent concealment doctrine, and concluded that the fraudulent concealment doctrine operates to equitably toll the applicable statutes of limitations, rendering Plaintiffs' claims timely;
- Plaintiffs plausibly alleged that a conspiracy existed and that several domestic Defendants' overt acts in furtherance of the conspiracy were committed in the United States and are sufficient to subject co-conspirators to jurisdiction in the United States;
- These are not "umbrella" claims in that Plaintiffs do not allege they were injured by non-conspirators who independently decided to charge artificial prices to keep pace with Defendants;
- Plaintiffs clearly alleged a common motive, conduct against self-interest, inter-firm communications, and suspicious auction rules as context for the conspiracy sufficient to adequately allege an antitrust conspiracy;
- Plaintiffs alleged sufficient facts to state a claim under the Commodity Exchange Act (CEA) against Defendants; and
- Plaintiffs adequately stated a claim for unjust enrichment and may proceed with that claim as an alternative theory to the federal antitrust and CEA claims.

ANNEXATION - OHIO

Board of Township Trustees for Eaton Township v. KNG, Ltd.

Court of Appeals of Ohio, Ninth District, Lorain County - May 15, 2023 - N.E.3d - 2023 WL 3450412 - 2023-Ohio-1621

Township board brought action challenging decision of county board of commissioners to grant developer's petition to annex certain township land into neighboring village.

The Court of Common Pleas affirmed commissioners' decision. Township appealed.

The Court of Appeals held that developer and village failed to satisfy road maintenance requirements of annexation statute, as condition to annexation.

Developer and village failed to satisfy the road maintenance requirements of annexation statute, which precluded annexation if a road would be divided by the annexation unless the municipal corporation agreed to assume maintenance of the road as a condition of the annexation, in township's action challenging county board of commissioners' decision to grant developer's annexation petition, which would divide a road between township and village; board's resolution merely stated that village and county "desire to enter into a shared maintenance agreement whereupon each will share equally (1/2) the cost of maintenance" of the road, which was not the same as the "municipal corporation, as a condition of annexation, will assume the maintenance."

EMINENT DOMAIN - PUERTO RICO

Dinh v. United States

United States Court of Federal Claims - June 5, 2023 - Fed.Cl. - 2023 WL 3815051

Bondholders filed putative class action against United States, seeking just compensation under Fifth Amendment for alleged taking of their private property as owners of first subordinated secured bonds issued by instrumentality of Commonwealth of Puerto Rico, as alleged direct and intended result of Congress's enactment of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), allowing Puerto Rico and its instrumentalities to adjust their debts in bankruptcy, that resulted in loss of significant portion of principal and interest on holder's bonds and their security interests and liens on revenues.

Government moved to dismiss for lack of subject matter jurisdiction or, alternatively, for failure to state claim.

The Court of Federal Claims held that:

- Subject matter jurisdiction could be exercised over claim;
- PROMESA did not displace jurisdiction over claim;
- Exercising jurisdiction was not impermissible collateral attack;
- Claims added in amended complaints related back to original timely complaint;
- Bondholders adequately alleged cognizable property interests;
- Collateral estoppel did not bar litigation of issue of PROMESA's enactment effecting taking; but
- Enactment of PROMESA did not constitute regulatory taking.

Bondholders' sufficiently alleged Fifth Amendment taking effected by Congress's enactment of

Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) that resulted in loss of significant portion of their principal and interest on bonds by allowing Puerto Rico to adjust its debts in bankruptcy, as required for exercise of Tucker Act jurisdiction over claim, since bondholders' complaint unambiguously alleged that federal action took their property without just compensation.

Tucker Act jurisdiction over bondholders' Fifth Amendment taking claims allegedly effected by Congress's enactment of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) that resulted in loss of significant portion of their bonds' principal and interest by allowing Puerto Rico to adjust its debts in bankruptcy, was not displaced by PROMESA, stating that any action against Oversight Board for Puerto Rico, and any action otherwise arising out of PROMESA, in whole or in part, "shall" be brought in United States district court for covered territory, since PROMESA did not reflect Congress's unambiguous intent to displace Tucker Act jurisdiction, given that PROMESA did not waive sovereign immunity for monetary relief claims against United States, unlike Tucker Act.

Bondholders' claim for Fifth Amendment taking allegedly effected by Congress's enactment of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), that resulted in loss of significant portion of bonds' principal and interest by allowing Puerto Rico to adjust its debts in bankruptcy, was not impermissible collateral attack on decision by district court confirming plan of debt adjustment under Title III of PROMESA, since district court's confirmation of plan simply described part of process that resulted in taking of bondholders' property to which they did not attribute any legal error, and their takings claim did not require Court of Federal Claims to scrutinize Title III court's reasoning or result in confirming plan.

Proposed amendment to bondholders' class action complaint to allege Fifth Amendment taking by additional bondholders related back, for purposes of six-year statute of limitations for claims before Court of Federal Claims, to original complaint claiming that taking was allegedly effected by Congress's enactment of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) that resulted in loss of significant portion of bonds' principal and interest by allowing Puerto Rico to adjust its debts in bankruptcy.

Bondholders sufficiently alleged property interest cognizable under Fifth Amendment Takings Clause, as required to state claim that taking was effected by Congress's enactment of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) allowing Puerto Rico and its instrumentalities to adjust their debts in bankruptcy, since bondholders alleged that enactment of PROMESA resulted in loss of significant portion of principal and interest on their bonds as well as their lien on revenues that could be enforced in event of default on their contractual right to repayment of principal and interest.

Prior proceeding in which district court assigned under Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) determined that plan of debt adjustment for Puerto Rico and its instrumentalities and settlement agreement did not take bondholders' property without just compensation did not collaterally estop bondholders from litigating issue of whether United States was liable for taking based on Congress's enactment of PROMESA.

Congress's enactment of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), allowing Puerto Rico and its instrumentalities to adjust their debts in bankruptcy, did not constitute Fifth Amendment regulatory taking of bondholders' property interests in their contractual right to repayment of principal and interest on bonds and liens against revenue, since bondholders' property interests were impaired only after Oversight Board for Puerto Rico, which was non-federal entity, took series of discretionary actions resulting in restructuring of debts under PROMESA, and taking involving third-party non-federal entities was insufficient to warrant just

compensation, as Board did not act as agent of United States and was not coerced to file petition for adjustment under PROMESA.

BOND ISSUANCE - TEXAS

In re Gaskill

Court of Appeals of Texas, Beaumont - June 8, 2023 - Not Reported in S.W. Rptr - 2023 WL 3876506

Voters dissatisfied with the results of an election approving the Magnolia ISD's authority to issue $228,000,000 in school bonds, filed a writ of mandamus almost six months after the election seeking to compel the Magnolia Independent School District's Board President to "take such actions as necessary to conduct" a recount for the 2022 Magnolia ISD Bond.

"The relators say they are not seeking to contest the election's results, but that they instead want information about the machines used in the election so they will know in upcoming elections how accurate the machines are in counting votes, including an election that will occur in May 2023."

The relators say they are not seeking to contest the election's results, but that they instead want information about the machines used in the election so they will know in upcoming elections how accurate the machines are in counting votes, including an election that will occur in May 2023.

"By waiting 171 days after the election to challenge Adcox's decision rejecting the petitions Relators submitted for a recount of the vote on a school bond measure approved by voters, the relators allowed the results of the election to become final and Adcox's duty to order a recount of the results to expire. We hold that we lack jurisdiction over this original proceeding. Accordingly, the Relator's petition for writ of mandamus is dismissed."

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 May) $137.3 billion, -23.9% Y/Y
Trading (as of May) $12.1 billion ADV, -13.1% Y/Y
Outstanding (as of 1Q23) $4.0 trillion, -0.8% Y/Y

Download xls

June 12, 2023

S&P U.S. Charter Schools Sector Fiscal 2022 Medians: Schools Hold Strong Amid Rising Costs

View the S&P report.

14 Jun, 2023

Fitch: Labor Inflation Remains an Uphill Battle for U.S. Life Plan Communities

Fitch Ratings-New York/Austin-12 June 2023: Persistently high wage inflation remains a major credit risk for U.S. life plan communities (LPC) and skilled nursing facilities (SNFs) given the very tight labor environment, according to Fitch Ratings in its latest Labor Dashboard for the sector.

LPC and SNF payrolls remain well below pre-pandemic levels. “High fee increases at LPCs will help alleviate wage pressures, but this practice is not sustainable over the longer term to maintain profit margins,” said Director Richard Park. “LPCs and communities with a significant SNF component will have to execute on productivity enhancements, cost savings and manage skilled nursing admissions to successfully operate through the current reality of tight staffing conditions and higher unit labor costs.”

SNF staff shortages are improving but remain a major challenge as over 16% of nursing homes are reporting a shortage of nurses and aides. The number of quits in the healthcare and social assistance sector remains high compared to recent averages.

“The tight labor market continues to be in favor of workers in search of higher wages and better work environments,” said Park.

Fitch’s latest ‘Life Plan Communities Labor Dashboard: June 2023’ is available at ‘www.fitchratings.com’.

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S&P U.S. Not-For-Profit Health Care Rating Actions, May 2023.

S&P Global Ratings maintained 31 ratings without revising the outlooks, took three positive rating actions, and revised four outlooks unfavorably and one outlook favorably without changing the ratings in the U.S. not-for-profit health care sector in May. Two of the three upgrades related to our assessment of the combined credit strength of Advocate Aurora Health and Atrium Health (with the combined organization now known as Advocate Health) that resulted in an upgrade on Atrium Health and its related credit, Wake Forest Baptist. Of note, this was the first month since October 2021 where we did not lower any ratings.

We removed Sparrow Obligated Group from CreditWatch (where it had been placed with developing implications) based on its merger with the University of Michigan. There were three new sale issuances in the month, with all ratings and outlooks unchanged.

The 12 rating actions consist of the following:

- Three upgrades on two health systems and one stand-alone hospital;
- Four unfavorable outlook revisions on three health systems in the 'A' category, (two to negative from stable and one to negative from positive) and one stand-alone hospital in the 'AA' category (to negative from stable); and
- One favorable outlook revision, to positive from stable on a stand-alone hospital in Georgia.

Continue reading.

13 Jun, 2023

Opioid Settlement Payouts to Localities Made Public for First Time.

Documents have been obtained showing the exact dollar amounts—down to the cent—that local governments have been allocated in 2022 and 2023 to battle the ongoing opioid crisis.

This story was first published by KFF Health News. Read the original article here.

Thousands of local governments nationwide are receiving settlement money from companies that made, sold, or distributed opioid painkillers, like Johnson & Johnson, AmerisourceBergen, and Walmart. The companies are shelling out more than $50 billion total in settlements from national lawsuits. But finding out the precise amount each city or county is receiving has been nearly impossible because the firm administering the settlement hasn't made the information public.

Until now.

After more than a month of communications with state attorneys general, private lawyers working on the settlement, and the settlement administrators, KFF Health News has obtained documents showing the exact dollar amounts—down to the cent—that local governments were allocated for 2022 and 2023. More than 200 spreadsheets detail the amounts paid by four of the companies involved in national settlements. (Several other opioid-related companies will start making payments later this year.)

Continue reading.

Route Fifty

By Aneri Pattani,
KFF Health News

June 16, 2023

Today's Challenges to Wastewater Treatment and Sludge Management: Burns & Levinson

As a consequence of the efforts by EPA and state environmental authorities throughout New England and beyond to update wastewater treatment requirements, including management of the sludge produced, significant questions and concerns about the direction and impacts of the regulatory changes have emerged. Today, wastewater treatment plants ("WWTPs) face particularly onerous challenges in the decades-long process of removing nutrients and other contaminants of concern in wastewater before it is discharged to inland rivers or coastal waters.

WWTPs were initially built as early as the 1890s to address primary treatment (removal of solids), later upgraded to secondary treatment (for bacterial decomposition), and, since the 1980s, for tertiary treatment (for nutrient removal). Large regional and small municipal facilities were improved at each step to meet the challenge. In the 1990s and early 2000s, EPA and state regulatory authorities established necessary but aggressively low concentrations for these elements (nitrogen for coastal waters, phosphorous for inland rivers) before treated wastewater may be discharged. In answering these challenges, WWTPs have relied largely on chemical, sometimes biological, treatment to take up and absorb the nutrients into sewage sludge solids.

In every aspect of our lives, we rely daily on the proper treatment of wastewater from our homes, businesses, and industries to protect our rivers and coastal estuaries, as well as our health. Historically, New England's responsibility for properly treating wastewater and managing and disposing of sludge fell to large and small urban industrial cities. Since the 1970s, intrastate regional authorities have emerged to serve many large cities and adjacent communities. Established in the late 1800s and early 1900s, WWTPs have been repeatedly modified, enlarged, and improved to treat contaminants in wastewater with increasingly sophisticated treatment technologies. In the 1960s through the 1970s, the federal Construction Grants Program covered as much as 90% of the cost to construct new or substantially upgrade existing wastewater treatment plants throughout New England, recognizing the importance of this critical infrastructure to protect public health and the environment.

The crucial primary stage in the wastewater treatment process is the removal of solids contained in the wastewater collected from the community and entering the WWTP. For much of that history, the collected solids (sludge) were dumped in landfills or the ocean offshore. Currently, offshore disposal of sludge is prohibited to avoid degradation of the coastal environment. Landfill disposal is now often restricted to "cake," a regrettable euphemism for 90% dewatered sludge.

Both sludge and cake contain high concentrations of the nutrients removed in the wastewater treatment process, which cause eutrophication, stimulating aquatic plant and algae growth, which die off to consume oxygen in the waters, particularly in slow-flowing rivers and coastal ponds. Today

in New England, the nutrient-rich sludge produced by WWTPs is landfilled (preferably as cake), incinerated in specialized facilities, or used for agricultural land application to enhance crop growth. In some areas of the country, sludge is disposed of in man-made vegetated lagoons to extract nutrients from the sludge.

In New England, the growing challenge for WWTPs, particularly those which also have on-site sludge incinerators and are located along rivers with restricted flow, is caused by nutrients being effectively recycled between the WWTP and sludge dewatering and incineration, requiring more chemical treatment for its removal and producing more and more sludge for incineration in each cycle. Essentially, the nutrients, which are not "destroyed" by incineration, remain trapped and recycled in a virtually closed loop.

Adding to this challenge for WWTPs is the shrinking availability of incinerator capacity in New England and growing limitations on the agricultural use of sludge. This results from two factors: more stringent federal regulation of sludge incineration and local and state prohibitions on agricultural land application of sludge. Available sludge incinerator capacity has dropped in response to enhanced air pollution control regulations adopted in the last decade, leading to the closure of smaller incinerators and adding to the already daunting challenge of siting new incinerators.

In addition, the current focus on the so-called "forever chemicals," such as PFAS (per – and polyfluorinated substances) used in coatings and consumer products to resist heat or stains, is impacting the use of sludge in agriculture. The growing concern about the potential health impacts of PFAS uptake into the food chain has resulted in Maine recently banning the application of nutrient-rich sludge in agriculture, while farm communities in Western Massachusetts are grappling with similar concerns.

These challenges facing municipal and regional WWTPs, sludge incinerators, farm communities, and even consumers require thorough consideration by regulators, regulated facilities, and all of us. While these challenges may be daunting, the current framework and efficacy of wastewater treatment and sludge management in New England, which has responded to the ever-changing regulatory requirements, cannot be left to the rule of unintended consequences.

Burns & Levinson LLP – Sean O. Coffey

June 15 2023

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3 Simple Steps to Improve Digital Government.

COMMENTARY | A customer-centric approach to digital government can help agencies connect more individuals and families with critical services and strengthen the bonds of trust between government and those they serve.

The pandemic accelerated the growth of digital government, bringing health care, education and even court services online. For many people, though, digital interactions with state and local agencies remain low.

A recent survey conducted by the Deloitte Center for Government Insights found that most people in America still choose to interact with government in analog modes, including through call centers and in-person visits. In fact, just 23% of respondents said they regularly use digital channels to

interact with government agencies, citing obstacles and challenges they've experienced when trying to access online services. At the same time, the survey identified several opportunities for agencies to make digital government services more attractive to constituents.

Barriers to Adoption and Reasons for Optimism

The survey found several reasons why digital government isn't yet widely adopted, including:

Continue reading.

Route Fifty

By Michele Causey,
Managing director, Deloitte Consulting LLP

JUNE 16, 2023

Three Cybersecurity Lessons That Business Can Learn From Local Government.

Businesses can learn a lot from mayors about cybersecurity, especially as city managers have suffered a record number of cyber attacks and have learned a lot of lessons the hard way. Baltimore, Maryland was hit with a severe ransomware attack in 2019, for example, but rather than going into panic, they went into incident response mode, took systems offline to contain the attack, and worked to restore services without paying the ransom.

Newly released research finds that these attacks happen much more than most people are aware, and that they have robust, adverse effects on municipalities. Using municipal bonds to measure the economic consequences, the results show that a 1% increase in the county-level cyberattacks covered by the media leads to an increase in offering yields ranging from 3.7 to 5.9 basis points, depending on the level of attack exposure. When evaluating these estimates at the average annual issuance amount of $235 million per county, that implies $13 million in additional annual interest costs per county.

It is not uncommon to see cyberattacks in the headlines in today's digital age. What often remains out of sight, however, is the financial impact on municipalities and their access to financing, according to this research of mine with Professor Christian Lundblad at University of North Carolina Chapel-Hill, Professors Christodoulos Louca and Eleni Kalotychou at Cyprus University of Technology, and PhD candidate Lefteris Andreadis.

Continue reading.

Forbes

By: Christos Makridis

Jun 14, 2023

Municipal Bonds: Bullish Signs for the Hospital Sector.

Financial pressures on hospitals are easing after a challenging 2022, presenting an opportunity for muni-bond investors.

In Brief

- While general obligation bonds receive most of the headlines, revenue bonds represent a much larger portion of the municipal bond market.
- The hospital sector is a large slice of the revenue-bond market and represents 13% of the overall muni market, as represented by the Bloomberg Municipal Bond Index.
- Hospital muni bonds typically provide more yield than other areas in the municipal-bond market, so the sector can deliver attractive long-term returns when performing well.
- Based upon our positive credit outlook and the sector's relatively higher yields, we are bullish about the outlook for the performance of the hospital sector for the remainder of 2023.

Continue reading.

Lord Abbett

By Pranav Sharma, Kari T. Gauster, Nicholas Bragdon

June 14, 2023

Municipal Credit Conditions Have Peaked, but Fundamentals Remain Strong.

Monthly state income tax collections sank in April, indicating the municipal market credit cycle has likely peaked. Yet the decline – which follows record high tax collections in the previous April – will, in our view, slow dramatically and can be well managed by most state and local governments that have amassed ample reserves. While security selectivity is critical, we expect a recession and state and local budget cuts to fuel outsize fear, creating attractive investment opportunities.

Income tax collections shrink

Almost all states saw income tax revenue shrink from April 2022, but the contraction was particularly noteworthy in Georgia, Illinois, Massachusetts, New Jersey, New York, and California. A drop in collections was widely anticipated amid a cooling economy and capital markets, yet the actual figures were worse than expected in several states, including California and New York. Both states are now forecasting current-year or out-year budget deficits after enjoying large surpluses in recent years.

Yet it is important to put the recent slump in context. We believe current declines are driven less by a deteriorating economy, and more by a return to normal trends following unsustainable revenue growth in recent years. State revenues surged a record 20% in 2021 followed by nearly 14% growth in real terms early in 2022, with April 2022 collections representing a high-water mark for much of the sector.Footnote1 Figure 1 shows April 2023 collections shifted lower, bringing most states more in line with fiscal year 2019 and 2021 results.

Continue reading.

by David Hammer, Tom Schuette of PIMCO, 6/16/23

Municipals Set Up for a Summer Rebound.

May update

- Munis posted negative total returns but outperformed comparable Treasuries in May.
- Bank portfolio liquidations have been less disruptive than initially feared.
- Better valuations and improving supply and demand dynamics should spur summer strength.

Market overview Municipal bonds posted negative total returns in May amid continuing heightened volatility. Interest rates rose throughout most of the month as banking concerns abated, economic data exceeded expectations, comments from the Federal Reserve turned more hawkish, and debt ceiling negotiations remained contentious to the very end. The Bloomberg Municipal Bond Index returned -0.75%, bringing the year-to-date total return to 1.62%. The asset class underperformed comparable Treasuries in the intermediate part of the curve but outperformed in both the front end and long end. Shorter-duration (i.e., less sensitive to interest rate changes) and triple-B-rated bonds performed best.

Fund flows remained consistently negative but were counterbalanced by manageable primary and secondary supply. The issuance was in line with historical expectations at $31 billion, 2% below the five-year average, and outpaced reinvestment income from maturities, calls, and coupons by $3 billion. As a result, deals were oversubscribed by 4.3 times on average, slightly above the year-t--date average of 4.0 times. At the same time, anticipated bank portfolio liquidations were less disruptive than initially feared. Selling was orderly and resulted in only a negligible month-ove--month increase in daily bid-wanted. Lower-coupon bonds with shorter maturities made up the bulk of activity.

Continue reading.

by Peter Hayes, James Schwartz, Sean Carney of BlackRock, 6/15/23

Austin ISD Launches New Website for Potential Bond Investors.

AUSTIN, Texas, June 14, 2023 /PRNewswire/ — Austin Independent School District (Austin ISD) today announced its new website for financial information, AustinISDInvestorRelations.com. The new site, created in partnership with BondLink, will make the district’s financial information more readily available for the community and potential bond investors, in preparation for Austin ISD’s upcoming bond sale.

In November 2022, Austin voters overwhelmingly approved Austin ISD’s $2.4 billion bond package, the largest ever in Central Texas. Bond projects will modernize Austin schools and increase security for students and staff.

Austin ISD is the eighth-largest school district in Texas, serving over 73,000 students in 116 diverse school communities. It is also the first district in the state of Texas to have a AAA rating, the strongest possible, from two separate rating agencies: KBRA and Moody’s. The AAA rating indicates

the lowest risk of default. It also ensures that Austin ISD will get the lowest interest rates when taking on debt, which saves taxpayers money.

“Austin ISD is committed to credit quality and strong relationships with our investors and our community,” said Eduardo Ramos, Chief Financial Officer at Austin ISD. “Through the launch of our new investor relations website with BondLink, we aim to communicate directly with more investors and maintain transparency with our community, while finding new opportunities to enrich our students’ education.”

BondLink, the cloud-based investor relations and debt management platform for the municipal bond market, helps issuers like Austin ISD provide a single location for accessing data and documents detailing their financing programs’ credit features. BondLink collaborates with other school districts across the U.S., including Ft. Worth Independent School District (TX), and Washington Elementary School District (AZ)

Colin MacNaught, CEO and co-founder of BondLink, expressed his enthusiasm for the partnership, saying, “Austin ISD is setting a great example for financial transparency for school districts across the country. Through this collaboration, we look forward to working closely with their finance team to enhance their investor relations strategy. Other ISDs can take note of this leadership and start thinking about how they can elevate their finance programs, particularly in today’s choppier market.”

For more information about the Austin ISD’s new transparency initiative and upcoming bond sales, please visit AustinISDInvestorRelations.com.

Florida HB-3: An Overview of ESG Factors Relating to Public Funds Investment and Financial Industry Impacts

On May 2, 2023, Florida Governor Ron DeSantis signed into law HB 3, also known as “An Act Relating to Government and Corporate Activism (the “Act”). The Act amends Florida Statute provisions relating to (i) deposits and investments of state money, (ii) state retirement systems and plans, (iii) state public funds, (iv) state bonds, (v) public deposits, (vi) government contracts, (vii) financial institutions, (viii) consumer finance companies, (viii) money services businesses, and (ix) deceptive and unfair trade practices.

Below is a summary of the provisions of the Act and its impact on the investment of public funds and the new legislative provisions affecting financial institutions in Florida.

Investment Decisions

The Act prohibits applicable parties from taking into consideration “non-pecuniary” factors, including environmental, social and governance (“ESG”) factors, when making investment decisions. Such investment decisions must be based solely on “pecuniary factors.” A “pecuniary factor” is defined in the Act as “a factor that… is expected to have a material effect on the risk or returns of an investment based on appropriate investment horizons consistent with applicable investment objectives and funding policy. The term does not include the consideration of the furtherance of any social, political, or ideological interests.” This requirement applies to the investment of public funds made by (i) the Chief Financial Officer, or other party authorized to invest on his or her behalf, (ii) a citizen support organization or a direct support organization on behalf of an agency, (iii) the plan

administrator, named fiduciary, board, or board of trustees of the retirement system or plans, and (iv) the State Board Administration of the System Trust Fund or other trust funds administered thereby.

Continue reading.

by Tala Woods

June 13, 2023

Shutts & Bowen LLP

Local Taxpayers Could Be On the Hook for the A's Stadium.

I rarely disagree with the Review-Journal's view, but promoting the new Oakland A's stadium by saying that there will be no new taxes is deceptive (June 9 editorial).

The legislation provides the team with $380 million in tax credits from the state, along with county-issued bonds and infrastructure. Tax credits allow the entity to not pay taxes that would normally be paid. And issuing county bonds does cost the taxpayer money. Municipal bonds are debt securities issued by state and local governments. They are loans that investors make to government. In this instance it is being used to help fund the building of a MLB stadium. According to the U.S.Security and Exchange Commission, the issuer, (Clark County) has the power to tax residents to pay the bondholders.

The road infrastructure for the new ball park also comes from taxes we citizens pay.

Continue reading.

Las Vegas Review-Journal

Michael O. Kreps

June 17, 2023

A's Public Financing Lacks Public Scrutiny.

Does anyone else feel like the "the public" didn't get much of a say in whether or not we finance a new ballpark somewhere along the Strip?

Even as the legislature began its second week of the special session to give the Oakland A's a truckload of "public financing," almost none of the process had been terribly open to the public. The clandestine nature of backroom deals that defined the special session is the type that generally doesn't instill confidence the interest of the public good is being prioritized above all else.

Judging by the testimony submitted by the public, Nevadans aren't exactly leaping with joy over the passing of the bill. More than 80 percent of public testimony had been in opposition.

Continue reading.

The Nevada Independent

by Michael Schaus

June 18th, 2023 at 2:00 AM

SEC Delays Cybersecurity Rules: Covington & Burling

Earlier this week, the Securities and Exchange Commission ("SEC") published an update to its rulemaking agenda indicating that it does not plan to approve two proposed cyber rules until at least October 2023 (the agenda's timeframe is an estimate). The proposed rules in question address disclosure requirements regarding cybersecurity governance and cybersecurity incidents at publicly traded companies and registered investment advisers and funds.

- **Cybersecurity Risk Governance Rule for Public Companies:** Proposed in March 2022, this proposed rule would require publicly traded companies to publicly disclose material cyber incidents within four business days and to provide disclosure in periodic reports about certain cybersecurity governance practices. The proposed rule has been subject to two comment periods; after the original comment period ended in May 2022, the SEC re-opened the comment period between October-November 2022.
- **Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies:** Proposed in February 2022, this proposed rule would require registered investment advisers and investment companies to adopt and implement "written cybersecurity policies and procedures reasonably designed to address cybersecurity risks." The rule would also require advisers to "report significant cybersecurity incidents affecting the adviser, or its fund or private fund clients" to the SEC as well as to implement certain recordkeeping practices. The proposed rule has also been subject to two comment periods; after the original comment period ended in April 2022, the SEC re-opened the comment period between March-May 2023.The SEC is also considering multiple other rules that implicate cybersecurity considerations and are in various phases of comment and revision for broker-dealers, clearing agencies, major security-based swap participants, the Municipal Securities Rulemaking Board, national securities associations, national securities exchanges, security-based swap data repositories, security-based swap dealers, and transfer agents.

Covington & Burling LLP – Micaela R.H. McMurrough, Ashden Fein, Caleb Skeath and Shayan Karbass

June 15 2023

Florida Law to Restrict the Use of Certain ESG Factors by Asset Managers and Financial Institutions: Latham & Watkins

The legislation mirrors anti-"industry boycott" legislation introduced or passed in other US states and provides more explicit rubrics of prohibited factors.

On May 5, 2023, Florida Governor Ron DeSantis signed into law House Bill 3, a comprehensive antiESG bill that restricts consideration of environmental, social, and governance (ESG) factors in various contexts (HB 3). The law, scheduled to take effect on July 1, 2023, builds on the State Board of Administration's August 2022 resolution providing that its own investment decisions must be based only on pecuniary factors that do not include "the consideration of the furtherance of social, political, or ideological interests." HB 3 amends a variety of Florida statutes relating to: (i) retirement plans and investments of funds; (ii) financial institutions, including qualified public depositories; (iii) money services businesses; (iv) consumer finance companies; (v) trust fund assets and public funds; (vi) government contracts; (vii) government bonds; and (viii) deceptive and unfair trade practices.

HB 3 fulfills the promises of a 19-state alliance formed on March 16, 2023, by Governor DeSantis and the governors of Alabama, Alaska, Arkansas, Georgia, Idaho, Iowa, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, South Dakota, Tennessee, Utah, West Virginia, and Wyoming to push back against what they believe to be President Biden's ESG agenda. Pursuant to the alliance's policy statement, the governors have agreed to lead their respective state-level efforts to:

- protect taxpayers from ESG influences across state systems, such as by blocking the use of ESG in all investment decisions at the state and local level, so that only "financial factors are considered to maximize the return on investment … [and] eliminating consideration of ESG factors by state and local governments when issuing bonds or prohibiting state fund managers from considering ESG factors when investing taxpayer money"; and
  protect citizens from ESG influences in the financial sector, including "banning the sector from considering so-called "Social
- Credit Scores" in banking and lending practices … [as well as] including stopping financial institutions from discriminating against customers for their religious, political, or social beliefs, such as owning a firearm, securing the border, or increasing [America's] energy independence."

