
ECONOMIC DEVELOPMENT - WEST VIRGINIA

Jefferson County Foundation, Inc. v. West Virginia Economic Development Authority

Supreme Court of Appeals of West Virginia - June 8, 2022 - S.E.2d - 2022 WL 2063006

Nonprofit organization that advocated for effective and accountable government brought action against West Virginia Economic Development Authority (WVEDA) and insulation manufacturer seeking declaration that WVEDA lacked statutory authority to enter into transactions to finance construction of manufacturing plant using a sale-leaseback arrangement and that transactions were a de facto tax abatement in violation of state constitutional guarantee of equal and uniform taxation.

The Circuit Court dismissed. Organization appealed.

The Supreme Court of Appeals held that:

- Organization had representative standing;
- Controversy did not present a nonjusticiable political question;
- Sale-leaseback arrangement was not a de facto tax exemption;
- WVEDA had statutory authority to enter into the sale-leaseback;
- No conflict existed in statutory tax exemption provisions; and
- Sale-leaseback did not violate constitutional guarantee of equal and uniform taxation.

Nonprofit organization that advocated for effective and accountable government had representative standing for its action against West Virginia Economic Development Authority (WVEDA) and insulation manufacturer seeking declaration that WVEDA lacked statutory authority to enter into transactions to finance construction of manufacturing plant using a sale-leaseback arrangement and that transactions amounted to a de facto tax abatement in violation of state constitutional guarantee of equal and uniform taxation, where organization sought a declaration regarding impact that a public contract would have on its members' interests that arguably fell within state constitutional protections.

Controversy about proposed transactions between a public entity, the West Virginia Economic Development Authority (WVEDA), and a private manufacturer to finance construction of manufacturing plant using a sale-leaseback arrangement did not present a nonjusticiable political question, where objector sought declaration that WVEDA lacked statutory authority to enter into proposed transactions and that transactions amounted to a de facto tax abatement in violation of state constitutional guarantee of equal and uniform taxation, and the court had duties to apply and enforce a statute unless statute was clearly unconstitutional.

Sale-leaseback arrangement involving West Virginia Economic Development Authority (WVEDA) and insulation manufacturer to finance construction of manufacturing plant was not a de facto tax exemption, and thus the West Virginia Economic Development Authority Act, as source of WVEDA's powers, did not need to be strictly construed in action seeking declaration WVEDA lacked statutory power for its actions and that the sale-leaseback violated state constitutional guarantee of equal and uniform taxation, where sale-leaseback was a series of transactions resulting in two, distinct interests of a fee interest and a leasehold, and WVEDA's resolution to enter into sale-leaseback did not declare that the leasehold interest produced by sale-leaseback would be exempt from taxation.

West Virginia Economic Development Authority (WVEDA) had authority, under West Virginia Economic Development Authority Act, to adopt resolution to enter into a sale-leaseback agreement with insulation manufacturer to finance construction of manufacturing plant, where Act authorized WVEDA to engage in the specific transactions set forth in resolution, including issuing revenue bonds, exchanging bonds with manufacturer for property, purchasing fee interest in property from manufacturer, leasing property to manufacturer, and selling property to manufacturer at end of lease term.

Statute exempting property acquired or used by West Virginia Economic Development Authority (WVEDA) from taxation did not conflict with statute identifying types of property exempt from taxation, as applied to sale-leaseback arrangement involving WVEDA and insulation manufacturer to finance construction of manufacturing plant, where the sale-leaseback was a series of legislatively-authorized transactions and not a tax exemption, and statute identifying property tax exemptions was not, by its plain terms, an exhaustive list of types of property the Legislature exempted from taxation.

Sale-leaseback arrangement involving West Virginia Economic Development Authority (WVEDA) and insulation manufacturer to finance construction of manufacturing plant did not violate state constitutional guarantee of equal and uniform taxation, despite argument that the sale-leaseback was a sham structure hiding a huge property tax break for manufacturer, where sale-leaseback was a series of transactions resulting in two, distinct interests of a fee interest and a leasehold, WVEDA's resolution to enter into sale-leaseback did not declare that the leasehold interest produced by sale-leaseback would be exempt from taxation, and leasehold interest was subject to general rules of valuation of a leasehold.

Objector's due process challenge, including a claim of vagueness, to statute providing tax-exempt status to property acquired or used by West Virginia Economic Development Authority (WVEDA) was moot on appeal in declaratory judgment action raising statutory and constitutional challenges to sale-leaseback arrangement involving WVEDA and insulation manufacturer to finance construction of manufacturing plant, where the sale-leaseback was comprised of a series of transactions to be affected by WVEDA pursuant to its statutory authority, and WVEDA's resolution to enter into sale-leaseback did not claim to extend the disputed tax exemption to the leasehold produced by the sale-leaseback.

US Municipal Bonds Statistics: SIFMA

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) $171.0 billion, -7.7% Y/Y
- Trading (as of May) $13.9 billion ADV, +42.9% Y/Y
- Outstanding (as of 1Q22) $4.0 trillion, +0.7% Y/Y

Download xls

June 9, 2022

Fitch: Access and Affordability Key Community-Related Credit Risk

Fitch Ratings-London/Hong Kong-07 June 2022: Access and affordability is the most relevant community-related environmental, social and governance (ESG) risk among rated issuers, especially for entities involved in the provision of basic services and infrastructure, housing and affordable lending, Fitch Ratings says in its latest 'ESG in Credit' publication.

Human Rights, Community Relations, Access & Affordability is one of the social general issues within Fitch's ESG Relevance Score framework. Building upon the UN Guiding Principles on Business and Human Rights and Sustainable Development Goals, many governments are developing national action plans that outline the role and responsibility of business in community development and rights. This includes the draft EU Social Taxonomy, which has "inclusive and sustainable communities and societies" as one of its three core objectives.

Access and affordability considerations can be credit positive, particularly issuances with agency sponsorship or provision for social good. This is the case for many residential mortgage-backed securities and covered bond programmes that address housing affordability and for government-sponsored enterprises that execute social policy objectives, like Fannie Mae (AAA/Negative) and Freddie Mac (AAA/Negative). Meanwhile, concessional financing and lending to low-income countries is credit positive for a number of Fitch-rated supranational development banks.

Human rights and community relations can be a key rating factor for issuers in energy and extractive industries because of their potential impact on the physical environment and sites of cultural heritage. Fitch has assigned elevated ESG Relevance Scores to issuers in mining and metals and oil and gas. Meanwhile the wellbeing of clinical trial participants is a human rights issue for pharmaceutical companies and relates to informed consent, trial safety, and the involvement of subjects from low-income, minority or underprivileged communities.

More details are available in our new report, ESG in Credit – Community-Related Issues, which is available at fitchratings.com.

Contact:

Nneka Chike-Obi
Head of APAC ESG Research, Sustainable Fitch
+852 2263 9641
Fitch (Hong Kong) Limited
19/F Man Yee Building
68 Des Voeux Road Central, Hong Kong

Jingwei Jia
Associate Director, Sustainable Fitch
+852 2263 9843

Media Relations: Peter Hoflich, Singapore, Tel: +65 6796 7229, Email: peter.hoflich@thefitchgroup.com
Tahmina Pinnington-Mannan, London, Tel: +44 20 3530 1128, Email: tahmina.p-mannan@thefitchgroup.com
Eleis Brennan, New York, Tel: +1 646 582 3666, Email: eleis.brennan@thefitchgroup.com

Additional information is available on www.fitchratings.com

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

Fitch Ratings-Austin/New York-10 June 2022: 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 29, 2021.

Primary revisions to the criteria include an explanation of Fitch's treatment and assessment of eligible qualified investments when rating prepaid energy transactions.

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.

Contact:

Dennis Pidherny
Managing Director
+1-212-908-0738
Fitch Ratings, Inc.
300 W. 57th Street
New York, NY 10019

Tim Morilla
Director
+1-512-813-5702

Nicole Wood
Director
+1-212-908-0735

Media Relations: Anne Wilhelm, New York, Tel: +1 212 908 0530, Email: anne.wilhelm@thefitchgroup.com

Additional information is available on www.fitchratings.com

Fitch: Inflation, Rising Costs Halt Improvement in U.S Public Power Credit Quality

Fitch Ratings-New York-13 June 2022: The latest financial medians could mean the end of a decade-long trajectory of improving financial metrics for U.S. public power, according to Fitch Ratings' "2022 U.S. Public Power Peer Review".

Credit quality and financial performance are both holding steady for the sector as a whole. However, performance was mixed last year, which according to Managing Director Dennis Pidherny is not surprising given rising operating costs and inflationary pressures that began to mount in late 2021. "Addressing the dramatically high rate of inflation and rising costs through disciplined cost recovery and rate-setting in 2022 will dictate the forward look on credit quality for public power utilities," said Pidherny.

Trends highlighted in the 2022 peer review include:

–Median ratios for coverage of full obligations improved for retail systems, sustaining an upward trend that began in 2015. Conversely, coverage for wholesales systems weakened for only the second time since 2012;

–The median capex-to-depreciation ratio for wholesale systems rose to 77%, but remained at or below 100% or the sixth time in the last eight years. The median ratio for retail systems remained strong at 145%;

–Cash on hand medians for retail and wholesale systems improved yet again, rising to the highest levels observed in a decade. This accumulation of excess cash likely remains attributable to muted levels of capital investment, stronger than anticipated demand following the coronavirus pandemic and disciplined rate-setting initiatives;

–Leverage metrics across the entire portfolio of rated credits were largely unchanged for the second year in a row. A modest increase in leverage metrics for wholesale systems was offset by a modest decline in metrics for retail systems. The figures for 2021, together with the figures for 2020, suggest a pause in the trend of deleveraging that began over a decade ago.

Fitch's U.S. Public Power Peer Review is a point-in-time assessment of Fitch-rated public power utilities. It assists market participants in making their own comparisons among the recent financial performance of wholesale and retail public power systems, and rural electric cooperatives. It is accompanied by the 2022 Fitch Analytical Comparative Tool for Public Power, an interactive tool that provides enhanced trend analysis and peer comparison tables.

The full report, "2022 U.S. Public Power Peer Review," is available at www.fitchratings.com.

Contact:

Dennis Pidherny
Managing Director
+1-212-908-0738
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Kathy Masterson

Senior Director
+1-512-215-3730

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

Additional information is available on www.fitchratings.com

Explore GFOA's Latest Research on Cyber Insurance.

Cyberattacks are a clear and present danger for local governments. The potential extreme consequences of a cyberattack have caused many local governments to turn to cyber insurance. Given the potential losses from an attack, transferring the risk of an attack to the insurance market could be an attractive proposition.

LEARN MORE

Dragos CEO Urges Utility Companies to Hire Cybersecurity Firms - Like His Own

Dragos CEO says he wasn't trying to help his company but promote cyber improvements that were 'solution agnostic'

An executive's involvement in drafting White House-backed cybersecurity guidelines for energy companies that could potentially benefit his firm rankled competitors and prompted an effort by the Biden administration to remedy the potential conflict, according to documents and emails reviewed by Bloomberg News and interviews with four people involved in the process.

Soon after President Joe Biden took office, the White House began developing a plan to harden the cyber defenses of the electric grid. Robert M. Lee, chief executive officer of the cybersecurity firm Dragos Inc., was brought in for advice.

Lee helped prepare guidelines that could direct utility firms in choosing a cybersecurity product, a plan that was intended to strengthen their digital defenses and encourage the sharing of threat intelligence. But some of the wording he inserted resembled the language his company uses to market a product, documents show.

In an early 2021 email to other industry experts involved in crafting the action plan, Lee said he needed to show support for the plan "without appearing to have authored anything."

In a separate email to the group, he wrote, "We're trying to say Keeper without saying Keeper," referring to his company's Neighborhood Keeper program, which finds potential threats and shares anonymized information about them with the government.

The others on the email chain didn't appear to be potential beneficiaries of the guidelines.

By inserting descriptors of his company's own product into the guidelines — such as "high-fidelity sensor-based" monitoring — Lee's efforts prompted complaints from competitors who felt they were effectively excluded from a major federal initiative. Government ethics experts said it also creates the appearance of favoritism.

Closely held Dragos has a valuation of $1.7 billion, and its backers include Koch Disruptive Technologies, as well as funds and accounts managed by BlackRock.

In interviews, Lee defended his actions and said the wording he chose simply mirrored language used “for years” by the U.S. government. “I have done, in my opinion, nothing wrong,” he said. “I’ve worked for over a decade in government and in the private sector to try to make infrastructure more secure. And finally something got going that was a good effort.”

Lee said he edited the guidelines to be “solution agnostic,” and he said he made that clear to others involved in the process. Asked about the “trying to say Keeper without saying Keeper” email, Lee said he often uses the term “keeper” as short hand for products like his own that share data anonymously.

“My intent was not to see Neighborhood Keeper itself get pushed but that this type of capability and information sharing be considered and recommended,” he wrote in an email to Bloomberg.

Lee said he was brought into the process by an independent contractor, whom he declined to name, but wanted to avoid being directly involved over perceptions that he stood to benefit. He said he wanted to encourage anonymous data sharing on cyber threats in order to protect critical systems. “I know the way it’s worded in my email is shady but you can believe me or not that was the intent,” he said in an email to Bloomberg, adding he stopped participating after White House lawyers were “concerned of optics.”

After publication, Lee said he was brought in by the White House for general advice on industrial control systems that are used by a wide swath of critical infrastructure. He said the edits that he made were for a white paper by the independent contractor, not the White House, though some ended up in the White House-backed plan.

It’s not known how many utilities ultimately hired Dragos as a result of the initiative. Lee declined to elaborate, saying information about Dragos’s customers isn’t public.

Government ethics experts said that when business executives influence policy that could benefit them, it runs counter to transparency norms and potentially exposes US taxpayers to products or services that haven’t been scrutinized by an open process. “We need a level playing field when it comes to government policies and decisions, not cozy relationships,” said Scott Amey, the general counsel for the Project on Government Oversight.

Dragos’s involvement in helping shape the plan unfolded amid a series of devastating cyberattacks made public in late 2020 and during the first half of 2021, including a ransomware attack on Colonial Pipeline Co. that caused fuel shortages along the East Coast. The new administration vowed to make improving the nation’s digital defenses a priority, though it has been limited because much of the nation’s critical infrastructure is in private hands.

Emails reviewed by Bloomberg show that Lee exchanged messages about the plan with Anne Neuberger, the deputy national security adviser for cyber and emerging technology, in early 2021. Neuberger brought in Lee to help because of his expertise in the relatively small field of industrial control system cybersecurity and his company’s investigation of an attack on Ukraine’s electric grid, according to a person familiar with her thinking.

The guidelines, for instance, urged utilities to pick a cybersecurity product that provides “high-fidelity sensor-based continuous network cybersecurity monitoring" and anonymize data by using a "technologically irreversible" process. Dragos described its platform in nearly identical language, according to an archive of Dragos's website dating from weeks earlier.

A document obtained by Bloomberg tracks where Lee himself inserted references to some of those descriptors, which he said can be found in other government documents. Bloomberg couldn't immediately find similar phrases on the websites of several of Dragos's competitors, which declined to comment or didn't respond to messages seeking comment.

On April 20, 2021, the Biden administration publicly announced a 100-day plan to bolster cyber defenses of the electric grid, including helping utilities modernize their own cybersecurity. A few weeks later, the industry's point person on the White House plan, Berkshire Hathaway Energy Chief Executive Officer Bill Fehrman, sent an email to energy companies endorsing Dragos's product.

"As part of the initiative and after a significant assessment of 18 different technologies, we are recommending Dragos Neighborhood Keeper," he said, according to a May 2021 email from Fehrman on behalf of an industry group he was part of. He wasn't aware of Lee's involvement, according to his spokesperson.

In June, the National Security Council sent the draft guidelines to energy executives and other government officials, emails show.

But news of the Dragos endorsement made its way to the White House, and Neuberger told Fehrman's group, the Electricity Subsector Coordinating Council, that such a claim could limit competition, according to a senior administration official. The guidelines were reworked and expanded before being made public by the Department of Energy last August.

A National Security Council spokesperson said, "When we became aware of concerns early last summer about the criteria that were then in development, we worked closely with the Department of Energy to ensure that the final guidance reflected the input of all government agencies with expertise in this area and did not favor any particular company."

The DOE, which is leading the initiative, declined to comment.

In response to inquiries about Fehrman's letter endorsing Dragos, Berkshire Hathaway Energy spokesperson Jessi Strawn said the "only sensor technology that was open to all investor-owned utilities at the time was Dragos Neighborhood Keeper." As a result of the White House-backed plan, Berkshire Hathaway Energy adopted the use of Dragos within its organization, she said.

Competitors complained to an industry group that the guideline's wording tracked closely to Dragos's product, according to two people involved. One company planning to hire a competitor hired Dragos instead, believing Fehrman's recommendation amounted to a government endorsement, one of those people said.

Neighborhood Keeper is free but requires buying Dragos's platform, which could cost a municipal utility about $15,000 to $45,000 a year, according to a company presentation from 2019. An update on the program last August said at least 150 electric utilities, serving almost 90 million electric customers, "have adopted or committed to adopting technologies" to bolster cyber defenses.

Experts say the government has several ways to limit private firms from being able to craft policy in their favor, including prohibiting the executive branch from endorsing a product unless it has followed a defined process.

"It's important that the public be able to have confidence in procedures the government uses," said Kathleen Clark, a legal ethics professor at Washington University in St. Louis, after learning of Lee's involvement. "There is reason not to have confidence in this case."

Bloomberg Markets

By Jack Gillum

June 10, 2022, 4:20 PM PDT

Major Public Funding Sources to Reconnect Communities.

When the federal government invested billions of dollars in highways beginning in the 1950s, Black and lower-income neighborhoods across the country were razed or cut off from surrounding communities. Now, cities throughout the country are attempting to right those past wrongs and reconnect communities that were damaged by highway construction. To viably pursue equity goals within this redevelopment process, the voices of the residents who live in these neighborhoods must be raised. One organization attempting to do this is Hinge Neighbors, a community-led nonprofit based in Rochester, NY. This fact sheet provides a variety of resources to assist organizations like Hinge Neighbors in leveraging available funds to advance community redevelopment goals as highways are removed.

Download Report.

Urban Institute

by Christina Plerhoples Stacy, Yonah Freemark & Rebecca Dedert

June 9, 2022

The Big Debate Around Statehouses: What to Do With Budget Surpluses

States had another year of exceptional revenue growth driven by a number of factors, but the conversation around how to reward taxpayers is complicated.

Welcome back to another edition of *Route Fifty's Public Finance Update*! I'm Liz Farmer and this week I'm looking at the major themes in the upcoming state budgets. In the last post-recession era, passing a budget was a harrowing balancing act between cutting services or raising taxes and fees. Deficits were an annual occurrence in a number of places and the federal government largely left states alone to figure it out.

Not so this time around.

This newsletter looks at what states are doing with their surpluses and why—in at least one state—getting a budget passed before the July 1 fiscal year start is still going to be a nail-biter. As always, send feedback and tips to: publicfinanceupdate@routefifty.com.

Continue reading.

Route Fifty

By Liz Farmer

JUNE 7, 2022

[Are States and Localities Wasting Their ARPA Funds? Some in Congress Want to Know.]

The Treasury Department is not monitoring if governments are using the recovery money properly, Republican senators charge. They are asking the Government Accounting Office to investigate.

Senate Republicans are concerned that some of the $350 billion in American Rescue Plan Act funds for states and local governments is being wasted, and this week, they asked the Government Accounting Office to investigate.

Fourteen Republicans on the Senate Finance Committee wrote the GAO saying there has not been enough congressional oversight of how the money is being used, and that the Treasury Department hasn't made available detailed information as to whether states and localities are properly reporting how they're using the money.