Continue reading.

Latham & Watkins LLP – Lawrence E. Buterman, Sarah E. Fortt, Joshua N. Holian, Betty M. Huber, Arthur S. Long, Andrea J. Schwartzman, Pia Naib, Charlie Beller, Karmpreet "Preeti" Grewal, Austin J. Pierce and Deric M. Behar

June 8 2023

Join GFOA for Training in Denver this August.

GFOA is offering a series of CPE-accredited courses **August 8-11, 2023** including: Overview of Grants Management,
Accounting for Capital Assets, Budget Analyst Training Academy, and ERP Readiness and System Selection.

Click here to learn more and to register.

Jerry Ford Joins the MSRB Board of Directors.

WASHINGTON, DC – The Municipal Securities Rulemaking Board (MSRB) announced today that municipal advisor Jerry W. Ford joined the Board of Directors and will serve through September 30, 2023. Ford will temporarily fill the position vacated by Jill Jaworski, who left earlier this month to assume the role of Chief Financial Officer for the City of Chicago.

To fill the remaining three years of Jaworski's term, the Board is seeking applications from non-dealer municipal advisors through June 16, 2023, via the MSRB's Board of Directors Application Portal. Additional details on the Board application process, information about Board service requirements and FAQs are available on the MSRB's website.

"We're grateful to welcome Jerry back to the Board at this pivotal time as we consider and adopt priorities and a supporting budget for the 2024 fiscal year," said MSRB Chair Meredith Hathorn. Ford previously served on the Board FY 2017-2020 and chaired the Board's Finance and Stakeholder Engagement Committees, among other responsibilities. For the remainder of FY 2023, Ford will serve on both the Audit and Risk Committee and Finance Committee.

Ford is president of Ford & Associates, where he advises clients on credit, structure, and sale of new-money and refunding issues, direct placement of bank loans, use and structure of interest rate swaps, and termination of existing swaps. Prior to founding Ford & Associates, Inc., Ford worked as a public finance underwriter/banker and financial advisor for a major southeast regional bank. Before entering investment banking, Mr. Ford was a senior consultant with Booz Allen Hamilton in Washington D.C. and worked in the Office of the Secretary at the U.S. Department of Health, Education, and Welfare. He has a bachelor's degree from California State University at Los Angeles and a master's in public administration from the University of Southern California.

Date: June 15, 2023

Contact: Leah Szarek, Chief External Relations Officer
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How the A's Stadium Revenue 'Waterfall' Will Repay Public Funds.

As the Oakland A's pitched state lawmakers on contributing up to $380 million in public financing for a new $1.5 billion baseball stadium in Las Vegas, one word kept coming up: "waterfall."

Bill supporters and lawmakers aren't talking about natural river formations or TLC's smash 1996 hit — waterfall in this context refers to a funding mechanism where tax revenue generated inside the stadium goes toward paying back public bonds, filling up reserve funds to backstop the bonds and more in a prioritized order.

But how does that waterfall actually work?

Under the legislation (SB1) — which the Legislature approved Wednesday and awaits Gov. Joe Lombardo's signature — the stadium would sit in a "sports and entertainment improvement district" created by Clark County commissioners. Tax revenues generated within that district would be pooled together to pay off the public funding for the stadium, a concept known as "tax-increment financing" (TIF), also known in this case as a "mega-TIF" because it would use all tax revenues and

fees generated within the district.

Continue reading.

The Nevada Independent

by Sean Golonka, Tabitha Mueller & Jacob Solis

June 15th, 20

Governor Signs Public Funding Bill for New Athletics Stadium in Las Vegas.

RENO, Nev. — Nevada Gov. Joe Lombardo signed into law a $380 million public financing package to help build a Major League Baseball stadium for the Oakland Athletics on the Las Vegas Strip as MLB's commissioner outlined a months-long approval process for the A's proposed move there.

The first-term Republican governor and former sheriff in Las Vegas said he was excited to sign the measure the Democrat-controlled Legislature approved after a seven-day long special session.

"This is an incredible opportunity to bring the A's to Nevada," Lombardo said in a statement from Carson City.

The $1.5 billion stadium with a retractable roof is planned near the homes of the NFL's Vegas Raiders, who fled Oakland in 2020, and the NHL's Golden Knights, who won the Stanley Cup this week in just their sixth season.

"This legislation reflects months of negotiations between the team, the state, the county, and the league," Lombardo said. "Las Vegas' position as a global sports destination is only growing, and Major League Baseball is another tremendous asset for the city."

Baseball Commissioner Rob Manfred outlined the review process of the A's proposed relocation during a news conference hours earlier at a meeting of owners in New York. With a capacity of 30,000, the stadium would be MLB's smallest.

Manfred said the team must submit a relocation application explaining its efforts in Oakland and why Las Vegas is a better market. A relocation committee will define the new operating territory and television territory. It will then make a recommendation to Manfred and the eight-man executive council. The executive council formulates a recommendation to all clubs, which must approve the move by at least three-quarters vote.

The team said in a statement the Nevada governor's signing of the funding package was "a significant step forward in securing a new home for the Athletics."

"We will now begin the process with MLB to apply for relocation to Las Vegas," the statement said. "We are excited about Southern Nevada's dynamic and vibrant professional sports scene, and we look forward to becoming a valued community member through jobs, economic development, and the quality of life and civic pride of a Major League Baseball team."

The $380 million in public funding would mainly come from $180 million in transferable tax credits and $120 million in county bonds. Backers have pledged that the creation of a special tax district around the proposed stadium would generate enough money to pay off those bonds and interest. The

plan would not directly raise taxes.

The plan had revived the national debate over public funding for private sports clubs. A's representatives and some Nevada tourism officials have said the measure could add to Las Vegas' growing sports scene and act as an economic engine. But a growing chorus of economists and some lawmakers have warned that such a project would bring minimal benefits when compared to the hefty public price tag.

Opposition came from both sides of the aisle, especially in northern and rural Nevada several hundreds of miles away from Las Vegas.

"No amount of amendments are going to change the fact we are giving millions of public dollars to a billionaire," Assemblywoman Selena La Rue Hatch, a progressive Democrat from Reno, said during the debate.

"Using taxpayer money on pet projects instead of private capital is socialism," said Republican Sen. Ira Hansen, from neighboring Sparks.

But backers said in addition to creating 14,000 construction jobs and permanent jobs subject to collective bargaining, Major League Baseball on the Las Vegas Strip will build on the excitement surrounding the Raiders, the Golden Knights and the WNBA's Aces in a city that had no major professional sports before 2016.

"With the Aces winning a national championship last year and the Golden Knights securing the Stanley Cup just last night, it is clear Las Vegas is clearly becoming the entertainment and sports capital of the world," said Democratic Assemblywoman Shea Backus, from Las Vegas.

Associated Press

Thu, Jun 15, 2023

- NABL Seeks Clarification From IRS.
- Understanding Government Compensation and Payroll: GFOA Webinar
- *Hirschfeld v. Oklahoma Turnpike Authority* – Supreme Court of Oklahoma holds that agenda items in Oklahoma Turnpike Authority's (OTA) notice of regular board meeting, stating that the board was to consider various design, right of way, and utility management contracts for the bond and capital program for turnpike construction and improvement program, complied with Open Meeting Act (OMA) section governing notice of public meetings.
- And finally, Careful What You Wish For – Eminent Domain Division is brought to us this week by *Kudzu Capital, LLC v. City of Decatur*, in which a special master awarded landowner $2.18MM as just compensation for his property. Aggrieved by this manifest injustice, the landowner demanded a jury trial. He was given a jury trial. The jury then awarded him the princely sum of $1.4MM. We've run the numbers in our heads and – quite preliminarily – have our suspicions that the second number is in fact less than the first.

PUBLIC UTILITIES - CALIFORNIA

Campana v. East Bay Municipal Utility District

Court of Appeal, First District, Division 4, California - May 23, 2023 - Cal.Rptr.3d - 2023 WL 3596189 - 2023 Daily Journal D.A.R. 4803

Water utility customers brought putative class action against municipal utility district alleging that the tiered-rate water structure used by the utility to determine the cost of residential and commercial water service in two counties violated Proposition 218's procedural and substantive limitations on a local agency's ability to extend, impose, or increase property-related fees for services.

The Superior Court sustained utility's demurrer without leave to amend. Customers appealed.

The Court of Appeal held that:

- The complaint sought to invalidate utility's rate structure, and did not merely seek refund of excess fees, and thus was subject to 120-day limitations period;
- The limitations period did not run anew when, each month, the utility collected the allegedly illegal tax; and
- The Government Claims Act did not extend the 120-day statute of limitations applicable to customers' claims.

Water utility customers forfeited any claim that the tiered-rate water structure used by municipal utility district to determine cost of residential and commercial water service violated Proposition 218, which imposed procedural and substantive limitations on a local agency's ability to extend, impose, or increase property-related fees for services, by misusing revenues for a purpose other than providing service, where customers' complaint set forth no factual allegations specific to the alleged section misuse of funds claim, and they failed to develop any pertinent arguments in their briefing on appeal of superior court's decision to sustain utility's demurrer, including any explanation for their position that an inverse validation was inapplicable.

Water utility customers putative class action complaint, which alleged the tiered-rate structure used by municipal utility district determine cost of residential and commercial water service in two counties violated Proposition 218's limitations on local agency's ability to extend, impose, or increase property-related fees for services, sought to attack, review, set aside, void, or annul utility's rate structure, and did not merely seek refund of excess fees, and thus, customers' claims were subject to 120-day limitations period; complaint framed the claims as an attack on tiered-rate pricing, alleging the constitutional infirmities of this structure gave rise to partial refund claims, and effect of customers' allegations, if true, would be to invalidate the tiered-rate fee structure.

Provision of Proposition 218 stating that all fees or charges shall comply with the section imposing procedural and substantive limitations on a local agency's ability to extend, impose, or increase property-related fees for services, does not authorize a new challenge, subject to a new statute of limitations, with the assessment and collection of fees each month; the provision merely requires that all fees, existing at the time Proposition 218 was approved, be brought into line with the substantive requirements of the section.

The 120-day limitations period applicable to water utility customers' putative class action complaint alleging the tiered-rate structure used by municipal utility district to determine cost of residential and commercial water service in two counties violated Proposition 218's limitations on local agency's ability to extend, impose, or increase property-related fees for services, did not run anew when, each month, the utility collected the allegedly illegal tax; the complaint challenged the validity of the utility's resolution adopting service fees, and there was no ongoing statutory obligation the

district had to fulfill after it adoption the resolution.

Assuming notice was required under the Government Claims Act for water utility customers' claims alleging the tiered-rate structure used by municipal utility district to determine cost of residential and commercial water service in two counties violated Proposition 218's limitations on local agency's ability to extend, impose, or increase property-related fees for services, any time requirements imposed by the Claims Act did not extend the 120-day statute of limitations applicable to customers' claims, because the gravamen of their complaint was a challenge to the tiered-rate structure adopted by the utility through resolutions.

WATER DISTRICTS - CALIFORNIA

Barajas v. Sativa L.A. County Water District

Court of Appeal, Second District, Division 2, California - May 25, 2023 - Cal.Rptr.3d - 2023 WL 3641453

Residents brought putative class action against local water district and fictitiously-named defendant for breach of contract, nuisance, and negligence based on district's alleged failure to provide potable drinking water.

After county's local agency formation commission (LAFCO) dissolved district, residents substituted county in lieu of fictitiously-named defendant, then voluntarily dismissed county.

Trial court certified class, then decertified class as to nuisance claim. The Superior Court, Los Angeles granted district's motion to dismiss, which it construed as motion for judgment on the pleadings, denied residents' motion for leave to amend complaint to name district as defendant "by and through" county, and denied residents' motion to vacate order that had granted their motion for voluntary dismissal of county as defendant. Residents appealed.

The Court of Appeal held that district was no longer valid defendant upon its dissolution because successor agency was appointed to wind up district's affairs.

County local agency formation commission (LAFCO) did not task water district with winding up its own affairs when dissolving district pursuant to Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, and, thus, upon district's dissolution, district had no further function to carry out and was no longer valid defendant in residents' action for breach of contract, nuisance, and negligence; Act authorized LAFCO to name successor agency instead of permitting district to wind up its own affairs by default, which LAFCO did by designating county as successor, transferring district's assets to county, and explicitly tasking county with winding up district's affairs, and it would be absurd for district to retain winding-up power when county owned and controlled its assets.

The provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 stating that a local agency's dissolution terminates its powers except those necessary to wind up its affairs, although they might suggest that a district always continues to exist notwithstanding its dissolution for purposes of winding up its affairs, these provisions merely set up default terms and conditions for dissolution; the Act elsewhere provides that a local agency formation commission (LAFCO) has the power to specify the terms and conditions that apply upon dissolution in a specific case, and those specific terms control over the Act's general provisions governing dissolution.

When authorizing dissolution of specific water district and appointment of county as administrator

and successor agency, legislature did not intend to preserve pending claims against district arising from its provision of water, and, thus, construing provisions of Cortese-Knox-Hertzberg Local Government Reorganization Act governing dissolution powers to preclude residents' action against district, or against county as successor responsible for winding up district's affairs, for negligence and other claims did not contravene legislature's intent; statute specifically addressing district explicitly granted immunity to county for claims arising from district's provision of water, so that county had incentive to assume stewardship despite district's water quality violations.

LIABILITY - CALIFORNIA

Los Angeles Unified School District v. Superior Court of Los Angeles County

Supreme Court of California - June 1, 2023 - P.3d - 2023 WL 3745196

Public high school student brought tort action against school district, alleging that district employee sexually assaulted her.

The Superior Court denied district's motion to strike student's request for statutory enhanced damages based on the assault resulting from district allegedly covering up employee's sexual assault of another student. District petitioned for writ of mandate. The Court of Appeal granted a writ. Review was granted.

The Supreme Court held that:

- Government Claims Act's prohibition of public entity being held liable in tort for damages imposed primarily for sake of example and by way of punishing defendant applies not only to damages that are simply and solely punitive but also to damages that would function, in essence, as award of punitive or exemplary damages; overruling *People ex rel. Younger v. Superior Court*, 16 Cal.3d 30, 39, 127 Cal.Rptr. 122, 544 P.2d 1322; *San Francisco Civil Service Assn. v. Superior Court*, 16 Cal.3d 46, 127 Cal.Rptr. 131, 544 P.2d 1331; *Kizer v. County of San Mateo*, 53 Cal.3d 139, 279 Cal.Rptr. 318, 806 P.2d 1353; and
- Government Claims Act shields public entities from liability for statutory award of enhanced damages, not exceeding treble damages, when childhood sexual assault was result of cover up.

EMINENT DOMAIN - GEORGIA

Kudzu Capital, LLC v. City of Decatur

Court of Appeals of Georgia - June 7, 2023 - S.E.2d - 2023 WL 3859348

City brought condemnation action against subdivision property owner seeking to condemn the property and requested appointment of special master.

Following a hearing, the special master awarded property owner $2,180,000. Both property owner and city appealed the award and requested a jury trial. In jury trial, the Superior Court incorporated the jury's verdict into a final judgment and awarded property owner $1,400,000. Property owner appealed.

The Court of Appeals held that:

- Price owner paid for the property and the corresponding tax certificate were relevant in

determining the fair market value of the property;

- Evidence of property owner's alleged right to require city to open right-of-way for vehicular use for roadway that abutted the property was inadmissible;
- Property owner was permitted by trial court to present evidence pertaining to its representative's dealings with city prior to the condemnation proceeding;
- Property owner's request to charge jury were adequately covered by the other general instructions given by the trial court; and
- Trial court did not err by charging jury that a county or municipality had no obligation to "open" an undeveloped road.

ZONING & PLANNING - MAINE

Tominsky v. Ogunquit

Supreme Judicial Court of Maine - May 23, 2023 - A.3d - 2023 WL 3590162 - 2023 ME 30

Property owner filed two appeals in the Superior Court, the first challenging code enforcement officer's issuance of building permits for six dwelling units on abutting property, and the second challenging the issuance of a certificate of occupancy for one of the dwelling units. Permittee filed appeal challenging town board of appeals' granting of good cause exception to owner for his untimely administrative appeal of the building permits.

The Superior Court denied owner's first appeal, dismissed owner's second appeal, and denied permittee's appeal. Owner and permittee appealed the decisions, and the appeals were consolidated for review.

The Supreme Judicial Court held that:

- As a matter of first impression, party that has obtained municipal approval need not and should not file its own appeal or cross-appeal to challenge the application of good cause exception to deadline for filing administrative appeal;
- Permittee lacked standing to file appeal town board of appeals' decision denying owner's appeal on the merits;
- Owner's mistaken belief of law was not an extraordinary circumstance that would result in flagrant miscarriage of justice that could excuse his delay in filing appeal to town board of appeals; and
- Issuance of certificate of occupancy was not an appealable event.

ZONING & PLANNING - MASSACHUSETTS

Hume Lake Christian Camps, Inc. v. Planning Board of Monterey

Supreme Judicial Court of Massachusetts, Suffolk - June 7, 2023 - N.E.3d - 2023 WL 3855265

Nonprofit Christian organization appealed planning board's denial of its application to build a recreational vehicle (RV) campground on its property, contending the proposed campground fell within Dover Amendment's limits on the ability of municipalities to "regulate or restrict the use of land or structures for religious purposes."

The Land Court Department entered judgment in part for organization. Board appealed, and organization cross-appealed. The Supreme Judicial Court on its own initiative transferred the case

from the Appeals Court.

The Supreme Judicial Court held that:

- Primary or dominant purpose of housing families at proposed RV campground would be to serve organization's religious mission;
- Primary or dominant purpose of housing volunteers and seasonal staff at RV campground would be to facilitate the operation, maintenance, and improvement of organization's religious family camp; and
- Primary or dominant purpose of religious family camp was to serve organization's evangelical mission, rather than recreation.

Primary or dominant purpose of religious family camp was to serve nonprofit Christian organization's evangelical mission, rather than recreation, and thus recreational vehicle (RV) campground for camp fell within Dover Amendment's limits on the ability of municipalities to "regulate or restrict the use of land or structures for religious purposes"; camp attendees were required to participate in two chapel sessions each day and to receive religious instruction, camp's guest retreats were available only to organizations that agree to abide by a schedule that included religious components, nonbelievers were allow to attend camp programs in the service of proselytization, and recreational activities boosted interest in the camp's religious offerings.

ZONING & PLANNING - MISSISSIPPI

City of Ocean Springs v. Illanne

Supreme Court of Mississippi - April 27, 2023 - So.3d - 2023 WL 3113383

Neighbors appealed three separate zoning decisions of the city board of aldermen regarding subdivision application for townhouse development.

The Circuit Court consolidated the appeals, reversed the decisions in two of the appeals, and on motion to alter or amend, altered its ruling in part, and remanded to the city board. City appealed.

The Supreme Court held that remand was required for a factual determination as to whether subdivision applicant was acting as a "petitioner" entitled to notice as a necessary party.

Remand of zoning appeals was required for a factual determination as to whether subdivision applicant was acting as a "petitioner" before the board of aldermen or whether he was acting in a representative capacity on behalf of the petitioner, and thus whether neighbors who appealed zoning decision were required to name and give notice to applicant as a necessary party; in addition, Supreme Court would direct the trial court to determine all issues of fact that may arise out of any appeal submitted to the trial court for a determination and that may be necessary for disposition of cases on appeal.

APPROPRIATIONS - NEW YORK

Schulz v. State

Supreme Court, Appellate Division, Third Department, New York - May 11, 2023 - N.Y.S.3d - 2023 WL 3355650 - 2023 N.Y. Slip Op. 02575

Taxpayers brought hybrid Article 78 proceeding and declaratory judgment action, alleging that appropriations in Governor's budget bill, relating to agreement between State, county, and National Football League (NFL) franchise in which State would appropriate $600 million in funds to urban development corporation for services and expenses related to development of proposed football stadium in county, violated provisions of State Constitution prohibiting State and local governments from appropriating public funds in aid of private undertakings.

Government defendants filed motion to dismiss for failure to state cause of action. The Supreme Court dismissed taxpayers' petition and denied petitioners' motion to file surreply. Taxpayers filed separate appeals.

The Supreme Court, Appellate Division, held that:

- State's appropriations did not violate State Constitution, even though appropriations would aid private undertaking;
- Any funds provided by county would not violate State Constitution; and
- Declaratory judgment, rather than dismissal of petition, was appropriate remedy.

Appropriation of State funds, relating to agreement between State, county, and National Football League (NFL) franchise in which State would appropriate $600 million in funds to public development corporation for services and expenses pertaining to development of proposed sports stadium, did not violate State Constitution's prohibition on appropriations of public funds for private undertakings, even though appropriations would aid private undertaking; private benefit was merely incidental, appropriations for stadium rebuild were expressly authorized by statute, and Legislature recognized public purpose of sports stadiums in creating and retaining jobs, attracting business investment, and enhancing State's reputation.

Any funds appropriated by county, relating to development of sports stadium located in county, would not violate State Constitution's prohibition on appropriation of funds by local governments for private undertakings; if county appropriated funds to private benefit corporation, those funds would not be subject to constitutional prohibition on gifting money to private entities, and if county appropriated money directly to private parties for stadium project, appropriations would not be barred by constitutional prohibition given predominantly public purpose of stadium.

Issuance of declaratory judgment, rather than dismissal of petition, was proper remedy in taxpayers' hybrid Article 78 proceeding and declaratory judgment action challenging appropriations of State funds related to development of sports stadium, upon determination that appropriations by State and county would not violate State Constitution's prohibitions on appropriations of public funds for private undertakings, since there were no questions of fact.

OPEN MEETINGS - OKLAHOMA

Hirschfeld v. Oklahoma Turnpike Authority

Supreme Court of Oklahoma - May 31, 2023, - P.3d - 2023 WL 3735825 - 2023 OK 59

Landowners petitioned for declaratory judgment and injunctive relief, claiming that Oklahoma Turnpike Authority (OTA) violated Open Meeting Act (OMA) by not providing sufficient notice of proposed new turnpikes in OTA's meeting agendas.

The District Court granted summary judgment for landowners. OTA appealed.

The Supreme Court held that:

- Agenda items about short-term financing for “certain turnpike projects” were sufficient;
- Agenda item about consideration of a consulting engineering services contract was sufficient;
- Agenda items about contracts for bond and capital program for turnpike program were sufficient;
- Governor’s mere announcement of turnpike program during meeting did not violate OMA notice requirement; and
- Supreme Court had exclusive jurisdiction to consider landowners’ request for declaratory relief.

Agenda items in Oklahoma Turnpike Authority’s (OTA) notice of regular board meeting, stating that a resolution authorizing short-term financing for “certain turnpike projects” would be considered and acted upon at the meeting, complied with Open Meeting Act (OMA) section governing notice of public meetings, even though the notice did not specify whether the financing was for one of three proposed new turnpikes that were part of turnpike improvement program, where “turnpike project” was a statutorily-defined term, OTA included with the agenda a copy of the resolution which referred to interim financing for “turnpike projects,” and board considered and approved resolution without any modifications, additions, or amendments.

Agenda item in Oklahoma Turnpike Authority’s (OTA) notice of regular board meeting, stating that the engineering division would submit a consulting engineering services contract for board’s consideration and action, complied with Open Meeting Act (OMA) section governing notice of public meetings, even if notice lacked specificity about which turnpikes were involved in a long-range turnpike improvement and expansion program that OTA announced at a subsequent meeting, where contract was for program management services, which was what was specified in agenda item, rather than for construction of a specific component of any turnpike project, and board considered and took action only on the contract expressly stated in the agenda without any modifications, additions, or amendments.

Agenda items in Oklahoma Turnpike Authority’s (OTA) notice of regular board meeting, stating that the board was to consider various design, right of way, and utility management contracts for the bond and capital program for turnpike construction and improvement program, complied with Open Meeting Act (OMA) section governing notice of public meetings, even if notice lacked specificity as to whether contracts involved the construction of one of three proposed new turnpikes, where board considered and took action only on the contract expressly stated in the agenda, board’s approval of agenda items did not include a contract for a specific component of any turnpike project, and items of business dealt with several turnpike projects on a larger scale than the possible construction or proposed route of one turnpike.

Governor’s announcement of a turnpike construction and improvement program during the director’s report section of Oklahoma Turnpike Authority’s (OTA) regular board meeting, without prior notice in an agenda item in OTA’s notice of public meeting, did not violate notice requirements of Open Meeting Act (OMA), where announcement was for informational purposes only, and board did not take any action at meeting regarding the program.

Supreme Court had exclusive jurisdiction to consider landowners’ request for declaratory relief to prevent Oklahoma Turnpike Authority (OTA) from exercising its eminent domain power to construct proposed new turnpike, upon OTA’s filing of application to validate proposed bonds to construct and operate turnpike.

IMMUNITY - TEXAS

City of Austin v. Quinlan

Supreme Court of Texas - June 2, 2023 - S.W.3d - 2023 WL 3767092

Restaurant patron brought premises liability action against city and restaurant that operated sidewalk café, arising out of ankle injury sustained when patron fell more than one foot from sidewalk to street.

The 98th District Court denied city's plea to jurisdiction, and city appealed. The Austin Court of Appeals affirmed in part and reversed in part. Petition for review was granted.

The Supreme Court held that:

- Sidewalk café maintenance agreement between restaurant and city did not impose nondiscretionary duty on city, and thus, claims against city did not fall outside "discretionary function" exception to waiver of immunity, under Texas Tort Claims Act;
- City's alleged control over sidewalk café, under agreement, had no bearing on issue whether "discretionary function" exception to city's waiver of governmental immunity applied;
- Statutes governing municipality's authority to issue permit for use of municipal street or sidewalk for public convenience or private use did not impose nondelegable, nondiscretionary duty on city, for which alleged breach fell outside "discretionary function" exception to waiver of immunity; and
- Dismissal of complaint, rather than remand to allow patron opportunity to amend, was appropriate.

IMMUNITY - TEXAS

City of League City v. Jimmy Changas, Inc.

Supreme Court of Texas - June 9, 2023 - S.W.3d - 2023 WL 3909986

Restaurant developer sued city for breach of contract for nonpayment of reimbursements for certain expenditures made in connection with construction and operation of a restaurant within city limits.

The District Court denied city's plea to the jurisdiction. City brought interlocutory appeal. The Houston Court of Appeals affirmed. City petitioned for review, which was granted.

The Supreme Court held that:

- Activity was not included in statutory list of governmental functions; disapproving *CHW-Lattas Creek, L.P. v. City of Alice,* 565 S.W.3d 779;
- Activity was discretionary, weighing in favor of concluding that city engaged in a proprietary function;
- Activity was primarily for benefit of those within corporate limits of municipality, weighing in favor of concluding that city engaged in a proprietary function;
- Terms and requirements of agreement did not indicate in any way that city entered into agreement on state's behalf, weighing towards a proprietary function; and
- City's discretionary decision to enter into agreement with restaurant developer was not essential to any governmental function, weighing in favor of holding that city engaged in a proprietary function.

City's activity of entering into agreement with restaurant developer as an economic-development activity and not as a community-development or urban-renewal activity was not included in statutory list of governmental functions protected by sovereign immunity under Tort Claims Act, for purposes of deciding city's plea to the jurisdiction in developer's breach of contract action against city for

nonpayment of reimbursement of expenditures in constructing and operating restaurant in city; purpose of agreement was to stimulate business and commercial activity, create local jobs, and increase state sales tax revenue, not to undertake urban renewal activities; disapproving *CHW-Lattas Creek, L.P. v. City of Alice*, 565 S.W.3d 779.

ZONING & PLANNING - WISCONSIN

Miller v. Zoning Board of Appeals of Village of Lyndon Station

Supreme Court of Wisconsin - June 6, 2023 - N.W.2d - 2023 WI 46 - 2023 WL 3829573

Objecting property owner sought certiorari review of village zoning board of appeals' upholding of village board's decision to grant neighboring property owners' application to rezone residential property for commercial use.

After neighboring property owners intervened, the Circuit Court reversed. Neighboring property owners appealed. The Court of Appeals reversed. Objecting property owner sought statutory certiorari review.

The Supreme Court held that village board's vote to rezone property was a "legislative act," and thus board member's alleged partiality from being the mother of one of the neighboring property owners who applied for the rezoning did not violate the procedural due process rights of the objecting property owner.

Village board's vote to amend zoning ordinance and rezone applicants' property from residential use to commercial use was "legislative act" rather than "adjudicative act," and thus board member's alleged partiality from being mother of one applicant did not violate procedural due process rights of objecting neighboring property owner; although vote only occurred in response to rezoning application, board made prospective change by enacting, repealing, or amending existing generally applicable law, and when legislative actions were at issue in dispute about procedural due process, those affected by legislation were not entitled to any process beyond that provided by legislative process.

The Risk of a US Recession Is Rising. Here's What That Means for States' Credit Outlook.

- **State credit quality is less favorable, Conning report says**
- **Texas gets top ranking this year, surpassing Florida**

The rising possibility of a recession threatens US states' credit quality, according to a new report.

As economic conditions soften the state's credit picture is less favorable, said Conning & Co. in its annual report analyzing the credit health of all 50 states released on Tuesday. The investment firm lowered the municipal sector's outlook to "declining" from stable.

"The inflation that supports sales-tax revenues will likely wane, and personal income taxes will probably decline with the labor market worsening," Karel Citroen, head of municipal research at Conning, a Hartford, Connecticut-based firm that manages over $7 billion of municipal bonds for clients, wrote in the report.

States have benefited significantly from robust tax collections and the unprecedented inflow of hundreds of billions of dollars from federal pandemic aid, pushing their financial reserves to all-time highs, and increasing pension, as well as other post-employment benefit contributions in 2022. Balances in rainy-day funds hit all-time highs in 37 states and their combined savings reached a record $134.5 billion by the end of fiscal 2022, according to data from the National Association of State Budget Officers.

The federal government provided nearly $200 billion in direct aid to states under the $1.9 trillion American Rescue Plan legislation, which boosted the fiscal strength of states and offset some of the tax-revenue shortfalls that plagued major cities as the shift to remote work turned residents away from urban centers.

However, tighter Federal Reserve monetary policy and tapering Covid-19 aid may reduce tax-revenue growth and could diminish state credit quality during the upcoming fiscal year, according to Conning.

"States in most cases have a constitutional obligation to balance their budget when they are being put together," Citroen said in an interview. "But when revenues fall short of expectations, it's difficult to cut expenditures on the fly, so states might have to tap into their reserves."

State Creditworthiness

According to Conning's report, Texas received the highest credit quality ranking this year and unseated Florida for the No. 1 ranking.

"Texas is a perfect example of a state that really diversified over the last 10 years away from natural resources and was able to attract tech and health care firms," Citroen said.

Texas outperformed in GDP per capita, the report said, adding that the Lone Star State and Florida, now second, benefited from strong economies and population growth. South Dakota, Tennessee and Idaho rounded out the top five states for credit quality.

Utah, which held the highest ranking for the three years prior to 2022, fell to its lowest rank since 2015, due in part to rising home prices. California slipped 14 spots to No. 42 from last year's rankings on tax-revenue declines.

Some states that benefited from migration during the Covid-era are now staring down significant infrastructure spending and pension obligations that could present challenges to their fiscal strength in the event of a recession.

"It's good when people move to an area because it brings in more tax collections as people spend and buy homes. But it drives up home prices and at some point the local municipality or the state needs to provide additional services as well," Citroen said.

Bloomberg CityLab

By Maxwell Adler

June 13, 2023

S&P Cyber Risk Insights: Recession Pressures Could Expose More U.S. Public Finance Issuers To Cyber Attacks

Key Takeaways

- Challenging macroeconomic factors such as rising inflation may leave many U.S. public finance issuers with fewer resources to maintain adequate cyber security protections, potentially raising their vulnerability to attacks.
- Substantive and rising cyber security insurance premiums, coupled with additional security requirements, will further challenge issuers' ability to maintain coverage during a recession.
- Recessionary pressures may accelerate reductions in cyber security insurance coverage, compounding waning coverage levels due to high claims volumes in the past few years.

Continue reading.

6 Jun, 2023

S&P U.S. Public Finance Rating Activity, May 2023

View the S&P Rating Activity.

June 6, 2023

S&P Global Ratings Definitions.

View the S&P Ratings Definitions.

9 Jun, 2023

US Public Transit Systems Face Credit Downgrades as Riders Stay Away.

- **S&P downgraded San Francisco's BART to A+ from AA last week**
- **Downgrades could lead to higher borrowing costs for operators**

US public transit systems have faced a slew of challenges from trying to bring riders back after a pandemic-induced slump to struggling with financial shortfalls. The latest hurdle will be trying to avoid credit-rating downgrades that will make borrowing more expensive.

California's Bay Area Rapid Transit District had its credit rating lowered two-notches to A+ by S&P Global Ratings last week. That revision also cited a negative outlook on its score, indicating future downgrades may be likely.

It's one of several public-transit agencies put on notice by S&P, including the San Francisco Municipal Transportation Agency and DC's Washington Metropolitan Area Transit Authority. Both S&P and Moody's Investors Service have negative outlooks on the public-transit sector broadly.

Continue reading.

Bloomberg CityLab

By Skylar Woodhouse

June 6, 2023

Hey, Budding Accountants: Governments Need You

A shortage of accountants and auditors has left dozens of municipalities without credit ratings, and new financial reporting requirements are likely to make things worse. There are ways to tackle this skill set supply chain problem.

S&P Global Ratings recently withdrew its credit ratings on 64 local governments after they failed to file financial updates on time because of staff shortages and delayed audits. Nearly 150 such municipalities are now on credit watch for tardy financial filings. Professional-association leaders warn that accounting staff shortages are popping up nationwide, impairing financial reporting at the same time that Congress has been pushing for more transparency in financial data, which will require even more staff work.

Historically, graduates with an accounting degree or a CPA certificate could always count on getting a job in the public sector as a secure, albeit unglamorous, career path. Meanwhile, accounting firms were always happy to fill their off-season job calendars with state and local government audits.

So what's changed in the supply chain for governmental accountants? Has life in the private sector become so attractive that all students gravitate to for-profit enterprises and high-powered corporate auditing at the expense of the public-sector workforce? Is it just about pay, as state and local governments fall farther behind in the competition for talent? Or is something else going on?

Continue reading.

governing.com

by Girard Miller

June 6, 2023

Fitch: Success of Smaller Colleges' Enrollment Strategies Not Guaranteed

Fitch Ratings-New York/Chicago-08 June 2023: Proactive strategic investments that create sustainable student pipelines can improve the long-term viability of smaller U.S. colleges, Fitch Rating says. However, addressing enrollment declines before reserves and other resources are depleted is key, as investments in new programs will stretch budgets in the short- to medium-term until colleges can see revenue-generating results, which generally lag by several years depending on factors such as capacity and accreditation. Strategies like tuition resets, scholarship aid and direct or pre-approved admissions are tools to attract students, but the challenge is supporting affordability while maintaining fiscal balance, particularly in an inflationary cost environment.

Debt and liquidity metrics for smaller private colleges were strong over the pandemic due in part to stimulus funds, strong investment returns and limited borrowing. However, we expect medians to return to pre-pandemic levels now that relief funds are exhausted and markets have declined from highs in 2021. Even with robust cash flow, smaller private colleges are generating 1.3x debt service coverage, lower than 2018-2021 annual median coverage levels.

Continue reading.

Fitch: Summer Months Crucial for North American Airports as Possible Recession Looms

Fitch Ratings-Austin-07 June 2023: The summer months could be a catalyst for a return to growth for North American airports before a potential economic downturn takes hold in the latter half of the year, according to Fitch Ratings.

Following a strong start to 2023, passenger traffic has flattened in recent months due to a combination of supply chain constraints, delayed aircraft deliveries, pilot and crew shortages, staffing issues and permanent losses in the business travel segment. Still, U.S. airport ratings remain on solid footing. 'The blended business/leisure traveler will help companies pumping the brakes on corporate travel,' said Senior Director Jeffrey Lack. 'Employers' push to get more workers back to the office could lead to sustained improvement to the business segment.'

Looking ahead, domestic leisure airports are most at risk to see growth soften given the resurgence of international travel with the elimination of COVID-19 restrictions in foreign countries. Conversely, international gateway airports, such as SFO, LAX, JFK and ORD will likely have the most to gain as recovery ensues. Canadian airports also stand to gain given the full border opening and the relatively slower recovery in 2022.

Many airports, including IAH, SEA, and DEN are expecting double-digit growth in traffic this summer from last summer, according to Airlines for America. One impediment to growth at international gateway airports could be the unprecedented surge in demand for travel documents that has created a growing backlog, with passport times now taking nine to 13 weeks. Demand for passports has surged by at least 30% this year, as 500,000 applications come in weekly.

The FAA acknowledged the potential strain on the aviation industry this summer and has relaxed "use it or lose it" policies for takeoff and landing slots from mid-May to mid-September at the three major airports serving NYC and to DCA in Washington, DC. Airlines will likely fly fewer routes this summer, but with larger planes, netting a positive increase in capacity.

Looking past the busy summer travel months, macro headwinds from a potential economic downturn could weaken demand. Airline cost pressures from labor rate increases under new contracts could also cause a softening in demand to the extent there is a full pass through to average ticket prices. With traffic at most airports now close to or exceeding pre-pandemic levels, non-airline revenues have solidly rebounded, led by strong growth in parking and rental cars.

Partially due to the three rounds of federal stimulus, some airports have liquidity balances at or greater than pre-pandemic levels and some airports still retain federal relief funds to utilize over the next year. Debt service coverage ratio levels are normalizing under the cost recovery frameworks and leverage remains consistent with current rating levels.

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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 - Cal.Rptr.3d - 2023 WL 3735488

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.

Fitch: Wage Growth Levels Off as Job Openings Remain High for U.S. NFP Hospitals

Fitch Ratings-Austin-12 June 2023: Payroll growth is slowing for U.S. not-for-profit hospitals with no near-term relief in sight for high labor inflation, according to Fitch Ratings' latest labor dashboard.

Average hourly earnings (AHE) wage growth for hospital and ambulatory healthcare employees remains well below recent highs as of April 2023. This sign that labor inflationary pressures are easing is positive, but wage growth for hospitals is still well above pre-pandemic averages.

Healthcare and social assistance job declined somewhat in April 2023, but job openings and quits rates are still high. "Hospitals are reducing non-clinical staff positions after experiencing material operating losses starting in early 2022," said Director Richard Park. "Commercial rate increases will

help alleviate profitability pressures but will not cover wage inflation from the past two years on their own." The number of quits in the healthcare and social assistance sector also remains high compared to before the pandemic.

One plus of late is the continued improvement of nursing facility staff shortages. Facilities reported nurse and aid shortages for April well below the January 2022 peak. "Sustained staffing improvements at nursing homes should help improve length of stay/discharge challenges at hospitals," said Park.

The full dashboard is available at 'www.fitchratings.com'.

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Fitch: Labor Inflation Remains an Uphill Battle for U.S. Life Plan Communities

Fitch Ratings-New York/Austin-12 June 2023: Persistently high wage inflation remains a major credit risk for U.S. life plan communities (LPC) and skilled nursing facilities (SNFs) given the very tight labor environment, according to Fitch Ratings in its latest Labor Dashboard for the sector.

LPC and SNF payrolls remain well below pre-pandemic levels. "High fee increases at LPCs will help alleviate wage pressures, but this practice is not sustainable over the longer term to maintain profit margins," said Director Richard Park. "LPCs and communities with a significant SNF component will have to execute on productivity enhancements, cost savings and manage skilled nursing admissions to successfully operate through the current reality of tight staffing conditions and higher unit labor costs."

SNF staff shortages are improving but remain a major challenge as over 16% of nursing homes are reporting a shortage of nurses and aides. The number of quits in the healthcare and social assistance sector remains high compared to recent averages.

"The tight labor market continues to be in favor of workers in search of higher wages and better work environments," said Park.

Fitch's latest 'Life Plan Communities Labor Dashboard: June 2023' is available at

‘www.fitchratings.com’.

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Fitch Ratings Updates U.S. Public Finance Prepaid Energy Transaction Rating Criteria.

Fitch Ratings-New York/Austin-13 June 2023: Fitch Ratings has published the following report: “U.S. Public Finance Prepaid Energy Transaction Rating Criteria.” This report updates and replaces the prior report published on June 10, 2022.

Primary revisions to the criteria include a clarification of Fitch’s use of counterparty credit assessments in its analysis and a di minimis update of Fitch’s stressed gas price.

The key criteria elements remain consistent with those of the prior report, and there is no impact on outstanding ratings. The previous version of the criteria has been retired.

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What State and Local Leaders Need to Know About the Federal Government's Regional Tech Hubs Competition.

Last week, the Economic Development Administration (EDA) posted a Notice of Funding Opportunity (NOFO) for the Regional Technology and Innovation Hubs (Tech Hubs) program. In doing so, the EDA has invited regional consortia across the country to apply for federal funding awards to accelerate the scale-up of their advanced industries as part of a new wave of place-based economic development.

The NOFO is the first of two for the Tech Hubs program, and launches the $500 million competition as a down payment on an authorized—but not yet fully funded—$10 billion initiative to transform the nation's industrial geography.

Envisioned by Brookings Metro and the Information Technology and Innovation Foundation in 2019 and structured by last year's CHIPS and Science Act, the Tech Hubs program represents a key part of the nation's new push to build global economic leadership by unlocking development in new places. It shows that, at last, the nation is urgently investing in the creation of good jobs in more places.

Continue reading.

The Brookings Institution

by Mark Muro, Joseph Parilla, and Martha Ross

Tuesday, May 16, 2023

To Enhance Community Services and Empower Workers, Local Governments are Building their Own Gig Work Platforms.

Despite historically low unemployment, too many workers in America are effectively sidelined or forced to accept work on the wrong terms. While there is no single solution to this multifaceted problem, an important part of addressing it lies in rethinking gig economy work, much of which is found on digital platforms such as Uber and DoorDash. This kind of work and the app-based way of finding it have become core features of our economy.

But this growing and poorly understood corner of America's labor market and service economy is now at a turning point. Many public officials, worker advocates, and others are understandably skeptical about gig economy work and how it can benefit communities—not just the companies and consumers relying on contracted workers.

Yet gig workers are meeting many critical needs, whether as helping hands at home, transporting

people and goods, or delivering other skilled tasks in flexible ways. Now, two years after the American Rescue Plan Act's passage, that law's historic federal aid is flowing to states and localities, many of which are using the funds to develop locally driven innovations that invest creatively in their low-income workforce. This presents an opportunity to drive change that would benefit millions of people in need of gig work services as well as the workers (who are disproportionately women and people of color) who deliver them.

Continue reading.

The Brookings Institution

by Xavier de Souza Briggs and Wingham Rowan

Tuesday, May 9, 2023

NABL Seeks Clarification From IRS.

Bond lawyer requests for clarifications on Internal Revenue Service rules affecting municipal finance are so far eliciting no answers from the IRS, leading the National Association of Bond Lawyers to send a letter to the agency requesting a response to some issues that date back to 2018.

The letter comes from NABL president Jodie Smith of Maynard Nexsen, who's halfway through his term leading the group. The bones of contention include defining two new categories of exempt facility bonds used for financing qualified broadband projects and qualified carbon dioxide capture facilities. There are also unanswered questions about when a qualified tender bond is treated as reissued, which is a question that dates back to 2019.

Concerns about Revenue Procedure 2018-26, which deals with remedial actions for improper uses of tax-exempt bond proceeds, trace back to a 2018 IRS regulation. Clarifications dating from 2015 Treasury rulings are still being sought on final regulations for private activity bonds. NABL is also requesting additional guidance on discrepancies between IRS Form 8038 and Form 8038-G, an e-filing form that the agency has been wrestling since the pandemic.

Although some of the issues have been waiting on decisions for five years, the letter represents business as usual.

"We submit comments to the IRS priority guidance plan every year," said Brian Egan, NABL's director of government affairs. "As practitioners, our members have valuable input that helps set the course for what guidance the market needs prioritized."

The reasons for the lack of response from the agency remain conjecture.

"It can mean many things," said Rich Moore, tax partner at Orrick, Herrington & Sutcliffe. "Sometimes, the IRS is actively working through a guidance project and trying to determine the details. Other times, the IRS has the intent to get to a project but doesn't have the bandwidth. Occasionally, NABL and the IRS won't see eye to eye as to whether guidance on a subject is needed."

The ongoing back and forth between the lawyers and the agents also comes with its own rules of engagement regarding what goes into the letters.

“This is not the time or place for new comments,” said Moore. “It is viewed by many as inappropriate to put something on the list for which NABL has not already provided detailed suggestions. This is just an exercise in reinforcing that previously submitted comments are still a priority.”

Streamlining dealings with the IRS was promised by an $80 billion funding infusion that was turned into a political football and then a bargaining chip used to partially pay for the Fiscal Responsibility Act of 2023. Repercussions from the defunding also remain unknown.

“We support the IRS getting whatever resources it needs to effectively carry out its mission,” said Egan. “I cannot say with certainty what the claw back of funds provided under the Inflation Reduction Act will mean for tax-exempt municipal market participants, but it’s worth noting the Service made investment and upgrades in relevant areas even before the passage of IRA.”

By Scott Sowers

BY SOURCEMEDIA | MUNICIPAL | 06/08/23 01:28 PM EDT

TAX - COLORADO

[MJB Motels LLC v. County of Jefferson Board of Equalization]

Supreme Court of Colorado - May 30, 2023 - P.3d - 2023 WL 3706206 - 2023 CO 26

Taxpayers, which owned commercial real property in county, brought action against county board of equalization and county assessor, alleging that pandemic and related government orders amounted to “unusual conditions” that required board to lower assessor’s property valuations and assessor to revalue properties.

The District Court dismissed complaint, and after the Court of Appeals moved for determination of jurisdiction, the Supreme Court granted motion and accepted jurisdiction.

The Supreme Court held that:

- COVID-19 pandemic was not “detrimental act of nature,” and
- Public health orders issued in response to pandemic did not constitute “regulations restricting the use of the land.”

COVID-19 pandemic was not “detrimental act of nature,” for purposes of statute that instructed tax assessors to revalue property before assessment date when unusual conditions in or related to real property, including detrimental acts of nature, would result in increase or decrease in actual value; COVID-19 was respiratory disease caused by novel coronavirus, such that it did not resemble natural events, including earthquakes, floods, and tornadoes, that were considered “acts of nature,” COVID-19 was not “in or related to real property,” given that while it might have infected people on property, it did not infect property itself, and COVID-19 did not directly affect use or availability of real property, had worldwide impact, and had duration that spanned years.

Public health orders issued in response to COVID-19 pandemic did not constitute “regulations restricting the use of the land,” and thus did not trigger revaluation of property pursuant to statute that instructed tax assessors to revalue property before assessment date where unusual conditions in or related to real property would result in increase or decrease in actual value; orders regulated operation of commercial activity on land, and not use of land itself, and examples provided in Assessors’ Reference Library (ARL) of regulations that increased or decreased use of land all

involved changes to categorization of land that were intended to be permanent until and unless land was subsequently recategorized, while health orders at issue were intended to be temporary.

CDFA's Modernizing Agricultural and Manufacturing Bonds Act Introduced in U.S. House of Representatives.

View the CDFA Press Release.

CDFA | Jun. 6

A New Map Could Mean Less Money to Expand Broadband for Some States.

The revised map that shows where there is little to no internet service in the U.S. comes as the feds are about to distribute nearly $42.5 in broadband funding.

In three weeks, the federal government will dole out billions from the infrastructure act to each state to expand broadband service.

To make sure the nearly $42.5 billion goes to where it's needed most, places with either no or poor internet access will be prioritized using a map from the Federal Communications Commission.

The FCC has been scrambling for months now to refine its data in a move that Chairwoman Jessica Rosenworcel described as "another step forward in its iterative effort to develop the best and most accurate broadband maps ever built in the United States."

Continue reading.

ROUTE FIFTY

by KERY MURAKAMI

JUNE 9, 2023

Fitch: Most U.S. State Gas Tax Bonds To Remain Stable Amid Changing Fuel Landscape

Fitch Ratings-New York-08 June 2023: Ratings and Outlooks for most U.S. state transportation bonds backed by gas tax revenues will remain intact even as vehicle fuel efficiency improves and electric and hybrid vehicles' share of the market expands, according to Fitch Ratings in a new report.

"Improvements in fuel efficiency and the transition to electric vehicles threatens to accelerate weakening revenue growth prospects for state gas taxes over the long term," said Director Tammy Gamerman. "However, many state transportation bonds contain features that mitigate these concerns and enable the bonds to be highly rated."

Fitch currently rates 29 unique securities in 17 states that are fully or partially supported by state motor fuel taxes. Among these, 14 are rated 'AA+' while three Missouri securities have Fitch's highest rating of 'AAA'.
Amid flattening gas tax growth in many states and the prospects for outright declines as hybrid and electric vehicles (EVs) grab more of a foothold, most state gas tax bonds are likely to maintain credit rating stability. That said, securities with more dependence on fuel taxes and looser additional leverage requirements are more likely to see negative rating pressure over the medium term, particularly in states with weaker economic growth.

Motor fuel taxes are a key source of transportation funding, and regardless of a state's exposure to rating actions on transportation bonds, all states will need to explore alternative sources to address unmet long-term infrastructure liabilities.

"The Road Ahead for State Gas Taxes and Transportation Bonds" is available at www.fitchratings.com.

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Quick Thoughts: Positioning for a Timely Opportunity in Munis

As markets continue to respond to an uncertain macroeconomic environment, the current fundamentals in the municipal bond market are creating an investment opportunity to capture strong after-tax total returns according to Stephen Dover, Head of Franklin Templeton Institute.

Municipal bonds are displaying unusually strong fundamentals. The backdrop of local fiscal conditions is solid, contributing to the strength of muni bonds in the current environment. State and local governments have been able to replenish cash reserves as a result of three things: large capital inflows from the Federal level throughout the pandemic, tax receipts that have exceeded pre-pandemic levels and moderate spending. There has been less municipal bond issuance compared to the pre-pandemic period, creating a scarcity of muni bonds.

Some unexpected areas are creating headwinds for muni bond valuations:

Continue reading.

Franklin Templeton

June 07, 2023

Long-Dated Municipal Bonds: A Winning Opportunity for High-Net-Worth Investors

Municipal bonds have long been prized by investors with higher incomes and higher tax brackets thanks to the fact that they can offer tax-free income. The vast bulk of the muni sector is free from Federal taxes and, depending on where the bond is issued, state taxes as well. As such, munis form a major building block of many high-net-worth (HNW) portfolios.

And investors in this category may have an opportunity at the long-end of the spectrum.

With their current high yields and potential for tax changes on the horizon, long-dated bonds may offer HNW individuals and families a wonderful win, especially when compared to Treasuries. Adding a dose of them makes perfect sense today.

Long Bonds Take a Hit

When it comes to fixed income, the middle or intermediate bonds are often considered the sweet spot offering the perfect blend of duration risk and current yield. However, for high-net-worth families looking at the muni space, they may want to consider the long end of the spectrum.

Continue reading.

dividend.com

by Aaron Levitt

Jun 07, 2023

Understanding Government Compensation and Payroll: GFOA Webinar

June 20, 21 & 22 | 1-4 PM ET

Details:

Many finance officers have responsibility for payroll. With that comes responsibility for managing a process that accounts for approximately 85% of an organization's operating budget, requires compliance with an ever changing set of state and federal legislative and regulatory requirements, is further complicated by unique collective bargaining requirements, and is critically important to each and every employee in the organization. And while just about every organization is able to manage these tasks routinely, there are often opportunities for significant improvements. This session will explore best practices in managing payroll, how to incorporate internal controls, use of technology, recommendations on dealing with an every changing set of compliance requirements.

The course will be taught as a mixture of presentation and open discussion. Panelists will include several consultants and service providers who work to drive efficiencies in payroll processing and can discuss common challenges that governments face, tools and techniques that can be applied, and innovative and new solutions that may be available from your technology partners.

Learning Objectives:

- Learn the basic steps involved in the payroll process
- Understand different methods for time entry and different purposes for tracking time
- Differentiate between compensation models
- Learn best practices related to budgeting for personnel
- Understand the overlapping network of regulations related to payroll and how to keep up with changes
- Discuss challenges related to hiring and retaining employees and strategies to address these challenges

Click here to learn more and to register.

How Good An Investment Are Municipal Bonds?

Municipal bonds, informally referred to as “munis,” are debt obligations of local, county, states, cities, counties and other governmental entities. The issuers use the proceeds of bond offerings to fund their day-to-day operations and to finance capital projects such as building schools, libraries, parks, highways, bridges and sewer systems. As detailed below, most municipal bonds are exempt from income taxes, making them especially attractive to individual investors in high tax brackets.

Types Of Municipal Bonds

General Obligation (GO) bonds are not backed by revenue from a specific project. Their interest may be paid from the issuer’s general funds or from property taxes earmarked for that purpose. The issuer may pledge to raise property taxes as needed to satisfy debt service on its bonds.

Revenue bonds are supported by revenue from a specific project such as a toll bridge, airport, hospital or utility. They generally pay higher interest rates than GOs because the associated interest payments depend on a single project, rather than the issuer’s full faith and credit. Industrial Revenue Bonds (IRBs) are a subcategory of revenue bonds issued on behalf of private-sector companies.

Continue reading.

Forbes

by Martin Fridson

Jun 7, 2023

Bonds Are Back. Where Vanguard’s Bond Boss Sees Value Now.

After a lousy year for bonds in 2022, the outlook is better. So much better that Sara Devereux, global head of the fixed-income group at Vanguard, has taken to sporting a button around the office declaring, “Bonds Are Back.”

“I haven’t seen this kind of opportunity in a long time, after a decade of yields at the zero lower bound,” says Devereux, whose unit has more than $2 trillion in assets under management.

Vanguard is the world’s second-largest asset manager, with $7.7 trillion in assets under management. In bonds it is best known for index funds. But it is also one of the biggest providers of U.S. active bond funds, with $890 billion in assets, and Devereux is helping lead the charge in active management.

Continue reading.

Barron’s

By Lauren Foster

Updated June 8, 2023

Los Angeles County, California: Fitch New Issue Report

Key Rating Drivers Revenue Framework: ‘aa’: The county’s revenues demonstrate limited volatility, reflecting the size and maturity of the economy and tax base, which retains a large Proposition 13 cushion. Growth prospects for revenues are solid. The county’s independent legal ability to raise revenues is restricted by state law but is satisfactory since it has control over fees and charges for services. Expenditure Framework: ‘aa’: Fitch expects expenditure growth to be marginally above future revenue growth in the absence of policy action. The county continues to enjoy solid expenditure flexibility, although policy changes and potential litigation outcomes could somewhat constrain that flexibility in the future. Pension and other post-employment benefit (OPEB) obligation contributions have been ramped up to pay down significant liabilities; however, such payments have remained a relatively stable percentage of spending in recent years. Long-Term Liability Burden: ‘aa’: The county’s long-term liability burden for debt and pensions is moderately low relative to total personal income. The majority of debt is issued by overlapping jurisdictions. Operating Performance: ‘aaa’: The county demonstrates an ongoing commitment to support a strong financial cushion. This cushion is aided in part by the DHS’s stable/solid financial position, which is supported by a five-year extension of full reimbursement for certain safety net hospital costs. The county, which has superior gap-closing capacity, is very well positioned to address economic downturns.

ACCESS REPORT

Tue 06 Jun, 2023

Louisiana Connected And The City Of Mansfield Announce Partnership To Design, Build And Operate A Fiber-Based Municipal Broadband System: Orrick

The Company
Louisiana Connected, a technology company that was created during the COVID-19 pandemic to address the systemic broadband blight in rural and urban Louisiana, and the city of Mansfield, are pleased to announce a partnership allowing the company to construct a fiber optic network that will deliver high-speed internet service directly to the homes and businesses in this Northwest Louisiana town.

The Impact
The Mansfield City Council, on May 22, 2023, voted unanimously on a Binding Memorandum of Understanding (MOU) with Louisiana Connected to design, build and operate the fiber-based broadband municipal system.

Louisiana Connected will fully-fund the multimillion-dollar construction and operation of the Mansfield network with private capital.

"Since the pandemic, I have worked alongside the City Council to fulfill the desire of many residents for efficient broadband in the city," said Mayor Thomas Jones. "I am excited to be on track with my goal to deliver on that strategic plan and look forward to a collaborative partnership with Louisiana Connected going forward."

"We applaud Mayor Jones and the City Council's leadership whose vision for world-class internet infrastructure for Mansfield made this announcement possible," said Donnette Dunbar, CEO of Louisiana Connected. "We are grateful for the City of Mansfield's support and look forward to providing them with a network that will support their goals for growth and prosperity."

The Team
An Orrick team led by [Charles Cardall](#) negotiated the Binding MOU, which came on the heels of a five-month state-required feasibility study so the city could receive complete cost estimates for the system's buildout as well as identify the neighborhoods with broadband deficit.

"Internet access has become as critical for learning, business and health as electricity and gas for basic living," said Charles. "Data shows 42 million Americans still have no access to broadband and millions more have low level connections, which is why Orrick is excited to apply our expertise to get these communities online and unlock the myriad social and economic benefits that emerge with improved digital equity."

Learn More
[Louisiana Connected](#)

June.06.2023

[Frederick Health Hospital, Inc., Maryland: Fitch New Issue Report](#)

Revenue Defensibility: 'bbb'; Dominant Market Share in Growing Service Area: The midrange revenue defensibility reflects FH's dominant market share of about 70% in an economically diverse and growing service area. Its market position is relatively secure due to the regulated nature of MD healthcare including certificate of need programs. FH focuses on its core service lines including cardiology, oncology neurology and women's health and does not provide trauma, open heart or transplant, so there is some outmigration to surrounding academic medical centers. FH's solid market share is supported by an expanding outpatient footprint including the cancer center

completed in 2017 and the recent critical care expansion including the ICU and emergency department. Under Maryland's Global Budget Review (GBR) program, annual revenue is allocated to hospitals for regulated service lines and is determined and known before the start of each year and adjusted annually for changes in market share, services provided and population growth. Approximately 70% of FH's revenues fall under Maryland's all payor system, which provides predictable revenue streams but may create a lag in reimbursement in a rapidly growing service area, such as FH's, and in the case of unpredictable utilization patterns, as was the case during the pandemic.

ACCESS REPORT

Tue 13 Jun, 2023

Sarasota County, Florida: Fitch New Issue Report

The 'AAA' Issuer Default Rating (IDR) and general obligation (GO) bond rating reflect the county's superior gap-closing and low long-term liability burden. The county's independent legal revenue raising ability, solid expenditure control and conservative budgeting practices provide the county with a considerable ability to maintain a high level of financial flexibility throughout economic cycles.

ACCESS REPORT

Mon 12 Jun, 2023

Franklin Templeton: Higher Credit Quality in Munis.

Jennifer Johnston, Franklin Templeton director of municipal bond research, discusses where to find value in the municipal bond market with Romaine Bostick and Scarlet Fu on "Bloomberg Markets: The Close."

Watch video.

Bloomberg Markets: The Close

June 7th, 2023

Municipal Bond ETFs – Expect More from Your Munis

ETFs and mutual funds have become an increasingly popular means of gaining exposure to municipal bonds. These funds offer investors convenient, diversified access to broad and targeted municipal markets. VanEck's municipal income ETFs offer investors the ability to exercise control over their portfolio yield, duration, and credit exposure at different points in the interest rate cycle.