The lawmakers cited a Fortune report that said some of the ARPA money is going for "questionable uses," including: $12 million for renovations of a minor league baseball stadium; $5 million for paying off debts of the Edward M. Kennedy Institute for the U.S. Senate; $70 million for tourism marketing in Puerto Rico; $6.6 million to replace irrigation systems at two golf courses; $2.5 million to hire new parking enforcement officers in Washington, D.C.; and $2 million for a county to help purchase a privately owned ski area.

Continue reading.

Route Fifty

By Kery Murakami

JUNE 9, 2022

[Defining Distress: Lessons from the Federally Chartered Regional Commissions]

Widening geographic inequality in the United States has shifted federal policymakers' attention to investing in "places" as well as "people." On his first day in office, President Biden signed an executive order prioritizing support for underserved communities, including those in rural areas.

For each of the three active federally chartered regional commissions that serve more than one state—the Appalachian Regional Commission, Delta Regional Authority, and Northern Border Regional Commission—the authorizing legislation explicitly requires the commission to assess annually which places within their service area can be classified as “distressed,” and to spend at least half, but often more, of their grant resources in those places.[1] [2] [3] Given the large proportion of rural places in their coverage areas, the use of “distress” by the commissions offers insights and lessons for reaching vulnerable rural communities.

Each commission defines distress differently, starting from the respective statutory requirements, balanced by internal analysis and capacity. Comparing their definitions illuminates the implications of different approaches and provides insights into the idiosyncrasies of designing methods for targeting specific types of communities.

Continue reading.

The Brookings Institution

by Anthony F. Pipa, Heather M. Stephens, and Natalie Geismar

Friday, June 3, 2022

Finding More Clarity in State Blue Sky Laws: Shedding Light on Exclusions from Municipal Bond Exemptions

Summary:
Some states exclude from the municipal exemption the registration of municipal securities that are paid from a non-governmental industrial or commercial enterprise, unless the payments and insured are guaranteed by a person whose securities are exempt from registration under certain other enumerated sections of the law.

Issue:
There is substantial disagreement among these states as to whether conduit 501(c)(3) bonds, student loan bonds and single family mortgage revenue bonds constitute bonds payable from revenues to be received from a non-governmental industrial or commercial enterprise.

Sub-Issue:
One state allows for the municipal exemption to apply to municipal securities that paid from revenues derived from a non-governmental industrial or commercial enterprise if the securities being offered obtain a rating high enough so as to not require any registration or notice filing. However, the guidance is ambiguous, which can cause differences in interpretation.

For example, in Washington, a regulation indicates that an exemption from registration for bonds payable from a non-governmental industrial or commercial enterprise is available if either:

- the security receives a rating of “AA” or better from S&P or an equivalent rating from Moody’s,
- the security is issued to fund a single-family mortgage program established and operated by a state housing finance agency and the security receives a rating of at least” A+” from S&P or an equivalent rating from Moody’s

The problem is that there is no guidance as to what constitutes an “equivalent” rating from Moody’s (or any other rating agency for that matter). Though it might seem obvious that a Moody’s rating of Aa2 would be an equivalent rating to an S&P rating of AA, the lack of formal guidance means that one is forced to make an assumption that Securities Division has not commented on; and if that assumption is incorrect, the issuance of the securities may be subject to an enforcement action.

Bottom line:
State opinions can sharply differ regarding exclusions from municipal bond exemptions. The lack of guidance and uniformity can make practicing in this area confusing — which is why it's key to rely on experienced consultants.

by Christopher Andreucci

June 8, 2022

Harris Beach PLLC

GASB Posts Paper on Intersection of ESG Matters with Governmental Accounting Standards.

View the GASB paper.

5/31/2022

The SEC's Proposed New Climate-Related Disclosure Requirements for Public Companies: What Do They Mean for Municipal Issuers and Borrowers? - Orrick

Summary Statement

- In March 2022, the U.S. Securities and Exchange Commission ("SEC") released proposed rules that would require public companies to include certain climate-related disclosures in their registration statements and periodic reports, including information about climate-related risks that are reasonably likely to have a material impact on their business, results of operations, or financial condition, and certain climate-related financial statement metrics in a note to their audited financial statements.
- While the SEC's recently proposed disclosure rules for public companies regarding climate-related disclosures do not apply to municipal issuers and borrowers (unless the borrower is a public company) and are not final, they do provide helpful context and guidance for how the SEC may view climate-related disclosures in the municipal market.
- In light of these considerations, issuers and borrowers in the municipal market should:
  – Review the SEC's proposed climate-related disclosure rules and their implications for the municipal market, specifically as it relates to disclosure of climate-related risk and governance and management of such risks in offering documents and continuing disclosure filings.
  – Assess climate-related risks to their organization and consider whether improvements need to be made to the governance and management of such risks and whether it is advisable to establish climate-related goals and policies.

Current Climate [PUN INTENDED!]

In March 2022, the SEC released proposed rules that would require public companies to include certain climate-related disclosures in their registration statements and periodic reports, including information about climate-related risks that are reasonably likely to have a material impact on their business, results of operations, or financial condition, and certain climate-related financial statement metrics in a note to their audited financial statements. The required information about climate-related risks also would include disclosure of a public company's greenhouse gas emissions, which have become a commonly used metric to assess a public company's exposure to such risks.

In May 2022, the SEC released proposed amendments to enhance and modernize the Investment Company Act "Names Rule" to address changes in the fund industry and compliance practices that have developed in the approximately 20 years since the rule was adopted. According to a statement by SEC Commissioner Allison Herren Lee, the SEC's proposed changes to the "Names Rule" have implications for funds using terms like "ESG" or "sustainable" or "green" or "social" in their names to ensure that such concepts truly align with a fund's investment decisions. While the May 2022 proposed amendments to the "Names Rule" are not the topic of this article, they illustrate the SEC's current focus on promulgating guidance that impacts the ESG investment community.

The SEC does not have the authority to adopt similar climate-related disclosure rules for issuers and borrowers (unless the borrower is a public company), and the proposed rules relating to such climate-related disclosures **do not** apply to issuers and borrowers. They do, however, provide helpful context and guidance as to how the SEC may view climate-related disclosures in the municipal market.

Orrick's corporate ESG group published an article summarizing the proposed rules as applied to public companies generally and proposing steps public companies could consider taking now. Our public finance team has prepared this supplement to that article, summarizing the key takeaways for issuers and borrowers. **We encourage you to read this supplement together with the underlying article.**

Applying the SEC's Proposed Rules to the Municipal Market

There are some key takeaways from the SEC's proposed rules for issuers and borrowers as it relates to disclosure of climate-related risks and governance and management of such risks in offering documents and continuing disclosure filings.

Climate-Related Disclosure

Proposed Rules:

In its registration statements and annual reports, a public company would be required to disclose climate-related risks, including information about:

- how any climate-related risks identified by the public company have had or are likely to have a material impact on its business and consolidated financial statements, which may manifest over the short-, medium-, or long-term;
- how any identified climate-related risks have affected or are likely to affect the public company's strategy, business model, and outlook;
- the public company's processes for identifying, assessing, and managing climate-related risks and whether any such processes are integrated into the public company's overall risk management system or processes;
- the impact of climate-related events (severe weather events and other natural conditions as well as physical risks identified by the public company) and transition activities (including transition risks identified by the public company) on the line items of a public company's consolidated financial

statements and related expenditures, and disclosure of financial estimates and assumptions impacted by such climate-related events and transition activities;
- the oversight and governance of climate-related risks by the public company's board and management; and
- the public company's climate-related targets or goals, and transition plan, if any.

The proposed rules would also require a public company to provide greenhouse gas ("GHG") emissions metrics for investors to assess those risks, and in certain instances the GHG emissions metrics disclosures would be subject to third-party verification requirements. Further, the proposed rules would allow for disclosure regarding a public company's climate-related opportunities.

Application to Municipal Market:

A registration statement for public companies is similar to an offering document like an official statement or offering memorandum for issuers and borrowers in the municipal context. Issuers and borrowers often have a practice of disclosing risks factors relevant to the security for and sources of payment of the securities being issued and, in many cases, risks relevant to an issuer's or borrower's operations and finances. It is not uncommon to see risk factors in an offering document for municipal securities relating to climate change, like global warming and even GHG emissions, or climate-related events like earthquakes, wildfire, floods, and tsunami, as and if relevant.

For issuers and borrowers that do not routinely include climate-related risk disclosure in their offering documents, the SEC's proposed rules suggest the time has come to start doing so.

For issuers and borrowers that already have a practice of disclosing climate-related risks in their offering documents, the SEC's proposed rules provide more detailed and focused considerations for developing their existing climate-related risk disclosure. Issuers and borrowers should partner with their disclosure counsel to think through each of the bullets above and consider if relevant and how to best disclose and address. The bulk of the disclosure points summarized above from the proposed rules are valuable guidance as to what issuers and borrowers should consider and discuss in developing their climate-related risk disclosure.

The annual reports prepared by a public company could be analogized to the annual reports prepared by issuers or borrowers for continuing disclosure purposes. While issuers and borrowers are only obligated to provide information in annual reports that they have contractually agreed to provide at the time of issuance of the debt instrument (often in the form of a continuing disclosure agreement or continuing disclosure certificate), there may be a push by ESG investors for issuers and borrowers to start including updates to their climate-risk disclosure as part of their annual reporting obligations going forward. Annual updates regarding climate-related risks are relevant to the secondary market – especially to ESG investors – who are buying and selling securities long after the publication of the related offering document.

Whenever an issuer or a borrower makes a public disclosure in the form of an offering document or an annual report, it is speaking to the municipal market and such statement is subject to SEC Rule 10b-5. SEC Rule 10b-5 states in relevant part: "It shall be unlawful for any person, directly or indirectly … *to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading."*

SEC Rule 10b-5 sets a high bar for public disclosures, including climate-related disclosure; there can be no errors or omissions of material facts. Materiality is the primary tool that issuers and borrowers have to guide disclosure practices. However, materiality is not based on what is material to the issuer or borrower making the disclosure; instead, it is based on what would be **material to the investment decision of a reasonable investor**.[1] What is material to a reasonable investor as it relates to climate-related risks and disclosure will require issuers and borrowers to have conversations with disclosure counsel, underwriters, and other professionals to ensure they are not omitting any aspect of their climate-related story that may be relevant to a reasonable investor – not just an ESG investor.

It is important to note that if an investor is specifically choosing to be an ESG investor, then an issuer's or borrower's climate-related policies and risks would be a top-of-mind factor when such investor is making investment decisions.

Audited Financial Statements

Proposed Rules:

Public companies would be required to include certain climate-related financial statement metrics and related disclosure as a note in their audited financial statements. The proposed financial statement metrics would consist of disaggregated climate-related impacts on existing financial statement line items. As part of the audited financial statements, the climate-related financial statement metrics would be subject to audit by an independent registered public accounting firm.

Application to Municipal Market:

Most issuers prepare their audited financial statements in accordance with standards and guidance promulgated by the Governmental Accounting Standards Board ("GASB"). It will be important to watch GASB closely in the coming years to see if it issues any proposals relating to the incorporation of climate-related metrics in audited financial statements for governmental agencies. To understand the risks imposed by climate-related conditions and events and adequately disclose them, it may be useful or even necessary for an issuer or borrower to quantify the climate-related costs incurred and reserves available to address climate-related risks should they occur. If such quantification of climate-related risks gains traction, GASB may decide to provide guidance on how to undertake this effort in a governmental agency's audited financial statements and in doing so subject an issuer's quantification to independent audit.

Implications for ESG Investing

Investor interest in ESG investments has grown significantly in recent years. According to one estimate, the "U.S. sustainable investment universe" has grown to over $17 trillion, which represents an increase of over 42% since 2018. Despite the growing interest in ESG investing and demand for ESG investments, there is no clear definition or description of what constitutes ESG investments, and ESG investors look for different markers, indices and evidence in their assessment of whether an investment qualifies as an ESG investment. Further, rating agencies are increasingly analyzing ESG factors as part of their credit analysis, with some agencies releasing "scorecards" for certain sectors of the municipal market, but there is no clear guidance on the factors considered and the importance in a given issuer's or borrower's credit analysis.

In light of the SEC's proposed rules, some of the looming questions for ESG investing include:

- How will the expectations from the ESG investor community develop concerning climate-related disclosures?
- How will ESG investors and rating agencies and other third-parties utilize the proposed rules when

evaluating the ESG quality of municipal securities and making an investment decision?
- Will the ESG investing community coalesce around more standardized approach to ESG at least as it relates to assessing environmental and climate-related governance issues?
- To what extent will ESG information become material to the reasonable investor and will the omission of it run afoul of SEC Rule 10b-5?

As noted earlier, the ESG investment market is sizable and growing, and may at some point drive a change in the municipal market even though the proposed rules if adopted would not be applicable to issuers and borrowers. Issuers or borrowers who fail to carefully assess climate-related risks and fail to take actions to manage and improve such risks and then are not able to provide the climate-related disclosure that the ESG community expects may face a more limited set of investors, which could in turn impact borrowing costs.

The question will be if the loss of ESG investors will be enough of a detractor for issuers and borrowers to change their approach and practices related to climate issues. Even more, if such climate-related practices and disclosures become more prevalent in the municipal market, the expectation may extend to investors outside the ESG market.

Dave Sanchez, Director of the Office of Municipal Securities at the SEC, seems to suggest things might come to that in statements made at the National Federation of Municipal Analysts' 2022 Annual Conference: "It's not a violation of securities laws to say you're not going to do anything [on ESG], that you are going to stick your head in the sand…maybe nobody will buy your bonds."[2]

What's Next

The SEC's proposed rules for public companies regarding climate-related disclosures are not yet final. Orrick will continue to monitor the proposed rules and any related enforcement actions by the SEC, along with potential implications for issuers and borrowers in the municipal market.

---

[1] *See Basic Inc. v. Levinson*, 485 U.S. 224, 224 (1988) (holding that for purposes of SEC Rule 10b-5, an omitted fact is material if there is a substantial likelihood that its disclosure would have been considered significant by a reasonable investor).

[2] See "SEC's Sanchez offers Guidance on ESG," by Connor Hussey, published on May 18, 2022 in *The Bond Buyer*, available at https://www.bondbuyer.com/news/secs-sanchez-offers-guidance-on-esg.

---

by Marc Bauer & Andrea Nicole Greenwald

June 9, 2022

Orrick, Herrington & Sutcliffe LLP

Considering Buying Municipal Bonds? Be Aware of Social Security and Medicare Implications.

During your working years, it's a good idea to invest heavily in stocks, since that could lead to solid, steady growth in your portfolio. But as retirement nears, it's smart to shift over to safer investments, like bonds.

Bonds don't tend to be as volatile as stocks, and so at a time when you might need to tap your investments for income, they're a good bet. And if you're going to buy bonds, you might want to focus on municipal bonds (or muni bonds) over corporate bonds.

Corporate bonds tend to come with higher yields than muni bonds. But muni bonds have a few distinct advantages. First, the interest income they pay is always tax-exempt at the federal level. And if you buy muni bonds issued by your state of residence, you can avoid state and local taxes, too.

Continue reading.

The Motley Fool

by Maurie Backman

June 8, 2022

Brookings 11th Annual Municipal Finance Conference.

The annual Municipal Finance Conference brings together academics, practitioners, issuers, and regulators to discuss recent research on municipal capital markets and state and local fiscal issues. The conference is a joint venture of the Hutchins Center on Fiscal and Monetary Policy at Brookings, the Rosenberg Institute of Global Finance at the Brandeis International Business School, the Olin Business School at Washington University in St. Louis, and the Harris School of Public Policy at the University of Chicago.

The 2022 conference will be held ***virtually*** across three days and will be open to the public free of charge:

- **Monday, July 18:** COVID's impact on the state and local sector; the G (governance) in ESG;
- **Tuesday, July 19:** Recent developments in the muni bond market
- **Wednesday, July 20:** The S (social) and E (environmental) in ESG

Click here to learn more and to register.

Municipal Bounce Back In 2022? (Bloomberg Radio)

Eric Kazatsky, Senior US Municipals Strategist with Bloomberg Intelligence, discusses the latest news from the municipal bond market. Hosted by Paul Sweeney and Matt Miller.

Continue reading.

Bloomberg Radio

Jun 10, 2022

ABRDN's Sickinger Sees 'Choppy' Muni Market This Year.

Christina Sickinger, ABRDN municipal credit analyst, discusses the state of the municipal bond market with Taylor Riggs on “Bloomberg Markets: The Close.”

Watch video.

Bloomberg Markets: The Close

June 7th, 2022, 12:24 PM PDT

Baltimore Looks to Expand Internet Access by Building Its Own Network.

The city’s broadband chief says getting its large underserved population connected is “too important for the private sector.” But Comcast is pushing back.

Baltimore has an audacious goal to build a city-owned broadband service that could give its poorest residents equal access to digital resources for education, medical services and jobs.

The plan lands the port city an hour from the nation’s capital squarely in the middle of a national debate over who deserves a chunk of the $95 billion in federal funding Congress allocated to close the digital divide. It also pits local officials against Comcast Corp., the cable giant that already serves the city.

Continue reading.

Bloomberg CityLab

ByTodd Shields

June 7, 2022, 3:00 AM PDT

Report: Tennessee Stadium's Proposed $1.5B Public Subsidy far Surpasses any Prior NFL Stadium

A new report from Sycamore Institute shows that the proposal for a new Tennessee Titans stadium includes the highest total amount of public subsidies for an NFL stadium at a proposed $1.5 billion while bringing limited public benefit in return.

That commitment was part of $1.5 billion in total stadium commitments lawmakers have made in the past 18 months. In a comparison of 10 new NFL stadium proposals since 2008, the new Nashville stadium includes more total public funding than any previous NFL stadium proposal and includes an estimated 68% public financing, which is higher than any proposal since the $700 million Lucas Oil Stadium built in Indianapolis in 2008, which relied on 86% public financing.

“The share of direct public subsidization of NFL stadiums has decreased over time, with one study estimating that taxpayers paid about 75% of construction costs between 1987 and 2008 but just 25% from 2009 to 2017," the report states. "As outlined in news reports, the tentative share of public financing for a new Titans stadium (about 68%) aligns more closely with venues built in the late 1990s and early 2000s than those built more recently."

Continue reading.

kpvi.com

By Jon Styf

Jun 8, 2022

Voters Narrowly Reject SF Muni Bond.

Transit advocates were disappointed Wednesday after Proposition A, a $400 million general obligation bond for San Francisco's beleaguered public transit agency, was narrowly rejected by voters, while most other ballot measures appeared to be passing, according to unofficial returns.

Prop A, the Muni Reliability and Street Safety Bond, required a two-thirds majority to pass. Unofficial returns showed it falling short by 3%, garnering only 63.3% of votes.

After plummeting from a high of more than 700,000 riders per weekday in February 2020 to a low of just over 100,000 in April that year, the San Francisco Municipal Transportation Agency has struggled since the start of the COVID pandemic to lure riders back. To be sure, they are returning, but it's been slow going and even now, weekday ridership is lower than pre-pandemic levels, reaching a high so far of just under 400,000 riders last April.

Prop A, which had the unanimous support of Mayor London Breed and the Board of Supervisors, was intended to help the transit agency get back on its feet by allowing the City and County of San Francisco to issue general obligation bonds to fund improvements such as increasing reliability, safety, and frequency; reducing delays; improving disabled access and equity; increasing subway capacity; and improving pedestrian, bicycle, and traffic safety. There are many other goals as well, such as improving Muni's deteriorating bus yards and redesigning streets and sidewalks.

Transit advocates were upset by the loss although, at press time, Breed — not giving up entirely — is "still waiting for more votes to come in," according to the mayor's communications aide Jordan Wilson.

"Anyone and any club that went No or No Position on Prop A should be ashamed," tweeted queer transit advocate Janice Li, who's an elected member of the BART board of directors.

Propositions B, E, and F were attempts to fight corruption.

Prop B would revamp the city's Building Inspection Commission. It passed with 58.9% of the vote, early returns showed.