Target Exposures, Tax-Exempt Income and Low Cost Muni ETFs

The indices underlying each ETF target specific maturity ranges or credit exposures, resulting in distinct performance yield and duration characteristics.

Continue reading.

VANECK

JUNE 10, 2023

- MSRB Adopts Amendments to Rules G-12 and G-15, Shortening Regular-Way Settlement for Municipal Securities Transactions to T+1.
- Burned by BABs, Issuers Look for a Way Out: Orrick
- Attend GFOA Accounting Training in Chicago in July.
- Upcoming NFMA Webinar on ETF Essentials for Muni Analysts.
- *Pike Off OTA, Inc. v. Oklahoma Turnpike Authority* – Supreme Court of Oklahoma holds that the Oklahoma Constitution permitted the Legislature to enact statute conferring exclusive original jurisdiction upon the Supreme Court to hear and determine an application for bond validation to construct and operate turnpikes, and thus, the statute was constitutional, notwithstanding provision of the Constitution that gave all district courts unlimited original jurisdiction, since the district courts' jurisdiction was limited where otherwise provided in the Constitution, and the Constitution expressly empowered the Supreme Court to exercise jurisdiction conferred by statute, including the jurisdiction conferred upon it in the turnpike statute.
- And finally, Elderly Man At World's Worst Nursing Home Or Your Editor's Monday Night? is brought to us this week by *Mercy Housing Georgia III, L.P. v. Kaapa*, in which a guy was found "lying face down on the floor covered in urine and feces." Check. He "was able to grunt in response to questions and could move his left leg." Sounds about right. "By the time he arrived at the hospital in an ambulance, he was agitated and was attempting to pull IVs from his arm with his left hand." Yup, and who pulls an IV out with his right hand? "He died two days later." We'll have to keep you posted on that one.

REDEVELOPMENT AGENCIES - CALIFORNIA

City of Chula Vista v. Stephenshaw

Court of Appeal, Third District, California - April 14, 2023 - Cal.Rptr.3d - 2023 WL 3336400

City and successor redevelopment agency filed petition for writ of mandate and complaint for declaratory and injunctive relief seeking a writ to compel Department of Finance to recognize reimbursement agreements as enforceable obligations and approve use of property tax revenues for such items on all current and futures recognized obligation payment schedules (ROPS).

The Superior Court denied petition. Plaintiffs appealed.

The Court of Appeal held that:

- Reimbursement agreements qualified as enforceable obligations;
- Department did not abuse its discretion in denying reimbursement of lease payments made in

connection with debt instruments that were unenforceable obligations; and
- Department was not estopped from denying ROPS.

Under "tax increment financing method," tax revenues available for local redevelopment agencies from land within a redevelopment area are frozen as of the date a redevelopment plan is adopted, and any tax revenues generated by an increase in property values after adoption of the plan, the tax increment, are paid to the redevelopment agency for use in financing the redevelopment project.

A primary purpose of legislation to dissolve redevelopment agencies and create a process for wind down of their affairs was to eliminate tax increment financing, and redirect, to the maximum extent possible, the revenues and assets of the former redevelopment agencies to local governments to help fund core governmental services; as part of the wind down process, the law established successor agencies and empowered them to continue to make payments due for enforceable obligations.

To obtain funds to make payments required by enforceable obligations, a successor redevelopment agency must periodically prepare recognized obligation payment schedules (ROPS) setting forth the minimum payment amounts for each enforceable obligation and identify one or more sources of payment, and submit the ROPS to the oversight board for approval; the Department of Finance makes its determination of the enforceable obligations and the amounts and funding sources of the enforceable obligations.

Reimbursement agreements between city and former redevelopment agency qualified as enforceable obligations under statutory exception for contemporaneous written agreements between city or county and former redevelopment agency at time of issuance of indebtedness obligations solely for purpose of securing or repaying those indebtedness obligations for purposes of recognized obligation payment schedules (ROPS), and thus Department abused its discretion in determining that agreements were not enforceable obligations; agreements were written agreements entered into at time indebtedness was incurred for purpose of securing or repaying that debt, parties expressly agreed that city would be entitled to exercise any and all remedies available pursuant to law if tax increment revenues were available but unpaid to city, and implied covenant of good faith and fair dealing required tax increment revenues be pledged to repayment of indebtedness honestly and in good faith.

There was no reimbursement agreement or amendment to an existing reimbursement agreement executed contemporaneously with debt instruments, and thus Department of Finance did not abuse its discretion in denying reimbursement of lease payments made in connection with those debt instruments as unenforceable obligations that were not required to be reimbursed to successor redevelopment agency or city for purposes of recognized obligation payment schedules (ROPS), although timing of reimbursement obligation was contingent on unpledged tax increment revenues being available; legislature did not make explicit any attempt to exclude agreements containing contingent repayment obligations, and Department failed to explain why contingency rendered repayment obligation illusory.

Department of Finance was not estopped from denying recognized obligation payment schedules (ROPS) for former redevelopment agency due to its approval of those items in prior ROPS; city and successor redevelopment agency could not show that they reasonably relied on Department's past ROPS approvals because the relevant transactions occurred years before Department's ROPS determinations, Department's ROPS determination letters expressly warned that past approval of an item would not prevent Department from revisiting that item on future ROPS, and estoppel would have nullified a strong rule of public policy.

PUBLIC UTILITIES - CALIFORNIA

TruConnect Communications, Inc. v. Maximus, Inc.

Court of Appeal, First District, Division 1, California - May 11, 2023 - 308 Cal.Rptr.3d 365

Provider of telephone services to lower-income residents of state under a program administered by the California Public Utilities Commission (CPUC) filed first amended complaint against administrator, hired by CPUC to manage program enrollment, and its subcontractor, for negligence, intentional and negligent interference with prospective economic relations, violations of the Unfair Competition Law, quantum meruit, unjust enrichment, and related claims, claiming that they botched the rollout of a new software platform used to enroll people in the program, causing provider to lose millions of dollars.

The Superior Court sustained companies' demurrers. Provider appealed.

The Court of Appeal held that:

- Trial court's jurisdiction over provider's action was not statutorily barred on basis that a decision by trial court in the action would be inconsistent with a CPUC order or decision;
- Trial court's jurisdiction over provider's action was not statutorily barred on basis that recovery in action would enjoin, restrain, or interfere with CPUC in the performance of its official duties; and
- Remand to trial court was warranted so that it could consider whether CPUC was an indispensable party to the action.

A trial court decision in action brought by provider of telephone services to lower-income residents of state, under a program administered by the California Public Utilities Commission (CPUC), against two companies, hired by CPUC to manage program enrollment, claiming that they botched the rollout of new software used for program enrollment, causing provider to lose millions of dollars, would not be inconsistent with any CPUC order or decision, and thus trial court retained jurisdiction over case; CPUC's determination that provider was not eligible for reimbursement from CPUC's program's fund did not affect whether provider was potentially entitled to damages from companies under tort and related theories, and provider would not have to establish that CPUC erred in making its determination in order to prevail in its action against companies.

Recovery in trial court action brought by provider of telephone services to lower-income residents of state, under a program administered by the California Public Utilities Commission (CPUC), against two companies, hired by CPUC to manage program enrollment, claiming that they botched the rollout of new software used for program enrollment, causing provider to lose millions of dollars, would not enjoin, restrain, or interfere with CPUC in the performance of its official duties, and thus trial court retained jurisdiction over case; crux of provider's action was to recover damages, not to constrain any of CPUC's findings or to interfere with CPUC's oversight of the program, and CPUC did not authorize or direct companies to injure third parties with software malfunctions and errors, thereby immunizing them from claims by those parties.

Remand to trial court was warranted so that it could consider whether the California Public Utilities Commission (CPUC) was an indispensable party to action brought by provider of telephone services to lower-income residents of state, under a program administered by CPUC, against two companies, hired by CPUC to manage program enrollment, claiming that they botched the rollout of new software used for program enrollment, since the trial court never reached the indispensable-party issue when sustaining companies' demurrers, and therefore never weighed the relevant factors or made any findings.

BALLOT INITIATIVE - CALIFORNIA

[Travis v. Brand]

Court of Appeal, Second District, Division 8, California - May 19, 2023 - Cal.Rptr.3d - 2023 WL 3558102

City residents brought action for injunctive relief against city mayor, city councilmember, political action committee (PAC) created to support ballot measure limiting waterfront development, and other supporters of measure, alleging that defendants violated Political Reform Act by failing to designate PAC as primarily formed and as candidate-controlled, then failing to follow naming and disclosure requirements for primarily formed and candidate-controlled committees.

Following bench trial, the Superior Court entered judgment in defendants' favor and awarded statutory attorney fees. Plaintiffs appealed and appeals were consolidated. The Second District Court of Appeal affirmed in part and reversed in part. Plaintiffs' petition for review was granted. The Supreme Court reversed and remanded for determination of whether residents brought or maintained suit without foundation, as necessary to support award of attorney fees to defendants under Act.

On remand, the Court of Appeal held that:

- Findings that residents had improper motive and outside funding did not establish their claims lacked foundation;
- Factual foundation existed for claim that PAC was misdesignated as general purpose committee;
- Factual foundation existed for claim that PAC was controlled by candidates;
- Claims had legal foundation;
- Defendants did not advance important rights affecting public interest, as necessary for private attorney general fee award; and
- Defendants did not confer benefit upon general public or large class.

EMINENT DOMAIN - FEDERAL

[Etchegoinberry v. United States]

United States Court of Federal Claims - May 19, 2023 - Fed.Cl. - 2023 WL 3574352

Landowners filed class action against United States, claiming that failure of Bureau of Reclamation, Department of Interior (DOI), to comply with statutory obligation, under San Luis Act, to provide irrigation drainage for owners' farmlands in water district resulted in gradual physical taking of property without just compensation.

Government moved to dismiss for failure to state claim.

The Court of Federal Claims held that takings claims were time barred.

Landowners' takings claims for just compensation, based on Bureau of Reclamation's failure to provide drainage for water district and owners' irrigated and drainage-impaired farmland within district, accrued, under six-year statute of limitations for claims against United States under Tucker Act, when landowners should have been aware that their claims had stabilized given numerous actions and decisions by government and extensive litigation history over several decades regarding government's failure to provide solution to drainage problem that should have alerted owners as to

permanency of alleged taking and ended any justifiable uncertainty they had about accrual of their claims.

NEGLIGENCE - GEORGIA

Mercy Housing Georgia III, L.P. v. Kaapa

Court of Appeals of Georgia - May 30, 2023 - S.E.2d - 2023 WL 3710032

Son of elderly tenant in section 8 housing filed a wrongful death, negligence, and negligence per se action against owners and managers of apartment complex after complex failed to provide tenant with an emergency call device, in compliance with the Department of Housing and Urban Development (HUD) regulations, resulting in tenant being unable to call for assistance after he had a stroke, causing a delay in tenant obtaining treatment and tenant's eventual death.

Son filed a motion for summary judgment on issue of negligence per se, and defendants moved for summary judgment on the issues of causation, punitive damages, and owner's status as a defendant. The State Court granted son partial summary judgment and denied defendants' motions for summary judgment. Defendants appealed.

The Court of Appeals held that:

- Trial court's admission of expert testimony from property manager was not an abuse of discretion;
- Owners and managers of apartment complex failed to provide tenant with an emergency call device, in compliance with HUD regulations, and thus were negligent per se; and
- Genuine issue of material fact existed as to whether the lack of an emergency call system actually delayed elder tenant's rescue and treatment following a stroke.

BALLOT INITIATIVE - MAINE

Jortner v. Secretary of State

Supreme Judicial Court of Maine - April 10, 2023 - A.3d - 2023 WL 2856124 - 2023 ME 25

Citizens filed petition for judicial review of decision of the Secretary of State that determined the wording of a ballot question for citizen-initiated legislation that would create a non-profit electric utility, challenging use of the term "quasi-governmental power company" to describe the proposed utility and requesting substitution with the term "consumer-owned transmission and distribution utility."

The Superior Court vacated Secretary's decision and remanded matter to Secretary to revise the wording of the ballot question. Secretary appealed.

The Supreme Judicial Court held that use of term "quasi-governmental" in describing the proposed utility resulted in the question being not understandable to a reasonable voter reading the question for the first time, and thus ballot question did not satisfy statutory standard.

Use of term "quasi-governmental" in describing proposed non-profit electric utility as a "quasi-governmental power company," in ballot question for citizen-initiated legislation that would create a non-profit electric utility, resulted in the question being not understandable to a reasonable voter reading the question for the first time, and thus ballot question did not satisfy statutory standard,

although some features of the new utility would be governmental in nature; term "quasi-governmental" did not appear in the proposed legislation and did not have a clear dictionary definition, the prefix "quasi-" had multiple meanings, and there was no existing statutory definition of the term.

BALLOT INITIATIVE - MINNESOTA

Kranz v. City of Bloomington

Supreme Court of Minnesota - May 24, 2023 - N.W.2d - 2023 WL 3606470

Residents of home-rule charter city whose proposed city-charter amendment to repeal the use of ranked-choice voting to elect candidates to municipal office was rejected by city council because one of its four sections was manifestly unconstitutional filed petition in the district court for correction of ballot error, seeking declaratory and injunctive relief to, inter alia, require city to sever the section deemed unconstitutional and to submit remainder of amendment to the voters.

The District Court denied the petition. Residents appealed, and their petition for accelerated review was granted.

The Supreme Court held that assuming without deciding that courts have the power under the Minnesota constitution to sever unlawful portions of a proposed city-charter amendment, the proposed amendment in the present case failed to satisfy the high bar required to establish that severance was appropriate.

Assuming without deciding that, under state constitution, Minnesota courts may sever unlawful portions of a proposed city-charter amendment pre-enactment, that is, after signature collection but before presentation to voters, unconstitutional provision of residents' proposed amendment to repeal use of ranked-choice voting, which required a supermajority of voters to approve such voting in future elections, did not satisfy the high bar required for severance; although other parts of amendment would effectively repeal ranked-choice voting even without the unconstitutional provision, amendment's purpose was twofold, both to repeal ranked-choice voting and, through the unconstitutional provision, to prevent its future reinstatement, so the subject provision provided a substantial portion of the efficacy or strength of the proposal, and it could not be ascertained whether signers of petition would have wanted remainder of amendment to proceed without the unconstitutional portion.

BOND VALIDATION - OKLAHOMA

Pike Off OTA, Inc. v. Oklahoma Turnpike Authority

Supreme Court of Oklahoma - May 23, 2023 - P.3d - 2023 WL 3592641 - 2023 OK 57

Plaintiffs brought action against the Oklahoma Turnpike Authority (OTA) for injunctive and/or mandamus relief, challenging the OTA's authority to construct three proposed turnpikes.

The District Court granted the OTA's motion to dismiss. Plaintiffs appealed, and the Supreme Court retained the case.

The Supreme Court held that:

- Oklahoma Constitution permitted Legislature to enact statute conferring exclusive original jurisdiction upon Supreme Court to hear and determine application for bond validation to construct and operate turnpikes;
- Plaintiffs' claims fell within the Supreme Court's exclusive jurisdiction; and
- Plaintiffs not have a clear legal right to the mandatory injunctive and/or mandamus relief they sought.

The Oklahoma Constitution permitted the Legislature to enact statute conferring exclusive original jurisdiction upon the Supreme Court to hear and determine an application for bond validation to construct and operate turnpikes, and thus, the statute was constitutional, notwithstanding provision of the Constitution that gave all district courts unlimited original jurisdiction, since the district courts' jurisdiction was limited where otherwise provided in the Constitution, and the Constitution expressly empowered the Supreme Court to exercise jurisdiction conferred by statute, including the jurisdiction conferred upon it in the turnpike statute.

Claims brought in action for injunctive and/or mandamus relief, which alleged the Oklahoma Turnpike Authority (OTA) did not have statutory authorization to construct proposed turnpikes and that OTA exceeded its statutory authorization by seeking an additional bond issue to complete a turnpike, fell within the Supreme Court's exclusive jurisdiction, and the Court gained exclusive jurisdiction to consider the questions raised by the action when the OTA filed its own application with the Court to validate the proposed bonds for these turnpikes.

Plaintiffs who brought action challenging Oklahoma Turnpike Authority's (OTA) authority to construct three proposed turnpikes did not have a clear legal right to the mandatory injunctive and/or mandamus relief they sought compelling OTA to perform, comply with, and abide by all legal duties, obligations, and due process rights of plaintiffs and other Oklahoma citizens; plaintiffs failed to specify any legal duty or obligation that OTA would violate at some point in the future, and their claim demanding OTA comply with some undefined laws or statutory duties was contingent upon whether Supreme Court approved OTA's proposed bond issue for these turnpikes, and so the claim was dependent upon the Court exercising its exclusive jurisdiction in OTA's separate bond validation proceeding.

EMINENT DOMAIN - TEXAS

City of Webster v. Moto Kobayashi Trust

Court of Appeals of Texas, Houston (1st Dist.) - May 9, 2023 - S.W.3d - 2023 WL 3311470

Owners of unoccupied, commercial buildings in city brought inverse condemnation action against city, alleging that city ordinance requiring the removal or demolition of their properties as a public nuisance abatement measure was an unconstitutional taking.

The 152nd District Court, Harris County, denied city's plea to the jurisdiction, and city appealed.

The Court of Appeals held that district court in Harris County lacked jurisdiction over inverse condemnation claims.

District court in Harris County lacked jurisdiction over inverse condemnation claims brought against city by owners of unoccupied, commercial buildings, alleging that city ordinance requiring the removal or demolition of their properties as a public nuisance abatement measure was an unconstitutional taking; legislature had mandated that inverse condemnation claims in Harris

County be brought in the civil courts at law.

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 May) $137.3 billion, -23.9% Y/Y
  Trading (as of May) $12.1 billion ADV, -13.1% Y/Y
  Outstanding (as of 4Q22) $4.0 trillion, -1.4% Y/Y

Download xls

June 1, 2023

Burned by BABs, Issuers Look for a Way Out: Orrick

Between April 2009 and December 31, 2010, state and local governments borrowed more than $181 billion through the issuance of 2,275 separate issues of Build America Bonds, which were authorized under the federal American Recovery Reinvestment Act of 2009 ("ARRA"). Under ARRA, the U.S. Treasury was supposed to provide cash subsidy payments equal to 35 percent of interest payable on outstanding BABs for the life of the bonds.

The promise of BABs subsidy payments in full was short-lived because of a debt ceiling fight – this one in 2011 between the 112th Congress and the Obama Administration which resulted in the Budget Control Act of 2011 (the "BCA") and the implementation of automatic spending reductions ("sequestration") beginning in March 2013.

Since sequestration took effect on March 1, 2013, BABs subsidy payments have been reduced year over year, with reductions ranging from a high of 8.7 percent in 2013 to a low of 5.7 percent for federal fiscal years 2021 through 2030. Under current law, BABs subsidy payments are subject to sequestration through federal fiscal year 2030 unless Congress takes action to modify or eliminate the sequester.

In addition to this partial sequestration imposed by the BCA, the Statutory Pay-As-You-Go Act of 2010 ("PAYGO") can impose mandatory spending cuts based on legislation that increases the federal budget deficit. In 2022, it was reported that due to COVID-19 relief legislation (which did not include a waiver of the PAYGO reductions), there was the potential for 100% sequestration of BABs subsidies beginning in January 2023. Fortunately, the Consolidated Appropriations Act of 2023, enacted in December of 2022, provides a reprieve from PAYGO sequestration through federal fiscal year 2025.

The prospect of a total elimination of BAB's subsidy payments, combined with uncertainty about the debt ceiling and the ability of Congress and the Biden Administration to resolve the current political logjam, has triggered renewed interest by the public finance community in BABs refundings. Many issuers simply want to get out of BABs altogether at this point.

For issuers that are thinking about "breaking up" with their BABs, important considerations include:

- **Redemption Provisions:** For BABs issued with 10-year par calls, it is straightforward to redeem and refund BABs, and many BABs have been refunded for savings over the past few years with traditional tax-exempt bonds.But many outstanding BABs were issued without a 10-year par call, leaving other redemption provisions as options.

  > *Make-whole Call provisions.* A make-whole call is a common redemption provision for taxable bonds, including BABs, that requires a payment by the issuer to the bondholder based on the net present value of future coupon payments, thereby putting the bondholder in the same position they would have been if the bonds were not redeemed.The present value calculation for make-whole calls is usually based on a spread against Treasuries—the higher the spread against Treasuries, the higher the discount rate and therefore the smaller the redemption price.
  >
  > As a broad market observation, it has generally not been possible to tax-exempt refund BABs through a make-whole call and achieve savings. However, as the spread between taxable and tax-exempt rates increases, there may be opportunities for savings depending on market conditions. In addition, some issuers may be interested in redeeming their BABs despite some dissavings to avoid the risk of future increases in sequestration.
  >
  > *Extraordinary Call Provisions.* In addition to make-whole calls, most BABs included extraordinary redemption provisions ("ERP"), which generally provide for a more issuer-favorable redemption price if specified conditions have occurred resulting in negative affects on the BABs subsidy.The particular conditions for exercise of ERPs vary between the bond documents for different issues of BABs.
  >
  > For issuers looking to exercise the ERP for their BABs, it is important to closely review the language to determine whether the conditions have been met. Views may differ as to whether the ERP conditions have been met as a result of sequestration, and current bondholders may object to the exercise of an ERP if the issuer undertakes a refunding of BABs using the ERP. It is necessary to consider the potential impact of such an objection on the ability to issue the refunding bonds, including whether litigation might lead to a larger redemption price that would reduce the savings on the transaction and potentially affect the ability to issue the refunding bonds. As another consideration, exercising an ERP under conditions where bondholders object might lead to a negative reputation among taxable bond investors.

- **Budget and Debt Policy Considerations:** Retiring BABs through a refunding and issuance of tax-exempt bonds will result in the loss of the federal interest subsidy.Issuers will need to evaluate the loss of the subsidy in their refunding savings analysis under any applicable debt policy or budgetary procedures for the issuance of any refunding bonds, but may be able to take sequestration into account in reducing the estimated value of those subsidy payment.It may be the case that there are savings from refunding the BABs even taking into account the lost subsidy

payments.
- **Refunding Bond Issuance Authority:** Issuers of revenue bonds should consult with counsel and closely review the provisions of their bond documents to evaluate whether the issuance of tax-exempt refunding bonds to redeem BABs qualifies as an issuance of refunding bonds or possibly triggers any additional bonds tests or has other covenant implications.

As a best practice, issuers should be sure to consult with Bond Counsel and other finance team members to fully assess the legal, financial and market considerations of any refunding transaction and financial benefits of any refunding transaction, and especially any transaction calling the bonds using an ERP.

by Christine Reynolds and John Stanley

May.24.2023

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Should We Rethink Reserves? - GFOA Publication

GFOA's best practice "Fund Balance Guidelines for the General Fund" is one of GFOA's most often cited standards. However, GFOA's consulting work with local governments has revealed that there are many opportunities for reserve optimization beyond the guidance provided in the best practice. This paper brings what we have learned together with university research to describe new opportunities for local governments to get the best value from their reserve strategies.

DOWNLOAD

Publication date: May 2023

U.S. Public Sector Cyber Risk Is Mainstream Now, Says S&P Seminar.

Key Takeaways

- The provision of essential services and the sensitive information held by local government organizations, utilities, and health services make them prime targets for cyberattacks.
- Cyber risk management should therefore be a priority for the U.S. Public Finance sector (and private companies), but it often remains underfunded and insufficient.
- Cyber risk mitigation should be integrated into organizational planning, particularly given the complexity of balancing risks across very large systems and organizations within those system.

Continue reading.

1 Jun, 2023

Cybersecurity Standards Gain Ground in Counties.

More counties are embracing voluntary cybersecurity frameworks to evaluate their risk and better protect their assets, a recent report shows.

County governments are reducing their cybersecurity risk levels by embracing voluntary standards, including those developed by the federal government, according to a report released last week.

Research from the National Association of Counties (NACo) and Accenture found that 50% of counties use the controls outlined in the National Institute of Standards and Technology's (NIST) Security and Privacy Controls for Information Systems and Organizations special publication.

Meanwhile, almost 30% use either a bespoke state or county-specific framework, a cybersecurity maturity model certification program or the 27001 Maturity Model developed by the International Organization for Standardization and the International Electrotechnical Commission. Just over 20% said they do not use a standardized cybersecurity framework, while 18% said they do not know.

Continue reading.

Route Fifty

By Chris Teale

JUNE 2, 2023

Las Vegas Ballpark Pitch Revives Debate on Public Funding for Sports Stadiums.

CARSON CITY, NEV. — Gov. Joe Lombardo wants to help build Major League Baseball's smallest ballpark — arguing that the worst team in baseball can boost Las Vegas, a city striving to call itself a sports mecca.

Nationwide debate about public funding for private sports clubs has been revived with the Oakland Athletics ballpark proposal. The issue pits Nevada's powerful tourism industry, including trade unions, against a growing chorus of mostly progressive groups that, throughout the country, are raising concerns about use of tax dollars to finance sports stadiums but could otherwise fund government services or schools.

The debate over relocating the team from California to Nevada echoes others around the country, where politicians have approved large sums of taxpayer money going to sports clubs in Buffalo, New York; Atlanta, Georgia; and Nashville, Tennessee. In Tempe, Arizona, though, voters rejected a $2.3 billion proposal that would have included a new arena for the NHL's Arizona Coyotes.

Continue reading.

Associated Press

June 04, 2023

MSRB Adopts Amendments to Rules G-12 and G-15, Shortening Regular-Way Settlement for Municipal Securities Transactions to T+1.

View the MSRB Notice.

5/30/23

MSRB Adopts T+1 Amendments to Align Muni Trade Settlement with SEC Rules.

The MSRB adopted amendments to MSRB Rule G-12 (“Uniform Practice”) and MSRB Rule G-15 (“Confirmation, Clearance, Settlement and Other Uniform Practice Requirements with Respect to Transactions with Customers”) to (i) “define regular-way settlement for municipal securities transactions as occurring one business day after the trade date” and (ii) align with recent SEC rule amendments to shorten the settlement cycle. (See previous coverage.).

Under amended Exchange Act Rule 15c6-1 (“Settlement Cycle”), the regular settlement cycle for most broker-dealer transactions was shortened from two business days after the trade date (“T+2”) to one business day after the trade date (“T+1”).

The effective date for the amendments is June 1, 2023 and the compliance date is May 28, 2024, which is consistent with the implementation date for amended Exchange Act Rule 15c6-1 (“Settlement Cycle”).

May 31 2023

Fried Frank Harris Shriver & Jacobson LLP

TAX - NEW YORK

St. Lawrence County v. City of Ogdensburg

Court of Appeals of New York - May 23, 2023 - N.E.3d - 2023 WL 3587521 - 2023 N.Y. Slip Op. 02757

County commenced combined article 78 and declaratory judgment action against city, which had repealed prior local law that opted out of application of state tax law that outlined process for enforcement and collection of delinquent real property taxes, seeking declaratory judgment that local law that repealed prior law was not in accord with state law and impaired rights of county and county treasurer.

City moved to dismiss for failure to state cause of action, and the Supreme Court, St. Lawrence County, issued declaration in favor of city. The Appellate Division affirmed. County appealed.

The Court of Appeals held that:

- City’s passage of clarifying amendment to charter rendered moot cross-claim asserted by school district;

- City ceased to be tax district with respect to future liens;
- Local law that repealed prior law did not violate state tax law that authorized tax districts to make agreements with each other with respect to real property upon which they owned tax liens in regard to disposition of such liens and property; and
- Local law did not violate mandate in state constitution and municipal home rule law.

Passage by city, which had enacted local law that repealed prior law that had opted out of application of state tax law outlining process for enforcement and collection of delinquent real property taxes, of clarifying amendment to city charter that expressly affirmed city's obligation to enforce delinquent taxes on behalf of school district, while appeal from declaration in favor of city in combined article 78 and declaratory judgment action brought by county was pending, rendered moot cross-claim asserted by school district.

City, which enacted local law that repealed prior law that had opted out of application of state tax law outlining process for enforcement and collection of delinquent real property taxes, and provided in charter for county to enforce city's delinquent taxes, ceased to be tax district with respect to future liens, and thus absolved itself of ability and responsibility to appoint enforcing officer and enforce tax law, and instead county was responsible for tax enforcement and benefits or burdens attendant thereto; upon repeal of opt-out law, city became subject to state tax law that outlined process for enforcement and collection of taxes with respect to enforcement of taxes which had become liens on or after date repeal was effective.

City's local law, which repealed prior law that opted out of application of state real property tax law that outlined process for enforcement and collection of delinquent real property taxes at local level, did not violate state tax law that authorized tax districts to make agreements with each other with respect to real property upon which they owned tax liens in regard to disposition of such liens and property, even though county argued city's amendment of charter to repeal prior law circumvented purported mandate in such tax law that city negotiate agreement with county regarding tax enforcement processes; tax law did not require that localities reach agreement or follow particular procedure, and instead it only authorized tax districts to tax agreements with respect to real property.

City's local law, which repealed prior local law that opted out of application of state real property tax law that outlined process for enforcement and collection of delinquent real property taxes at local level, did not violate mandate in state constitution and municipal home rule law that "local government shall not have power to adopt local laws which impair powers of local government or public corporation," even though county argued local law prevented it from entering into type of agreement contemplated by state tax law and impaired its power by burdening it with financial liability for city's delinquent tax obligations; legislature expressly permitted city to repeal local law, and that repeal may have imposed additional obligations on county was simply consequence of statutory structure outlined in tax law.