The vote came four months after Mohammed Nuru, the former director of San Francisco Public Works, pleaded guilty to a federal fraud charge. His arrest in 2020 touched off a wide-ranging corruption scandal. Prop B would change the structure of the Building Inspection Commission by removing designated industry seats and allowing qualified members of the public to serve instead. Three seats would require subject matter expertise, much like the Historical Preservation Commission. Nominees would also be required to go through a public hearing process, while the mayor would have the power to hire or fire the director, providing greater accountability, according to proponents' statements in the voter guide.

Prop C, which would place new restrictions on recall efforts in San Francisco, and Prop H, which sought to recall embattled progressive District Attorney Chesa Boudin, are detailed on page 1. [LINK].

A new Office of Victim and Witness Rights and legal services for domestic violence victims will be created under Prop D, which passed with 60%, early returns showed. Faced with recalling a district attorney who, many felt, wasn't doing enough for victims of violent crimes, Prop D passed with almost the same number of votes that brought down Boudin.

The new office would establish a one-year pilot program to provide free legal services for domestic violence victims starting July 1, 2023. The Board of Supervisors will determine subsequent funding through the city's budget process. Currently, victims must navigate a maze of bureaucracy through several departments, proponents argued, which Prop D would streamline.

Voters passed Prop E, which deals with behested payments, with 66.8% of the vote, preliminary returns showed. Behested payments are donations solicited by a public official to benefit either a government agency or a private organization. Prop E will amend the city's existing law with two additions: members of the board could not seek behested payments if the board had approved a beneficiary's contracts; and the board can only amend the behested payments law if the city's Ethics Commission approves proposed amendments by a majority vote and then the Board of Supervisors approves them with a two-thirds vote.

Voters approved Prop F, which addressed garbage collection and disposal, by the largest margin of any of the propositions on the ballot, 67.4%, early returns showed.

For nearly a century, Recology — a private company that provides refuse services — has held the monopoly on trash and recycling pick up in San Francisco. Prop F will restructure membership of the Refuse Rate Board, change the process by which rates and regulations are set, and implement rules governing how future changes are made. The city controller will assume new duties as the refuse rate administrator. Most recently, it was revealed that Recology was allowed to overcharge customers by up to $200 million and agreed to refunds.

Voters were inclined to expand leave for public health emergencies. Prop G was approved with 60.7% of the vote, early returns showed. Prop G requires private employers and the city to provide paid leave to employees for public health emergencies. The Board of Supervisors voted unanimously to place Prop G on the ballot and stated in the voter guide that the COVID pandemic revealed massive gaps in protections for essential workers and increased wildfires are causing more unhealthy air quality days each year. Such emergency leave would kick in during any public health emergency. Notably, the measure was rejected by voters in the city's highest income ZIP codes, election results showed.

Bay Area Reporter

by Eric Burkett

Wednesday Jun 8, 2022

Bonds Could Make a Comeback as a Hedge Against a Recession.

Nearly half of investors believe that the U.S. will enter a recession in 2023, according to a Bloomberg survey conducted in April 2022, with another 15% predicting that it could happen this year. In anticipation of an upcoming recession, the S&P 500 index fell 16% so far this year – its worst start since 1970 – and many believe it will fall further.

Unfortunately, there aren't many good places for investors to park their capital. Cash isn't very attractive with 8% inflation, rising mortgage rates are hurting real estate, and alternative investments like gold and crypto are in the red. While bonds are suffering from rising interest rates, their yield could make them the lesser of the evils.

Let's look at what's driving the risk of a recession and why bonds might offer a safe haven.

Continue reading.

dividend.com

by Justin Kuepper

Jun 10, 2022

- S&P Credit FAQ: Will LIBOR's Expiration Adversely Affect U.S. Public Finance Issuers?
- First Circuit Affirms Dismissal Of Putative Securities Class Action Against Bank For Alleged Failure To Disclose Deteriorating Bond Market Conditions.
- Muni Issuers Face Pressures from Remote Work. **Ed. Note: Anyone working on a risk factor for this?**
- Budget Document Basics: GFOA eLearning Course
- NABL 201 LIVE Webinar Series: Arbitrage and Rebate
- *Matter of Oklahoma Development Finance Authority* – Supreme Court of Oklahoma holds that ratepayer-backed bonds issued pursuant to Regulated Utility Consumer Protection Act to cover the debt incurred by natural gas utility during winter weather event were constitutional; proposed bonds, which would allow customers to pay their utility bills at a lower amount over a longer period of time, involved traditional, self-liquidating bonds.
- And finally, Maybe Stick To The Bouncy Castle? is brought to us this week by *Kamphaus v. Town of Granite* (Foreshadowing!), in which a child was frolicking in the local cemetery (like you do) when he was injured when a HEADSTONE FELL ON HIM. The court found that the town had no obligation or duty to the kid regarding the maintenance or inspection of the headstone. (Assumption of the omen?) It did, however, neglect to detail precisely what type of occult ritual is required to rid the poor little bastard of this paranormal curse. Who you gonna call? Apparently not the Oklahoma Supreme Court.

PUBLIC CONTRACTS - CALIFORNIA

San Luis Obispo Local Agency Formation Commission v. Central Coast

Development Company

Court of Appeal, Second District, Division 6, California - May 5, 2022 - Cal.Rptr.3d - 78 Cal.App.5th 363 - 2022 WL 1419943

After property developer seeking to construct housing units on property, as well as city that approved permit, refused to pay more than $400,000 in attorney fees and costs to county's local agency formation commission, which prevailed in company and city's lawsuit against it for its denial of company and city's annexation application, commission brought action against developer and city, seeking attorney fees and costs.

The Superior Court granted developer and city's judgment on pleadings. Commission appealed. While that appeal was pending, developer and city moved for attorney fees. The Superior Court granted the motion, awarding $428,864 to developer and $172,850 to city. Commission appealed.

On rehearing, the Court of Appeal held that:

- Indemnity agreement contained in annexation application being void for illegality meant that commission was not subject to liability for attorney fees based on statute governing award of attorney fees in contract actions, and
- Doctrine of in pari delicto did not apply to allow enforcement of indemnity agreement.

Indemnity agreement contained in property developer and city's property-annexation application that they submitted to county's local agency formation commission was void for illegality, and therefore commission was not subject to liability for attorney fees based on statute governing award of attorney fees in contract actions, in action arising from commission's denial of application to annex property for construction of housing units; commission was not authorized by statute to make indemnity agreement.

A public agency that was not authorized to make the agreement, resulting in that contract being void and the public agency not being able to enforce nor be liable on the contract, is not liable for attorney fees pursuant to statute governing award of attorney fees in a contract action.

Indemnity agreement contained in property developer and city's property-annexation application that they submitted to county's local agency formation commission was void for illegality, and therefore commission was not subject to liability for attorney fees based on statute governing fees and charges incurred in the processing of an application with the commission, in action arising from commission's denial of application to annex property for construction of housing units; commission was not authorized by statute to make indemnity agreement.

Doctrine of in pari delicto did not apply to allow enforcement of indemnity agreement, which was void for illegality, contained in property developer and city's property-annexation application that they submitted to county's local agency formation commission, and therefore commission was not subject to liability for attorney fees based on statute governing award of attorney fees in contract actions, in action arising from commission's denial of application to annex property for construction of housing units; commission was public entity for which there was overriding public interest in limiting its contractual obligations.

WATER LAW - CALIFORNIA

City of San Buenaventura v. United Water Conservation District

Court of Appeal, Second District, Division 6, California - May 26, 2022 - Cal.Rptr.3d - 2022 WL 1679400

City petitioned for writ of mandate and filed complaint for determination of invalidity and declaratory relief asserting that groundwater extraction charge adopted by water conservation district for non-agricultural users that was three times the charge for agricultural users was a tax that required voter approval, and alleging that statute that required at least a three-to-one ratio between charges was facially unconstitutional.

The Superior Court entered judgment declaring charge invalid and finding statute unconstitutional. District appealed.

The Court of Appeal held that:

- City's claim challenging validity of charge was subject to independent, not rational basis, review;
- Charge was tax that required voter approval; and
- Statute requiring minimum of three-to-one ratio between charges was facially unconstitutional.

City's claim challenging validity of groundwater extraction charge adopted by water conservation district for non-agricultural users that was three times charge for agricultural users on basis that charge was unconstitutional tax without voter approval was subject to independent, not rational basis, review of administrative record; validity of charges presented constitutional question, and one purpose of constitutional provision that broadened definition of taxes that required voter approval was to curtail deference that had been traditionally accorded legislative enactments on fees, assessments, and charges.

Groundwater extraction charge adopted by water conservation district for non-agricultural users that was three times charge for agricultural users did not bear reasonable relationship to burdens or benefits of district's conservation activities, and thus, was not excepted from constitutional requirement of voter approval of any levy, charge, or exaction of any kind imposed by local governments, even if agricultural land had greater natural recharge of water than non-agricultural land, since agricultural land's relatively high recharge rate per acre-foot was swamped by its total pumpage, which accounted for 77% of net extractions.

Statute requiring a water conservation district to adopt a groundwater extraction charge for non-agricultural users that was at least three times more than charge for agricultural users facially violated constitutional requirement of voter approval of any levy, charge, or exaction of any kind imposed by local governments unless that charge bore reasonable relationship to payor's burdens on, or benefits received from, the governmental activity, even if there might be circumstances in which three-to-one ratio was justified, since such justification would have nothing to do with requirements under statute.

PUBLIC DUTY DOCTRINE - IOWA

Estate of Farrell by Farrell v. State

Supreme Court of Iowa - May 13, 2022 - N.W.2d - 2022 WL 1509713

Estates of motor vehicle occupants who died as result of head-on collision with another vehicle traveling the wrong way on state highway brought action against state and two municipalities, alleging the defendants negligently designed, constructed, and operated a confusing interchange used by the errant driver.

The District Court denied defendants' motion for judgment on the pleadings. Defendants filed interlocutory appeal. The Court of Appeals reversed and remanded. Application for review was granted.

The Supreme Court held that public-duty doctrine did not bar action.

Public-duty doctrine did not bar claims against state and municipalities brought by estates of motor vehicle occupants who died as result of head-on collision with another vehicle traveling the wrong way on state highway, alleging that states and municipalities negligently designed, constructed, and operated a confusing highway interchange, with inadequate lighting and signage, used by the errant driver, which induced the driver mistakenly to drive into oncoming traffic; defendants' alleged affirmative negligence created a dangerous condition on their own property that was allegedly a cause of the fatal accident.

EMINENT DOMAIN - KENTUCKY

Commonwealth v. Louisville Gas and Electric Company

Court of Appeals of Kentucky - April 22, 2022 - S.W.3d - 2022 WL 1194180

Public utility initiated condemnation proceedings to take property upon which the Kentucky Heritage Land Conservation Fund Board owned a conservation easement for construction of underground natural gas pipeline.

The Circuit Court denied Board's motion to dismiss on issue of sovereign immunity. Board filed interlocutory appeal.

The Court of Appeals held that:

- Condemnation proceedings to take conservation easement impacted Commonwealth's property rights; and
- Board was competent to defend Commonwealth's interests by asserting defense of sovereign immunity; but
- As matter of first impression, statutory mandate that eminent domain powers are exercisable as if conservation easements do not exist constitutes waiver of sovereign immunity; and
- Doctrine of prior public use did not bar utility from taking property.

Condemnation proceedings against property upon which Kentucky Heritage Land Conservation Fund Board owned a conservation easement impacted the property rights of the Commonwealth itself, and thus doctrine of sovereign immunity applied to entitle the Board to immunity in the absence of waiver by the legislature; Board used state funds to acquire the easement, and the easement was granted in the name of the "Commonwealth of Kentucky, by and through the Finance and Administration Cabinet, for the use and benefit of the Kentucky Heritage Land Conservation."

Attorney General was not required to formally decline to participate in condemnation proceedings impacting Commonwealth's rights to property upon which Kentucky Heritage Land Conservation Fund Board owned conservation easement, and thus Board was competent to defend Commonwealth's interests by asserting defense of sovereign immunity; suit did not challenge constitutionality of a statute.

Statute prohibiting a conservation easement from operating to impair or restrict any right or power of eminent domain created by statute and mandating that such rights and powers shall be exercisable as if the conservation easement does not exist constitutes a waiver of sovereign immunity where a governmental interest in a conservation easement is asserted as a defense to condemnation proceedings initiated by a party with a statutory right of eminent domain.

Statute mandating that eminent domain powers were exercisable as if conservation easements did not exist operated to prevent doctrine of prior public use from barring public utility's action to take property upon which Kentucky Heritage Land Conservation Fund Board owned a conservation easement; assuming, pursuant to statute, that Board's easement did not exist, then there was no prior public use to impede exercise of utility's right of eminent domain.

The doctrine of prior public use, which provides that land devoted to one public use cannot be taken for another public use in the absence of express legislative authority for the taking, operates to resolve competing claims to property under a right of eminent domain.

EMINENT DOMAIN - MICHIGAN

Barber v. Charter Township of Springfield, Michigan

United States Court of Appeals, Sixth Circuit - April 11, 2022 - 31 F.4th 382

Property owner filed state court action against township, county, and their parks and recreation departments alleging that their proposed removal of dam near her property amounted to unconstitutional taking and trespass.

Following removal, the United States District Court entered judgment on pleadings in defendants' favor, and owner appealed.

The Court of Appeals held that:

- Owner's claim for injunctive relief was ripe for adjudication, and
- Owner faced sufficiently concrete, particularized, and imminent injury-in-fact to establish her standing.

Property owner's claim for injunctive relief was ripe for adjudication in her action against county and township alleging that their proposed removal of dam near her property amounted to unconstitutional taking and trespass, even though dam had not yet been removed, where county and township had reached final decision to remove dam.

Property owner faced sufficiently concrete, particularized, and imminent injury-in-fact to establish her standing to assert claim that proposed removal of dam near her property by county and township amounted to unconstitutional taking and trespass, even though removal had not commenced; county and township had made final decision to remove dam and invested at least $600,000 into dam removal and restoration project, owner claimed that removing dam would change flow of water on her property and likely alter its configuration, and harms she faced were particular to her property.

IMMUNITY - OKLAHOMA

Kamphaus v. Town of Granite

Supreme Court of Oklahoma - May 17, 2022 - P.3d - 2022 WL 1550074 - 2022 OK 46

Mother of child, who was injured when headstone fell on him while visiting cemetery, brought action against town, the operator of the cemetery, for negligence.

The District Court granted summary judgment in favor of town. Mother appealed. The Court of Civil Appeals reversed. Town filed petition for certiorari.

The Supreme Court held that:

- Town had no duty to maintain headstone, and
- Town had no duty to inspect headstone.

Town had no duty to maintain headstone, which fell on child while visiting cemetery operated by town; town only provided routine maintenance to common areas of cemetery, such as roadways, fences, and shrubbery, and mowing services, and town had no property interest in headstone placed on easement belonging to purchaser of cemetery plot.

Town had no duty to inspect headstone, which fell on child while visiting cemetery operated by town, where headstone was not owned, placed, or controlled by town.

BONDS - OKLAHOMA

Matter of Oklahoma Development Finance Authority

Supreme Court of Oklahoma - May 24, 2022 - P.3d - 2022 WL 1634775 - 2022 OK 48

Oklahoma Development Finance Authority requested that Supreme Court assume original jurisdiction and approve the issuance of ratepayer-backed bonds pursuant to the February 2021 Regulated Utility Consumer Protection Act.

The Supreme Court held that ratepayer-backed bonds to secure fuel costs incurred by public utility during extreme winter weather event were constitutional.

BONDS - OKLAHOMA

Matter of Oklahoma Development Finance Authority

Supreme Court of Oklahoma - May 24, 2022 - P.3d - 2022 WL 1635165 - 2022 OK 47

Oklahoma Development Finance Authority requested that Supreme Court assume original jurisdiction and approve the issuance of ratepayer-backed bonds pursuant to the February 2021 Regulated Utility Consumer Protection Act.

The Supreme Court held that:

- Bonds were constitutional;
- Oklahoma Corporation Commission’s final financing order was not appealed and thus final; and
- Commission did not violate the Open Meetings Act when it issued final financing order regarding ratepayer-backed bonds.

Ratepayer-backed bonds issued pursuant to Regulated Utility Consumer Protection Act to cover the debt incurred by natural gas utility during winter weather event were constitutional; proposed bonds, which would allow customers to pay their utility bills at a lower amount over a longer period of time, involved traditional, self-liquidating bonds.

Oklahoma Corporation Commission's final financing order regarding ratepayer-backed bonds issued to cover the debt incurred by natural gas utility during winter weather event was final, as no party had appealed the financing order, and thus Supreme Court considering approval of the bonds would decline to consider issues regarding the filed-rate doctrine and whether the utility's fuel costs were prudently incurred.

Oklahoma Corporation Commission did not violate the Open Meetings Act when it issued final financing order regarding ratepayer-backed bonds issued to cover the debt incurred by natural gas utility during winter weather event, even if Commission failed to post agenda for meeting, where Commission met five days earlier as part of regular meeting where it decided to continue that meeting, Commission properly continued that meeting by providing a public announcement for the continued meeting with the date, time, and place, and Commission only discussed matters which were on the agenda for the prior meeting.

EMINENT DOMAIN - RHODE ISLAND

Mitola v. Providence Public Buildings Authority

Supreme Court of Rhode Island - May 9, 2022 - A.3d - 2022 WL 1446737

Property owners filed petition for assessment of damages, and petition to compel purchase in fee.

The Superior Court denied petition to compel purchase in fee, and entered final judgment. Owners appealed.

The Supreme Court held that:

- On issue of first impression, obligation of public building authority to purchase property in fee simple, if property owner so requested, was time limited;
- Petition to compel purchase in fee was timely filed;
- Owners' nearly four-year delay in bringing petition to compel purchase in fee was not inexcusable;
- Authority was not significantly prejudiced by owners' delay in bringing petition to compel purchase in fee; and
- Taking in fee by public building authority had to be based on value of property at time of taking.

EMINENT DOMAIN - TEXAS

Hlavinka v. HSC Pipeline Partnership, LLC

Supreme Court of Texas - May 27, 2022 - S.W.3d - 2022 WL 1696443

Pipeline company initiated condemnation proceedings after landowners rejected its offer to purchase a pipeline easement.

The County Court granted company's motions for summary judgment and to exclude landowner's testimony, and denied landowners' plea to the jurisdiction. Landowners appealed. The Houston Court of Appeals affirmed in part, reversed in part, and remanded. Both parties petitioned for review, and both petitions were granted.

The Supreme Court held that:

- Polymer-grade propylene product that company's pipeline carried qualified as an "oil product";
- Pipeline company met public use standard for common-carrier status that was required for condemnation authority; and
- Trial court's exclusion of landowner's testimony about sales of easements to other pipelines constituted harmful error that warranted new trial as to market value.

Pipeline company established that polymer-grade propylene that it carried qualified as an "oil product," as required for company to have statutory condemnation authority to build and construct a common-carrier pipeline to transport it, because the Natural Resources Code defined oil as "crude petroleum oil," and polymer-grade propylene was a product derived from crude oil's refinement and distillation, and further, the Railroad Commission, which authorized company to operate a pipeline, defined "product" to include all liquid products or by-products derived from crude petroleum oil or gas.

Pipeline company served at least one unaffiliated customer, and accordingly, it met the public use standard for common-carrier status under statute granting condemnation authority to common-carrier pipelines that transported oil products, where company had a transportation contract with an unaffiliated customer, its pipeline connected to existing pipeline networks making the transportation network feasible, pipeline had additional capacity and terminated near other potential customers, and company publicly filed a tariff with the Railroad Commission, demonstrating that it offered and marketed the pipeline for public hire.