TAX - MAINE

Hurricane Island Foundation v. Town of Vinalhaven

Supreme Judicial Court of Maine - May 30, 2023 - A.3d - 2023 WL 3699098 - 2023 ME 33

Taxpayer, which was a nonprofit corporation that occupied most of an island pursuant to a 40-year lease, sought review under Maine Rules of Civil Procedure of town assessor's denial of its application for a local property tax exemption available to literary and scientific institutions.

The Superior Court entered final judgment that taxpayer was a scientific institution and modified assessor's decision to designate taxpayer as tax exempt. Town appealed.

The Supreme Judicial Court held that:

- Taxpayer's complaint could fairly be treated as a complaint for declaratory judgment, and thus the Superior Court had subject-matter jurisdiction, but
- Taxpayer failed to demonstrate that it was a scientific institution.

Even though complaint filed by taxpayer for review under the Maine Rules of Civil Procedure of town assessor's denial of its application for a local property tax exemption available to literary and scientific institutions could fairly be treated as a complaint for declaratory judgment, which would be a basis for the Superior Court to have subject-matter jurisdiction, the Supreme Court would not require the matter to be remanded to the Superior Court for the taxpayer to amend and label the complaint; if that happened, the Superior Court would be compelled to engage in the duplicative task of considering exactly the same arguments and exactly the same evidence and deciding exactly the same issue as it has already considered and decided in entering the judgment on appeal, i.e., dismissal would serve no purpose, would unjustifiably elevate form over substance, and would waste judicial resources as well as the resources of the parties.

Taxpayer, which was a nonprofit corporation, failed to demonstrate that it was a "scientific institution," and thus taxpayer did not show that it qualified for property tax exemption available to literary and scientific institutions; record showed that taxpayer's primary purpose was education, given that taxpayer's purpose was to promote character development, leadership skills and self-discovery through outdoor educational experiences beyond the traditional classroom, taxpayer's articles of incorporation further stated that its primary purpose was educational and listed other charitable or research purposes, and taxpayer's brochures primarily discussed education and applied sciences with some references to the sciences apart from education.

Parametric's Patel Expects Heavy Inflows Into Munis.

Parametric Managing Director Nisha Patel discusses the outlook for the muni market with Romaine Bostick and Scarlet Fu on "Bloomberg Markets: The Close."

Watch video.

Muni MomentBloomberg Markets: The Close

May 31st, 2023

Maximizing Returns With Tobacco Bonds: Benefits, Risks and Investment Strategies

When most investors think of municipal bonds, general obligation or GO bonds tend to be the first thing that pops into their heads. And for good reason. These bonds issued by state and local governments form the backbone and bulk of the municipal bond sector. Cash flow and interest payments are driven by tax revenues.

But there is more than one type of bond in muni land and some may be lucrative for investors. In this case, it's the tobacco settlement bonds.

With their natural inflation protection, high yields and tax-free status, tobacco bonds could make for an interesting portfolio addition for investors. And thanks to the growth of municipal bond ETFs and mutual funds, getting exposure is easier than ever.

Continue reading.

dividend.com

by Aaron Levitt

May 31, 2023

Bonds 101 For Small Government Finance Officials: GFOA Webinar

June 8, 2023 | 3 p.m.-4 p.m. ET

Details:
Periodically, government entities will need to authorize and issue debt for projects. In this session, we will discuss the basics for issuing debt for a unit of local government. During the entire debt issue process, finance officers will constantly communicate with various professionals, including bond counsels, municipal advisors, underwriters, and the rating agencies. Specifically, finance officers will be advised on how to structure the debt payments. In addition, these professionals will assist the finance officers in achieving the best credit rating possible. Such ratings will be beneficial when the bonds are sold by the government entity. Since the macroeconomic environment is constantly changing, government finance officers will always benefit from future learning opportunities related to issuing debt.

Click here to learn more and to register.

University of Texas System: Fitch New Issue Report

Revenue Defensibility: 'aaa': Very Strong Demand; Consistent Revenue Diversity: The University of Texas System's (UTS) 'aaa' revenue defensibility assessment is supported by exceptionally strong underlying market characteristics and solid enrollment as Texas's public research flagship university system. Overall revenue stability benefits from a solid enrollment niche, diverse multi-facility healthcare operations, strong fundraising, a deep research base, historically stable state operating support and substantial endowment income. Operating Risk: 'aa': Consistently Solid Cash Flow Margins: The 'aa' operating risk assessment reflects UTS's solid cash flow margins, which average in excess of 20%. The assessment further reflects strong capital fundraising and state debt service support of designated capital projects. Financial Profile: 'aaa': Resilient Liquidity; Very Strong Leverage Metrics: UTS's 'aaa' financial profile is supported by very low leverage ratios, as measured by available funds to debt, which remain solidly within the rating category through Fitch's modeled stress scenario that incorporates both an operating revenue stress and a market-driven investment downturn.

ACCESS REPORT

Sacramento Municipal Utility District, California (Electric): Fitch New Issue Report

The ‘AA’ rating reflects the Sacramento Municipal Utility District’s (SMUD) very strong and stable financial profile in the context of its ‘aa’ revenue defensibility assessment and ‘a’ operating risk assessment. The ‘aa’ financial profile is expected to persist over the medium term, with leverage, calculated as net adjusted debt to adjusted funds available for debt service, remaining between 5.0x and 6.0x and supportive of the rating. Higher than anticipated costs from the implementation of SMUD’s ambitious 2030 Zero Carbon Plan, adopted in April 2021, could occur as energy purchases from clean technology increase. However, Fitch Ratings anticipates that costs will be recovered in a timely manner to preserve the utility’s financial profile, or the target date would be delayed if costs are significantly higher than anticipated, given SMUD’s focus on affordability and reliability to guide the pursuit of its 2030 goal.

ACCESS REPORT

Iowa Finance Authority: Fitch New Issue Report

Key Rating Drivers Sound Financial Structure: Fitch’s cash flow modeling demonstrates that the resources of Iowa Finance Authority’s (IFA, or the authority) combined CWSRF and DWSRF programs (together, the program) are sufficient to withstand hypothetical pool defaults in excess of Fitch’s ‘AAA’ liability rating stress hurdle, as produced using Fitch’s Portfolio Stress Model (PSM). Surplus annual loan repayments and pledged reserves primarily provide this loss protection. Above-Average Pool Diversity: Fitch views the program’s pool diversity as above-average, driven by the large number of borrowers (more than 750 obligors). The top 10 borrowers represent a low 36% of the pool total and the largest single borrower represents a moderate 14% of the pool. Largely Unrated Portfolio: Overall, IFA’s pool quality is below average in comparison to similar programs Fitch rates, as more than three-quarters of the loan portfolio does not carry a public rating. To mitigate this risk, Fitch’s PSM conservatively assumes unrated borrowers to be of sub-investmen--grade quality (BB). Effective Program Management: IFA and the Iowa Department of Natural Resources (DNR) jointly manage the program following underwriting and loan monitoring procedures set forth by the MTA. The program has not experienced a default of any pledged borrower to date.

ACCESS REPORT

Orlando Utilities Commission, Florida: Fitch New Issue Report

The ‘AA’ Issuer Default Rating and rating on Orlando Utilities Commission’s (OUC) utility system revenue bonds reflects the utility’s very low leverage in the context of very strong revenue defensibility and operating risk, which are both assessed at ‘aa’. OUC’s revenue defensibility is anchored by the provision of monopolistic electric and water utility services to a very favorable and

growing service area, as well as the independent ability to raise rates without regulatory oversight. OUC's operating cost burden is historically very low. However, elevated gas prices in 2022 drove operating costs to 11.11 cents/kWh from 9.04 cents/kWh in 2021. Natural gas accounts for 65% of OUC's energy generation; sustained elevated operating costs could negatively affect OUC's very strong operating risk assessment. OUC's financial profile and leverage ratio, measured as net adjusted debt to adjusted funds available for debt service remained very strong in fiscal 2022, when recorded leverage was a very low 4.3x. Total operating expenses increased 22% yoy, while purchased power expense nearly doubled yoy, totaling $86.6 million in fiscal 2022. Operating margins remained strong as the utility's fuel charge pass-through increased revenues and recovered higher fuel costs. Fitch Ratings expects OUC will continue to demonstrate strong operating performance while incorporating additional capital spending to reach long-term carbon-emission goals.

ACCESS REPORT

Fri 02 Jun, 2023

Attend GFOA Accounting Training in Chicago in July.

Need accounting help? We're bringing in-person training back to Chicago in July with Advanced Governmental Accounting (July 18-19), Intermediate Governmental Accounting (July 25-26), and Accounting for Pensions and Other Post Employment Benefits (July 27).

Click here to learn more and to register.

Upcoming NFMA Webinar on ETF Essentials for Muni Analysts.

The Webinar Subcommittee will present ETF Essentials for Muni Analysts on **June 22**. This webinar will include a discussion about how fixed income ETFs work, how they are used, their influence on market structure and how they telegraph market sentiment. NFMA members may register for free; non-members may attend for a $100 fee. Press is not permitted to attend.

To register, click here.

S&P Charter School Brief: Tennessee

View the Brief.

1 Jun, 2023

- Keep Your Paws Off My Positive Arbitrage – "With Great Power Comes Some Responsibility" – Squire Patton Boggs

- 2023 SEC Municipal Securities Disclosure Conference – Voluntary Disclosure and FDTA Structured Data Present Benefits and Pose Uncertainties for Issuers and Obligated Entities: Hunton Andrews Kurth
- Legislation Creates Taxable Municipal Bonds to Boost Infrastructure Investments.
- Municipal Bond Issuers on Edge as Debt Ceiling Deadline Nears.
- Fitch Places Muni Ratings Tied to U.S. Sovereign on Rating Watch Negative.
- Marin City Apartment Complex Opponents File Suit to Block Bonds.
- And finally, I Know This Word. I Do Not Think It Means What You Think It Means Redux. is brought to us this week by *Harper v. Health Care Service Corporation*, in which the court insisted on referring to the plaintiff as a "purported taxpayer." Are we missing something here? Is this a term of art in the wide, wide world of tax of which we had not been aware? It had been our understanding that one is either a taxpayer or not a taxpayer. You know, binary. But we are going to take this ruling as an excuse to characterize this publication as, "a purported public finance publication of unspeakable power and influence." That said, Your Editor has previously been referred to as "an ostensible homo sapien." So we have that going for us, which is nice.

EMINENT DOMAIN - CALIFORNIA

Shenson v. County of Contra Costa

Court of Appeal, First District, Division 2, California - March 30, 2023 - 89 Cal.App.5th 1144 - 306 Cal.Rptr.3d 584 - 2023 Daily Journal D.A.R. 2797

Owners of creekside properties sued county and flood control district for inverse condemnation and parallel tort causes of action after drainage improvements failed and their properties were damaged by erosion and subsidence.

The Superior Court granted defendants' motion for summary judgment. Owners appealed.

The Court of Appeal held that:

- County's requirement that developer make drainage-related improvements and offer to dedicate an easement as conditions of subdivision approval did not convert spillway into a public drainage system;
- Fees collected by flood control district did not establish that subdivision's drainage improvements were incorporated into a public drainage system;
- Failure of defendants to require mitigation by upstream property owners did not establish that subdivision's drainage improvements were a public work; and
- Any error in trial court's exclusion of expert's statement regarding county's custom and practice was harmless.

County's requirement that private developer make drainage-related improvements and offer to dedicate an easement as conditions of approval of subdivision did not convert spillway constructed by developer into a public drainage system, as alleged in inverse condemnation action brought by subdivision property owners, where county never expressly accepted the easement offer and never maintained or repaired the spillway or installed any improvements.

The fact that drainage improvements required for county approval of subdivision served some off-subdivision needs did not convert the improvements into public works in inverse condemnation action brought by subdivision property owners; county ordinance requiring easements for off-subdivision drainage merely recognized that waters from landlocked properties must at times be conveyed through drainage improvements on other properties to reach a natural watercourse.

County’s failure to act on developer’s offer of dedication of subdivision’s drainage improvements did not convert the improvements into public works in inverse condemnation action brought by subdivision property owners; the county’s acceptance of the offer only for the purpose of recording the deed was not an equivocal acceptance of the offer for the purpose it was offered, i.e., to access the improvements, and county made no effort to maintain or repair the improvements.

County’s requirement that subdivision developer install drainage improvements and county’s acceptance “for recording only” of offer of dedication of the improvements did not create an implied acceptance of the drainage easements as public works in inverse condemnation action brought by subdivision property owners; county was not involved in the construction of the improvements and did not perform maintenance or repair work on them.

Fees collected from subdivision property owners by flood control district were not evidence that subdivision’s drainage improvements were incorporated into a public drainage system in inverse condemnation action brought by owners against district and county; fees were collected pursuant to a drainage fee ordinance to be placed in a fund intended to cover a local match to a proposed federal flood-control project that was never built.

ATTORNEYS' FEES - CALIFORNIA

Kennedy Commission v. City of Huntington Beach

Court of Appeal, Fourth District, Division 2, California - May 11, 2023 - Cal.Rptr.3d - 2023 WL 3372378

Objector filed petition for alternative writ of mandate and complaint for declaratory and injunctive relief against city and city council, alleging that amended housing plan was inconsistent with city’s housing element, which identified sufficient sites to accommodate city’s regional housing needs allocation (RHNA) of low-income housing.

Action was transferred from the Superior Court, Orange County. The Superior Court, Los Angeles County granted petition for writ of mandate and, later, the Superior Court awarded attorney fees to objector. City and city council appealed each decision. The Court of Appeal reversed, granting of petition for writ of mandate and reversed attorney fees award. On remand, objector filed first amended petition for writ of mandate and declaratory relief. After parties stipulated to dismissal of first amended petition, objector filed motion for attorney fees. The Superior Court granted attorney fees in amount of $3,531,201.10. City and city council appealed.

The Court of Appeal held that:

- Objector satisfied causation element to recover attorney fees under catalyst theory pursuant to statute allowing award of fees in action resulting in enforcement of important right affecting public interest;
- Action was not frivolous, as supported award of attorney fees;
- Trial court acted within its discretion in finding that objector reasonably attempted to settle its case before suing;
- Objector satisfied prong requiring enforcement of important right;
- Action conferred a significant benefit on public;
- Sufficient evidence supported trial court’s finding that 4,165.7 hours spent litigating case was reasonable; and
- Trial court acted within its discretion when it applied multiplier of 1.4 to lodestar amount.

Objector’s persistence in requiring city to meet city’s regional housing needs allocation (RHNA) of low-income housing was substantial factor in city’s adoption of second housing element, which complied with RHNA, and thus objector satisfied causation element to recover attorney fees under catalyst theory pursuant to statute allowing award of fees in action resulting in enforcement of important right affecting public interest, in action seeking writ of mandate and declaratory relief regarding amended housing plan; objector’s litigation caused Legislature to change law to require consistency by charter cities and prompted Department of Housing and Community Development (HCD) to file suit against city, and objector achieved its primary objective of city complying with RHNA.

ANNEXATION - ILLINOIS

Village of Kirkland v. Kirkland Properties Holdings Company, LLC I

Supreme Court of Illinois - May 18, 2023 - N.E.3d - 2023 IL 1286122023 WL 3516672

Village brought action against purported successor owners of original landowner, alleging they breached recorded annexation agreement for 114-acre residential subdivision by refusing its request for a letter of credit, in amount proportionate to the number of their lots, to secure completion of roads in the subdivision, and sought damages or, in the alternative, injunctive relief in form of specific performance.

The Circuit Court granted defendants’ motion to dismiss on the pleadings and awarded attorney fees in their favor. Village appealed. The Appellate Court reversed in part, vacated in part, and remanded. Defendants’ petition for leave to appeal was allowed.

The Supreme Court held that:

- Village’s notice of appeal was sufficient to confer appellate jurisdiction over its challenge to the circuit court’s award of attorney fees and the circuit court’s dismissal of village’s third amended complaint, on which the circuit court based its award of attorney fees;
- Defendants were “successor owners of record of the land” subject to the annexation agreement, even though they owned only a portion of the original configuration;
- The annexation agreement was binding on defendants; and
- Because the Municipal Code expressly authorized specific performance as a remedy, village’s requests for specific performance remained viable despite the availability of other avenues of relief.

LIABILITY - IOWA

Sutton v. Council Bluffs Water Works

Supreme Court of Iowa - May 19, 2023 - N.W.2d - 2023 WL 3555502

Homeowners brought action against city for strict liability and negligence, alleging that underground water main broke and that this water caused their house to settle, resulting in damage to its foundation, interior walls, garage floors, and doors.

The District Court denied city’s motion to dismiss the strict liability claim, and city sought interlocutory appeal.

The Supreme Court held that:

- Municipal Tort Claims Act did not bar homeowners' strict liability claim against city, and
- Municipal Tort Claims Act's language defining "tort" as every civil wrong which results in wrongful death or injury embraces strict liability claims.

Municipal Tort Claims Act did not bar homeowners' strict liability claim against city for damages allegedly caused when underground water main broke and the water caused their house to settle, resulting in damage to its foundation, interior walls, garage floors, and doors; strict liability claims were "torts" for which parties could pursue claims under the Act, and sections of Act granting immunity to municipalities for tort claims based on claims of negligent design and construction of public facilities or failure to upgrade public facilities were not applicable since homeowners alleged no negligence in design and made no allegation of any failure by city to upgrade, improve, or alter any part of water distribution system to a new, changed, or altered design standard.

Municipal Tort Claims Act section granting immunity to municipalities for tort claims based on claims of failure to upgrade public improvements or facilities is not limited to negligence, and it bars claims based on an alleged failure to upgrade existing public facilities when a new-and-improved design standard emerges.

EMINENT DOMAIN - MASSACHUSETTS

Smiley First, LLC v. Department of Transportation

Supreme Judicial Court of Massachusetts, Suffolk - May 23, 2023 - N.E.3d - 2023 WL 3589087

Landowner brought action against Massachusetts Department of Transportation (MassDOT), seeking declaratory and equitable relief as to MassDOT's contention that its purported taking of landowner's property merely confirmed rights that MassDOT already held under previous taking.

On cross-motions for summary judgment, the Superior Court granted summary judgment to MassDOT. Landowner appealed to Appeals Court, and the Supreme Judicial Court transferred case on Supreme Judicial Court's own motion.

The Supreme Judicial Court held that:

- Whether easement has been established by eminent domain or granted privately, as general rule, doubts as to extent of restriction in easement should be resolved in favor of freedom of land from servitude, and
- Easement condemned by MassDOT's predecessor-in-interest for relocating railroad facilities displaced by road construction project did not encompass project for construction of test track and 6,000 square foot building for storage of railway vehicles on burdened land, and thus such project constituted an additional taking for which compensation was required.

Whether easement has been established by eminent domain or granted privately, as general rule, doubts as to extent of restriction in easement should be resolved in favor of freedom of land from servitude.

Easement condemned by Department of Public Works, the predecessor-in-interest to Massachusetts Department of Transportation (MassDOT), for relocating railroad facilities displaced by road construction project did not encompass project for construction of test track and 6,000 square foot

building for storage of railway vehicles on burdened land, and thus such project constituted an additional taking for which compensation was required; easement was limited in space and time by air rights reserved to fee holder, providing for railroad to relocate a single track to property and thereafter fixing scope of easement to the right of way occupied by track and vertical dimension above it, and overall purpose set out in easement was to relocate the facilities being displaced.

License agreement entered into between Commonwealth and Department of Public Works, the predecessor-in-interest to Massachusetts Department of Transportation (MassDOT), which permitted easement condemned by Department for relocating railroad facilities displaced by road construction project to be used by railroad for ancillary activities that constituted railroad purposes, could not unilaterally expand scope of permissible use of the burdened land beyond what was stated in the taking.

Where a right of way, or other easement, is granted by deed without fixed and defined limits, the practical location and use of such way or easement by the grantee under the deed, acquiesced in by the grantor at the time of the grant and for a long time subsequent thereto, operate as an assignment of the right, and are deemed to be that which was intended to be conveyed by the deed, and are the same, in legal effect, as if it had been fully described by the terms of the grant.

Easement condemned by Department of Public Works, the predecessor-in-interest to Massachusetts Department of Transportation (MassDOT), for relocating railroad facilities displaced by road construction project, providing for railroad to relocate a single track to property and thereafter fixing scope of easement to the right of way occupied by track and vertical dimension above it, did not give railroad a right to occupy the entire parcel of burdened land in perpetuity; rather, railroad only possessed a right to place its tracks and facilities in the place of its choosing on the burdened land.

EMINENT DOMAIN - PENNSYLVANIA

In re General Municipal Authority of City of Nanticoke

Commonwealth Court of Pennsylvania - March 27, 2023 - A.3d - 2023 WL 2637071

Condemnees brought separate preliminary objections to amended declarations of taking of their respective properties by city’s general municipal authority, which declarations were for construction of multi-use building.

The Court of Common Pleas overruled condemnees’ objections and, after condemnees filed notices of appeal, directed condemnees to file concise statements of errors. After trial judge’s retirement, Tina Polachek Gartley, J., issued supporting opinion.

The Commonwealth Court held that:

- Provisions of the Municipality Authorities Act (MAA) allowing takings for partial public uses, uses not exclusively designated as public or non-public, and uses for industrial development did not facially violate federal or state constitutional protections;
- Trial court allowed amendment of declarations after condemnees brought preliminary objections, and thus, amended declarations were not improperly filed;
- Absent any prejudice resulting from listing of incorrect location for examination of minutes of meeting by authority authorizing declarations, declarations were validly authorized;
- Any inadequacy in description of condemnee’s property in original declaration was rectified by

amended declaration; but
- Remand was required for trial court to hold de novo hearing and to make findings of fact and conclusions of law.

OPEN MEETINGS - VIRGINIA

Gloss v. Wheeler

Supreme Court of Virginia - May 18, 2023 - S.E.2d - 2023 WL 3513381

County residents filed a petition for mandamus and injunction against members of the county board of supervisors, alleging violation of the Virginia Freedom of Information Act (VFOIA).

The Prince William Circuit Court granted defendants' motion to strike made at the conclusion of residents' evidence at trial, and denied residents' motion for reconsideration. Residents appealed.

The Supreme Court held that meeting of county's citizens advisory board and a majority of supervisors was subject to the open meeting provisions of VFOIA and did not fall within an exception to the definition of "meeting."

In action brought by county residents against members of the county board of supervisors for alleged violation of the Virginia Freedom of Information Act (VFOIA), meeting of county's citizens advisory board and a majority of supervisors did not fall outside the VFOIA definition of "meeting" based on participants' failure to discuss public business, where the meeting was called specifically to discuss matters of county policy related to riots occurring in the county and police response to those riots, such discussions occurred as planned, the same issues were placed on county board's agenda for a subsequent emergency meeting, and sufficient evidence supported a conclusion that county business was transacted regarding the contents of a requested law enforcement report about the riots.

MUNICIPAL CORPORATIONS - WASHINGTON

Messersmith v. Town of Rockford

Court of Appeals of Washington, Division 3 - May 18, 2023 - P.3d - 2023 WL 3514210

Property owners brought action against town, seeking to quiet title to strips of land that fell within platted roads and alleyway.

The Superior Court granted property owners' motion for summary judgment. Town appealed.

The Court of Appeals held that platted roads and alleyway were not subject to the nonuser statute and thus did not revert to property owners.

Platted roads and alleyway which were never developed were not subject to the nonuser statute and thus did not revert to property owners in quiet title action against town, where the plain language of the nonuser statute as it existed at relevant times limited its application to "county" roads and ceased to apply to the roads on property owners' land when the property was annexed into and became part of the town one year after having been platted.

EMINENT DOMAIN - FEDERAL

[Angelly v. United States]

United States Court of Federal Claims - May 11, 2023 - Fed.Cl. - 2023 WL 3398155

Owners of land and other property along two rivers filed suit against United States, seeking just compensation for alleged physical taking of flowage easements by Army Corps of Engineers' construction of river training structures designed to deepen and provide better alignment for rivers' navigational channels thereby causing atypical and unseasonal flooding on their land. Government moved to dismiss for lack of subject matter jurisdiction and for failure to state claim.

Holdings:

- Takings claims were not time barred, and
- Landowners' complaint sufficiently stated takings claims.

Landowners' allegations of atypical and unseasonal flooding of their property, which would not have occurred absent Corps of Engineers' construction of river training structures for navigational channels, would be accepted as true on government's motion to dismiss takings claims for lack of subject matter jurisdiction, so Court of Federal Claims would presume owners rarely experienced flooding outside of typical flooding season until specified years; government failed to controvert owners' allegations and instead provided evidentiary support for assertion that flooding occurred regularly for many years, but nowhere in its motion or attached exhibits presented evidence calling jurisdictional facts into question contrary to owners' allegations of new atypical flooding during growing season.

When the government decides to forego the opportunity to define precisely when a Fifth Amendment taking occurs, and instead leaves the taking to physical events, it is thereby putting on the owner the onus of determining the decisive moment when the fact of the taking could no longer be in controversy; these circumstances would allow the government to place an unfair burden on the property owner, so strict application of accrual principles is discouraged in cases where the taking is the result of a gradual process.

Under the "stabilization doctrine," the statute of limitations does not bar an action under the Tucker Act for a Fifth Amendment taking by flooding when it is uncertain at what stage in the flooding operation the land has become appropriated for public use; rather, stabilization occurs when it becomes clear that the gradual process set into motion by the government has effected a permanent taking, not when the process has ceased or when the entire extent of the damage is determined.

During the time when it is uncertain whether the gradual process will result in a permanent taking, under the Fifth Amendment, the plaintiff need not sue the government; however, once it is clear that the process has resulted in a permanent taking and the extent of the damage is reasonably foreseeable, the claim accrues and the statute of limitations begins to run.

Under stabilization doctrine, landowners' claims seeking just compensation under Tucker Act, for atypical and unseasonal flooding of their property due to Army Corps of Engineers' construction of river training structures for navigational channels, accrued under six-year statute of limitations for takings claims, on date that flooding stabilized when it became clearly apparent by passage of time that such atypical and unseasonable intermittent flooding was of permanent nature.

Landowners claiming that Army Corps of Engineers effected taking of their property, by atypical and unseasonal flooding due to construction of river training structures for navigational channels, were

not required to pinpoint precise action constituting conduct that government could not engage in without paying just compensation, in order to state Fifth Amendment takings claim, since pinpointing requirement for regulatory taking claim did not apply to landowners' physical takings case, and even if pinpointing requirement applied, owners sufficiently alleged their claims with enough specificity to pinpoint what government actions allegedly led to taking of their properties.

Landowners claiming that Army Corps of Engineers effected taking of their property, by atypical and unseasonal flooding due to construction of river training structures for navigational channels, were not required to affirmatively and literally plead that alleged flooding fell outside of United States' navigational servitude, in order to state Fifth Amendment takings claim, since owners' properties did not sit in riverbed, and it was not location of river training other structures that was relevant, but rather, location and permanence of effect of government action causing flooding.

Court of Federal Claims conducts a two-part test to distinguish torts from takings: (1) a property loss compensable as a taking only results when the government intends to invade a protected property interest or the asserted invasion is the direct, natural, or probable result of an authorized activity and not the incidental or consequential injury inflicted by the action, and (2) the nature and magnitude of the government action must be considered.

Landowners seeking just compensation for atypical and unseasonal flooding of their properties due to Army Corps of Engineers' construction of river training structures for navigational channels stated claim for Fifth Amendment taking, not claim sounding in tort, since owners alleged they could establish their takings claims by proving that flooding allegedly invading their properties was direct, natural, and probable result of Corps' actions to maintain navigable river channel.

n analyzing whether the invasion of owners' property was the direct, natural, or probable result of the government action, as required to state a Fifth Amendment takings claim, Court of Federal Claims must look at whether the result was predictable; in other words, the injury must be the foreseeable result of the action.

California Pension Bill Seeks $15 Billion Divestment.

The California state Senate approved a bill that would force the country's two largest pensions to divest an estimated $15 billion from oil and gas companies, a measure opposed by the funds' managers.

The measure, which passed in a 23-10 vote on Thursday, requires the California Public Employees' Retirement System and the California State Teachers Retirement System to empty their assets of large oil and gas companies by 2031 and halt any new investments by 2024.

The bill now heads to the Assembly, where similar legislation died last year after approval by the Senate.

The proposal highlights key divisions among California's Democratic supermajority as lawmakers' tough stance on climate change clashes with concerns that divestment will threaten the financial health of municipalities burdened with millions of dollars in pension fund liabilities. It also contrasts with efforts by Republican-led states like Florida and Texas to limit funds from making investment decisions based on environmental, social and governance issues.

"Senate Bill 252 would do nothing to combat the dangers of climate change," Calpers Chief

Executive Officer Marcie Frost said in a statement. “Its only impact, at least in the short term, would be to make it that much harder to achieve the investment returns needed to pay the benefits promised to Calpers members.”

Calpers said it uses its investments to push for climate change issues at large companies. The pensions say divestment would also increase risk by reducing their portfolio’s diversification.

But Senator Lena Gonzalez of Los Angeles County, the bill’s author, said the legislation’s eight-year divestment timeline is sufficient to achieve the goals without harming returns.

“You’ve been engaging for decades with companies and they haven’t done anything,” said Gonzalez. “Clearly their strategy isn’t working.”

The bill has also splintered California’s powerful labor interests. Unions representing firefighters and construction trades are against the measure, while a major teachers’ union and the California Nurses Association support it.

Calpers and Calstrs manage a combined $822.6 billion in assets. The funds are under pressure to provide an investment return rate of 6.8% and have in recent years turned to private equity to boost returns.

Proponents of the bill say the pension funds’ continued investment in the oil and gas sector flout California’s goal of reaching net zero carbon emissions by 2045.

Bloomberg Politics

By Eliyahu Kamisher

May 26, 2023

Rural California Hospital’s Bankruptcy Highlights Industry Strains.

- **California’s San Benito Health Care District filed Chapter 9**
- **Nine rural hospitals in state closed since 2005, report says**

In yet another sign of the increasing financial stress facing US hospitals, a public health care operator in California has filed for bankruptcy protection.

San Benito Health Care District in Hollister filed for Chapter 9 bankruptcy on Tuesday, citing labor costs, a years-long shortage of working capital and a $5.2 million overpayment from Medicare it had to return, the court filing said. The Chapter 9, which is filed by municipalities and public entities, is rare compared to other bankruptcy filings used by corporations and individuals.

The move allows the district to address excessive health-care costs for its workers and find a partner or buyer, a press release prior to the filing said. The district operates the 25-bed, 116-year-old Hazel Hawkins Memorial Hospital and a handful of specialty and rural health clinics and nursing homes.

Continue reading.

Bloomberg

By Lauren Coleman-Lochner

May 24, 2023

Fitch: California Revenue Shortfall Consistent with Historical Volatility

Fitch Ratings-New York/San Francisco-25 May 2023: California's deteriorating revenue forecast reflects the high sensitivity of the state's tax revenues to changing economic conditions, which is a fundamental characteristic of its credit profile, says Fitch Ratings. California (Issuer Default Rating 'AA'/Stable) benefits from strong financial resilience and prudent fiscal management since the 2008-2009 Great Recession. Fitch anticipates the state will respond to the lower available tax revenues with sustainable actions that support ongoing structural budget balance.

The May Revision to Governor Newsom's fiscal 2024 budget proposal assumes revenues will be $31.5 billion lower for fiscal years 2022-2024 than was assumed when the fiscal 2023 budget was enacted in June 2022. Fiscal 2023 general fund revenues, prior to transfers, are forecast to be $16.7 billion (7.5%) lower than the June 2022 estimate and down 7.7% yoy. Forecast fiscal 2024 general fund revenues of $206.6 billion, prior to transfers and solutions, are $26.8 billion (11.5%) lower than the June 2022 estimate but still well above pre-pandemic fiscal 2019 levels of $144.5 billion.

The lower revenue forecast is driven largely by weakness in the personal income tax (PIT), with slowing economic conditions and technical factors playing important roles. The PIT is highly sensitive to economic changes, and the forecast reflects slower economic growth after the very rapid pace of growth immediately following the pandemic recession. The governor's economic assumptions assume a stronger rebound in national GDP growth than does Fitch's economic outlook, leaving the state's revenue forecast susceptible to downside risk. Additionally, the state Legislative Analyst Office's (LAO) assessment of the May Revise suggests a more pessimistic outlook with the fiscal 2022-2024 forecast an additional $11 billion below the Governor's estimate.

California's pass-through entity (PTE) elective tax and the deferral of tax deadlines in a number of counties add uncertainty. The PTE elective tax allows business owners to work around the federal cap on state and local tax deductions by combining corporate income tax payments and personal income tax credits. The department of finance (DOF) estimates nearly 10% of general fund revenues before transfers from fiscal 2022-2024 will be PTE elective tax payments. The mix of payments and credits with unpredictable timing complicates revenue forecasting.

Following severe winter storms, the state deferred tax deadlines for individuals and businesses in 55 counties, representing 99% of the state's population, from April to October 2023. The state estimates the deferral will shift $40 billion of its tax revenue from the current into the next fiscal year, while acknowledging the difficulty in crafting an estimate given the lack of clarity on potential taxpayer behaviour. Fitch considers the state's liquidity cushion ($109 billion including $91 billion in borrowable resources as of April 30, 2023) more than adequate to address cash flow implications.

The May Revision addresses the lower revenue forecast by tapping resilience built into the fiscal 2023 and previous budgets without dipping into the budget stabilization account (BSA) or taking deep cuts to ongoing spending. Prior budgets enhanced resilience by reducing budgetary and other debt, limiting growth in ongoing spending, applying non-recurring revenues to one-time spending including for capital investment rather than debt issuance, placing revenue triggers on new programs, and building reserves.

The bulk of the Governor's proposed budget balancing actions involve some form of spending reduction, including funding delays, reduced one-time spending, spending shifts from the general fund to other funds, and trigger reductions that can be restored if the revenue picture improves. The Governor is also proposing to renew and increase a managed care organization tax that is expected to raise $3.4 billion. The May Revise includes a modest withdrawal of $450 million of the $900 million balance Safety Net Reserve but does not touch the larger $22.3 billion BSA, and adds to the Public School System Stabilization Account, bringing its total to 10.7 billion, leaving these reserves available to address further revenue deterioration.

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Los Angeles Department of Water & Power, California: Fitch New Issue Reporty

The 'AA–' rating reflects Los Angeles Department of Water & Power's (LADWP) very strong financial profile in the context of a large and diverse retail customer base, very strong revenue defensibility characteristics, increasing operating costs and a large capital plan. LADWP is in the process of redesigning its overall power supply portfolio to comply with state and local requirements to increase renewable energy resources and supply 100% carbon-free energy to retail customers by 2035. The rating analysis does not incorporate full potential costs related to the power supply conversion because the utility's strategic plan to reach the target and the total costs are not yet fully identified. Fitch expects a final plan in 2023, but additional costs in the capital improvement plan (CIP) are not expected to be materially incurred over the five-year CIP.

ACCESS REPORT

Fri 26 May, 2023

Marin City Apartment Complex Opponents File Suit to Block Bonds.

Opponents of a 74-apartment, five-story development at 825 Drake Ave. in Marin City have filed a

lawsuit to block the issuance of bonds needed to finance the project.

The suit was filed on May 18 by Save Our City, an advocacy group, and the group's co-founder, Marilyn Mackel, a Marin City Community Development Corp. board member and a former court commissioner in Los Angeles County.

The suit seeks an order invalidating the Marin County Board of Supervisors' decision on March 21 to approve the issuance of the revenue bonds by the California Municipal Finance Authority.

The authority is a joint powers agency of 350 California counties, cities and special districts that assists local governments, nonprofits and businesses with the issuance of taxable and tax-exempt financing. Marin County is one of the authority's members.

Under federal law governing tax-exempt financing, a government whose territory includes the location of the project had to approve the bonds. As a result, only Marin County or the state could provide the necessary approval.

The supervisors voted 3-2 to approve issuance of the bonds, with Stephanie Moulton-Peters and Eric Lucan casting the dissenting votes. Save Our City's lawsuit alleges that the supervisors who voted in favor of issuance "cast their votes based on incorrect understanding of the nature and extent to their authority to approve or disapprove the project."

"All three of these supervisors," the suit states, "expressed their understanding that they could not lawfully vote to disapprove the proposed tax-exempt bond financing for the project on their own substantive objections to the project arising from features of the project that are detrimental, or that these supervisors considered detrimental, to the community."

The defendants named in the suit are Marin County, the county supervisors, the California Municipal Finance Authority and the developers, Pacific West Communities and Affordable Housing Land Consultants.

"We have not yet seen the lawsuit," County Counsel Brian Washington wrote in an email. "As required by SB 35, the county ministerially approved the 825 Drake Project without the Board of Supervisors being allowed to be part of the decision-making process. It will be the developer's obligation to defend any lawsuit challenging the project."

Supervisor Dennis Rodoni said also he had not seen the suit and declined to comment. Supervisors Katie Rice and Mary Sackett did not respond to a request for comment. The developers did not respond to requests for comment.

Mackel said Monday that Save Our City has more than 100 people on its mailing list and has been meeting since October. She said the legal costs associated with the lawsuit are being covered by an anonymous donor.

"Safety issues are the primary concern we're focusing on," Mackel said, "although there are many, many others."

Bettie Hodges, another Save Our City co-founder and director of the Hannah Project Partnership for Academic Achievement, said, "The streets are extremely narrow. There is limited parking, which will create congestion. There is concern among residents that emergency vehicles will have limited access."

Because of Senate Bill 35, the project was approved without review by the Marin County Planning

Commission or environmental analysis under the California Environmental Quality Act. The law, intended to streamline housing development to address California's severe housing shortage, mandates a ministerial approval process for projects proposed in jurisdictions that have failed to create their state-mandated quota of housing.

Hodges said a high percentage of Marin City's housing is already affordable or subsidized by the government, so if Marin City were a separate jurisdiction it would be exempt from SB 35.

One of the few requirements that developers face under SB 35 is to make a certain percentage of their residences affordable to households making below 80% of the area median income. Depending on the circumstances, the requirement can range from a maximum of 50% to a minimum of 10%.

Under SB 35, the developer of 825 Drake Ave. is not required to provide any parking, since the site is located within a half-mile of a Marin Transit bus stop. If not for SB 35, the county would have required two parking spaces per dwelling.

Mackel said another big concern of Save Our City is the effect the project will have on Village Oduduwa, a low-income seniors complex, which it will abut.

"The seniors will have no sunlight," Mackel said.

Other safety concerns include the fact that the project will be located in a state-designated high fire hazard zone at heightened risk to wildfires in the summer, and in an area prone to flooding in the winter with just one road in and out of the community.

The controversy over the project grew more intense following the March 21 hearing on the bonds. Alexis Gevorgian, who had been the spokesperson for the project, said that 16 of the apartments would be reserved for four-person households earning $49,800 per year or less; eight for four-person households earning no more than $83,000; and 29 for four-person households earning no more than $99,600. Twenty of the apartments would be affordable to four-person households earning up to $116,200.

Hodges questions whether the developer is committed to those numbers.

"I think those ranges are aspirational," she said.

The Marin Housing Authority is allocating vouchers to the project so 25 households will be guaranteed to pay no more than 30% of their income for rent.

During the March hearing, Kimberly Carroll, director of the Marin Housing Authority, also said the apartments will provide options for residents of Golden Gate Village who are being forced to move because their family size has diminished and there are no appropriately sized apartments available in the neighborhood.

Marin Independent Journal

By RICHARD HALSTEAD | rhalstead@marinij.com | Marin Independent Journal

PUBLISHED: May 25, 2023

An Overview Of U.S. State Budgets And Municipal Bonds.

Summary

- California just released its mid-May budget update, which tells a story of further revenue slowing and an increased budget deficit.
- States report monthly cash flows—and combined with economic data—have expected the robust revenue growth of the last few years to stabilize, slow and potentially retreat.
- While the forecast looks cloudy, state and local governments have largely planned well for a rainy day.

Continue reading.

Seeking Alpha

May 23, 2023

Franklin Templeton Investments

Municipal Bond Issuers on Edge as Debt Ceiling Deadline Nears.

City and state governments fear potential surge in cost of financing

A Utah city's plan to issue about $15 million in bonds to fund a new parking structure has officials fixated on the fast-approaching deadline to raise the U.S. debt ceiling. The fear: A default could upend the bond market.

"The cost will skyrocket for us, and financing could become unattainable," said Mark Shepherd, mayor of Clearfield, about 30 miles north of Salt Lake City.

A surge in borrowing costs could result in local projects in Clearfield and elsewhere being left unfinished, said Shepherd, who is also chair of a National League of Cities committee on federal advocacy.

Continue reading.

The Wall Street Journal

By Brenda León and Heather Gillers

Updated May 26, 2023 5:27 pm ET

Fitch Places Muni Ratings Tied to U.S. Sovereign on Rating Watch Negative.

Fitch Ratings – San Francisco – 26 May 2023: Following Fitch Rating's placement of the United States' 'AAA'/'F1+' Foreign and Local Currency Issuer Default Ratings (IDRs) on Rating Watch Negative (RWN), Fitch has placed on RWN the 'AAA' ratings of certain categories of debt that are directly tied to the creditworthiness of the U.S. or its related entities.

Categories of debt with ratings that are affected include:

–Pre-refunded bonds with repayments that are wholly dependent on 'AAA' rated U.S. government and agency obligations held in escrow;

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

Continue reading.

What the U.S. Credit Rating Moves Mean for Muni Bonds.

After Fitch Ratings put the U.S. government's debt on watch for a negative downgrade Wednesday, Fitch analysts have been busy working out the implications for the $4 trillion muni bond market.

While the credit-rating firm believes Republicans and Democrats will reach a federal spending compromise before any Treasury bills default, Fitch analysts are wary of how a spending deal could hit the revenues of state and local governments.

"We're certainly watching very closely," said Doug Offerman, a senior director at the firm's public finance states group. Local governments rely directly on federal funding for healthcare, education and transportation. With federal spending amounting to a third of gross national product, any big change will affect local economies. "It's a big footprint," Offerman said.

Continue reading.

Barron's

By Bill Alpert

May 26, 2023

Keep Your Paws Off My Positive Arbitrage – "With Great Power Comes Some Responsibility" - Squire Patton Boggs

Our previous post kicked off our Rebate Series by introducing core concepts and terms. However, for every rule there is an exception. And, as you will learn shortly, for every exception there is an exception to that exception (except when there is not).

The next two episodes will focus on the so-called timing exceptions. In the rebate world, there are three: the 6-month, 18-month and two-year spending exceptions to the rebate requirement. Two general points to keep in mind: (1) each of these exceptions is independent of the others; so an issue could qualify under more than one, and (2) the spending exceptions are not automatically applied; so an issuer can choose NOT to apply them.

This post will cover the 6-month and 18-month spending exceptions, saving the best (or honestly, the most confusing) for last.

Continue reading.

By Natalie Vicchio on May 17, 2023

The Public Finance Tax Blog

Squire Patton Boggs

Local Governments Escape Ruling that Could Have Upended Property Tax Laws.

The Supreme Court ruled that cities and counties cannot keep surplus funds from the homes they sell after residents fail to pay property taxes. But local officials nationwide are breathing a sigh of relief that the court didn't go further.

A Minnesota county violated the Fifth Amendment when it sold and kept the excess proceeds from an elderly woman's home, the U.S. Supreme Court ruled Thursday in a unanimous decision.

"A taxpayer who loses her $40,000 house to the state to fulfill a $15,000 tax debt has made a far greater contribution to the public fisc than she owed," Chief Justice John Roberts wrote in the opinion. "The taxpayer must render unto Caesar what is Caesar's, but no more."

The case, *Tyler v. Hennepin County*, centered on how much autonomy state governments have regarding property that is seized lawfully from owners who are delinquent on their taxes. The Fifth Amendment specifies that governments cannot take private property without justly compensating its owner. So the question was whether Hennepin County improperly took the profits it made from selling the woman's house.

Continue reading.

Route Fifty

By Elizabeth Daigneau

May 25, 2023

2023 SEC Municipal Securities Disclosure Conference - Voluntary Disclosure and FDTA Structured Data Present Benefits and Pose Uncertainties for Issuers and Obligated Entities: Hunton Andrews Kurth

The 2023 SEC Municipal Securities Disclosure conference took place on May 10, 2023, the first in nearly three years. Hunton Andrews Kurth LLP's municipal disclosure lawyer Andrew Kintzinger participated as a speaker in the first panel discussion, "Voluntary Disclosure," moderated by Adam Wendell, Deputy Director of the SEC Office of Municipal Securities ("OMS"). Mr. Kintzinger, along with other panelists, discussed current trends with voluntary disclosure and the value of voluntary disclosure generally to rating agencies, investors, and municipal analysts. In addition, the panelists deliberated ways to encourage additional voluntary disclosure with guidance from the SEC while

mitigating exposure to antifraud liability. Key takeaways from the panel included a reminder that, although Regulation FD1 does not apply to municipal securities issuers, selective disclosure by municipal issuers should still be avoided. We recommend that issuer clients ensure that proper disclosure policies and procedures are in place to avoid selective disclosure. In addition, most municipal issuers still struggle to define what is "material" in the absence of clear guidance from the SEC. The panel echoed what we are seeing in our practice as a trend among issuers to avoid materiality determinations altogether by simply erring on the side of disclosure. It remains to be seen whether too much information ends up eroding the benefits of good disclosure, particularly for retail investors of municipal bonds.

The second panel discussion, the "Financial Data Transparency Act ("FDTA")," moderated by Mary Simpkins, Senior Special Counsel of OMS, discussed the FDTA's requirements that the SEC adopt structured data standards for information submitted to the MSRB. The potential scope of the requirement is remarkably broad – the FDTA mandate is not limited to specific information (e.g., financial statements alone), particular submissions (e.g., primary or secondary market disclosures alone), or particular categories of municipal market participants (i.e., broker dealers' trade reports) could also be included. The "covered data" will need to be fully searchable and machine readable on a far greater level than simply a searchable PDF, meaning that every piece of data will need to be given a commonly agreed-upon "tag." Given the diversity of issuers and credits in the municipal securities market (compare, for example, the Official Statement for a large hospital system versus a water and sewer system), establishing a common taxonomy for all municipal securities market data could be a challenge. Based on the timeline set out in the FDTA mandate, we expect the SEC and other federal financial regulators to issue proposed rules by mid-2024, and final rules by December 2024 to establish data standards that are to be effective no later than December 2026. Until the proposed rules are issued, we can only surmise that implementation of the structured data standards will generally track the implementation of XBRL standards for financial statements that publicly reporting companies were required to undertake beginning in 2009. Based on our experience, if the burden to adopt data standards is left up to each individual municipal securities data reporter, then any affected municipal securities issuer will likely end up working closely with its auditor and internal accountants over a year or more to understand the requirements, select an appropriate electronic platform and convert its financial statements and disclosures into the required 'tagged' format. An interesting proposal from the FDTA panel was more centralization of the tagging work to ease the burden on individual issuers (especially smaller or new issuers) – such as the SEC building the platform itself, or that all issuers in a state send their information to one entity who does the work for them. Of course, there are pros and cons to that centralization idea. Any initial taxonomy will undoubtedly undergo revisions as the market provides the SEC with feedback on applying the tags and utilizing the structured data. Transitioning to structured data is no simple undertaking, and we will be following the proposals closely.

The conference continued with two afternoon panels: "Broad Risks," moderated by Mark Elion, Senior Counsel of OMS, discussed the current trends in Environmental, Social and Governance ("ESG") risks, and "Hot Topics and Cold Cases," moderated by Dave Sanchez, Director of OMS, discussed recent enforcement actions for the SEC in the municipal securities market and their applications regarding responsibilities for municipal advisors and the use of the "Limited Offering" exemption under SEC Rule 15c2-12.

During the conference, SEC Chair Gary Gensler provided opening remarks, SEC Commissioner Jaime Lizárraga provided remarks prior to the ESG panel, SEC Commissioner Hester Peirce provided remarks prior to the last panel, and OMS Director Dave Sanchez provided closing remarks.

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1 See 17 C.F. R. § 243.100-.103 (2022).

Hunton Andrews Kurth LLP – Shaney B. Lokken, Andrew R. Kintzinger and Justin K. Hicks

May 22 2023

New York City, New York: Fitch New Issue Report

The 'AA' Issuer Default Rating (IDR) and GO bond ratings reflect New York City's exceptionally strong budget monitoring and controls, supporting our high assessment of operating performance. Federal stimulus aid has relieved fiscal pressure, which would have otherwise resulted from the city's lagged economic recovery, and supported structural budgetary balance. However, the record revenue performance and strong recovery from the pandemic, 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 inflationary environment.

ACCESS REPORT

Mon 22 May, 2023

Oregon Department of Transportation: Fitch New Issue Report

The 'AA+' rating reflects the exceptional resilience of the security structure and growth in pledged revenues that is expected to exceed the long-term rate of inflation. Assuming additional debt issuance to the additional bonds tests (ABTs), net pledged revenues could sustain significant declines and still comfortably meet maximum annual debt service (MADS) requirements on the senior, subordinate, and second subordinate lien bonds. The rating is capped by the state's Issuer Default Rating (IDR) of 'AA+'.

ACCESS REPORT

Wed 24 May, 2023

State of Connecticut: Fitch New Issue Report

Connecticut's 'AA-' Issuer Default Rating (IDR) reflects its superior gap-closing capacity, as well as its wealthy and diverse, yet slow-growing, economic profile. The rating also incorporates the state's elevated liability burden, carrying costs and expenditure growth trends, which are likely to remain comparatively high over time. Economic Resource Base: Connecticut has a diverse and mature economic base anchored by a large finance sector as well as important manufacturing, education and health sectors. Post-pandemic economic growth trails national trends. Connecticut has the highest per capita personal income of any state, although income growth slowed in the prior decade.

ACCESS REPORT

Wed 24 May, 2023

[Oklahoma Capitol Improvement 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 resources sector. While the state 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

Fri 26 May, 2023

TAX - TEXAS

Pecos County Appraisal District v. Iraan-Sheffield Independent School District

Supreme Court of Texas - May 19, 2023 - S.W.3d - 2023 WL 3556711

School district petitioned for review of decision of county appraisal review board (ARB) denying school district’s challenge to valuation of taxpayer’s mineral-interest real property, alleging that taxpayer’s property was erroneously omitted from appraisal for certain tax years.

The 83rd District Court granted taxpayer’s motion to show authority, concluding that school district’s attorney lacked authority to represent district because he was engaged under an allegedly void contingent-fee contract for appraisal litigation, and granted taxpayer’s plea to the jurisdiction, concluding that school district’s petition was “void and of no effect” and that district had thus failed to timely appeal the ARB’s decision. School district appealed. The El Paso Court of Appeals reversed and remanded. Taxpayer petitioned for review, which was granted.

The Supreme Court held that:

- Statute authorizing a 20 percent contingency fee for attorneys hired to enforce collection of delinquent taxes did not expressly authorize school district to retain attorney on contingent-fee basis for appraisal litigation;
- Attorney’s authority to represent school district in appraisal litigation was not authorized by Education Code;
- Texas law did not authorize school district to retain attorney on a contingent-fee basis for appraisal

litigation;
- Attorney could not show his authority to represent school district by pointing to contingent-fee contract; and
- Proper remedy for failure to show authority was to give school district a reasonable opportunity either to modify its agreement with attorney or to retain other counsel on terms that were within school district's lawful authority.

School district's lawsuit seeking to require county appraisal district to raise its valuation of taxpayer's mineral-interest real property so that taxpayer would owe additional taxes, which had not yet been imposed, was not a suit to enforce collection of delinquent taxes, and thus statute authorizing a 20 percent contingency fee for attorneys hired to enforce collection of delinquent taxes did not expressly authorize school district to retain attorney on contingent-fee basis to bring appraisal litigation; there had been no taxes imposed based on heightened valuation school district desired, so there were no delinquent taxes to collect.

Actions of attorney hired by school district on a contingent-fee basis for representation in lawsuit seeking to increase appraisal for taxpayer's mineral-interest real property so as to impose additional taxes on taxpayer was not to assess or collect school district's taxes, which could have only taken place if appraisals were in fact increased, and thus attorney's authority to represent school district in appraisal litigation was not authorized by section of Education Code providing that board of trustees of an independent school district may employ a person to assess or collect school district's taxes and may compensate the person as the board of trustees considers appropriate.

Texas law did not authorize school district to retain attorney on a contingent-fee basis for appraisal litigation seeking to increase valuation of taxpayer's mineral-interest real property; no authority could be implied from relevant statutes, and legislature had authorized taxing units to use contingent-fee agreements related to taxation in only one specific circumstance, to enforce collection of delinquent taxes, suggesting that law-making branch had not authorized taxing units to pursue appraisal litigation by engaging attorneys on a contingent-fee basis, but had not impliedly authorized such controversial contracts without saying so.

School district lacked power to retain attorneys on a contingent-fee basis to pursue appraisal litigation, and thus attorney hired by school district for appraisal litigation with respect to taxpayer's mineral-interest real property could not show his authority to represent school district by pointing to contingent-fee contract, which was an ultra vires act beyond school district's authority, on motion for attorney to show authority, in school district's challenge to valuation of taxpayer's property.

Proper remedy for failure to show authority by attorney hired by school district on contingent-fee contract for representation in appraisal litigation related to valuation of taxpayer's mineral-interest real property was not dismissal with prejudice of school district's claims challenging valuation, but rather was to give school district a reasonable opportunity either to modify its agreement with attorney or to retain other counsel on terms that were within school district's lawful authority; school district was not afforded a reasonable opportunity to hire another attorney or to adjust its arrangement with attorney, either of which would have cured problem identified by motion for attorney to show authority.

Legislation Creates Taxable Municipal Bonds to Boost Infrastructure Investments.

Bipartisan legislation recently re-introduced in the U.S. Senate would create a new class of "direct-pay" taxable municipal bonds intended to boost infrastructure investments and other public projects by providing affordable access to large taxable bonds.

The American Infrastructure Bonds Act would allow state and local governments to issue taxable bonds for any public expenditure that would be eligible to be financed by tax-exempt bonds.

American Infrastructure Bonds would be a "direct-pay" taxable bond with the U.S. Treasury paying a percentage of the bond's interest to the issuing entity to reduce costs for state and local governments. They would be issued for projects at 28 percent of the bond's interest.

The bonds could be used for a variety of infrastructure projects including bridges, broadband internet, roads, and water systems.

The bonds are modeled after the Build America Bonds issued after the 2008 financial crisis to attract more public infrastructure investment.

U.S. Sens. Michael Bennet (D-CO) and Roger Wicker (R-MS) re-introduced the bill.

"We have to continue to invest in 21st century American infrastructure to build an economy that grows for everyone," Bennet said. "The American Infrastructure Bonds Act is a bipartisan proposal to attract greater support for infrastructure projects across the country – especially in rural and underserved communities."

TRANSPORTATION TODAY

BY MELINA DRUGA | MAY 23, 2023

Puerto Rican Muni Bond ETF Launches.

First-of-its-kind fund focuses on U.S. territory bonds.

X-Square Capital, a Puerto Rico-based advisory firm, debuted its Triple Tax-Exempt Municipal Bond ETF (ZTAX), which it says is the first bond fund focusing on triple-tax-exempt muni bonds from U.S. territories.

The fund, with an expense ratio of 1.1%, launched on May 19 and invests in muni bonds issued by U.S. territories, with typical allocation ranges being 65%-80% Puerto Rico, 10%-25% U.S. Virgin Islands and 5%-10% Guam. While other funds hold Puerto Rican bonds, this is the first fund to fully focus on bonds from U.S. territories.

Its price has slipped to $25 since it launched last week at $25.95.

Part of the bond's appeal stems from a 125-year-old law giving Puerto Ricans U.S. citizenship, and establishing that income from bonds issued by Puerto Rico would be exempt from local, state and federal taxes.

As yields rose in 2022, muni funds experienced record outflows of $122 billion. They also had their worst year since 1981, with the Bloomberg Municipal Bond Index dropping 8.5%, with high yield munis doing worse still, losing 13%.

This year may present an improved scenario, with expectations for a pause in interest rate increases. A looming recession may also bode well for the asset class, because muni bonds have historically gained in recessions.

Declining inflation may also boost fixed income assets.

The bonds were central to the debt crisis and bankruptcy that Puerto Rico underwent starting in 2015, when it announced it would be unable to pay its $123 billion debt, declaring bankruptcy in 2017 after the widespread damage to the island from hurricanes Irma and Maria.

Puerto Rico's economy is still suffering compared to the mainland U.S., with average incomes a fraction of the poorest U.S. state; however, the unemployment rate has fallen significantly and now stands at 6%, higher than the U.S. average but lower than much of the last decade when it was about twice the national average.

With the restructuring having concluded, the "post restructuring," bonds held by the fund are a bet on the future of Puerto Rico differing from its past decade.

etf.com

by Gabe Alpert

May 24, 2023

Reviewed by: Lisa Barr

Edited by: Ron Day

TAX - ILLINOIS

Harper v. Health Care Service Corporation

Appellate Court of Illinois, First District - May 4, 2023 - N.E.3d - 2023 IL App (1st) 220078 - 2023 WL 3238760

Purported taxpayer brought derivative action on behalf of city and county against city and administrator of city's employee health care plan, asserting various theories of recovery under the Municipal Code, state constitution, the Freedom of Information Act (FOIA), and Medical Practice Act, seeking return of taxpayer funds city used to pay administrator.

The Circuit Court granted administrator and city's motion to dismiss with respect to pleadings and motion for involuntary dismissal, and dismissed all of purported taxpayer's claims. Purported taxpayer appealed.

The Appellate Court held that:

- City was not required to comply with statute governing award of municipal contracts;
- City duly executed agreements with administrator under municipal ordinance;
- Purported taxpayer lacked standing to bring cause of action under the Medical Practice Act;
- Purported taxpayer could not recover taxpayer funds under theory of unjust enrichment;
- Administrator was not a "public body" within meaning of FOIA;
- Purported taxpayer failed to state cause of action that city and administrator violated the "prior

appropriations doctrine"; and
- Order denying purported taxpayer's motion for partial summary judgment was appealable.

City, in exercising its home rule authority, was not required to comply with statute governing award of municipal contracts when city's mayor, comptroller, and purchasing agent's allegedly delayed signing agreements with administrator of city's employee health care plan until years after agreements' effective dates, in purported taxpayer's derivative action on behalf of city and county against city and administrator; absent any express statutory limitation or preemption of city's ability to contract for and administer health care coverage for its employees, city was free to exercise its home rule authority without being bound by requirements of the statute, including signing contracts after their effective dates, giving them retrospective effect, and providing for administrator's continuation of services in between contracts.

City, in exercising its home rule authority, duly executed contracts with administrator of city's employee health care plan for purposes of ordinance providing that no contract was binding on city unless it had been duly executed, in purported taxpayer's derivative action on behalf of city and county against city and administrator, alleging city's mayor, comptroller, and purchasing agent's delay in signing contracts with administrator until years after their effective dates rendered them null and void under statute governing award of municipal contracts, and thus were not binding under ordinance; under its home rule authority, city established its own procedures for executing contracts, which included signing them after their effective dates and giving them retrospective effect.

Purported taxpayer lacked standing to bring cause of action alleging that administrator of city's employee health care plan violated the Medical Practice Act by negotiating reduced fees from its third-party medical providers, in purported taxpayer's derivative action on behalf of city and county against administrator and city; far from redressing any injury to the city, a successful prosecution of purported taxpayer's claims would harm city by preventing administrator from negotiating reduced fees from its medical providers and then passing on some or all of those savings to the city.