Trial court's exclusion of one landowner's testimony about sales of easements to other pipelines, in pipeline company's condemnation proceedings, denied landowners the opportunity to rebut presumption that land's highest and best use was purely agricultural and that there was reasonable probability the easement that was condemned would likely have been sold, and thus, the exclusion constituted harmful error that warranted a new trial as to market value; recent sales of comparable easement rights on the same property to other pipeline companies, combined with existence of pipelines running parallel and adjacent to condemning pipeline company's pipeline, provided some evidence from which a factfinder reasonably could conclude that landowners could have sold to another the easement that they were instead compelled to sell to pipeline company.

S&P: Federal Funds Kept U.S. Colleges And Universities Afloat; Some May Sink When They're Gone

Key Takeaways

- According to the U.S. Department of Education, the U.S. higher education sector received about $75 billion through the three major federal emergency pandemic relief bills: Coronavirus Aid, Relief, and Economic Security Act (CARES),
- Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA), and the American Rescue Plan Act (ARPA).

- The median value of institutional funds received by schools we rate was about $2.0 million through CARES, $4.0 million through CRRSAA, and $5.0 million through ARPA.
- Several schools received additional aid in the form of a Paycheck Protection Program (PPP) loan or additional state and local grants.
- Emergency government funds accounted for over 4% of adjusted operating revenue in fiscal 2021 for more than 30% of respondents.

Continue reading.

2 Jun, 2022

Fitch: US School Districts' Cyber Risk Heightened by Limited Resources

Fitch Ratings-Austin/New York-01 June 2022: US public school districts are increasingly targets of cyberattacks due to the volume of sensitive personally identifiable information (PII) that schools maintain and the generally limited resources devoted to cybersecurity, Fitch Ratings says. Cyberattacks increased in frequency, severity and sophistication during the pandemic, leaving school districts, already facing operational and financial stresses exacerbated by the pandemic, particularly vulnerable.

School districts turned to remote learning during the pandemic and most became reliant on third-party learning platforms and personal student devices to conduct classes, significantly increasing their exposure to cyberbreaches. According to a recent report by K12 Security Information Exchange (K12 SIX), 162 school districts across 38 states reported cyberbreaches in 2021. However, due to weak public disclosure requirements across the sector, the number of incidents is likely much higher. Fitch's analysis of recent school district cyberattack data suggests that district size does not seem to be a factor, as both large and small districts have been targeted.

Competing K-12 budget considerations and resource allocation often lead to weakness in institutional cybersecurity. The threat landscape and cost of breaches and remediation are growing at a much faster pace than school districts' IT budgets allocated to cybersecurity. This trend is further exacerbated by hiring and staff retention challenges in a tight labor market, especially for IT staff, and the generally limited ability of school districts to independently increase revenues.

Ransomware remains the most prevalent cyber event impacting K-12 schools, accounting for roughly 37% of the reported K-12 cyber incidents in 2021, according to K12 SIX. Ransomware attacks in 2021 resulted in school closures in some cases due to attackers withholding access to databases used in school operations, leading to loss of instruction time for students. Disclosed ransom amounts paid in 2021 by school districts trended around mid-six-digit figures, while the cost of recovery after incidents has been much higher, which may not have been fully covered by districts' insurance policies.

Some districts have no cyber insurance at all. Adequate third-party risk transfer through cyber insurance is becoming increasingly unattainable for school districts, with annual premiums across K-12 cyber policies reportedly soaring more than 300% (according to Aon PLC) and coverage levels shrinking. Districts will face greater financial risks from cyberattacks without the ability to adequately transfer risk. Fitch considers the impact of cyberattacks as part of its assessment of management, which is an asymmetric credit factor where evidence of significantly weaker characteristics may negatively affect the rating. In the event of a cyberattack, Fitch will evaluate management’s ability to respond to the impact in relation to an entity’s financial flexibility.

Schools subject to breaches that disclose confidential information could face financial, legal and reputational risks as well as the risk of enforcement actions due to regulations regarding privacy and confidentiality. PII is trafficked on the dark web, and minors are at elevated risk of identity theft, which can go undetected for years due to lack of regular credit monitoring for this demographic.

Data breaches and leaks constituted about 20% of K-12 reported cyber incidents in 2021. According to K12 SIX, 55% of disclosed school data breaches in 2021 were directly due to leaks originating from district vendors, highlighting the elevated third-party risk for the sector. School district data is a valuable target given the amount of sensitive PII pertaining to teachers, parents, students and other personnel, a trend that is expected to continue as long as profit incentives remain high and outweigh perceived risk of criminal prosecution.

Contacts:

Omid Rahmani
Associate Director, US Public Finance
+1 512 215-3734
Fitch Ratings, Inc.
2600 Via Fortuna, Suite 330
Austin, TX

Brittany Pulley
Associate Director, US Public Finance
+1 512 813-5652

Sarah Repucci
Senior Director, Fitch Wire
Credit Policy – Research
+1 212 908-0726

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

---

Data Analysis: State Rainy Day Fund Balances Over Time

Introduction

Before the COVID-19 crisis, state rainy day funds and total balances were at an all-time high, after a decade of rebuilding reserves following the Great Recession. In spring 2020, when the pandemic first hit, this financial cushion softened the immediate blow for states facing revenue shortfalls and helped them to close budget deficits by the end of the fiscal year – something most states are required by law to do. At the same time, as state revenue projections were plummeting further, concerns grew that states might end up depleting the rainy day funds they had worked so hard to build in recent years.

As it turns out, these concerns did not come to pass, mainly because state revenues later performed considerably better than was expected early in the pandemic. This was driven by an influx of federal funds, higher-income workers being relatively insulated from the effects of the COVID-19 recession, the shifting of consumption from services to goods (more commonly taxed at the state level), and the expanded ability to tax online sales following the South Dakota v. Wayfair Supreme Court decision.

Now, nearly two years after the initial onset of the pandemic, state rainy day fund balances have reached new record levels. This is largely due to revenues exceeding lowered budget forecasts in the vast majority of states and increased federal aid, which led to substantial budget surpluses in some cases that were at least partly deposited into rainy day funds. However, it also has a lot to do with deliberate steps that states took in the years leading up to the pandemic to strengthen their reserves, informed by lessons learned from the Great Recession.

Continue reading.

NASBO

By Kathryn White posted 02-22-2022

S&P: Strong Management Continues To Determine Performance For U.S. Rental Housing Bonds

Overview

The demand for U.S. rental housing–across all price ranges–regained its footing in 2021 after a year of suppressed demand and general upheaval during the first year of the pandemic. The need and demand for affordable rental housing units remains a challenge across the country. The loss of low-cost rental units is making it even more difficult for moderate- and low-income households to find viable housing options. Federal funding, including aid to both renters and landlords, provided significant support, albeit not without distribution hiccups, and the eviction moratorium helped prevent widespread evictions and delinquent bills. However, inflation, increased expenses related to health and safety supplies and processes, higher labor costs and labor shortages, and supply chain interruptions have taken a toll on many U.S. rental housing bond properties. Financial results in 2021 for the 35 S&P Global Ratings' ratings on affordable age-restricted and mobile home park stand-alone rental housing bond (RHB) transactions show, on average, weaker debt service coverage (DSC) ratios compared with the previous year. In contrast, financial and operational performance, on average, for the 30 Section 8 ratings and six unenhanced affordable transactions showed improvement, as evidenced by an increase in average DSC and slight strengthening to overall occupancy rates for the portfolios, but challenges related to deferred maintenance and environmental hazards remain.

The rated universe of non-military stand-alone RHB transactions shrunk to 71 ratings as of April 2022, down from 110 a year ago. During the past year (April 2021 through April 2022), there were 39 rating withdrawals across 29 transactions, compared with 24 withdrawals across 17 transactions for the same period the previous year. In both years, some withdrawals were due to refinancing and defeasance, but many, particularly for age-restricted and Section 8 transactions, were due to poor financial and operating performance, non-payment and payment defaults, and information quality and reliability issues with management and governance to the extent that we could no longer maintain the ratings. This report provides more detail to how each property type subsector performed during the past year, and what we expect in the coming year.

Continue reading.

25 May, 2022

Public-Private Partnerships Provide Flexibility to Political Subdivisions in Designing and Financing Projects.

Public-private partnerships (P3s) have risen in prominence in recent years due to the flexibility they provide in designing and financing projects. P3s involve the collaboration between governmental entities and private enterprises to finance, build, design, operate, and maintain projects. These alternative project delivery models allow large governmental and civic projects to be achieved that would not otherwise be possible due to the use of flexible procurement methods and access to new sources of capital that P3s unlock. While Indiana and Kentucky have statutes that explicitly provide for P3s, they are also commonly utilized by political subdivisions in Ohio and West Virginia despite the absence of local P3 statutes in those jurisdictions. In each of these states, P3s have financed a variety of large projects.

Indiana

Indiana Code § 5-23-3 permits a political subdivision to enter into an agreement with a development partner ("operator") for the acquisition, design, development, reconstruction, repair, maintenance, and/or financing of any public facility or improvement on behalf of the governmental body. The process under this statute is commonly referred to as "Build-Operate-Transfer" or "BOT." Under the statute, the governmental body enters into a public-private-agreement with an operator to provide an identified service or deliverable to the governmental body for a guaranteed price. The BOT statute offers an efficient alternative to traditional procurement for capital projects and has been utilized by communities across Indiana for parking garages, town and city halls, firehouses, police stations, public works facilities, roads, sewer infrastructure improvements, parks, performing arts centers, schools, pools, and jails.

Political subdivisions that wish to utilize the BOT process for projects must first have the governing body of the unit adopt the BOT statute by resolution or ordinance. After adoption, any instrumentality of the unit, such as redevelopment commissions and sanitary sewer boards, may utilize the BOT process for financing and constructing its facilities and improvements. Under the BOT process, the governmental body issues a request for proposals and qualifications (RFP/Q) seeking firms interested in a public-private partnership to deliver a project or series of projects to the governmental body. Following the selection of a preferred offeror after the required notices and hearing, the governmental body negotiates directly with the preferred offeror during the scoping period to determine the terms in which the project will be designed and operated and to finalize a guaranteed budget for the project. Following the scoping period, the governmental body may formally award the project to the preferred offeror and enter into a BOT agreement with the operator.

BOT agreements, when structured properly, may offer a streamlined design and development process with an efficient procurement process, flexible financing terms, built in cost savings, and risk mitigation. Compared to traditional procurement processes, this unique approach to design and financing has numerous advantages such as:

1. the selection of the entire project team (design and construction) under one contract;
2. control of the design timeline;
3. oversight and authority of design elements and approvals;
4. a no-cost or low-cost scoping period;
5. numerous financing options;
6. potential for lower issuance costs;
7. assumption of construction risk by project team; and
8. a guaranteed budget or maximum price with no change orders.

Kentucky

Kentucky law provides broad authorization for state and local governmental entities to enter into P3 agreements of all types. Kentucky Revised Statutes (KRS) 45A.077 and KRS 65.028 outline the respective procurement process state and local governments must follow to pursue non-transportation P3s. Both P3 statutes require publication of a request for proposals (RFP) containing specific provisions, to include scoring criteria and how each factor is weighted, and require certain approval processes. Private businesses are explicitly authorized to submit unsolicited proposals to governmental entities and these statutes outline the competitive procurement process interested governments must follow for their consideration. Title 200 of the Kentucky Administrative Regulations (KAR) 5:355 further regulates both state and local non-transportation P3s to include requiring the head of the governmental body or agency to conduct specific qualitative and quantitative analysis before entering into a P3 agreement. Transportation P3s are regulated separately under KRS 175B.005-095, 200 KAR 10:010-030, and 603 KAR 2:020.

Starting July 1, 2024, the Kentucky General Assembly must approve P3s valued at $25 million or more unless the RFP or public notice of an unsolicited proposal have been published before that date. The State provides additional oversight of local P3s by requiring projects valued at over 30% of the local government's general fund revenue receipts from the previous year to be reviewed and approved by the Kentucky Local Government P3 Board.

Kentucky's exceptionally broad P3 statutes provide public entities with significant flexibility during the procurement process to receive creative proposals and select the proposal that provides the overall best value. The Commonwealth of Kentucky, public universities, and local governments have all taken advantage of this innovative project delivery method. Thus far, project types have included government office buildings, mixed-use parking garages, utilities, campus housing, downtown revitalization, and more.

Ohio

Ohio has one official P3 statute specifically authorizing transportation facility P3s. Pursuant to Ohio Revised Code Section 5501.70 et seq., the Ohio Department of Transportation is permitted to solicit and receive bids for the development, financing, maintenance, or operation of a transportation facility. Other political subdivisions can create P3 by utilizing local "port authorities," governmental entities created under Chapter 4582 of the Ohio Revised Code and empowered by Sections 13 and 16 of Article VII of the Ohio Constitution. Chapter 4582 of the Ohio Revised Code is divided into two separate provisions: Sections 4582.01-4582.20 governing several older port authorities, while Sections 4582.21 et seq. govern most port authorities.

Ohio's port authorities are powerful P3 entities because they are empowered to foster and encourage private enterprise and economic development within their individual jurisdictions (and in cooperation outside their jurisdictions), and port authorities have almost all of the development powers of a private developer. Furthermore, port authorities may enter into cooperative agreements with other political subdivisions, allowing a port authority to exercise any of its powers on behalf of the political subdivision, or even share those powers (except the powers of taxation and eminent domain) in an arrangement resembling a "joint venture" with local governments. This means that political subdivisions can do P3s with any private developer directly or in combination with the port authority. Importantly, port authorities are not subject to Ohio prevailing wage laws or restrictive procurement laws such as competitive bidding. This can lower costs of any P3 development and accelerate the timetable for project commencement and completion.

Recently, the Toledo-Lucas County Port Authority (TLCPA) was one of the driving forces behind the University of Toledo's innovative P3, utilizing tax-exempt bonds to allow for the monetization of its parking system. TLCPA created a special purpose non-profit subsidiary, ParkUToledo Inc., to enter into the concession agreement with the University of Toledo. Frost Brown Todd acted as bond counsel to the TLCPA for this project.

West Virginia

In West Virginia, there is not a specific statute governing local government P3. However, local governments may use their statutory powers to enter into contractual agreements providing for the acquisition, design, development, operation, maintenance, and/or financing of projects. When West Virginia political subdivisions consider a P3 arrangement for all or any aspect of a project, there are several legal considerations. These include:

1. compliance with West Virginia Code § 5G-1, if applicable, for the procurement of architectural or engineering services;
2. compliance with competitive bidding requirements for construction contracts and local labor preferences, if applicable;
3. the political subdivision's authority to transfer property;
4. the political subdivision's authority to lease property;
5. the ability of the political subdivision to partner with other governmental entities to facilitate the P3 arrangement, which include but are not limited to building commission, county and municipal development authorities organized pursuant to West Virginia Code §7-12, and joint development entities created by two or more development authorities, counties and/or municipalities pursuant to West Virginia Code §7-12-9b, as well as governmental instrumentalities of the State of West Virginia;
6. whether the project would be subject to ad valorem property taxes; and
7. whether the structure being considered would be subject to business and occupation taxes.

This is not an exhaustive list but is intended to highlight issues under West Virginia law to be considered when entering into a local government P3.

West Virginia local governments have successfully partnered with a variety of public and private entities to complete projects. These projects have leveraged the expertise of private partners to achieve projects that often would not have otherwise been completed. In addition, P3 have allowed local governments to leverage additional funding sources, such as federal grants and new market tax credits, to complete more complex projects than would otherwise have been possible using traditional project delivery structures.

Conclusion

P3s provide political subdivisions in Indiana, Kentucky, Ohio, West Virginia, and many other states with streamlined and flexible approaches for designing, building, financing, operating, and maintaining projects that benefit the public. As discussed above, there is not a one-size-fits-all model to P3s. The advantages of utilizing P3s compared to traditional procurement methods are numerous, including reducing or eliminating the possibility of change orders, lower issuance costs, more expedient approvals on financing, and reduction of risk to the governmental entity. Most importantly, P3s provide political subdivisions with greater flexibility in selecting developers for the project by enabling political subdivisions to use a variety of criteria in awarding a project as opposed to just awarding a project to the lowest bidder.

Frost Brown Todd LLC – Carrie J. Cecil , Matthew K. Duncan, Jason M. Halligan, Emma H. Mulvaney, David A. Rogers and Beau F. Zoeller

May 31 2022

Nossaman: U.S. Department of Transportation Issues Temporary Waiver of Buy America Requirements for Construction Materials

U.S. Department of Transportation Issues Temporary Waiver of Buy America Requirements for Construction Materials
As anticipated by project sponsors and industry participants, the U.S. Department of Transportation (USDOT) issued a temporary waiver of Buy America requirements for construction materials on May 19, 2022.

The Infrastructure Investment and Jobs Act (IIJA) expanded the applicability of Buy America and required the Office of Management and Budget (OMB) to promulgate guidance extending the current Buy America requirements regarding iron and steel and manufactured products to include construction materials, as well. OMB issued initial IIJA-implementing guidance effective May 14, 2022. OMB also issued a request for information seeking public input on its guidance, and recently extended the deadline for comments to June 6, 2022.

Following the release of OMB's guidance, USDOT proposed a temporary waiver for the new construction materials requirement to facilitate implementation of this new obligation. The public comments submitted in response overwhelmingly supported the implementation of the temporary waiver.

Continue reading.

Nossaman LLP

By Alyn Shen, Shant Boyajian on 06.01.2022

American Dream Mall Owner Skips Interest on $800 Million Municipal Bond.

The trustee said it notified the developer to make the payment by June 16 to avoid a default

The developer of American Dream, the $6 billion mega-shopping mall in East Rutherford, N.J., has failed to make its semiannual interest payment for an $800 million municipal bond, according to a notice to bondholders Friday.

Bondholder trustee U.S. Bank NA said that developer Triple Five Group didn't deposit funds for an interest payment due Wednesday and bondholders were paid from an $11.35 million debt service reserve account.

Triple Five didn't immediately respond to a request for comment. The trustee said it notified the developer to make the payment by June 16 to avoid a default.

Banks and bondholders lent about $2.7 billion to build American Dream, the country's second-largest mall. After many years of construction delays, the sprawling shopping mall and entertainment center near the Meadowlands Sports Complex opened in October 2019 under its third owner, Canada's Triple Five. The coronavirus pandemic caused it to shut down a few months later, before reopening in October 2020.

The Wall Street Journal

By Akiko Matsuda

June 3, 2022

[Investors Dip Back Into Municipal Bonds.]

Exchange-traded funds see record inflows as muni prices rebound after mostly falling all year

Investors are creeping back into the municipal-bond market, eager to take advantage of bargains.

Municipal-bond exchange-traded funds took in a record $1.8 billion for the week ended May 25, quadruple their weekly average for 2022, according to data from Refinitiv Lipper. Municipal-bond mutual funds continued to lose investor cash, but outflows fell to their lowest level since March.

Prices climbed as buyers ventured back in, with municipal bonds returning 2.9% from May 18 through Thursday, according to Bloomberg index data. Nuveen LLC, one of the largest managers of municipal bonds, said it plans this week to reopen its national and California high-yield funds, which closed to new investors last summer as prices skyrocketed.

Municipal bonds have returned minus 7.59% this year as of Friday, counting price changes and interest payments, according to Bloomberg index data from FactSet, pulling slightly ahead of other fixed-income investments. The Bloomberg U.S. Aggregate Bond index—largely U.S. Treasurys, highly rated corporate bonds and mortgage-backed securities—has returned minus 8.47% this year through Friday.

"I think things are turning around. I don't think it's a blip," Municipal Market Analytics partner Matt Fabian said of the rally. "I think munis had gotten too cheap."

A contributing factor in municipal bonds' rise: They are in high demand in early summer when a swath of outstanding municipal debt gets paid off and investors need new sources of tax-free income. High-net-worth investors favor the roughly $4 trillion market for state and local government bonds because the interest they throw off is typically exempt from federal and often state taxes.

Muni prices have been dropping fairly steadily all year as yields rose in response to Federal Reserve efforts to rein in inflation. The prospect of newer, higher-yielding debt flowing into the market caused outstanding lower-yielding debt to lose appeal for investors. Bond prices fall as yields rise.

Part of the downward pressure on muni prices came from steady mutual-fund outflows, which amount to more than $40 billion so far this year, according to Refinitiv Lipper. Mutual funds control nearly $1 trillion in outstanding municipal bonds, according to Fed data. When those investors pull their money in unison, fund managers must come up with the cash quickly.

The record inflows into exchange-traded funds, which unlike mutual funds can be bought and sold at any time of day, likely reflect purchases by younger or more nimble investors, Mr. Fabian said. Some of the cash might also come from mutual-fund managers temporarily parking investors' money while they look for bonds to purchase, he said.

Many remain wary of declaring the 2022 bond rout over. Economic turbulence, volatile bond rates, or more bond issuance than expected could push prices downward, Mikhail Foux, head of municipal strategy at Barclays PLC, wrote in a research report Friday. "The market is not out of the woods as of yet."

But municipal credit has remained strong, with states, cities, and school districts flush with tax revenue from the Covid-19 recovery and federal aid from pandemic rescue packages. That creates an incentive for investors to tiptoe back into the market as prices drop, and increasingly they have.

One early entrant was New York state resident Jonathan Kahn, who said he bought his first muni bond in two years on April 6. Before purchasing a bond, Mr. Kahn said, he typically checks public trade data posted by the Municipal Securities Rulemaking Board, a self-regulatory organization, to see how much a dealer last paid for the security. Unlike in the stock market, there is no publicly searchable daily price information for municipal bonds, and many trade infrequently. Debt is issued by about 35,000 different borrowers ranging from states to sewer districts and rural hospitals, according to Municipal Market Analytics.

Mr. Kahn said that before April the last time he found a bargain was March 2020, when the onset of the Covid-19 pandemic prompted market panic and muni prices cratered. Over the past two months, Mr. Kahn said he has made 15 purchases in the muni market.

"It's an open question as to how long yields will continue to go up and prices will continue to remain attractive," he said.

The Wall Street Journal

By Heather Gillers

Updated May 31, 2022

[Puerto Rico's Bond Investors Head to San Juan for Conference After 5-Year Bankruptcy.]

- **Island hosts first bond investor conference since bankruptcy**
- **Nuveen, Invesco and T Rowe Price hold Puerto Rico's new bonds**

Mutual funds are pouring back into Puerto Rico debt, a notable comeback for the US commonwealth that's exiting the biggest ever municipal bankruptcy after five years and that still struggles with an uncertain economy bled by population loss.

Island officials are trying to make sure investors don't leave. Puerto Rico is hosting its first annual event for bond holders since before its bankruptcy in 2017, hoping to show that it's put an end to the runaway deficits that drove it into ruin and locked it out of capital markets. Among its selling points: a sharply reduced debt load that's giving it a fresh fiscal start.

Mutual funds run by big-name firms like Nuveen and Invesco have been buying the island's bonds because of the high yield they offer and the tax advantage the debt carries. This time though, the funds are going in with the knowledge that a federally-appointed financial oversight board — despised by territorial residents as a vestige of colonialism — will ensure that bondholders get repaid.

At the two-day conference, commonwealth officials and local business leaders are looking to convince even more investors and industries such as biotech and data and technology to look past the deficit spending that pushed the island into bankruptcy and buy into an economy that slumped for more than a decade as it has been battered by hurricanes, earthquakes and political corruption.

"The Puerto Rico of today is not the Puerto Rico of even five years ago. The innovation and ecosystem that is brewing here is really quite something," said Ella Woger, the acting chief executive officer of Invest Puerto Rico, a public-private partnership set up to promote business on the island. "We look forward to communicating this new narrative. We've moved beyond the fiscal crisis narrative and hurricane-stricken narrative that we had before."

Messaging

Having less debt to repay helps with that message. The commonwealth slashed $22 billion of bonds down to about $7 billion in March. The biggest mutual-fund holders of the restructured securities include Nuveen, T Rowe Price Group, Invesco, Mackay Shields and Vanguard, as of March 31, according to data compiled by Bloomberg.

"The debt has been downsized so substantially that relative to the size of the Puerto Rican economy, it looks manageable and serviceable without the kinds of stresses that forced the commonwealth into restructuring several years ago," John Miller, Nuveen's head of municipals, said in an email.

With Puerto Rico bonds rotating out of the hands of hedge funds and other distressed-debt buyers, the commonwealth has a larger investor base to tap into, Omar Marrero, executive director of Puerto Rico's Fiscal Agency and Financial Advisory Authority, said in a telephone interview. He said officials want to earn credit ratings for Puerto Rico's sales-tax and general-obligation bonds in the next year or two.

"That helps a lot with the yield and the return," Marrero said about attracting more traditional municipal-bond investors. "To the extent that future administrations want to go back to the market or see the need to go back to the market, obviously those are the type of investors that you want investing in Puerto Rico."

Commonwealth general-obligation bonds maturing in 2046 traded Friday at an average yield of 4.8%, which is about 2 percentage points more than top-rated municipals, according to data compiled by Bloomberg.

Bond Traders

Island officials have lined up municipal-bond traders from JPMorgan Chase & Co., Barclays Plc, Goldman Sachs Group Inc. and Morgan Stanley to weigh in Monday during a panel at the conference — called PRNOW Summit — on how traditional state and local debt buyers are once again investing in the island's securities. More than 500 attendees have registered for the conference Monday and Tuesday.

"They've restructured to a more reasonable amount of debt," said Daniel Solender, head of municipals at Lord Abbett & Co., which manages $31 billion of state and local debt. "The economy there seems to be doing very well and they're getting tons of fiscal stimulus. So it seems like they're trending in a much better direction."

Puerto Rico still faces challenges. Its economy is projected to grow by 3.5% this fiscal year and next, but may contract again in fiscal 2024 and remain flat in fiscal 2025, according to the commonwealth's latest multi-year fiscal plan. The island's population is expected to continue declining through fiscal 2026.

"There are long-term risks and bondholders will have to weigh those risks," said Megan Poplowski, director of municipal research at MFS Investment Management.

Self Govern

The oversight board has clashed repeatedly with island lawmakers over issues such as spending cuts and pension benefits. It has the authority to certify a budget unilaterally if island lawmakers fail to create a compliant spending plan.

The board terminates after Puerto Rico and its public agencies, such as utilities, approve balanced budgets for four consecutive years. They must also have adequate access to the credit markets at reasonable rates before the board can leave.

Many Puerto Ricans say they want the board to end sooner because the panel has control over the island's revenue and spending and takes away from the commonwealth's ability to govern itself.

Once the board is winds down, bondholders lose a key backstop that can take action to ensure debt payments if island lawmakers fail to allocate money for principal and interest. The board did just that in February after Puerto Rico's Senate declined to take up legislation that would direct money to pay debt service this fiscal year.

"In the short term, the credit looks good because you have the board keeping an eye on the island's finances and you have economic growth due to federal disaster aid and stimulus," said John Ceffalio, senior municipal research analyst at CreditSights. "Over the long term, there's a lot of credit question marks."

Bloomberg Markets

By Michelle Kaske and Jim Wyss

June 6, 2022

Munis Bounce Back In May (Bloomberg Radio)

Joe Mysak, Editor of the Bloomberg Brief: Municipal Markets, discusses the latest news from the municipal bond market. Hosted by Paul Sweeney and Katie Greifeld.

Listen to audio.

Bloomberg Radio

Jun 03, 2022

S&P Charter School Brief: Michigan

View the Brief.

24 May, 2022

A Look Into Incredible Growth in Sustainable Municipal Debt Issuances.

In the midst of current economic uncertainty, U.S. municipal governments are on track to issue over $60 billion in sustainable municipal debt in CY2022, reflecting a 30% increase from the 2021 numbers of $45.9 billion in sustainable municipal debt issuance.

In their recent report, S&P Global Rating indicates that municipal debt issued under the Environment, Social and Governance (ESG) label will continue to grow in the future, taking up a significant section of the overall municipal issuance. More and more local governments are tapping into the 'Green Debt' for their capital needs, which includes projects like water and wastewater utilities, financing green buildings, public transit, and much more.

In this article, we will take a closer look at the nature of sustainable debt and what the future holds.

Continue reading.

municipalbonds.com

by Jayden Sangha

Jun 01, 2022

NABL Submits Comments for IRS 2023 Priority Guidance Work Plan.

The NABL Tax Law Committee sent comments on June 2, 2022, in response to the Internal Revenue Service's (IRS's) request for input on its 2023 priority guidance work plan.

Each spring, the IRS publishes such a request for its upcoming July to June work plan year. Stakeholder comments help the IRS identify and prioritize the tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance.

[SEC Charges Louisiana Town and Former Mayor with Fraud in Two Municipal Bond Deals.]

Town's Municipal Advisor and its Owner also charged

Washington D.C., June 2, 2022 — The Securities and Exchange Commission today charged the town of Sterlington, Louisiana and its former mayor, Vern A. Breland, as well as the town's unregistered municipal advisor, Twin Spires Financial LLC, and its owner, Aaron B. Fletcher, with misleading investors in the sale of $5.8 million in municipal bonds across two offerings in 2017 and 2018.

According to the SEC's complaints, the town of Sterlington issued the revenue bonds to finance the development of a water system and improvements to its existing sewer system. As required by state law, Sterlington applied to the Louisiana State Bond Commission (SBC) for approval of the two offerings. The SEC alleges that Sterlington submitted false financial projections, created by Fletcher and Twin Spires, with then-Mayor Breland's active participation and approval, substantially overstating the number of historical and projected sewer customers in order to mislead the SBC as to the town's ability to cover the debt service for the proposed bonds. The town and Breland allegedly did not disclose to investors that SBC approval of the bonds was based on the false projections or that Breland had directed the misuse of more than $3 million from earlier bond offerings intended for sewer system updates to instead pay for sports complex improvements, town legal fees, and payroll. The SEC further alleges that Twin Spires and Fletcher provided municipal advisory services to Sterlington without Twin Spires being registered as a municipal advisor with the Commission.

"Investors in Sterlington's bonds had a right to know that the town had obtained approval of the bond offerings based on false projections and had misused proceeds from prior offerings." said LeeAnn Ghazil Gaunt, Chief of the SEC Enforcement Division's Public Finance Abuse Unit. "Further, it is long past time for financial advisors to municipal issuers to comply with the requirement that they must be registered with the Commission before they provide municipal advice, and we will vigorously pursue advisors who continue to flout those requirements."

The SEC charged Sterlington, Breland, Twin Spires, and Fletcher with violating the antifraud provisions of the Exchange Act and the Securities Act. Fletcher and Twin Spires also were charged with failing to register as municipal advisors and with violating fiduciary duty and fair dealing rules. Without admitting or denying the SEC findings, Sterlington has agreed to a cease-and desist order against future violations, whereas Twin Spires and its owner Fletcher have consented to the entry of judgments enjoining them from future violations and agreed to pay disgorgement, prejudgment interest, and civil penalties in amounts to be determined at a later date by the court. Breland is litigating the SEC's allegations against him.

Robbie L. Mayer and Creighton Papier of the Public Finance Abuse Unit conducted the investigation under the supervision of Peter J. Diskin and Deputy Unit Chief Rebecca J. Olsen. The litigation against Breland will be conducted by William P. Hicks and M. Graham Loomis of the SEC's Atlanta Regional Office. The SEC acknowledges the assistance of the Investigative Audit Staff of the

Louisiana Legislative Auditor.

Investors Revisit Muni Bonds Amid Higher Yields and Strong Credit.

KEY POINTS

- It's been a tough year for municipal bonds with investors cashing out amid rising interest rates.
- But higher yields compared to U.S. Treasurys and strong credit ratings may be sparking a shift, experts say.
- "I think that public finance upgrades will outpace downgrades in 2022," said Tom Kozlik, head of municipal research and analytics at HilltopSecurities.

Continue reading.

cnbc.com

by Kate Dore, CFP®

JUN 1 2022

FAF Issues 2021 Annual Report.

Norwalk, CT—June 1, 2022 — The Financial Accounting Foundation (FAF) today posted its 2021 Annual Report to its website. The report is available as a printable PDF file and as an enhanced digital version.

The annual report theme is "Standards That Work from Main Street to Wall Street," and it commemorates the 50th anniversary of the creation of the Financial Accounting Foundation. The report provides a snapshot of the major milestones over the last 50 years of the Foundation's work to enable the independent standard-setting process of the Financial Accounting Standards Board (FASB) and Governmental Accounting Standards Board (GASB).

The report also offers an overview of how the FASB and GASB focus on obtaining and incorporating stakeholder input during standards-setting activities. This feedback has recently led the FASB to add project topics on digital assets; intangibles; government grants; and accounting for financial instruments with environmental, social, and governance (ESG)-linked features and regulatory credits. It has also informed the GASB's work on three major projects, the Financial Reporting Model Reexamination, Revenue and Expense Recognition, and the Disclosure Framework.

The 2021 Annual Report includes:

- Letters from FASB, GASB, and FAF leaders
- Milestones of the FAF's 50-year history
- Highlights of 2021 FASB and GASB standards and Exposure Drafts
- Complete 2021 management's discussion and analysis and audited financial statements (MD&A) (previously posted to the FAF website).

The annual report is available online as a downloadable PDF file, along with a mobile-friendly version at accountingfoundation.org. The online version also includes complete lists of all FASB and GASB advisory group members, including the Emerging Issues Task Force and the Private Company Council.

S&P Credit FAQ: Will LIBOR's Expiration Adversely Affect U.S. Public Finance Issuers?

The London Interbank Offered Rate (LIBOR) as we know it has about a year left. The one-year countdown until the cessation of one-, three-, six-, and 12-month U.S. dollar LIBOR publication by the ICE Benchmark Association begins July 1, 2022. While the one-week and two-month LIBOR ceased to be published effective Jan. 1, 2022, the remaining tenors cover the vast majority of LIBOR-based exposure for U.S. Public Finance (USPF) issuers.

USPF issuers service most debt by applying cash available from total operating revenues, net of expenses. Because the notional amount of LIBOR exposure tends to be modest relative to USPF issuers' overall debt service obligations, it is our view that substituting a successor benchmark for LIBOR-exposed instruments will not impair an issuer's capacity to meet debt service payments. Even adjustment factors to reconcile LIBOR with its successor benchmarks are imperfect and contribute to modestly higher interest rates. We view the USPF sector's use of cash available for debt service across all instruments as distinguishing it from some other sectors, in which the capacity to meet obligations is specific to the debt issue's cash flows and not to the issuer's broader cash flows. In the former structure, cash flows tend to be tightly aligned with debt service obligations, and even small changes in interest rates can have consequences, which we do not view as an exposure for USPF issuers.

In our ongoing due diligence calls, issuers across USPF sectors have afforded us insights into preparatory and transitional trends as they continue to work with their counterparties to migrate to a new benchmark or rely on newly established legislation to enact SOFR as the replacement benchmark. There is belief among issuers that the cost increase as a result of imperfect harmonization between LIBOR and SOFR will be inconsequential to overall operating performance and subsequent debt service obligations. Below we answer some frequently asked questions to address these issues.

Frequently Asked Questions

What credit risks remain for USPF issuers?

Although we believe recently passed legislation will aid the municipal bond market in achieving a smooth transition from LIBOR to an alternative benchmark, in certain circumstances management's adoption and execution of a strategy that limits financial exposures could be key to credit stability. Most issuers within public finance that have LIBOR exposure exists predominately in the form of variable rate debt which are often hedged with fixed payer swap instruments. Risks could remain acute for some issuers if management fails to identify and address exposure adequately, resulting in elevated basis risks and increased costs through untimely or unmatched transition between their debt obligations and hedging instruments. Alternatively, fixing variable-rate portfolios through reissuance in unfavorable market conditions could subsequently weaken an issuer's budgetary performance, flexibility, and liquidity. In our view, a credit-sound strategy by management includes the identification of an issuer's complete LIBOR exposure with proactive measures already in place to amend any existing documentation with fallback language, while budgeting for some increased costs. We believe there is risk associated with strategies that have not yet identified which obligations need to be amended and/or will not assume increased cost of capital as part of their annual expenses.

Further limiting any credit exposures that USPF issuers might face as they transition to benchmarks that succeed LIBOR are federal legislative and regulatory developments that define the replacement benchmark as the Secured Overnight Financing Rate (SOFR), where financing documents are silent on the question of substitution. Nevertheless, the parties to the financing need to agree on a spread adjustment to reconcile the differences in these measures of interest rates. While time still remains, many USPF issuers have indicated that they have already assessed potential exposure to LIBOR across all obligations and are either in or have completed discussions with their counterparties.

What recent regulatory developments have provided guidance for USPF issuers?

The Federal Reserve, the Federal Deposit Insurance Corp., and the Office of the Comptroller of the Currency prohibited new contracts to use LIBOR as of Jan. 1, 2022, and S&P Global Ratings believes that transition risk for USPF issuers would exist mainly in legacy contracts that have proven difficult or problematic to amend. The recent passing of the federal Adjustable Interest Rate (LIBOR) Act has created a safe harbor for those who select SOFR as the replacement benchmark, and they will not be subject to legal liability. The law also provides that the Federal Reserve can select a SOFR-based replacement for LIBOR in contracts where there is no fallback language that specifies LIBOR or where any fallback language is not sufficient, maintaining an active rate for those contracts. This federal law supersedes the New York State law that provided similar fallback language. While many issuers have already worked with their lenders to adopt fallback language, some cited legislation as their preferred method of transition.

Clarity on avoiding a taxable event was published on Jan. 4, 2022, when the IRS provided guidance on the transition from LIBOR. The guidance states that the IRS will not consider the transition a taxable reissuance if the LIBOR replacement includes any rate recommended by the Alternative Reference Rates Committee or the Federal Reserve. While these new rules have a 12-month grace period beyond the cessation of LIBOR, the additional timing affords issuers the confidence to transition from LIBOR without the concern of a forced reissuance in a rate environment that could be detrimental to their overall cost of capital.

What risks associated with derivatives remain for USPF issuers?

For swaps and other derivative instruments, similar protocols are in place to facilitate a smooth transition that provides robust fallbacks for those parties who elect to adopt the protocols. The International Swaps and Derivatives Association (ISDA) has published the IBOR Fallbacks Protocol and Supplement, effective Jan. 25, 2021, which identifies SOFR as the successor to LIBOR, but leaves open to negotiation between the issuer and its counterparty the spread adjustment for reconciling SOFR's interest cost to LIBOR's, which can define financial capacity to meet debt service requirements.

While not affecting all sectors in USPF, the Financial Accounting Standards Board (FASB) has proposed an update to accounting standards on April 20, 2022, to include flexibility regarding hedge accounting qualifications during the LIBOR transition period. Previously, in the event a hedge was deemed no longer highly effective, and hedge accounting was discontinued, issuers would have reported the change in fair value of the non-hedged interest rate swaps as an interest expense, inflating their recorded expenses and possibly affecting debt service coverage requirements that may be required by individual indentures and other covenants. Should FASB adopt these proposed changes, the risk is mitigated as long as management applies for relief through Dec. 31, 2024.

What risks do USPF issuers face if they transition to another benchmark that is not SOFR?

Although the prospects for transitioning to benchmarks other than SOFR are remote, transition to an index that results in higher interest rates relative to current interest rates, or that triggers a taxable reissuance under the tax code, might negatively pressure credit ratings if the costs are material to cash available for debt service and debt service. While there are other replacement rates available, only SOFR being a substitute for LIBOR will enable a safe harbor protection under the new regulations.

What does S&P Global Ratings expect the transition from LIBOR to look like from here?