Purported taxpayer failed to specifically plead that medical providers with whom administrator of city's employee health care plan negotiated contracts for reduced fees were subject to licensure requirements under the Medical Practice Act, in purported taxpayer's derivative action on behalf of city and county against administrator and city, where some of the providers about which purported taxpayer complained were pharmacists, who were licensed under the Pharmacy Practice Act and not the Medical Practice Act.

Purported taxpayer could not recover taxpayer funds city used to pay administrator of city's employee health care plan under a theory of unjust enrichment, in purported taxpayer's derivative action on behalf of city and county against administrator and city, where agreements between city and administrator for plan administration services were proper exercises of city's home rule authority and, as such, were valid and enforceable contracts.

Administrator of city's employee health care plan was not a "public body" within meaning of the Freedom of Information Act (FOIA), and therefore was not required to make its agreements with city for plan administration services available for public inspection under FOIA, in taxpayer's derivative action on behalf of city and county against administrator and city, where administrator was a mutual insurance company.

Purported taxpayer failed to state a cause of action that city and administrator of city's employee health care plan violated the "prior appropriations doctrine" by allegedly failing to identify administrator in city's annual appropriations ordinances and in failing to fully disclose and approve

administrator's fees before it began performing under contracts for plan administration services, where purported taxpayer cited no statutory provisions or constitutional law to support her invocation of the doctrine.

Purported taxpayer forfeited on appeal issue of whether city and administrator of city's employee health care plan violated the "prior appropriations doctrine" by failing to comply with state constitutional provision requiring units of local government to make payments from public funds only as authorized by law and statute providing that a municipality cannot incur expenses unless an appropriation was previously made concerning that expense, where purported taxpayer did not allege her theory in her amended complaint, but raised it for the first time on appeal.

Involuntary dismissal of purported taxpayer's claim that city and administrator of city's employee health care plan violated the "prior appropriations doctrine" was warranted, where administrator attached city's answer to purported taxpayer's interrogatories, in which it explained how its annual appropriation ordinances appropriated monies to specific funds used to pay administrator's administration of the plan, and purported taxpayer failed to present any evidence that city and administrator's affirmative defense was unfounded or required resolution of an essential element of material fact.

Order denying purported taxpayer's motion for partial summary judgment, on theory that contracts between city and administrator of city's employee health care plan was void under statute governing award of municipal contracts and ordinance providing that no contract was binding on city unless it had been duly executed because they were signed by city's mayor years after their effective date, was appealable, where subsequent dismissal of purported taxpayer's amended complaint was final and appealable, and no trial or hearing had been conducted.

NASBO 2023 Introduction to State Budgeting Seminar.

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Municipal Bond Performance on Track for Worst May Since 1986.

- **Elevated rates, debt ceiling and SVB bonds dampened returns**
- **Investors optimistic about seasonal summer upswing ahead**

This month is on track to be the worst May in recent history for municipal bonds amid the elevated interest-rate environment and Treasury volatility caused by fear of a US default.

Municipal bonds lost 1.38% so far in May, according to data compiled by Bloomberg. Barring a major rally, that puts this month on track for the worst May performance since 1986, when bonds lost 1.63%. On average, munis gained 0.9% in May over the last decade, the strongest month of returns, buoyed by expectations of summer rallies.

Investors say the unusual weakness reflects a range of factors — chief among them an uptick of issuance after weeks of low supply that kept demand high, as well as renewed fears of additional rate hikes that dampened the performance of all types of fixed income. And even more alarming are

concerns over US default as investors in state and local government debt tend to be risk averse. Fitch Ratings warned Wednesday that the US's AAA rating is under threat as the White House and Congressional Republicans try to reach an agreement.

Continue reading.

Bloomberg Markets

By Nic Querolo

May 26, 2023

Money in Munis in 2023 (Bloomberg Audio)

Eric Kazatsky, Senior US Municipal Strategist with Bloomberg Intelligence, joins us to discuss the municipal bond market. Hosted by Kriti Gupta and Madison Mills.

Listen to audio.

Bloomberg

May 26, 2023

GASB Adds Project on Infrastructure Assets to Current Technical Agenda.

Norwalk, CT, May 25, 2023 — The Governmental Accounting Standards Board (GASB) recently added a major project on accounting and financial reporting issues for Infrastructure Assets to the Board's Current Technical Agenda.

The project will evaluate standards-setting options designed to make related information about infrastructure assets:

1. More useful for making decisions and assessing government accountability
2. More comparable across governments and more consistent over time
3. More relevant to assessments of a government's economic condition, and
4. Better reflect the capacity of those assets to provide service and how that capacity may change over time.

The project will consider how infrastructure assets should be recognized and measured in financial statements and whether the optional use of the modified approach should continue to be allowed to report infrastructure assets. It will also evaluate whether additional information related to the maintenance and preservation of infrastructure assets should be presented in financial statements, and, if so, what information and where in the financial report that information should be provided.

Research conducted by the GASB over the last several years on financial reporting information about capital assets, including infrastructure assets, has looked broadly at these areas. Many stakeholders shared their perspective on the value of information about capital assets in financial statements, difficulties in providing that information, and what additional information about capital

assets is needed.

The Board decided to add a project to the agenda focusing on infrastructure assets after carefully evaluating the staff's research findings this spring and taking into account the high level of interest from the Governmental Accounting Standards Advisory Council, the GASB's advisory council, which ranked the project highly during its annual project prioritization.

GFOA Webinar: ERP Project Readiness

Thursday, June 1, 2023

VIEW DETAILS

MSRB Report Analyzes Buying Behavior In the Primary and Secondary Markets for Municipal Bonds.

Washington, D.C. — The Municipal Securities Rulemaking Board (MSRB) today published a new report on trading patterns in the primary and secondary markets for municipal bonds, finding notable differences in the buying behavior of individual and institutional investors in each of these markets.

The report reveals that individual investors are more prevalent in the secondary markets but have limited participation in the primary market. More specifically, while individual investors may access the new issue market through separately managed accounts, mutual funds and ETFs, individual investors buying bonds in non-managed accounts do not participate much at all. Institutional investors, on the other hand, dominate the primary market.

"There are a number of reasons individual investors may not be able to participate in the primary market," said John Bagley, MSRB Chief Market Structure Officer. "On negotiated deals, where institutional investors have priority, individual investors would likely have difficulty getting access to bonds. Similarly, on competitive deals, prices and yields can change frequently, making it hard for individual investors to participate prior to the bid time."

The findings in the report show that individual investors, defined as trade sizes of $100,000 or less, purchased only 1.2% of the par amount traded in the primary market and 13.4% of the par amount traded in the secondary market. Conversely, institutional investors, those making trades of $1 million or more, clearly dominated both the primary and the secondary markets in terms of par amount traded. They purchased 85.4% of the par amount traded in the primary market and 68.2% of the par amount traded in the secondary market.

In terms of number of trades, individual investors accounted for over 83% of the trades in the secondary market but only 30% of the trades in the primary market, whereas institutional investors accounted for 27% of trades in the primary market and only 4% of trades in the secondary market.

"While individual investors may have valid reasons not to access the primary market, we believe that more balanced participation between the primary and secondary markets could bring benefits to individual investors, including access to bonds not available in the secondary market, as well as

potentially better yields in some cases," said Bagley.

Read the report.

Date: May 24, 2023

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

- SEC Approves Amended MSRB Rule G-40 on Advertising by Municipal Advisors, Related Amendments to MSRB Rule G-8(h) on Books and Records to be Made by Municipal Advisors and Related Updates to the MSRB's FAQs regarding the Use of Social Media.
- Broker-Dealer Settles FINRA Charges for Failing to Properly Supervise Bond Sales to Affiliate.
- SEC Approves MSRB Amendment to Allow Testimonials in Muni Advisor Advertisements.
- Ken Paxton Raises Legal Concerns on Austin's Financial Model for Project Connect.
- *Krupka v. Stifel Nicolaus & Co., Inc.* – After California bond purchasers sued bond underwriter in Missouri state court alleging negligent due diligence and resulting misrepresentations in the offering memorandum and the underwriter removed the case to the District Court under the Class Action Fairness Act (CAFA), the District Court declined to remand the matter back to the state court under CAFA's securities exception.
- And finally, "I Pledge Allegiance…" is brought to us this week by *White v. Harkrider*, in which sheriffs' deputies were, "involved in the investigation of a single-car accident in which the driver drove away from the scene." The deputies, "noted a beer can on the road and unused rifle ammunition in the ditch." Much like the fact that the national bird was originally meant to be a turkey before that eagle flew into the picture (true story), the American flag was originally meant to be a beer can on the road and unused rifle ammunition in the ditch (perhaps less true story) until it became painfully clear that Betsy's skills were limited to the strictly geometric.

SECURITIES - CALIFORNIA

Quinn v. LPL Financial LLC

Court of Appeal, Second District, Division 8, California - May 10, 2023 - Cal.Rptr.3d - 2023 WL 3334992

Registered securities broker-dealers and investment advisers brought action alleging that brokerage firm misclassified them as independent contractors, rather than employees, and failed to reimburse for business expenses and made unlawful wage deductions.

The Superior Court granted firm's motion for summary adjudication. Plaintiffs appealed.

The Court of Appeal held that:

- Statute creating different test for determining whether broker-dealers and advisors were employees did not violate their equal protection rights, and
- Retroactive application of the statute did not violate due process.

Statute stating that *Borello*, 48 Cal.3d 341, 256 Cal.Rptr. 543, 769 P.2d 399, rather than *Dynamex*, 4 Cal.5th 903, 232 Cal.Rptr.3d 1, 416 P.3d 1, test for determining status as employee or independent contractor applied to registered securities broker-dealers and investment advisers had rational basis and did not violate equal protection rights of advisors and broker-dealers, even if the exemption resulted from lobbying efforts; legislature rationally could believe such professionals, who asked people to trust them with wealth and finances, had more skill and bargaining power than the average worker and therefore were less vulnerable to exploitation by misclassification as independent contractors.

Registered securities broker-dealers and investment advisers had no vested right in a particular test for determining whether they were employees or independent contractors, and, thus, retroactive application of statute stating that *Borello*, 48 Cal.3d 341, 256 Cal.Rptr. 543, 769 P.2d 399, rather than *Dynamex*, 4 Cal.5th 903, 232 Cal.Rptr.3d 1, 416 P.3d 1, test for determining status as employee or independent contractor applied to registered securities broker-dealers and investment advisers did not violate due process.

MUNICIPAL GOVERANCE - CALIFORNIA

Childhelp, Inc. v. City of Los Angeles

Court of Appeal, Second District, Division 7, California - April 17, 2023 - Cal.Rptr.3d - 2023 WL 3274645

Nonprofit tenant brought action against city landlord for declaratory relief, writ of mandate, and promissory estoppel after city declined to transfer property to tenant in exchange for tenant's agreement to continue using the property to provide services for victims of child abuse.

City filed unlawful detainer action, and actions were consolidated. The Superior Court granted city's motions for summary adjudication on promissory estoppel cause of action, sustained city's demurrer without leave to amend to tenant's causes of action for declaratory relief and writ of mandate, and granted summary judgment to city on unlawful detainer complaint. Tenant appealed.

The Court of Appeal held that:

- City council resolution directing various city departments and officials to prepare and execute the necessary approvals and agreements was not an ordinance or contract which required city to transfer the property;
- Tasks described in city council resolution were discretionary rather than ministerial; and
- City could not be promissorily estopped from entering into any contract which violated city charter.

City council resolution directing various city departments and officials to prepare and execute the necessary approvals and agreements to convey property to nonprofit tenant, in exchange for tenant's agreement to continue using the property to provide services for victims of child abuse, was not an ordinance or contract which required city to transfer the property; city did not comply with the requirements in the city charter and administrative code for contracting and selling real property, and there was no ordinance prescribing the terms and conditions of the sale or a written contract signed by the mayor or other authorized personnel and approved by the city attorney.

Tasks described in city council resolution directing various city departments and officials to prepare and execute the necessary approvals and agreements to convey property to nonprofit tenant, in exchange for tenant's agreement to continue using the property to provide services for victims of child abuse, were discretionary rather than ministerial, and thus tenant was not entitled to writ of mandate compelling city to transfer the property; although the resolution directed certain City officers and departments to take certain actions, it did not specify how these actions should be carried out, and there was no contract, or even agreement on key terms, at the time the resolution was passed.

City could not be promissorily estopped from entering into any contract to convey premises to nonprofit tenant, in exchange for tenant's agreement to continue using the property to provide services for victims of child abuse, which violated city charter, even if city council had passed resolution directing various city departments and officials to prepare and execute the necessary approvals and agreements and had induced tenant not to look for other, affordable properties; the reasonable value of the property exceeded $5,000, city attorney had not approved the form of any agreement to sell the property, and city had not passed an ordinance or entered into a written contract to sell the property to tenant.

LIABILITY - IOWA

White v. Harkrider

Supreme Court of Iowa - May 12, 2023 - N.W.2d - 2023 WL 3395946

Arrestee's spouse brought action against city, county, police officer, and deputy sheriff, alleging state constitutional tort claims, as well as claims for intentional infliction of emotional distress, trespass, and assault, arising out of warrantless arrest which occurred at their residence.

The District Court granted in part and denied in part defendants' motion to dismiss for failure to state claim. Application of spouse and cross-application of defendants for interlocutory appeal was granted.

The Supreme Court held that:

- Defendants' alleged conduct in effecting warrantless arrest was not outrageous, precluding claim for intentional infliction of emotional distress;
- Officers did not commit trespass when they entered spouse's property; but
- Spouse sufficiently stated claim for assault.

BONDS - MISSOURI

Krupka v. Stifel Nicolaus & Co., Inc.

United States District Court, E.D. Missouri, Eastern Division - May 11, 2023 - Slip Copy - 2023 WL 3376356

California Plaintiffs filed a putative class action in Missouri state court alleging that Missouri Defendant Stifel Nicolaus made negligent misrepresentations and was negligent in its underwriting of municipal bonds issued by the Illinois Finance Authority (IFA) to fund low-income housing developments in Chicago.

In January 2023, Defendant removed the case to the District Court of Missouri under the Class Action Fairness Act (CAFA). Plaintiffs moved to remand the case, arguing that their claims fell under CAFA's jurisdictional exception for actions related to securities.

The District Court held that:

- CAFA confers original federal jurisdiction when the putative class has over 100 members, the amount in controversy exceeds $5 million, and the parties are minimally diverse in citizenship;
- CAFA does not apply to "any class action that solely involves a claim that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security;"
- The party seeking remand bears the burden of proving a CAFA exception, and any doubt is resolved against remand;
- In cases where remand was granted, the plaintiffs sued in their capacity as holders alleging breach of fiduciary duties owed by the defendant trustees or corporate board members and related claims predicated on the breach;
- By contrast, in cases where plaintiffs have sued as purchasers alleging misrepresentation in the sale of securities, courts have denied remand; and
- Remand was not warranted under the CAFA securities exception.

"Here, Plaintiffs have not sued the trustee and do not plead the existence of a fiduciary relationship on which their claims depend. Rather, they allege injury from Stifel's negligent due diligence and resulting misrepresentations in the offering memorandum provided to potential investors as purchasers. Applying the foregoing caselaw to this set of facts, the Court concludes that remand is not warranted under the CAFA securities exception."

"The Court acknowledges Plaintiffs' argument that a straightforward reading of the statute could be construed to encompass their claims, given its broad ;related to' language. But while the Eighth Circuit has yet to opine on this issue, the Circuit has instructed in a similar context that courts are to interpret CAFA jurisdiction broadly and exceptions narrowly, with any doubt resolved against remand."

"Mindful of this directive and guided by the reasoning of other Circuit and district courts, the Court declines to extend the securities exception to cover claims involving the performance of non-fiduciary functions vis-à-vis potential investors based on an alleged duty of care not grounded in the securities themselves. Rather, this case appears to present the type of 'interstate class action of national importance' that Congress intended to place in federal court."

ZONING & PLANNING - NEW HAMPSHIRE

Anthony v. Town of Plaistow

Supreme Court of New Hampshire - May 16, 2023 - A.3d - 2023 WL 3471177

Landowners sought review of town planning board's granting of site-plan approval for the development and consolidation of two neighboring lots in town's commercial zoning district.

The Superior Court affirmed. Landowners appealed.

The Supreme Court held that:

- Landowners could not raise argument that board erred when it determined that use of lots complied with zoning ordinance;
- Board adequately considered the potential for regional impact; and
- Board acted reasonably and lawfully in approving site plan.

To the extent that landowners were seeking appellate review of trial court's judgment affirming zoning board of appeal's (ZBA) decision that it lacked jurisdiction to consider landowners' challenge to decision that a neighboring landowner's proposed use of lots complied with zoning ordinance, that issue was not properly before the Supreme Court; landowners did not appeal trial court's judgment before it became final, which meant that any appeal was deemed waived.

When appealing from superior court's affirmance of town planning board's granting of site-plan approval for the development and consolidation of two lots in town's commercial zoning district, neighboring landowners could not raise argument that board erred when it determined that use of lots complied with zoning ordinance; neighboring landowners had already appealed to have zoning board of appeals (ZBA) review the compliance determination, but the ZBA had dismissed that appeal.

Planning board adequately considered the potential for regional impact when approving site plan for the development and consolidation of two lots in town's commercial zoning district; at the public hearing, town's planning director discussed regional impact issues and testified that in his 16 years of experience, he had never worked on a commercial development that had caused any regional impact, and board was also aware that the project would not impact ground or surface water, that the site was located in the center of the town, and that the project would minimally affect traffic in the area.

Town's planning board acted reasonably and lawfully in approving site plan for the development and consolidation of two lots in town's commercial zoning district; board subjected application to a rigorous review process, including numerous public hearings and a site visit, and at each stage of the process, abutters' concerns about water quality, wetlands preservation, pollution, noise, and buffering were addressed by applicant or board.

EMINENT DOMAIN - SOUTH CAROLINA

Braden's Folly, LLC v. City of Folly Beach

Supreme Court of South Carolina - April 5, 2023 - S.E.2d - 2023 WL 2778717

Owner of two small, contiguous, developed coastal lots brought action for regulatory taking against city, alleging that city amended ordinance to require certain contiguous properties under common ownership, including owner's properties, to be merged into a single, larger property, and that merger ordinance interfered with owner's investment-backed expectation.

Parties filed cross-motions for summary judgment. The Circuit Court granted owner's motion. City appealed.

The Supreme Court held that:

- Treatment-of-the-land factor weighed in favor of identifying relevant parcel as both lots combined;
- Physical-characteristics factor weighed in favor of identifying relevant parcel as both lots combined;
- Value-of-the-property factor weighed in favor of identifying relevant parcel as both lots combined;

- Economic impact of ordinance weighed heavily in favor of finding that ordinance did not amount to regulatory taking;
- Extent to which ordinance interfered with owner's investment-backed expectations did not weigh in favor of either party; and
- Character of ordinance weighed in favor of finding that ordinance did not amount to regulatory taking.

Treatment-of-the-land factor for defining relevant parcel for purposes of regulatory-taking claim brought by owner of two contiguous, beachfront lots, who challenged city ordinance requiring lots to be merged, weighed in favor of identifying relevant parcel as both lots combined, where lots were currently merged under state and local law, there were no physical or topographical boundaries that would have limited joint treatment or development of lots, lots had always been owned and sold as single unit and were even redeveloped by owner at same time, and due to city's zoning ordinances and dune-management ordinances, owner was prohibited from selling lots separately or from building separate homes on each should one of the existing homes be more than 50% destroyed.

Physical-characteristics factor for defining relevant parcel for purposes of regulatory-taking claim brought by owner of two contiguous lots, who challenged city ordinance requiring lots to be merged, weighed in favor of identifying relevant parcel as both lots combined, where lots were located on beach, which was quintessential example of area that was heavily regulated and likely to become subject to additional environmental regulations.

Value-of-the-property factor for defining relevant parcel for purposes of regulatory-taking claim brought by owner of two contiguous lots, who challenged city ordinance requiring lots to be merged, weighed in favor of identifying relevant parcel as both lots combined; any economic impact resulting from merger ordinance was mitigated by benefits of using property as integrated whole since, regardless of merger ordinance, one lot contained beachfront property that was restricted by city's dune-management ordinances, which prevented any redevelopment on lot if existing house was destroyed by 50% or more, and thus merger of lots would allow owner to maintain beach house on other lot while simultaneously enjoying beach access from beachfront lot.

Economic impact of city ordinance requiring merger of property owner's two contiguous, beachfront lots weighed heavily in favor of finding that ordinance did not amount to regulatory taking, although owner claimed that if lots were sold separately, they were worth $508,000 more than if they were sold as single, merged lot, where $508,000 difference amounted to 23% reduction in value, which, while not insignificant, was far less than other reductions in value found constitutional by United States Supreme Court, owner remained able to rent out houses on each lot separately, with average gross receipts amounting to approximately $117,000 per year, and during pendency of lawsuit, buyer offered owner its full asking price of $2.55 million for both lots.

Extent to which city ordinance requiring merger of property owner's two contiguous, beachfront lots interfered with owner's investment-backed expectations did not weigh in favor of either party, for purposes of owner's regulatory-takings claim, although ordinance was enacted after owner redeveloped house on first lot and built new house on second lot, with plans to sell lots separately, where owner used lots for family vacations and as rental properties for several decades, owner delayed selling lots after redevelopment and made little to no effort to actually sell once lots were placed on market, lots were located in coastal area with dynamic, fragile environment, and size, shape, and orientation of lots provided objective indicia that owner's expectation of selling second lot was unreasonable.

Character of city ordinance requiring merger of property owner's two contiguous, beachfront lots weighed in favor of finding that ordinance did not amount to regulatory taking, where ordinance did

not unfairly single out owner's lots, ordinance was reasonable land-use regulation enacted as part of coordinated effort to protect beach and surrounding land by preserving federal funding for beach renourishment, and although owner was slightly burdened by ordinance, it in turn would benefit greatly from the restrictions that were placed on others.

EMINENT DOMAIN - TEXAS

Hidalgo County Water Improvement District No. 3 v. Hidalgo County Irrigation District No. 1

Supreme Court of Texas - May 19, 2023 - S.W.3d - 2023 WL 3556685

Water improvement district brought action against county irrigation district for the condemnation of property to extend an underground irrigation pipeline.

Special commissioners were appointed and assessed damages to irrigation district. Irrigation district then filed plea to the jurisdiction, arguing it had governmental immunity from condemnation suit. The County Court at Law granted irrigation district's plea to the jurisdiction and dismissed for want of subject matter jurisdiction based on governmental immunity.

Water improvement district appealed. The Corpus Christi affirmed. Water improvement district petitioned for review.

The Supreme Court held that irrigation district did not have governmental immunity from condemnation suit.

Irrigation district did not have governmental immunity from water improvement district's eminent domain proceeding for the condemnation of property to extend underground irrigation pipeline, considering the purpose that governmental immunity served, its nature, and development of immunity and eminent domain precedent; condemnation proceeding, being in rem in nature, did not threaten the public treasury, separation-of-powers underlying immunity were not threatened, recognizing immunity in condemnation proceedings would be contrary to legislative scheme that preferred pre-taking adjudication and would require the taking to occur first and consequences be sorted out later, and wholly immunizing irrigation district would undermine condemnation power the Legislature chose to grant condemnors to fulfill an identified public need.

Cities Face Mounting Financial Pressures.

On top of the familiar problems—pensions, inflation, pandemic aid ending—officials are also trying to prepare for two potentially devastating scenarios: a recession or the U.S. defaulting on its loans.

As big cities try to regain a steady financial footing after the pandemic, some familiar but stubborn problems threaten to knock them off balance, a panel of municipal finance experts warned this week.

"We're in a moment of inflection right now," David Schleicher, a Yale law professor, said during a virtual gathering on municipal distress held by the Volcker Alliance. "We've been living through this period of flush state and local budgets, and we're about to see a real turn."

While the economy has proved resilient in many places, it has had an uneven effect on cities. The pressures facing municipalities include the imminent end of federal pandemic aid, uncertainty around the economic condition of downtowns, inflation, and increased demand for social services and other city services.

Continue reading.

ROUTE FIFTY

by DANIEL C. VOCK

MAY 19, 2023

Fitch: Strong Financial Profiles and Loan Oversight Support CDFI Credit

Fitch Ratings-New York/San Francisco-17 May 2023: Strong loan portfolio management and financial profiles support community development financial institutions' (CDFIs) credit ratings amid growing economic headwinds, Fitch Ratings says. CDFIs play an important role in providing affordable financing in the current environment of high interest rates and reduced credit supply, supporting low-income and low-wealth communities by providing capital to individuals, businesses, and organizations that historically have not had access to mainstream sources of credit.

Like other social lending institutions, CDFIs generally exhibit solid demand, low loan delinquencies and losses, conservative risk management, and strong financial profiles. This is reflected in the high investment grade ratings currently assigned to CDFIs. CDFIs keep loans on balance sheet and typically provide active oversight of their loan portfolios, with early and frequent follow-ups for delinquent loans and other loss mitigation strategies to minimize loan defaults and losses.

While CDFIs' modest delinquency rates are slightly higher than those of banks, charge-off levels are comparable, despite the portfolios' perceived higher risk and lower credit quality. The median 90+ day delinquency rate among CDFIs was 1.30% between 2017 and 2021, compared to 1.06% for banks. Furthermore, the median net-charge off rate among CDFIs was 0.48% between 2017 and 2021, similar to 0.50% for banks during the same time period, according to the FDIC and Opportunity Finance Network, the industry trade group for CDFIs. Fitch forecasts a mild recession beginning in the second half of the year, and while loan performance may deteriorate, loan losses are expected to remain well within Fitch's stressed rating assumptions.

Continue reading.

Fitch: Financial Conditions, Debt Limit, CRE Are Key Credit Risks

Fitch Ratings-New York-18 May 2023: Tightening financial conditions, an increased focus on office real estate valuations and political risks from wrangling over the US federal debt limit are among the key credit risks highlighted in Fitch Ratings' Risk Headquarters report for 2Q23.

Since the last quarter, the key risks we highlighted regarding financial instability related to the rising costs of capital were reflected in some of the largest bank failures in US history and the swift

takeover of Credit Suisse by UBS following rapid deposit outflows. While further systemic contagion risk has been mitigated through prompt government and regulator support measures, the longer-term effects on financing costs, especially for smaller and regional banks, and credit conditions in the wider economy remain highly uncertain.

The new pressures faced by US community and regional banks have also renewed investor concerns regarding commercial real estate, specifically offices, which are facing a combination of secular challenges from changing work patterns, cyclical pressures from a lacklustre economic outlook and tightening financing conditions.

Our key risks have been updated since the last quarter. Risks related to the cost of capital and financial instability, inflation, and geopolitics, policy and governance are still significant. Fitch expects broader risks to investment and consumption to persist as financial conditions continue to tighten and inflation remains above central bank targets. Political risks are also largely unchanged, with heightened focus on the US federal debt limit as the "x-date" approaches in June or July. Geopolitical risks pertaining to the Russia-Ukraine war, tensions over the Taiwan Strait and US-Chinese geopolitical competition remain.

China Macro has been removed from the key risks. Uncertainty over the Chinese economy's recovery in 2023 has been reduced significantly with the end of Zero-Covid and a rapid consumption-led jump in growth in the first quarter.

'Risk Headquarters – May 2023' is available at fitchratings.com.

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S&P U.S. Mortgage Revenue Bond Program Rating Actions In Line With Expectations After Application Of Updated Criteria.

Key Takeaways

- We reviewed all sector ratings within scope following the release of our "Mortgage Revenue Bond Program" criteria, published Oct. 10, 2022.
- Overall, the extent and magnitude of rating actions aligned with our expectations, although the direction of rating actions was more uniformly positive than expected.
- Rating changes were limited to one notch.
- Application of the criteria resulted in minimal rating actions in the sector, and we expect continued rating stability under the new framework.

Continue reading.

18 May, 2023

Senior-Living Debt Defaults Far Outpace the Rest of Government Debt Market.

- **About 7% of outstanding senior-living bonds in payment default**
- **With business model changing, new projects are riskier**

One sector is an outlier when it comes to the traditionally-tiny default rates in the $4 trillion municipal bond market.

Roughly 7% of the $43 billion in outstanding senior-living bonds, or about $3.2 billion, is in default on a payment, according to data compiled by Bloomberg. That compares to a rate of less than 1% for all state and local government debt.

Health care has been slammed by a shortage of caregivers and higher wage and supply costs, even as the pandemic pushed occupancy rates down. Hundreds of nursing homes have closed since the beginning of the pandemic as they cope with those pressures, along with government reimbursements that fall short of covering costs — and the fallout is expected to continue.

Continue reading.

Bloomberg Markets

By Lauren Coleman-Lochner

May 22, 2023

Fitch: Labor Demand Shows Clear Signs of Cooling, but Slow Pace Continues

Fitch Ratings-New York-16 May 2023: Despite unemployment being at a 54-year low, the labor market will weaken as aggregate demand stagnates in response to higher interest rates and tightening credit conditions, exacerbated by stress in the banking sector, according to Fitch Ratings.

“Labor demand still exceeds supply, but this imbalance is declining, now at approximately 2.3 percent of the labor force in first-quarter 2023 compared with 3.2 percent last quarter,” said Olu Sonola, Fitch Head of U.S. Regional Economics. “Job openings have also declined by 1.6 million from peak levels. Wage growth year-over-year has decelerated significantly since last quarter in a number of states.”

The labor market remains relatively tight, even though the job openings to unemployed ratio is now down to 1.6 from the peak of 2.0 in March 2022. Thirty-five states have non-farm payrolls at or above pre-pandemic levels in first-quarter 2023.