Based on our polling of issuers across USPF sectors, we have found that there is considerable variability among issuers in their preparation for LIBOR's expiration. Although many have completed discussions with counterparties surrounding the selection of replacement benchmarks and adjustment factors, there are also many whose discussions remain in the preliminary stages. We do not expect negative credit consequences among the latter group because their LIBOR exposure tends to be small and any basis differential between LIBOR and its successor after applying an adjustment factor should be inconsequential. Moreover, the modest ratio of LIBOR instruments relative to total debt instruments, when viewed against the backdrop of debt payments that come from cash available for debt service from all revenue sources, rather than those dedicated to a specific issue, further limits the potential for negative financial pressures attributable to the transition. Legislative and regulatory guidance that will facilitate the transition should further insulate credit quality. We believe that there will be additional costs associated with the transition and surveyed issuers believe these additional costs to be nominal to their budgetary performance.

31 May, 2022

California's May Revision To The Executive Budget Proposal: Revenues Are Stronger; Risks Remain - S&P

Key Takeaways:

- California's revenues are surging over prior forecasts, although general fund revenue is projected to decline modestly in fiscal 2023 from a 2022 peak.
- Substantial proposed one-time spending could have favorable credit implications, as it could help mitigate the twin risks of either a revenue pullback, or even higher revenue growth causing the state to reach its constitutional appropriations limit.
- The state now projects structural balance in each year of its five-year projection, based on the governor's updated budget proposal.

Continue reading.

1 Jun, 2022

[Munis Have Slid This Year as Investors Bail Out. They May Be a Bargain Right Now.]

Municipal bonds have taken a beating this year as investors retreat amid rising interest rates. The market, however, could be poised for a comeback thanks to unusually attractive relative yields and strong balance sheets at state and local governments.

BlackRock and Insight Investment are among those arguing that municipal bonds look attractive compared with other bond markets today. The most obvious reason is that yields on tax-exempt 10-year municipal bonds rival those on Treasuries today, around 2.75%, and were yielding more than them as recently as mid-May. That is unusual because unlike Treasuries, interest income from munis are exempt from federal taxes and sometimes exempt from local tax in the states where they are issued, which is typically reflected in lower yields for munis because investors get to keep more of their interest payments.

Tax-exempt 10-year munis with AAA ratings yielded 98 cents for every dollar of Treasury yield on May 25. That's higher than average over the past decade, when they yielded 94 cents for every dollar of Treasury yield. And excluding the first six months of 2020—when investors were concerned that fallout from Covid-19 would cripple state and local governments—they paid out 91 cents for every dollar of Treasury yields since 2012.

That raises one big question: If munis offer such a good deal, why aren't they more popular?

Investors have pulled a net $38 billion from funds that invest in tax-exempt municipal bonds so far in 2022, according to Refinitiv Lipper, with outflows in 18 of the past 19 weeks, including a net $1 billion withdrawal the week ended May 25. That is the longest stretch of withdrawals since 2013.

It is likely because rising interest rates have fueled a selloff in the market in 2022, with the ICE US Broad Municipal Index posting an 8.2% year-to-date loss as of May 25.

"We've had a selloff and now [individual investors] are selling, even though it's the worst possible time to sell," said Vikram Rai, head of municipal strategy at Citigroup. "If mutual-fund flows stabilize, then muni returns will improve."

In other words, individual investors have been chasing performance—that matters because individuals own a greater share of the muni bond market than other corners of fixed-income markets. And the market's performance looks like it's in the early stages of a turnaround, with a 2.1% return for the week ended May 25.

What's more, the muni-market selloff was driven by volatility in the Treasury market, and not fundamental problems with state and local governments' finances. In fact, states have built up their largest fiscal cushion on record, according to Pew Research Center, after municipal governments received unprecedented support from the federal government's response to the Covid-19 pandemic.

"The fundamental backdrop for munis is incredibly strong," said Sean Carney, head of municipal strategy at BlackRock. "At these levels, these valuations, the market is pricing in a lot of bad news. And there's not a lot of bad out there once rates begin to stabilize."

The summer months are usually a good time for municipal bonds, he added, because bond maturities remove supply from the market and interest payments give investors extra cash to reinvest. "Over the next three months…the balance of supply and demand will be much more favorable," Carney said.

The market also stands to get “crossover buyers”—insurers, foreign investors and banks that don’t benefit as much from munis’ tax exemptions—that are moving into the market with bets that yields may have peaked, investors say.

“Insurance companies, large commercial banks and global investors have not only found value in the taxable muni bond market, but also the tax-exempt market, given their experience of it being a high quality market that produces solid streams of income” said Thomas Casey, senior muni-bond portfolio manager at Insight Investment.

Contrarians who want to take advantage of investors’ shifting appetites can buy muni funds, but they come with a risk: The funds offer daily liquidity, so investor withdrawals may force managers to offload bonds at a loss. Most closed-end muni funds use leverage, meaning they borrow short-term and reinvest that borrowed money in long-term securities, introducing extra risk when short-term interest rates move in unpredictable directions. And while open-ended funds generally don’t use leverage, strategists say investor withdrawals are weighing on the entire market. So in general, investors in muni funds should prepare to see red on their quarterly statements until interest rates start falling or other investors wade back into the market.

Investors who won’t be trading in and out of positions often—a group that should include most individual investors—could instead focus on buying and holding individual bonds in their brokerage accounts.

Investors in high-tax states, such as New York and California, can buy bonds issued locally for a state or even local tax break. The trading costs of muni bonds, known as markups, are notoriously high for individual investors trading bonds. But they have been declining in recent years, according to the Municipal Securities Rulemaking Board—and since 2018 brokerages have been required to report them. In short, markups are a one-time cost that allows an investor to forgo paying fund-manager fees and avoid other risks that come with buying funds.

More individuals may be doing this already. Insight Investment’s Casey said that he follows brokerage activity, and has noticed that while investors are still withdrawing cash from muni mutual funds, they have been buying more bonds directly.

For buyers who aren’t eager to do the extra research to build a portfolio themselves, large asset managers offer separately managed ladder accounts for smaller investors. BlackRock, for example, offers standardized accounts for investors with as little as $125,000 (or $250,000 with slightly more customization). That structure gives investors some of the benefits of a large manager’s credit-research team and relieves them of the burden of research.

Fund managers argue that credit selection will be important if the Federal Reserve causes a recession in its efforts to fight inflation. And they warn that some states’ pension funding may suffer as a result of the steep selloff in financial markets this year, which could add hidden risks to seemingly strong fiscal positions.

But there is another trend that benefits investors who are willing to buy munis directly and hold them to maturity: Municipalities default far less often than companies do. The long-term default rate for municipal bonds is around 0.1%, while the comparable rate for corporate bonds is around 7%, according to Moody’s.

The municipalities that did default had an average rating in the lowest tier of investment-grade

(BBB-) five years before the event. So investors looking to pick individual bonds may want to stick with bonds rated A or higher, especially if economic growth continues to slow.

Among bonds rated A or higher, fund managers from both BlackRock and Insight Investments said they favor municipal bonds with claims on distinct revenue streams from state and local governments, known as "special revenue bonds." Those can include water and sewer services, toll roads and other utilities and essential services.

If the idea sounds simple, that's because it is—people need water and sewer services, so those borrowers will probably keep paying. That highlights why the muni market is one of the only bond markets where individual investors have a fighting chance of solo investing success, even if they don't necessarily have an edge.

Barron's

By Alexandra Scaggs

May 30, 2022

First Circuit Affirms Dismissal Of Putative Securities Class Action Against Bank For Alleged Failure To Disclose Deteriorating Bond Market Conditions.

On May 20, 2022, the United States Court of Appeals for the First Circuit affirmed the district court's dismissal of claims under Section 10(b) of the Securities Exchange Act (the "Exchange Act") and Rule 10b-5 thereunder against a bank and its affiliates (the "Bank"). *Ponsa-Rabell v. Santander Sec. LLC, et al.*, No. 20-01857 (1st Cir. May 20, 2022). Plaintiffs alleged the Bank devised a scheme to defraud investors into purchasing Puerto Rican government bonds by omitting material information about the state of the market and about its own alleged program to rid itself of those securities. The appeal did not pertain to the district court's dismissal of claims under Section 17(a) of the 1933 Securities Act or Plaintiffs' claims brought under Puerto Rican law for which the district court declined to exercise supplemental jurisdiction after dismissing plaintiffs' securities claims.

According to the Complaint, the Bank acted as broker to plaintiffs who allegedly purchased Puerto Rico Municipal Bonds, Puerto Rico Closed End Funds, and Puerto Rico Open End Funds (collectively the "PRMB securities") from December 1, 2012 to October 31, 2013 (the "Putative Class Period"). Plaintiffs alleged that the PRMB securities were marketed to the public via fund-specific prospectuses that disclosed the fund's investment objectives, risk factors, and tax consequences, along with investment risks associated with each particular fund. According to the Complaint, the PRMB securities were "attractive investments" that offered relatively high interest and were exempt from Puerto Rican and Federal income and estate taxes. Shortly before the Putative Class Period, however, the Complaint alleges that Puerto Rico began experiencing an economic recession, which made investments in the PRMB securities particularly risky. Plaintiffs alleged that during the recession, Puerto Rico issued billions of dollars in PRMB securities and used the proceeds to pay off existing debts rather than to stimulate the Puerto Rican economy. Puerto Rico's deficit allegedly increased to approximately $2.2 billion and became unpayable.

According to the Complaint, in 2012, various public sources began warning about the increased risks of holding PRMB securities, including a March 2012 published report that warned that Puerto Rico was "flirting with insolvency", and an August 2012 report from Moody's Investor Service

("Moody's") lowering Puerto Rico's bond credit rating to Baa1 and advising that "[c]onservative investors . . . should pursue portfolio diversification." Plaintiffs' alleged that on December 13, 2012, Moody's again downgraded Puerto Rico's credit rating to Baa3, "just above junk bond status." The Complaint alleges that the bond market "crashed" in the fall of 2013, resulting in financial losses for all those who invested in PRMB securities. Plaintiffs alleged that leading up to this crash, the Bank actively tried to rid itself of its PRMB securities inventory "at an accelerated pace," which, according to plaintiffs, motivated the Bank to sell the securities to plaintiffs. Plaintiffs filed their initial complaint against the Bank four years after the crash, alleging that they never would have purchased the PRMB securities if the Bank had disclosed the risk of the crash. The district court dismissed the federal securities claims with prejudice and the state law claims without prejudice, and plaintiffs appealed the dismissal of the Section 10(b) claims—specifically, whether plaintiffs sufficiently pled (i) a material misrepresentation or omission, and (ii) scienter.

The First Circuit first considered the misstatement or omission element of plaintiffs' Section 10(b) claim. Plaintiffs alleged that two disclosures in the fund prospectus were "fatally defective" because of information the Bank omitted. In the disclosures, the Bank allegedly disclosed that "there is no Assurance that a Secondary Market for the Offered Bonds will Develop," and that "the Underwriters are not obligated to do so [meaning to guarantee a secondary market] and any such market making may be discontinued at any time at the sole discretion of the Underwriters." Plaintiffs contended that these disclosures did not include material facts which were necessary to make them not misleading; namely, that market conditions were deteriorating in Puerto Rico and that the Bank was selling off its own inventory of PRMB securities for that very reason. Plaintiffs further alleged that even if the omitted information was public, it did not relieve the Bank of its duty to disclose the information at the time plaintiffs allegedly purchased the PRMB securities, or of its ongoing obligation to update its prospectuses.

In affirming the district court's decision, the Court rejected plaintiffs' argument that the Bank should have disclosed information regarding the deteriorating market conditions, holding that the Bank "was simply not under any duty to repeat information already known or readily accessible to investors." In so holding, the Court maintained that "it is not a material omission to fail to point out information of which the market is already aware" and added that "plaintiffs' own complaint points to public statements about the deteriorating economy in Puerto Rico."

Turning to plaintiffs' allegation that the Bank should have disclosed that it was divesting itself of the PRMB securities, the Court similarly affirmed the district court's dismissal. In particular, the Court distinguished *Tutor Perini Corp. v. Banc of Am. Sec. LLC*, 842 F.3d 71, 90 (1st Cir. 2016), a case in which a bank allegedly knew the market for a particular security was "on the brink of collapse" when it allegedly encouraged plaintiff to purchase more of the securities while rapidly selling the same securities. The Court distinguished Tutor on the basis that the bank there had a "special relationship" with plaintiff as its investment advisor; whereas, in contrast here, plaintiffs made no allegations that they had a special relationship or had given any particularized investment instructions to the Bank that would support a duty to disclose. The Court determined that plaintiffs merely alleged that the Bank "solicited" (or recommended) they purchase the PRMB securities, and that their investment objectives were to "preserve capital" and "current fixed income." Further, the Court held that, unlike in Tutor, plaintiffs made no allegation that the Bank promised to outline the risks of their investment or failed to inform plaintiffs of a market crash they knew was occurring. Therefore, the Court affirmed the district court's holding that plaintiffs failed to sufficiently allege an actionable omission. After making his finding, the Court noted that it was able to avoid a lengthy analysis concerning whether plaintiffs sufficiently pled scienter.

Shearman & Sterling LLP

June 2 2022

Fitch: Strong Revenues Propel California Budget; Uncertainty Heightened in Forecast

Fitch Ratings-San Francisco/New York-31 May 2022: The updated budget proposal for fiscal 2023, released by Governor Newsom in his “May Revise”, reflects the continued economic and revenue rebound from the pandemic and continues the state’s policy of prudently allocating higher available revenue to maintaining budgetary resilience while also increasing programmatic spending, says Fitch Ratings.

The state now projects fiscal 2022 revenues will be $41 billion (23%) higher than the June 2021 enacted budget estimate, with revenues well above pre-pandemic levels. General fund revenues, prior to transfers, are forecast to remain flat at $223 billion in fiscal 2023, but $25 billion (13%) higher than the estimate used in the Governor’s January 2022 budget proposal. This exceptional growth, especially in the current year, comes despite the war in Ukraine and related economic sanctions on Russia, as well as ongoing supply chain disruptions, all of which contribute to the tempering of growth in the outyear revenue forecast.

The state attributes the strong revenue performance to a number of factors, including underlying economic growth with the state having passed its pre-pandemic GDP level in the first quarter of 2021 and the continued strength of earnings and stock market performance that benefit higher-wage taxpayers. It also reflects the impact of inflation on sales and income tax revenues as they are not inflation-adjusted.

While the forecast pre-dates the recent stock market retraction and incorporates record high capital gains in the current year, it assumes stock market growth will be weaker through the forecast period, accompanied by a decline in capital gains realizations and lower related taxes. The requirement to transfer capital gains-related tax revenues above 8% of general fund revenues not needed to fund Proposition 98 education spending to the budget stabilization fund and to debt repayment dampens the impact of capital gains volatility on general fund operations.

Although the state’s economic outlook assumes continued growth and recovery, it has been slightly downgraded relative to its earlier forecast due to the greater economic uncertainty. The economic assumptions underlying the governor’s “May Revise” are in line with Fitch’s economic outlook for the U.S., with the state assuming 3% real national GDP growth in 2022.

As has been the state’s practice, the governor takes a fairly conservative approach to using increased revenue by limiting growth in ongoing spending, rebuilding reserves, and paying down long-term liabilities. The revised budget proposal adds to the rainy day fund (Budget Stabilization Fund, BSA), bringing its total to over $23 billion, which is considered full funding at 10% of revenues and allocates $10.4 billion to other operating reserves.

The proposal assumes that 94% of the $49 billion discretionary surplus (the surplus not required to be spent on education due to proposition 98) will be applied to one-time expenditures focused on direct relief to taxpayers, investments in infrastructure, and COVID-related emergency spending. The budget also proposes using $6.2 billion in one-time funds to refund general obligation bonds and substituting up to $2.7 billion in expected appropriation-backed debt issuance with pay-as-you-go financing. It applies $3.9 billion in supplemental payments to reduce retirement liabilities (required under Proposition 2 and above the actuarial requirement).

The budget as initially proposed in January and revised in May provided approximately a $3 billion increase in ongoing spending, including to expand access to healthcare, address extreme weather, invest in public safety, and combat homelessness. Even with these increases, the multi-year forecast, which incorporates an added inflation adjustment beginning in 2023-2024, is structurally balanced.

Fitch anticipates details of the enacted budget will vary from the governor's plan; but, as in recent years, the general approach of limited recurring spending growth, focus on one-time actions, and restoring resilience will likely carry through.

Contact:
Karen Krop
Senior Director, U.S. Public Finance
+1-212-908-0661
Fitch Ratings
300 West 57th Street,
New York, NY 10019

Bryan Quevedo
Director
+1-415-732-7576

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

Additional information is available on www.fitchratings.com

Municipal CFOs: Be Careful of Your Bond Disclosures; The SEC is Gunning for You.

The Securities and Exchange Commission (SEC) recently charged two chief financial officers of school districts with misleading investors in municipal bond offerings. This should be a warning to municipal CFOs to be very careful to make appropriate disclosures when involved in their public entities' bond issues. An SEC official recently stated that "the SEC is committed to holding bad actors in municipal securities offerings accountable for their misconduct." Don't be the CFO bad actor that the SEC targets!

Sweetwater (California). The first situation involved Sweetwater Union High School District, near San Diego, California, and its CFO, Karen Michel. The school district issued general obligation bonds in April 2018. In September 2021, the SEC charged that the district and CFO Michel provided inaccurate information in connection with the sale of the 2018 Bonds. The district settled with the SEC and agreed to a consent order. CFO Michel also settled with the SEC, was banned from participating in future municipal bond offerings, and agreed to pay a $28,000 penalty. The SEC also required the district to engage an outside financial professional (who was not involved in the bond issue) to clean up the district's financial operations.

What went wrong in Sweetwater? Before the district's FY 2017-18 started, the district agreed to 3.75% raises for its employees. CFO Michel failed to include the full cost of the salary increases in the FY 2017-18 budget. The budget projected an ending general fund balance of $19.5 million. But if the 3.75% increase were factored into the budget, it would have shown an ending general fund balance of NEGATIVE $7.2 million. Even though internal analyses by her office recognized the problem, CFO Michel took many steps to cover up the actual deficit.

How did the CFO hide the ball in Sweetwater?
CFO Michel was in charge of all aspects of the district's finances. She oversaw the budget process. She prepared all periodic financial reports to the five person school board. And she oversaw the debt issuance process for the district. In addition, in its resolution approving the issuance of $28 million of general obligation bonds in 2018, the school board authorized CFO Michel to enter into all agreements and sign all documents related to the bonds. And she did so; she negotiated and signed all documents related to the bonds.

Who did the CFO mislead?

- Her school board.
- The State of California. The CFO filed periodic year-to-date budget information with the state that included the false information.
- The rating agency that gave an "A" rating to the bonds.
- The underwriter and other professionals working on the bond issue.
- Through the preliminary and final official statements, the bond purchasers.

To each of these entities, CFO Michel provided inaccurate information and hid the truth. CFO Michael then signed the closing certificates that said there were no misstatements or material omissions in the official statement. The bonds were issued in April 2018. CFO Michel retired in September 2018. The new CFO figured out the problem quite quickly, as did the auditor working on the FY 2017-18 audit. The rating agency then downgraded the district from "A" to "BBB+" with a negative outlook.

What are the lessons of Sweetwater?

- For CFOs: Don't hide the truth and lie about the financial condition of the issuer. The truth will eventually come out!
- For the school board: Don't give power over all aspects of the finances to one person. Have some sort of checks and balances in the financial operations.
- For bond professionals: When conducting due diligence, be careful to analyze what you are being told, particularly when it comes to projections of future results.

Crosby (Texas). The second situation involved the Crosby Independent School District, near Houston, Texas, and its CFO Carla Merka. The school district issued $20 million of general obligation bonds in 2018. In 2022, the SEC charged the district, CFO Merka and the district's auditor with providing inaccurate information in connection with the 2018 Bonds. The district settled with the SEC and agreed to a consent order. CFO Merka was fined $30,000 and is prohibited from participating in future municipal bond offerings. The auditor was suspended from practicing before the SEC for at least three years.

What went wrong in Crosby?
The district's FY 2016-17 financial statements (a) failed to report $11.7 million in payroll and construction liabilities, and (b) falsely reported $5.4 million in reserves. CFO Merka was aware of these problems but did not inform the auditor who prepared the FY 2016-17 financial statements. She then provided the FY 2016-17 financial statements to be included in the official statement for the January 2018 Bonds.

Does this case involve Texas high school football?
Yes, it does! The district issued bonds in 2013 to fund various capital projects, including improvements to the football stadium. The district's superintendent became actively involved in the stadium project, and he directed the contractors to perform project enhancements outside the original scope of work. As a result, the stadium project blew through its budget, and $12 million from the general fund would be needed to finish the stadium (the district did not have $12 million available in the general fund). CFO Merka convinced the primary contractor to defer payment until the district could undertake a new bond issue.

Did the district then double down?
Yes, it did! As a way of dealing with the $12 million problem, the district changed its fiscal year end in FY 2016-17 from August 31 to June 30. The district traditionally paid its teachers their annual salaries over the course of 12 months. The auditor assumed the teachers were fully paid for FY2016-17 by June 30, 2017, but the final two months for FY 2016-2017 were still owing and unpaid – that amount was $3.8 million. CFO Merka did not tell the auditor of this problem.

As with the Sweetwater situation, CFO Merka in Crosby was in total control of the bond process on behalf of the district, and she did not inform the underwriter or the disclosure counsel of the problems of which she was aware.

Things then hit the fan. The bonds were issued in January 2018. Also in January 2018, the football-loving superintendent resigned. In May 2018, CFO Merka resigned and took a CFO job at another school district. In June 2018, the district's new CFO discovered the problems. In August 2018, the district went public with the problems. In September 2018, one rating agency downgraded the 2018 Bonds from "A1" to "A3" with a negative outlook. A second rating agency also downgraded the 2018 Bonds from "AA-" to "A-" with a negative outlook.

What are the lessons of Crosby?

- Don't let superintendents anywhere near football projects.
- If the superintendent messes up, the CFO should not cover for him. It could cost the CFO $30,000 and her career.
- An underperforming auditor can cause real problems. The SEC said the auditor failed to "exercise professional judgment" and "maintain professional skepticism."

Obviously, most people reading this article would not make the mistakes that the CFOs in Sweetwater and Crosby made, but these cases are a good reminder that CFOs, public officials and public finance professionals all need to be very careful and diligent to provide full and accurate information when bond issues are being sold to the public.

by Ryan Gonder & David Unkovic

June 1, 2022

McNees Wallace & Nurick LLC

Investors Are Looking Back Into Muni Bond ETFs.

After the sell-off in the fixed-income markets, exchange traded fund investors are looking back into municipal bonds.

For example, among the most popular ETF plays over the past week, the iShares National Muni Bond ETF (NYSEArca: MUB) attracted about $1.2 billion in net inflows, according to VettaFi data.

Meanwhile, the muni bond ETF segment brought in a record $1.8 billion for the week ended May 25, or quadruple its weekly average for 2022 so far, the Wall Street Journal reported. However, municipal bond mutual funds continued to bleed money, but outflows dipped to their lowest level since March.

Muni bond prices are also strengthening as investors returned to this fixed-income segment, with MUB returning about 3.2% since its low last Wednesday.

The municipal bonds asset category has declined about 8% this year as of Thursday, including price changes and interest payments, according to the Bloomberg index data. In comparison, the Bloomberg U.S. Aggregate Bond index, which is largely comprised of U.S. Treasuries, highly rated corporate debt, and mortgage-backed securities, has decreased by 8.5% this year through Thursday.

"I think things are turning around. I don't think it's a blip," Municipal Market Analytics partner Matt Fabian told the WSJ. "I think munis had gotten too cheap."

A contributing factor to muni bonds' recent strength may be attributed to their high demand in early summer when a large number of outstanding municipal debt is paid off and investors re-invest in new sources of tax-free income. High-net-worth investors especially target the roughly $4 trillion market for state and local government bonds since the interest payments are typically exempt from federal and state taxes.

Muni bonds, along with the broader fixed-income market, have taken a beating this year in light of the Federal Reserve's increasingly aggressive monetary policy tightening measures to rein in decades-high inflation levels.

The downward pressure on munis partially came from mutual fund outflows, which were over $40 billion so far this year, according to Refinitiv Lipper data.

ETF TRENDS

by MAX CHEN

MAY 31, 2022

MSRB Files Proposal with SEC to Implement Structural Changes to Its Fee Setting Process.

Washington, D.C. – The Municipal Securities Rulemaking Board (MSRB) announced today that it filed with the Securities and Exchange Commissions (SEC) a proposal to restructure how the organization will assess fee revenue and manage reserve levels going forward. The filing describes an annual rate setting process that will annually adjust fee rates to account for prior year results. This "Annual Rate Card Process" is designed to ensure the organization has sufficient annual revenue to fund operations, while also more effectively and efficiently managing its reserve levels. Consistent with the new approach, the proposal would also amend certain fees for dealers and municipal advisors as of October 1, 2022. The additional revenue generated from these amendments will fund anticipated operating shortfalls and other near-term funding priorities of the self-regulatory organization (SRO) responsible for protecting and strengthening the $4 trillion municipal securities market.

"Among the highest responsibilities of an SRO is prudent stewardship of the revenue from regulated entities," said MSRB Chair Patrick Brett. "Following an intensive evaluation by our Finance Committee and a careful review of input from our stakeholders, we have developed a more nimble and sustainable approach that positions us to continue to advance our mission of protecting investors, issuers and the public interest, and our long-term strategic goals of modernizing our rules, technology and data."

Proposed Annual Rate Card Process

The MSRB's proposal to establish a new Annual Rate Card Process would determine certain MSRB fees based on the total amount of revenue each fee was expected to contribute, the expected volume of activity underlying the fee, and the amount of revenue actually generated by the fee in the prior fiscal year as compared to budget.

"With the majority of the MSRB's revenue coming from market volume-based fees, market volatility has contributed to a cycle of excess reserve building and temporary fee reductions that has understandably frustrated many of our regulated stakeholders," said Frank Fairman, Chair of the Board's Finance Committee. "Our proposed rate card process provides a more timely and predictable mechanism for mitigating the impact of market volatility, allowing us to effectively manage reserve levels while adequately funding future expenses needed to deliver on our long-term strategic plan."

The new approach is designed to maintain a fair and equitable balance of fees among regulated entities while also ensuring that the MSRB has sufficient revenue and organizational reserves to operate without interruption even in economic downturns and other unforeseen circumstances.

Proposed FY 2023 Fee Rates

The MSRB's proposal would increase the rates of assessment for the MSRB's market-based fees, including the Underwriting Fee, Transaction Fee and Trade Count Fee (currently known as the Technology Fee) described in MSRB Rule A-13, for the first time in over a decade. The proposal also would increase slightly the rate of assessment for the MSRB's Municipal Advisor Professional Fee described in MSRB Rule A-11. The proposed rates of assessment would become operative on October 1, 2022, and are currently expected to remain operative through December 31, 2023, when the next set of rates determined under the Annual Rate Card Process would take effect.

"I am pleased to report that we remain on track to fulfill our commitment to return approximately $19 million in excess reserves to the industry by the end of September," said MSRB CEO Mark Kim. "We strive to uphold the public trust and ensure accountability to our stakeholders by more effectively managing our operational reserves and by providing transparency in how we allocate our resources."

The MSRB publishes detailed information about its revenues, expenses and reserves in its annual budget each fall, in addition to providing full audited financial statements in its annual report each January.

- See FAQs about Proposed Amendments to MSRB Rules Establishing Fees for Dealers and Municipal Advisors.
- Read the MSRB Notice.
- Read the filing.

Date: June 2, 2022

Contact: Leah Szarek, Chief External Relations Officer
202-838-1300
lszarek@msrb.org

Budget Document Basics: GFOA eLearning Course

July 6, 7 & 8, 2022 – Noon-2 ET

Details:

Most, if not all, local governments produce a budget document every year as one of the final steps in their budget process, but do they know who is reading it and what they think of it? This course will encourage finance and budget staff to think critically about why their local government publishes a budget document and what they are communicating so that they can produce a document that is more useful for both internal and external stakeholders. By pointing out some of the limitations of the budget document as a communications tool, the course will also encourage attendees to think about how their organization's budget document fits in with its broader budget communications strategy and how to develop other means of communication to complement the budget document.

Please note that this course is not focused on how to win the GFOA Distinguished Budget Presentation Award. Instructors may touch on the criteria for the Budget Award, but it will not be a major focus of the presentation.

Click here to learn more and to register.

Texas Law Forces Banks to do Business With Gun Manufacturers.

If you want to do business in Texas, you have to be pro-gun

I keep telling myself that it can't get any worse in Texas. And yet somehow, it always does.

After the recent massacre in Uvalde, Texas, companies didn't issue policy statements that they would no longer do business with the firearms industry like they did after the Parkland massacre.

Why? Texas S.B. 19, passed in September 2021 also known as a FIND law (firearm industry nondiscriminatory legislation).

Continue reading.

medium.com

by Caren White

May 30, 2022

GFOA Debt Committee Launches 'Wholesale Review' of Best Practices.

The Government Finance Officers Association's debt committee Saturday recommended repealing a decades-old policy position against taxable debt and revamping a swath of best practices ranging from issuing variable-rate debt to hiring underwriters as part of a wider updating of its best practices and policy statements.

Meanwhile, the GFOA's next debt-focused best practice is likely to focus on designated green bonds, debt committee members said Saturday.

At its meeting Saturday ahead of the GFOA's 116th conference in Austin, Texas, the debt committee spent hours recommending updates to the association's best practices, which guide tens of thousands of local and state governments across the country. It's the first time in 10 years that the committee has undertaken a comprehensive review of all its best practices, which the association's website says "aim to promote and facilitate positive change or recognize excellence."

The recommendations will be sent to the executive board, which will vote on the measures in September. Changes to policy statements need to be voted on by the entire membership, which won't happen until the 2023 annual conference at the soonest.
With all eyes on ESG, the association's upcoming best practice recommendation will likely focus on designated ESG bonds, said committee member David Erdman, Wisconsin's capital finance manager.

"I think we're pretty close to doing a best practice on designated bonds," Erdman said. "The market is starting to hear more, as a result of MRSB discussions, about what people are looking for with designated bonds," he said. "There's been no consistency out there for investors, but now we are starting to see that a little."

On the policy side, the GFOA's decades-old position that the association "does not support the taxable bond option" dates all the way back to 1977, where it was written in response to a specific congressional situation, members said.

"That was in response to a very specific situation almost 50 years ago," said debt committee chair Tim Ewell, chief assistant county administrator of Contra Costa County, California.

The position is "clearly at odds with our position now," Ewell said.

Taxable bonds have become a growing part of the municipal market in recent years amid low interest rates and the 2017 Tax Cuts and Jobs Act ban on tax-exempt advance refundings. In 2020, taxable debt totaled nearly $150 billion – up from around $30 billion in 2019 – though that number declined in 2021 to just over $100 billion.

Because the full membership needs to vote on policy statements, the committee recommended that the GFOA review the position ahead of the next annual conference, and "mute" the policy in the meantime.

A best practice that warns issuers about floating variable-rate debt may be softened to reflect both the potential usefulness of short-term variable rate notes and shifting market conditions, members said.

After years of low interest rates rendered variable-rate bonds uncommon, rates are back on the rise, Erdman noted. "As interest rates go up, you're going to see more issuers consider variable-rate debt," he said, noting that Wisconsin is floating $130 million of variable rate notes this week.

Also on the variable-rate debt practice, the debt committee recommended updating language to reflect that the most common interest rate index, the London Interbank Offered Rate, is being phased out. The GFOA will not recommend a new index in its updated best practices.

On the market side, current best practice recommends issuers use an RFP to select an underwriter. The committee suggested broadening the recommendation to include hiring a previously retained underwriter who may already be familiar with the issuer's "story" without a new RFP.

Through all the best practices, the committee suggested weaving language highlighting diversity, equity and inclusion as well as ESG principles.

After the meeting, Ewell thanked the committee for its work, noting that it was the first in-person annual conference since the pandemic. The debt committee has, he said, embarked on such tasks as a suite of ESG best practices, an ESG white paper, voluntary disclosure and a "wholesale review of the vast majority of our best practices," he said. "It proves once again that this is the committee that rolls up its sleeves and works on behalf of our membership."

By Caitlin Devitt

June 6, 2022

BY SOURCEMEDIA | MUNICIPAL

Muni Issuers Face Pressures from Remote Work.

Credit and income sensitive municipal bond investors are well served to note recent comments by industry experts citing remote work as an emerging credit risk.

In affirming its negative outlook on Kansas City, Missouri, Fitch Ratings cautioned that based on increased remote work, it anticipates a slow recovery in payroll taxes – the city's largest source of general fund revenue.

The narrative continued with Bloomberg Intelligence strategist Eric Kazatsky's observation that "a handful of cities in Ohio, such as Cincinnati and Toledo, that rely heavily on income taxes could also see weakness in their revenue streams from remote working and potentially be subject to a downgrade."

The cautionary sentiment ironically came shortly on the heels of JP Morgan Chase CEO Jamie Dimon's begrudging acknowledgment that "working from home will become more permanent in American business."

Indeed, Dimon's concession to "the new normal" echoes what seems to be the growing consensus despite efforts by President Biden, governors, and mayors to encourage workers to return to their offices to help revive urban economies.

While the path back to pre-pandemic office life remains uncertain, a protracted work from home reality may be a harbinger for future credit rating downgrades of cities heavily dependent on commuter-driven revenues, especially after federal stimulus funds run dry.

The potential drag on tax revenues extends well beyond wages – sales taxes, transit systems, toll roads and small businesses will, to varying degrees, also feel the pinch.

A shrinking commuter base could also be a double whammy for big cities such as Los Angeles and New York, which are already grappling with population losses.

For example, the migration of millionaires leaving New York has diminished a primary demand component for the state's municipal debt.

The demographic shift has presented an unusual opportunity for highly taxed NYC residents who remain to invest in-state "triple tax-free" at higher absolute yields than offered by states with no income tax, such as Florida.

As remote work becomes an increasingly relevant credit driver, income-focused investors and investment managers will likely have similar opportunities to capture higher yields as impacted issuers come to market at cheaper levels.

Conversely, cities that rely more heavily on property taxes relative to earnings and sales taxes are likely to be more resilient to long-term shifts to remote work.

Also, smaller towns and suburban areas outside larger business districts would be the logical economic beneficiaries should hybrid work become the new paradigm.

A study by Pew Research Center, using 2019 Census Bureau data, reveals that among the workforces of 10 large metropolitan hubs, Richmond, Virginia had the highest share of workers commuting from outside the city at 77%.

Surprisingly, New York City had the lowest commuter share at 28%, but this result was somewhat misleading as the survey counted anyone residing within the city's five boroughs as a non-commuter.

Further complicating the credit calculus is the daunting task of determining which state collects taxes on wages for employees that live in a different state from the company for which they work.

While the rules governing taxation are literally all over the map, the guiding principle is that states that do not impose "double taxation" on employees working from a different state than their employer have the greatest exposure to lost earnings tax revenues.

Currently, there are only five states – Connecticut, Delaware, Nebraska, New York, and Pennsylvania – that assert the right to impose income tax on wages earned while working for an employer based in that state, even if performed remotely from another state.

However, neighboring states might strike a reciprocal agreement, such as the one between New Jersey and Pennsylvania, stipulating conditions under which remote employees only owe taxes to their resident state.

Given these complexities, portfolio managers will want to perform an issuer-by-issuer analysis in order to determine exposure to remote work risks as part of a broader credit assessment after which they can evaluate if yields adequately compensate for such risks.

An instructive case in point is last week's Moody's upgrade of New York State to Aa1 even as the ratings agency noted "risks associated with the Metropolitan Transit Authority, a component unit of the state, and uncertainties regarding recovery of the office-intensive New York City metropolitan area, which is the key driver of the state's economy."

The takeaway is that municipal investors need to consider remote work in their credit analysis to inform their buy/sell decisions.

Evidently, the ratings agencies are already paying increasingly close attention.

By Michael Wolfson

BY SOURCEMEDIA | MUNICIPAL | 06/02/22

NABL 201 LIVE Webinar Series: Arbitrage and Rebate

Tuesday, June 28, 2022 |. 1:00pm – 2:30pm ET

Join us for an educational presentation of the latest practical application of yield restriction and arbitrage rebate rules. Be sure to register by **10:00am ET on Tuesday, June 28, 2022**, and participate in a discussion of post-issuance considerations and rebate computations.

Expert speakers will present key findings, trends, and themes that explore highly detailed topics including:

- Calculations/The Basics
- Temporary Periods, Reserve Funds, and Spending Exceptions
- Elections, Allocations, and Waivers

Click here to register.

Think Twice Before Buying a Muni Below Par.

Thinking about buying a municipal bond at a price below its par value? You may want to think twice, because if it's acquired at too deep a discount it could be subject to an additional tax, known as the de minimis tax, which would take a bite out of the after-tax return.

In short: The larger the discount, the greater the risk that an investor will face a higher tax rate. Here are some issues to consider.

What is a discount?

Municipal bonds, or munis, are usually issued with a $1,000 par value, which is the amount you can expect to receive when the bond matures. However, after the initial issuance date, a muni's value can rise and fall in the secondary market. Events such as rising interest rates or deteriorating credit quality can cause the value of the bond to fall below $1,000. When that happens, the bond is trading at a discount.

Continue reading.

advisorperspectives.com

by Cooper Howard of Charles Schwab, 6/1/22

Making The Case for Municipal Bonds Despite Recent Volatility.

The first half of the year has so far been challenging for investors in municipal bonds. Ben Barber, Director, Municipal Bonds, Franklin Templeton Fixed Income, shares his latest outlook and reasons for optimism.

After a rocky start to the year in US municipal bonds, investors have not seen a reprieve as the second quarter of the calendar year started off with more of the same volatility. Yields have continued to move higher, roughly 166 basis points (bps) from the start of the year.1 This has caused much of the downward price pressure on the sector and is being exacerbated by heavy outflows from retail investors.

The municipal market will continue to be pressured by the Federal Reserve's (Fed's) monetary policy that is aimed at helping to stem inflation as well as those inflationary pressures continuing to drive longer-term yields higher. As we have previously highlighted when providing updates on the municipal market, we will provide outlook for three important dynamics across the sector: technicals, fundamentals and valuations.

Continue reading.

advisorperspectives.com

by Ben Barber of Franklin Templeton Investments, 6/2/22

Ready to Buy Muni Bonds Again? Consider this Hidden Tax Before Piling In.

KEY POINTS

- After a rough period for municipal bonds, also known as muni bonds, investors may be returning for higher yields and credit strength.
- These assets may appeal to higher earners because interest generally avoids federal taxes and may also bypass state and local levies.
- However, muni bond interest may trigger Medicare premium hikes for some retirees, financial experts say.

Continue reading.

CNBC.COM

BY Kate Dore, CFP®

JUN 3 2022

- Fitch: ESG in Credit – Exposure to Social Impacts Report
- 'Woke' ESG Scores From Credit Raters Draw GOP Ire to Muni Market.
- Texas Republicans Roil Muni Market Again With Energy Law.

- [Fitch: Operational Technology Cyberattacks Are a Credit Risk for Utilities]
- [Save The Date: NABL Arbitrage and Rebate Live Webinar!]
- *Ponsa-Rabell v. Santander Securities LLC* – Court of Appeals holds that there was no evidence of a special relationship between brokerage firm and customers who purchased municipal bonds from the firm, as would impose duty on the firm, under securities law, to disclose to customers that, at time of sale, it was actively trying to rid itself of its inventory of municipal bonds because of its concern of risk exposure, given the direction of the market.
- And finally, Think Of The (Alcoholic) Children is brought to us this week by *In re Revocation of an Alcoholic Beverage Permit for Riteway Liquor Store*, in which the Court of Appeal affirmed the closure of a liquor store. Sure, "the liquor store was one of the most dangerous places in city, two people had been murdered outside of liquor store in recent years, numerous residents of community wanted permit revoked, frequent complaints were made of loitering, fights, and drug use on premises." Ok, maybe a smidge problematic. But let's consider the balance of harms, shall we? To paraphrase, what profiteth a man if he avoids the occasional stabbing, BUT LOSETH HIS OWN LIQUOR STORE? Pretty sure that's how that goes…

BONDS - FEDERAL

Ponsa-Rabell v. Santander Securities LLC

United States Court of Appeals, First Circuit - May 20, 2022 - F.4th - 2022 WL 1598018

Customers who had purchased municipal bonds from broker brought securities fraud class action against brokerage firm asserting it made material omissions when making the sales, in violation of Securities Exchange Act and Puerto Rico law.