Employment levels now exceed pre-pandemic levels in all but fifteen states, while the unemployment rate is below pre-pandemic levels in 30 states. Slower recovery in leisure and hospitality is a drag on Nevada, Oregon, and Hawaii, and several other states with large cities due primarily to the slow return to office trends, such as New York, California and Illinois.

Western and Midwestern states dominate with very high labor utilization. Mississippi, West Virginia, New Mexico, and South Carolina continue to show structural weakness in utilization. New Jersey is

the only state with a year-over-year change in employment-to-population ratio of over 1.0 percentage point.

For more information, a special report titled “U.S. States — Labor Market Quarterly Tracker — 1Q23” is available at www.fitchratings.com.

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Additional information is available on www.fitchratings.com

[Fitch: Ongoing Disclosures Help Mitigate CA, Other Public Finance Delayed Audits]

Fitch Ratings-Chicago/New York-17 May 2023: Delays in the release of California’s GAAP-based audited financial statements are not a near-term credit concern given ample state financial disclosures, Fitch Ratings says. However, severely delayed audits can trigger negative rating pressure on U.S public finance issuers when alternative disclosures are insufficient. Fitch relies on financial statements and other relevant information to support its analysis and ratings decisions. A failure to provide fiscal data in a timely manner can lead to a negative rating action or even a rating withdrawal if the information available is not sufficient to support the rating analysis.

The state of California (AA/ Stable) has fallen behind in issuing GAAP-based audited financial statements but continues to provide timely financial disclosures, including monthly cash reports and detailed budget and revenue forecasts. Through FY18, the state released its Annual Comprehensive Financial Report (ACFR) by March 31, nine months after the end of the fiscal year and somewhat late compared to other states.

The state transitioned to a new financial accounting system, “Fi$Cal”, during FY2019 and since then the release of the annual audit has become progressively later. FY19 results were released in October 2020, FY20 in February 2022, and FY21 in late March 2023. There is no current date for the release of the FY22 ACFR. Despite these delays, California continues to provide transparency in its financial operations through an abundance of robust and timely budgetary and revenue information.

GAAP-based ACFRs are an objective and important source that Fitch and other market participants typically rely on to understand a government's financial performance. The ACFR provides a set of financial statements that comply with accounting requirements established by the Governmental Accounting Standards Board (GASB) and audited by an independent auditor using generally accepted auditing standards. The ACFR presents an official account of a government's financial condition for the last fiscal year, comparing it to prior fiscal years, and includes management discussion and analysis of the results.

Habitually delayed publication of an ACFR beyond 270 days past the end of the fiscal year can be an indication of management weakness. Fitch has downgraded and/or withdrawn ratings on certain entities with chronically late financial statements. Fitch downgraded the Issuer Default Rating (IDR) of Manhattan, Kansas to 'AA' from 'AA+' on May 18, 2020, due in part to the city's repeated delays in publishing audits. Fitch withdrew the rating on Manteca Finance Authority, CA's sewer revenue bonds on April 12, 2023, because of the system's continuing inability to provide reliable financial information. Conversely, Fitch upgraded the IDR on Northport, Alabama to 'AA+' from 'AA' on March 17, 2023, noting improved budget management practices as evidenced by the steps taken to ensure the timely filing of its financial audits following a short period when such filings had been delayed.

The median audit timeline for municipal governmental bond sectors has grown from of 147 days in 2009 to 164 in 2020, according to a 2022 report from the University of Illinois, Chicago and Merritt Research Services. Pandemic disruptions, including steep declines in state and local government employment in 2020, have likely contributed to longer audit timeframes. State and local government employment has since recovered, although it is still down slightly relative to 2019 averages, with Fitch expecting a mild recession beginning later this year.

In some states, the state auditor either conducts or signs off on the local government's audit, which typically takes more time than audits by a private firm. When financial audits are delayed, Fitch typically relies on other fiscal disclosures including unaudited actuals and monthly budget reports showing the performance of both revenues and expenditures. This additional transparency is key in Fitch's ability to perform its forward-looking credit analysis and to continue to assess an issuer's creditworthiness.

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Did Your Town Make This List of Best-Performing Cities?

The Milken Institute is out with its annual report ranking the economic performance of more than 400 metropolitan areas. Here's what it takes to be a booming city.

A new report ranking the economic performance of hundreds of cities found that booming high-tech sectors are driving gross domestic product growth in large and small cities alike, but that growth comes at the cost of affordable housing.

On Wednesday, the Milken Institute, an economic think tank, released its 2023 Best Performing Cities Index. Published annually since 1999, the report aims to measure cities' economic performance based on metrics such as labor market conditions, tech industry growth, and access to housing and broadband. This year's index primarily uses data from 2021, representing the first full year of recovery after the onset of the pandemic.

Continue reading.

ROUTE FIFTY

by MOLLY BOLAN

MAY 18, 2023

SEC Approves Amended MSRB Rule G-40 on Advertising by Municipal Advisors, Related Amendments to MSRB Rule G-8(h) on Books and Records to be Made by Municipal Advisors and Related Updates to the MSRB's FAQs regarding the Use of Social Media.

View the MSRB notice.

May 15, 2023

MSRB Municipal Variable-Rate Demand Obligations and Auction-Rate Securities (2009-2022)

Statistical report on trading, interest rate and other characteristics of the municipal variable rate securities market.

View the MSRB publication.

May 15, 2023

Cryptocurrency: Fairy Tale or Future

The late 2022 FTX scandal seems like a plausible end to the era of blockchain mania, so 2023 is a good time to look back and ask ourselves, “What can we learn from crypto thus far?” After all, local governments will face increasing pressure to adopt new technologies, not just blockchain/cryptocurrency.

LEARN MORE.

Broker-Dealer Settles FINRA Charges for Failing to Properly Supervise Bond Sales to Affiliate.

A broker-dealer settled FINRA charges for failing to monitor conflicts of interest related to the sale of bonds to a bank affiliate (“Affiliate”).

In a Letter of Acceptance, Waiver and Consent (“AWC”), FINRA said that bank regulations forbade the Affiliate from purchasing municipal bonds entailing a markup from the broker-dealer.

FINRA determined that the broker-dealer failed to implement a reasonable supervisory system to ensure that the Affiliate was not charged such a markup. FINRA found that the broker-dealer’s actions violated MSRB Rule G-27 (“Supervision”).

To settle the charges, the broker-dealer agreed to (i) a censure, (ii) a $50,000 fine and (iii) comply with the undertakings set forth in the AWC.

Fried Frank Harris Shriver & Jacobson LLP

May 18 2023

Florida Enacts Anti-ESG Legislation - House Bill 3 Explained: Akin Gump

On May 2, 2023, Gov. Ron DeSantis (R-FL) signed into law House Bill 3 (HB3), legislation that, among other things, blocks the consideration of environmental, social and governance (ESG) factors in state and local investment decisions and procurement processes. As we have written about previously (e.g., here), the politicization of ESG is creating significant complexities for companies that do business in multiple jurisdictions, some of which require or permit the consideration of ESG factors, and others that have adopted anti-ESG legislation similar to HB3. That said, HB3, which is scheduled to take effect on July 1, 2023, is considered among the farthest reaching anti-ESG legislative enactments to date. The following alert describes HB3’s requirements.

At a high-level, HB3 requires that investment decisions (and proxy voting decisions) for state pension assets be made taking into account only “pecuniary factors.” For purposes of the legislation, “pecuniary factors” are defined as factors that are “expected to have a material effect on the risk or returns of an investment based on appropriate investment horizons consistent with applicable investment objectives and funding policy.” Importantly, the term prohibits “the consideration of…any social, political or ideological interests” when state and local officials make investment and

other covered decisions. Notably, in addition to applying to investment decisions relative to state pension assets, among other things, HB3 also places limits on investment decisions for local governments; prohibits the issuance of ESG bonds in Florida; and imposes limits on state procurement processes. More specifically:

Continue reading.

Akin Gump Strauss Hauer & Feld LLP – Martine E. Cicconi, Mark R. Herring, Stacey H. Mitchell, Brian Arthur Pomper, Ryan C. Anderson and Christopher A. Treanor

May 18 2023

SEC Approves MSRB Amendment to Allow Testimonials in Muni Advisor Advertisements.

The SEC approved an MSRB proposal to amend Rule G-40 ("Advertising by Municipal Advisors") which will allow for the use of testimonial statements in municipal advisor advertisements. The MSRB set a compliance deadline of July 3, 2023.

As previously covered, the rulemaking will (i) establish supervisory obligations specific to testimonial use, (ii) modify the definition of "municipal advisory client" with regard to soliciting municipal securities businesses to align with MSRB Rule G-38 ("Solicitation of Municipal Securities Business") and (iii) create a conforming obligation under MSRB Rule G-8 ("Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers and Municipal Advisors") to keep any records relating to testimonial advertising, including any record of payment for testimonials.

In response to comments received during the initial comment period, the MSRB amended its proposal to include (i) clarifying language to "enhance readability and understanding" and (ii) social media guidance consistent with the proposed changes to Rule G-40.

May 17 2023

Fried Frank Harris Shriver & Jacobson LLP

Sixth Circuit Invalidates Application of Nashville's Sidewalk Ordinance Under The Takings Clause: Squire Patton Boggs

In *Knight v. Metro. Gov't of Nashville and Davidson County* (No. 21-6179), the Sixth Circuit decided a longstanding question about the standard that applies to conditions imposed by a legislature on those applying for building permits. The issue is common enough: a city wants more sidewalks to improve safety, health, and traffic. So the city requires landowners to add sidewalks to their properties as a condition of issuing building permits. Nashville's ordinance requires to grant an easement and build a sidewalk or to pay a fee to build sidewalks elsewhere in the city. The question in Knight was whether this permit condition should be judged under the unconstitutional conditions test in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) or the deferential balancing test used for zoning restrictions under *Penn Central Trans. v. NYC*, 438 U.S. 104 (1978). State courts have long been divided on whether *Nollan* is limited to the discretionary decisions of zoning

administrators, or whether it also applies to municipal legislation like Nashville's rule.

Writing for the panel, Judge Murphy's opinion reviews the history of the Takings Clause and Supreme Court decisions on unconstitutional conditions, and concludes that *Nollan* applies and that Nashville's ordinance violates the Takings Clause by "forcing a few people to bear the full cost of public programs that the public as a whole should pay for." The ordinance lacks the "nexus" and "rough proportionality" between the imposed condition and the social costs of the new construction. Extending existing sidewalks would be permissible, the court explains, but Nashville cannot force landowners to build "sidewalks to nowhere" or "pay for sidewalks miles away" without compensation. After saying so, however, the court says it has not actually decided the issue because Nashville had waived all arguments regarding *Nollan* by focusing exclusively on the *Penn Central* test. Though the panel avoids declaring Nashville's ordinance unconstitutional, its opinion gives important guidance for cities imposing conditions on building permits across the Sixth Circuit—and for landowners that challenge those ordinances.

Squire Patton Boggs – Colter Paulson

May 15 2023

[State of Wisconsin: Fitch New Issue Report]

Revenue Framework: 'aa': Wisconsin's sound revenue framework relies on broad based taxes that generally reflect economic performance and which Fitch Ratings anticipates will continue to grow in line with long-term expectations for inflation. Wisconsin has an unlimited legal ability to independently raise revenues. Expenditure Framework: 'aaa': Fitch anticipates Wisconsin will continue to effectively manage a natural pace of spending growth expected to be slightly above annual revenue growth, reflecting the primary drivers of Medicaid and education. The state benefits from low fixed carrying costs and has demonstrated ample ability to cut spending if needed. Long-Term Liability Burden: 'aaa': Long-term liabilities are low and below the U.S. state median. The state benefits from strong pension funding and a benefit structure that shares the risk of investment underperformance with beneficiaries.

[ACCESS REPORT]

16 May, 2023

[Muni Advocates See Bank-Qualified Cap as Attainable Goal.]

With advance refunding currently dead in the water, muni leaders see a change in the regulation of bank-qualified bonds as low-hanging fruit that could help attract more Republicans to get involved in public finance issues.

The Government Finance Officers Association federal advocates advanced this position during the meeting of the group's Committee on Governmental Debt Management before the opening of the group's annual conference in Portland, Oregon. The Bank-qualified cap is one of the core issues for muni advocates, particularly those representing smaller issuers and regional banks and broker-dealers.

“If we get a standalone bill. I would say we’re at least 65% of the way there,” said Jarron Brady, federal policy analyst, GFOA. The legislative change sought by GFOA and other muni groups would raise to $30 million from $10 million the cap on how much an issuer could issue in a calendar year and maintain the ability to sell debt directly to banks as bank-qualified.

The direct sale of BQ debt to banks greatly simplifies the process for smaller issuers. The GFOA believes the qualification lowers debt issuance costs by an estimated 25 to 40 basis points. The Tax Reform Law of 1986 set the bank-qualified limit at $10 million for a calendar year and allows banks to deduct most of the carrying cost of that debt as a business cost. The American Recovery and Reinvestment Act raised the cap to $30 million a year in an effort the help pull the economy out of the global financial crisis. ARRA also applied the limitation to individual borrowers rather than conduit issuers.

The effort has a familiar champion in the form of Rep. Terri Sewell, D-Ala., who unsuccessfully introduced similar legislation in 2019.

The National League of Cities, the National Association of Counties, Securities Industry and Financial Markets Association, and the Bond Dealers of America are all pulling on the same rope, as are other groups representing specific groups of issuers such as healthcare and education finance authorities.

“The current bank-qualified bond limits were established in 1986,” said Michael Decker, SVP, Research and Public Policy, BDA. “As a result of inflation, they’re sorely undervalued relative to where they were decades ago, worth less than half in real dollar terms of what they were then.”

GFOA touts a sizable uptick in issuance during the years the cap was lifted. “The data shows that when the cap was lifted to $30 million during the Obama administration, municipalities all across the country were issuing debt at a much higher rate,” said Brady. You see the data go from this flat line to a jump. We’re hoping to get back to that jump.”

A budget reconciliation bill that surfaced in the fall of 2021 contained provisions to raise the cap back to $30 million but failed to reach the finish line.

Efforts in Congress to put advance funding back into play are currently hamstrung by efforts to repeal the Tax Cuts and Jobs Act, the legislative cornerstone of the Trump presidency and viewed as untouchable by House and Senate Republicans.

The appeal of raising the BQ limit spreads across party lines. “Most members of Congress have a small town in their district somewhere,” said Decker. “It applies equally to red and blue states so it’s popular, it’s beneficial, and It’s long overdue.”

By Scott Sowers

BY SOURCEMEDIA | MUNICIPAL | 09:06 AM EDT

[Limited Offering Exemption May Be Too High a Compliance Risk]

Limited offering exemptions, once a common exemption from the official statement requirements under the federal securities laws, may soon be rarely utilized by underwriters for fear that compliance risks are too high.

That's according to representatives from dealer groups speaking at the 2023 GFOA Annual Conference, who bemoaned the speed and volume with which the Securities and Exchange Commission is producing rule proposals and recapped much of what was said at last week's SEC Municipal Disclosure Conference.

Michael Decker, senior vice president for research and public policy at the Bond Dealers of America, addressing the room full of issuers, attempted to reassure them that there is no direct risk to themselves associated with the limited offering exemption.

"Nobody is going to come after the issuer," Decker said. "The effect you're likely to see is that some underwriters are likely to say we don't want to use this exemption anymore, because the compliance risks are too high. I would just say be prepared."

The limited offering exemption allows underwriters to underwrite deals for which the issuer has not produced an official statement, if the bonds are being sold to 35 or fewer sophisticated investors and the underwriter has a "reasonable basis" to believe that those investors will not sell the bonds on the secondary market.

The Commission has urged those concerned they're in violation of the exemption to reach out and contact the SEC at LimitedOfferingExemption@SEC.gov, similar to the self-reporting encouragement offered when the SEC sought industry-wide settlements in the Municipalities Continuing Disclosure Cooperation Initiative, which was introduced in 2014 to address potentially widespread violations of federal securities laws.

But many regard this new initiative as forcing certain requirements on the market in a particularly aggressive fashion and with it, changing how broker-dealers and underwriters handle compliance.

"MCDC, as well as prior statements from the SEC and enforcement actions from the SEC, really changed the compliance role of the broker-dealer firms in the muni space," said Leslie Norwood, managing director and associate general counsel of the Securities Industry and Financial Markets Association. "A record retention requirement is being imputed for (Rule) 15c2-12, where one is not specifically written into 15c2-12 but regulators have created one out of enforcement."

"Here again, we see the SEC imputing a record retention requirement with regards to the limited offering exception, where nothing is written specifically into the rule," Norwood said, referring to the idea that broker-dealers needed to document their reasonable basis for belief that the bonds would not end up trading. "Regulation by enforcement."

LeeAnn Gaunt, chief of the SEC enforcement division's Public Finance Abuse Unit, said around the time that MCDC was concluding in 2016 that MCDC both raised the level of awareness of continuing disclosure problems and led to improvements in the market. But how far they'll take this enforcement of the limited offering exemption remains uncertain.

But the fact that the Commission seems to pick up a niche issue (Gaunt said at last week's SEC Municipal Disclosure Conference that she'd only recently heard of the exemption) and enforce it en masse does cause concern for other areas, such as green bonds.

For the muni market, there are two major concerns when it comes to ESG so far. The first is climate risk disclosure which, has to do with climate risks which could impact issuers' ability to repay debt and what issuers are doing to mitigate those risks. The other is labeled bonds, which simply means designating bonds as ESG. It's this latter which is causing some concern for BDA's members, Decker said.

"There's not really a standard for what constitutes a green bond," Decker said. "There are third party evaluating organizations that will tell you to meet their standard for what is a green bond but it's not clear that, 10 years from now or 20 years from now when the SEC really starts to dig into this in an MCDC like way, are they going to accept those standards."

Norwood and Decker agreed that the Commission continues to stack rulemaking proposals on top of each other that have caused a dizzying effect but it also gives the muni market a good opportunity to express its thoughts on the many proposals, and express individual concerns.

"This SEC administration has been very aggressive in their regulatory agenda across markets," Decker said. "On the other hand, staff went out of their way to say they really welcome feedback." He views this as an opportunity to take them up on it.

By Connor Hussey

BY SOURCEMEDIA | MUNICIPAL | 09:04 AM EDT

Anti-ESG Laws' Impact on Munis May be Far-Reaching.

In a rebuke to company policies deemed pro-environmental, social and governance or "woke," several states have introduced or passed so-called "anti-boycott" laws.

These laws are intended to ban companies, such as commercial banks and investment banks, from doing business in the state if they are perceived as boycotting or otherwise discriminating against: (i) certain industries, such as fossil fuels, firearms, timber, mining, or agriculture, or (ii) other companies that do not support their particular ESG, DEI (diversity, equity and inclusion) or other social, political, or ideological interests.

As a practical matter, anti-boycott laws may reduce competition among underwriters, resulting in increased borrowing costs. Ultimately, the staying power of these laws will depend on a number of factors, including the willingness of states to accept increased borrowing costs or whether to utilize the laws' existing exceptions to obtain a more economically advantageous deal.

Such laws generally target contracts with state and local governments for goods and services valued at $100,000 or more. To ensure compliance, companies are typically required to certify that they do not and will not boycott such companies.

Many of these laws include exceptions, however, where the requirements: (i) are inconsistent with legal duties related to the issuance or incurrence of debt obligations or the management of the funds or (ii) interfere with the ability to obtain particular goods or services in an economically practicable manner.

Florida's new anti-boycott law, "An Act Relating to Government and Corporate Activism" (HB-3), goes a step further, effectively banning all state and local issuers in Florida from issuing ESG bonds. Under the law, ESG is defined simply as "environmental, social, and governance" and "ESG Bonds" is defined broadly as "any bonds that have been designated or labeled as bonds that will be used to finance a project with an ESG purpose."

The definition of issuer is equally broad, including all state and local bond issuers, including the State's Division of Bond Finance, municipalities and quasi-public corporations, from issuing ESG

bonds. Significantly, the Florida Higher Education Facilities Financing Authority (FHEFFA), the issuer of tax-exempt bonds benefitting private colleges and universities in the state, is identified as an issuer in this definition. Effectuating HB-3, as further discussed below, will therefore determine the extent to which private colleges and universities may obtain tax-exempt financing through FHEFFA for ESG-related projects.

Arguably, HB-3 is intended to ban bonds branded in some manner as ESG. Some of the examples of bonds designated or labeled as having an ESG purpose that are included within the definition of ESG bonds are green bonds, Certified Climate Bonds and GreenStar designated bonds. Thus, an issuance of bonds named (i.e., "designated or labeled," two concepts that are often conflated) "Green Bonds," "Sustainability Bonds," or "Social Bonds," or with similar identifiers, would be banned by HB-3, as such naming choice tags the bond issue as financing a project with an ESG purpose.

If this is the end of the story, then the impact of HB-3's ban on the issuance of ESG bonds is a fairly simple determination.

The situation become less clear, however, when considering bonds issued for the purpose of financing a project with an arguably ESG purpose, where the name of the bond issue lacks a specific ESG identifier.

Practically speaking, the proceeds of most municipal bonds have some ESG purpose, regardless of the bond issue's name. Additionally, the official statement and the investor roadshow, which are used in marketing the bonds to investors, typically include a description of the project to be financed with the bonds proceeds.

As such, the wording of HB-3, particularly the definition of ESG bonds, raises a potential validity question due to the following additional examples included in the definition of ESG bonds of bonds designated or labeled as having an ESG purpose: (i) environmental bonds marketed as promoting a generalized or global environmental objective; (ii) social bonds marketed as promoting a social objective; and (iii) sustainability bonds marketed as promoting an environmental and social objective.

Arguably, any bond-financed project marketed through the official statement or investor roadshow as beneficial to the Florida environment, state or local government, or society at large, could fit within these categories, including, wind turbines, solar panels, hurricane preparedness equipment, affordable housing, public schools, libraries, elderly or youth centers, public safety facilities, or a city or town hall.

Complicating matters are bond-financed projects that not only support a particular Florida environmental objective, but also positively impact the environment generally or globally. Since the language of HB-3 alone does not clarify the matter, the extent to which such bond-financed projects would be banned by HB-3 ultimately depends on Florida's interpretation of ESG bonds specifically and enforcement of HB-3 generally.

In any event, it is unlikely that HB-3 would affect the inclusion of general climate-related disclosure in an official statement for Florida bonds. Florida issuers should proceed with caution, however, in their approach to disclosure in a post-HB-3 world. To avoid potential liability under Section 17(a) of the Securities Act or Rule 10b-5 under the Securities Exchange Act, Florida issuers must avoid making any untrue statement of a material fact, or omitting any such material fact, including those related to environmental, social or governance matters, in their official statements.

Such legal considerations aside, if less information is available to investors to evaluate an issuer's

credit quality, the result may be higher interest rates or the inclusion of more onerous covenants to mitigate any perceived (albeit potentially nonexistent) risks.

HB-3 also bans Florida issuers from entering into contracts with rating agencies whose ESG scores will have a direct, negative impact on the issuer's bond ratings. Ultimately, it may prove impracticable for a rating agency to either: (i) extract environmental, social and governance considerations from the total mix of information available to a rating agency in its general credit review of an issuer, particularly compared to other states, or (ii) declare, at the time it enters into a contract with a Florida issuer, but prior to commencing and completing its credit review, that such ESG considerations, isolated from further relevant context, would not directly affect the issuer's bond rating in a negative way.

Significantly, unlike other so-called anti-boycott laws, HB-3 permits financial institutions (including federal or state banks) to circumvent its anti-boycott provisions in connection with the purchase or underwriting of bonds (other than ESG Bonds) issued by governmental entities in the State.

Therefore, commercial banks and investment banks may participate in Florida bond transactions notwithstanding any perceived boycott of particular industries. This exemption may reduce the risk of increased borrowing costs resulting from less competition among underwriters. However, the benefit may be offset by a potentially smaller investor pool, as ESG funds and other impact investors look to other states for ESG-related investment opportunities.

HB-3's ban on issuing ESG Bonds could be narrowly tailored to minimize disruption or broadly interpreted for a far-reaching impact, depending particularly on the meaning of ESG bonds. The latter scenario may result in a number of unintended consequences, including validation questions, ratings disruptions and disclosure issues. HB-3 could also have a precedent-setting effect beyond Florida.

It will be interesting to observe Florida's approach to effectuating, interpreting and enforcing HB-3, and the degree to which other states take notice.

By Neal Pandozzi

BY SOURCEMEDIA | MUNICIPAL | 05/17/23 01:22 PM EDT

Neal Pandozzi is a partner with the law firm Bowditch & Dewey, LLP in Boston, Massachusetts. He has over two decades of public finance experience. He is licensed to practice law in Massachusetts and Rhode Island.

Bipartisan Senators Reintroduce Legislation to Restore Tax-Exempt Status of Advance Refunding Bonds.

- Sens. Roger Wicker (R-Miss.) and Debbie Stabenow (D-Mich.) re-introduced the bipartisan LOCAL Infrastructure Act, which would allow counties to advance refund municipal bonds on a tax-exempt basis
- The tax-exempt status of advance refunding municipal bonds has been unavailable to counties since 2017 as a result of a spending offset provision of the Tax Cuts and Jobs Act
- Counties have historically relied on tax-exempt advance refunding to lower borrowing costs, freeing up funds to be used for other important capital projects and minimizing costs to taxpayers

Continue reading.

NATIONAL ASSOCIATION OF COUNTIES

by MAXX SILVAN & PAIGE MELLERIO

MAY 17, 2023

Ken Paxton Raises Legal Concerns on Austin's Financial Model for Project Connect.

Texas Attorney General Ken Paxton says the unique financing model Austin established for Project Connect is likely illegal under state law, a position that could greatly hamper the city's efforts to build a transformational light rail system that voters approved more than two years ago.

Paxton's opinion, issued Saturday in connection to state legislation that seeks to undo the $7 billion transit investment, says Austin made "mistakes" in creating the fund and "misstatements to the voters" in the November 2020 election.

Voters approved two things that are at issue in Paxton's opinion: a 20% increase in the city portion of their property tax, and the establishment of a local government corporation to build the system, financed by debt backed by that tax revenue. That tax revenue transfer, according to a city resolution, is to continue indefinitely until funds are no longer required for "operations, maintenance, or state of good repair."

Continue reading.

by Ryan Autullo

May 21, 2023

Austin American-Statesman

Muni Bonds: Recession Potential Warrants Second Look

Recessionary pressures on the economy continue to mount, as the Fed tries to toe the line between raising interest rates to combat inflation and maintaining economic growth. In the meantime, muni bonds present investors with a prime fixed income option.

Given rising rates, fixed income investors have yield top of mind. At the same time, they also need quality exposure, given the threat of recession. Both can be addressed via muni bonds.

"Should the U.S. economy fall into a recession, high yield municipals may fare better than their taxable counterparts," private asset manager Lord Abbett noted. "Over the long term, municipal bonds historically have experienced a fraction of the default rates of similarly rated corporate bonds."

The aforementioned blog post, in particular, looked at periods of recession and how muni bonds

fared.

“Focusing specifically on recessionary periods, municipal fundamentals have historically outperformed corporates: during the past five economic contractions in the United States, municipal bonds’ credit ratings have been much more stable, and default rates have been much lower relative to corporate bonds,” the asset manager added.

2 Cost-Effective Muni Bonds ETFs

Not sure where to start with getting municipal bond exposure? One fund to consider, especially for the cost-conscious investor, is the Vanguard Tax-Exempt Bond ETF (VTEB).

With a 0.05% expense ratio, the fund offers low-cost exposure to municipal debt. Comparable funds have an average expense ratio of 0.68%, based on Morningstar data.

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 muni bonds from primarily state or local governments, or agencies exempt from U.S. federal income taxes and the federal alternative minimum tax (AMT).

Another option launched just months ago is the Vanguard Short-Term Tax-Exempt Bond ETF (VTES). The fund, with its similarly low 0.06% expense ratio, seeks to track the S&P 0–7 Year National AMT-Free Municipal Bond Index, which is designed to meld two benefits of municipal bond exposure: tax efficiency and tax-exempt yield.

VTES’ benchmark includes bonds with maturities ranging from 0–1 years as well as 5–7 years. As such, investors get the risk-mitigating benefits of short-term exposure while also obtaining more yield, common with longer-duration bonds.

Given this balance, VTES may best suit investors with an investment horizon of two to four years. Additionally, it could work for high net worth clients looking for tax-exempt income.

“VTES is designed for tax-sensitive investors who have a preference for taking on less interest rate risk than the overall municipal market,” said Jeff Johnson, head of fixed income product at Vanguard, in an interview with VettaFi.

ETFTRENDS.COM

by BEN HERNANDEZ

MAY 19, 2023

Tax-Free Income on Sale: Buying Municipal Bonds at a Discount with Closed-End Funds

There’s nothing better than getting a high yield, except if that high yield comes tax free. And right now, investors have the opportunity to engage in such a transaction.

Despite their steadfastness and stability, municipal bonds have continued to trade sideways – and lower – in the wake of the Fed’s pace of interest rate hikes. Munis are prized by many investors for

their high credit quality and their ability to provide federal, and in some instances state/local, tax benefits. Now could be one of the best times to add the bonds variety to a portfolio.

However, there is a way to buy munis at both a discount and a higher yield. Closed-end funds are some of the biggest buyers of muni bonds, and right now, their discounts to net asset values (NAVs) are at some of the highest levels not seen in over a decade. With tax-free yields closer to 8%, investors looking to juice their income have a rare opportunity in the sector.

Continue reading.

dividend.com

by Aaron Levitt

May 16, 2023

Why Muni Mutual Fund and ETF Flows Are Diverging.

Pat Luby, CreditSights senior municipal strategist, discusses the divergence between muni mutual funds and muni ETF flows with Vonnie Quinn and Romaine Bostick on "Bloomberg Markets: The Close."

Watch video.

Bloomberg Markets: The Close

May 17th, 2023

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