The United States District Court for the District of Puerto Rico adopted report and recommendation of United States Magistrate Judge and dismissed. Customers appealed.

The Court of Appeals held that:

- Brokerage firm was under no duty to repeat information already known or readily accessible to investors, and
- There was no evidence of a special relationship between broker and its customers, as would impose duty on firm to disclose omitted information.

Brokerage firm selling municipal bonds to its customers was under no duty to repeat information already known or readily accessible to the investors to avoid later claim for securities fraud based on the omission; although customers asserted that firm should have disclosed to them in fund prospectus information regarding the deteriorating market conditions for Puerto Rico bonds, it was commonly known to public at the time of the purchase that Puerto Rico was experiencing an economic recession and that its debts might become unpayable.

There was no evidence of a special relationship between brokerage firm and customers who purchased municipal bonds from the firm, as would impose duty on the firm, under securities law, to disclose to customers that, at time of sale, it was actively trying to rid itself of its inventory of municipal bonds because of its concern of risk exposure, given the direction of the market; there was no indication that firm made any special promises to its customers to outline the risks of their investment, or to inform them that any projected risks were materializing.

EMINENT DOMAIN - INDIANA

Town of Linden v. Birge

Court of Appeals of Indiana - April 18, 2022 - N.E.3d - 2022 WL 1132791

Property owners brought inverse condemnation action against town, county, and county officials after improvements to an existing regulated agricultural drain to alleviate flooding issues in town and surrounding areas caused flooding on their property.

The Circuit Court granted town's motion to dismiss. The Court of Appeals reversed and remanded. On remand, the Circuit Court entered an order finding that there had been a permanent physical invasion of owners' property and set matter for determination of damages. Defendants filed interlocutory appeal.

The Court of Appeals held that:

- Temporary but frequent flooding of landowners' property did not constitute a per se taking;
- Evidence regarding highest and best use of landowners' property was irrelevant for purposes of establishing whether a taking had occurred; and
- Sufficient evidence supported finding that flooding on landowners' property was caused by improvements to drain.

Temporary but frequent flooding of landowners' property, allegedly caused by improvements to regulated agricultural drain that ran through pre-existing drainage easement on landowners' property in order to alleviate flooding issues in town and surrounding areas, did not constitute a per se taking as a permanent physical invasion of landowners' property; instead, whether temporary but frequent flooding of landowners' property was compensable taking was required to be analyzed under expanded *Penn Central* factors.

Evidence regarding highest and best use of landowners' property was irrelevant for purposes of establishing whether a taking had occurred, and thus was inadmissible in landowners' inverse condemnation action against town, county, and county officials arising after improvements to an existing regulated agricultural drain that ran through pre-existing drainage easement on landowners' property to alleviate flooding issues in town and surrounding areas allegedly caused flooding on landowners' property.

Sufficient evidence supported finding that flooding on landowners' property was caused by improvements to regulated agricultural drain that ran through pre-existing drainage easement on landowners' property, in inverse condemnation action against town, county, and county officials, although defendants presented evidence and expert testimony that flooding was caused by increased rainfall, topology of landowners' farmland, and failure of landowners to connect their private lateral drains to improved drain; landowners presented evidence that they had little issue with flooding prior to improvements to the drain, and landowners' expert witness testified that drain, as reconstructed, caused flooding issues on landowners' property.

In determining whether frequent flooding of landowners' property as an alleged result of improvements to regulated agricultural drain that ran through pre-existing drainage easement on landowners' property in order to alleviate flooding issues in town and surrounding areas constituted a taking, trial court was to limit its consideration to the impact of the flooding on those portions of landowners' property that were outside of pre-existing 75-foot drainage easement that was created by statute and needed to specify the land affected if a taking was determined.

EMINENT DOMAIN - KENTUCKY

Commonwealth v. Louisville Gas and Electric Company

Court of Appeals of Kentucky - April 22, 2022 - S.W.3d - 2022 WL 1194180

Public utility initiated condemnation proceedings to take property upon which the Kentucky Heritage Land Conservation Fund Board owned a conservation easement for construction of underground natural gas pipeline.

The Circuit Court denied Board's motion to dismiss on issue of sovereign immunity. Board filed interlocutory appeal.

The Court of Appeals held that:

- Condemnation proceedings to take conservation easement impacted Commonwealth's property rights; and
- Board was competent to defend Commonwealth's interests by asserting defense of sovereign immunity; but
- As matter of first impression, statutory mandate that eminent domain powers are exercisable as if conservation easements do not exist constitutes waiver of sovereign immunity; and
- Doctrine of prior public use did not bar utility from taking property.

Statute prohibiting a conservation easement from operating to impair or restrict any right or power of eminent domain created by statute and mandating that such rights and powers shall be exercisable as if the conservation easement does not exist constitutes a waiver of sovereign immunity where a governmental interest in a conservation easement is asserted as a defense to condemnation proceedings initiated by a party with a statutory right of eminent domain.

The doctrine of prior public use, which provides that land devoted to one public use cannot be taken for another public use in the absence of express legislative authority for the taking, operates to resolve competing claims to property under a right of eminent domain.

PERMITS - LOUISIANA

In re Revocation of an Alcoholic Beverage Permit for Riteway Liquor Store

Court of Appeal of Louisiana, Second Circuit - April 13, 2022 - So.3d - 2022 WL 1100505 - 54,431 (La.App. 2 Cir. 4/13/22)

Owner and operator of liquor store sought judicial review of city's revocation of its alcoholic beverage permit.

Following a de novo trial, the District Court affirmed revocation of the permit. Owner and operator of liquor store appealed.

The Court of Appeal held that:

- Notice of city council meeting to consider rescinding alcoholic beverage permit was sufficient to put permit holder on notice as to allegations against it and to prepare its defense thereto;
- Sufficient evidence supported revocation of permit; and
- Any potential error in allowing city council transcript into record had no substantial effect on outcome of case.

EMINENT DOMAIN - NORTH DAKOTA

City of West Fargo v. McAllister

Supreme Court of North Dakota - May 12, 2022 - N.W.2d - 2022 WL 1493547 - 2022 ND 94

City filed quick-take eminent domain proceeding to acquire right-of-way across landowner’s property for a sewer improvement project.

The District Court entered judgment in favor of city. Landowner appealed.

The Supreme Court held that:

- Quick-take condemnation procedure applied to city’s acquisition of right-of-way across landowner’s property for sewer improvement project;
- City was not required to pay for a sewer improvement project with special assessments in order to use the quick-take procedure; and
- Exclusion of portion of expert testimony was warranted.

Quick-take condemnation procedure, which allowed municipality to immediately take possession of right-of-way after making an offer to purchase and depositing the amount of the offer with the clerk of court, was not limited only to a right-of-way for highway or roadway purposes, and applied to city’s acquisition of right-of-way across landowner’s property for sewer improvement project.

City was not required to pay for a sewer improvement project with special assessments in order to use the quick-take procedure, which allowed municipality to immediately take possession of right-o--way after making an offer to purchase and depositing the amount of the offer with the clerk of court, to acquire right-of-way across landowner’s property as part of project.

PREEMPTION - OHIO

Newburgh Heights v. State

Supreme Court of Ohio - May 19, 2022 - N.E.3d - 2022 WL 1572051 - 2022-Ohio-1642

Village filed complaint seeking declaratory judgment and a motion for preliminary and permanent injunction against State, seeking to enjoin enforcement of provisions allegedly infringing on home rule authority to enact and operate photo traffic enforcement systems, including by reducing local funding, granting exclusive jurisdiction over photo enforcement actions to courts, and requiring local authorities to pay advance court deposits to cover costs.

City filed motion to intervene, complaint, and motions for injunctions on the same basis. After allowing intervention and following hearing, the Court of Common Pleas granted motions for preliminary injunction in part, but denied motions as to funding, jurisdiction, and deposits. Village and city appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. The State filed a discretionary appeal.

The Supreme Court held that:

- No conflict existed between a municipality's ordinance allowing the use of traffic cameras and state law allowing a reduction of a municipality's share of the state's local-government funds based on the amount of traffic-camera fines collected, and
- No conflict existed between a municipality's ordinance allowing the use of traffic cameras and state law requiring a municipality to pay an advance deposit to cover court costs and fees when litigating a citation for a violation based on the use of traffic camera.

SCHOOL FINANCE - TENNESSEE

Metropolitan Government of Nashville and Davidson County v. Tennessee Department of Education

Supreme Court of Tennessee - May 18, 2022 - S.W.3d - 2022 WL 1561546

Municipality and county brought declaratory judgment action against Governor and Department of Education, asserting that the Education Savings Account Pilot Program (ESA Act) was unconstitutional under the Home Rule Amendment and under the due-process and education clauses.

The Chancery Court entered judgment finding ESA Act unconstitutional under Home Rule Amendment. The Court of Appeals affirmed. Governor and Department applied for permission to bring interlocutory appeal, which was granted.

The Supreme Court held that:

- Municipality and county asserted a sufficient palpable injury to support standing, but
- ESA Act was not "applicable" to municipality or county and therefore did not implicate the Home Rule Amendment.

Municipality and county asserted a sufficient palpable injury to support standing at motion-t--dismiss stage of their declaratory judgment action against Governor and Department of Education, asserting that the Education Savings Account Pilot Program (ESA Act) was unconstitutional under the Home Rule Amendment, where municipality and county asserted an injury to local control of local affairs, which the Home Rule Amendment was enacted to protect.

Education Savings Account Pilot Program (ESA Act), allowing a limited number of students to directly receive their share of state and local education funds, which would ordinarily be provided to the public-school system they attended, and use such funds to pay for a private school education, was not "applicable" to municipality or county and therefore did not implicate the Home Rule Amendment, even though municipality and county might be affected by Act; facially, Act governed only the conduct of local education agencies (LEAs), not of municipality or county, and financial connections between LEAs and municipality or county did not change fact that entities were distinct from each other.

EMINENT DOMAIN - TEXAS

City of Baytown v. Schrock

Supreme Court of Texas - May 13, 2022 - S.W.3d - 2022 WL 1510310 - 65 Tex. Sup. Ct. J. 985

Property owner brought regulatory-taking and declaratory-judgment claims against city, alleging that city denied him all economically viable use of property by refusing to provide water service to his property and seeking declaration that city's enforcement of ordinance against him resulted in inverse condemnation of his property for which no just compensation was paid.

Following rendition of summary judgment against property owner, which was overturned by the Court of Appeals the County Civil Court at Law granted city's motion for directed verdict after property owner rested his case at jury trial. Property owner appealed, and the Houston Court of Appeals affirmed in part, reversed in part, and remanded. City petitioned for review, which was granted.

The Supreme Court held that city's refusal to reconnect property owner's utility service, due to outstanding utility bills, which prohibited owner from renting out the property did not constitute a regulatory taking.

City's refusal to reconnect property owner's utility service, due to outstanding utility bills, which prohibited owner from renting out the property did not constitute a regulatory taking; ordinance did not regulate land use, but instead permitted the city to refuse to connect utility service to the property until outstanding utility bills associated with the property were satisfied, city's regulation of utility service was not a regulation of the property itself, and property owner's claim was for city's alleged wrongful enforcement of its ordinance, rather than for a taking of private property.

LICENSING FEES - TEXAS

Builder Recovery Services, LLC v. Town of Westlake

Supreme Court of Texas - May 20, 2022 - S.W.3d - 2022 WL 1591976 - 65 Tex. Sup. Ct. J. 1151

Construction waste disposal business brought declaratory-judgment action, challenging town's power to pass ordinance requiring business to obtain license to conduct its business and seeking declaration that 15% license fee on business's gross revenue pursuant to ordinance was unlawful.

Business also sought to recover attorney fees. After bench trial, the District Court ruled in favor of business on its claim that 15% licensee fee was unlawful, awarded attorney fees in sum of $8,523, and ruled in favor of town on all other claims. Business appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. Plaintiff petitioned for review, which was granted.

The Supreme Court held that:

- Claim that town lacked authority to impose license fee based on any percentage of revenue was not mooted by intervening downward adjustment to the size of fee;
- General-law municipality's express power to regulate construction trash hauling did not include implied power to charge licensing fees based on a percentage of revenue; and
- Parties' failure to address severability warranted remand.

TAX - KANSAS

[Bicknell v. Kansas Department of Revenue]

Supreme Court of Kansas - May 20, 2022 - P.3d - 2022 WL 1593903

Taxpayers petitioned for review after Board of Tax Appeals, on remand from Court of Appeals' vacatur of Court of Tax Appeals' affirmation of Department of Revenue's determination that taxpayer was Kansas resident, determined taxpayer was Kansas resident.

The District Court determined taxpayer was domiciled in Florida, and the Court of Appeals reversed and remanded. Taxpayers filed petition for review and Department filed conditional cross-petition for review, both of which were granted.

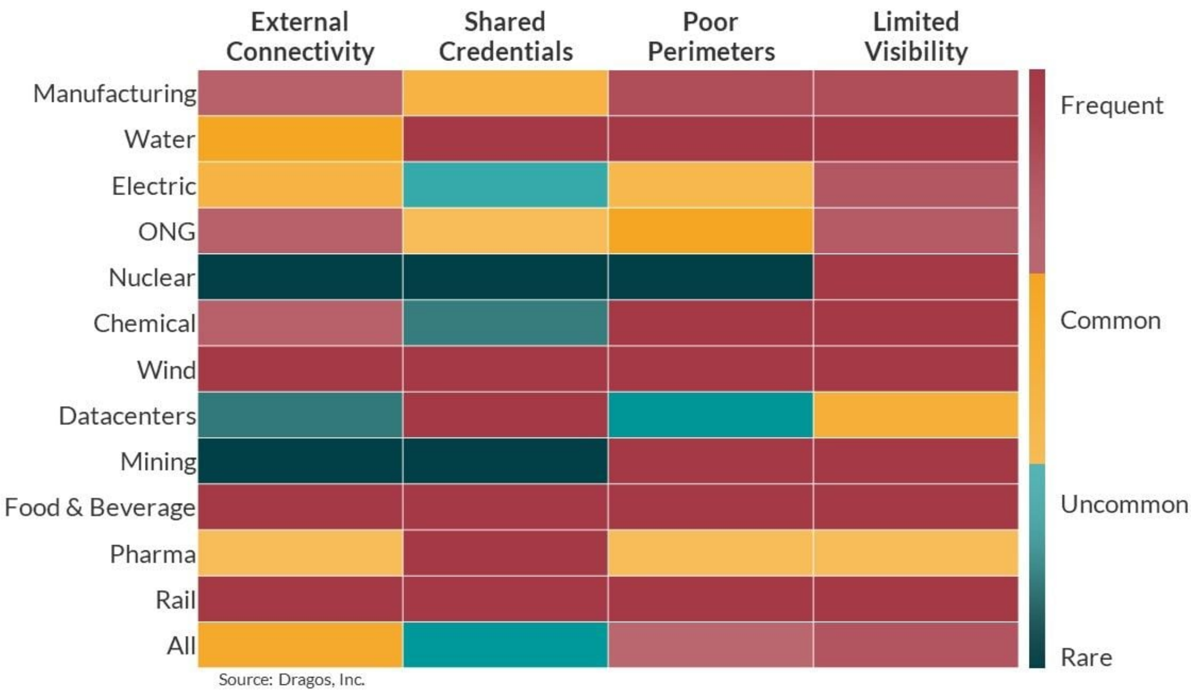
The Supreme Court held that:

- District Court was not required to transfer venue;
- District Court did not impermissibly shift burden of proof from taxpayer to Department;
- District Court's comment on Department's failure to produce witnesses to rebut taxpayer's evidence that established his absence from city in Kansas did not shift burden of proof;
- Substantial and competent evidence supported District Court's determination regarding taxpayer's physical presence in Kansas and other jurisdictions;
- Taxpayer's testimony that he was retired and became Florida resident was probative of and material to question of domicile;
- District Court properly applied Kansas law in determining whether taxpayer was domiciled in Kansas; and
- District Court did not improperly use regulation governing factors for determining whether person's domicile was in Kansas as formula for determining taxpayer's domicile.

[Ftich: Operational Technology Cyberattacks Are a Credit Risk for Utilities]

Fitch Ratings-Chicago/Toronto/Austin/New York-23 May 2022: Cyberattacks on industrial control systems/operational technology are more likely to have a credit and ESG impact than a corresponding attack on IT, Fitch Ratings says. Operational technology (OT) systems are vital production technologies that prioritize product or service availability and human safety and are often found in critical infrastructure environments. Cyberattacks that cause prolonged disruption in the delivery of these goods and services and materially affect cash flow, compromise safety or expose governance weakness could be a credit negative.

In the special report U.S. Cyber Risks in Operational Technology (How Operational Technology Influences Cyber Risk for Critical Infrastructure), we explore the IT/OT challenges in the power and utilities and water and sewer sectors, which have been recent targets of cyberattacks. The heatmap below illustrates a breakdown of Dragos' four key findings by OT industry vertical. The report also discusses credit and ESG impacts of cyber incidents in these sectors.



Historically, IT and OT systems were physically segregated and attacks on OT systems were rare; however, IT and OT systems are converging to leverage bigger data sets in real time to optimize performance, costs, safety, uptime and system efficiencies. These convergences, if done correctly, can greatly enhance operations and resiliency, but when done incorrectly, can weaken both operations and resiliency. An attacker that moves laterally and elevates privileges on an OT system can create much more harm compared with an intrusion into an IT system.

Attacks on OT are increasing in both frequency and severity. A report from Claroty found industrial control systems' vulnerability disclosures grew 110% over the last four years and saw a 25% increase in 2H21 compared with 1H21. A report from Ponemon calculated the average cost of a cybersecurity incident to be $3 million and take an average of 316 days to detect, investigate and remediate.

Mon 23 May, 2022

California's $98 Billion Surplus Comes as Warning Signs Loom.

- **Booming stocks, profits have given way to losses, volatility**
- **Newsom, seeking re-election, vows $18 billion inflation relief**

Wall Street's market turmoil is exposing the pitfalls California faces for banking on the investment fortunes of the state's wealthiest residents to fill its coffers.

While capital gains from booming stocks helped the most populous US state to amass a record $97.5 billion budget surplus — about half of which Governor Gavin Newsom says is available to spend for any purpose — the S&P 500 and the Nasdaq Composite are off abut 17% and 28% this year in reaction to rising inflation, monetary tightening and a land war in Europe.

The stock declines and corresponding concerns of a US recession raise the prospect that the spigot of wealth will soon slow in California, long prone to booms and crippling deficits because of the sensitivity of its revenue to markets. Municipal-bond analysts and the legislature's adviser would like to see more caution in the spending plan that lawmakers must approve by June 15.

Continue reading.

Bloomberg Politics

By Romy Varghese

May 25, 2022

Lessons for Us All from California's Evaporating Billions.

Rising interest rates have triggered substantial market losses from Golden State treasurers' untimely investments of idle cash. It's time for reforms wherever similar portfolios are now bleeding red ink.

Inflation and the Federal Reserve's new regime of monetary tightening have brought a perfect storm to a half-dozen of California's most prominent public treasurers. Their cash management investment portfolios have collectively lost $5 billion of market value in this fiscal year. That total is three times the losses suffered by Orange County in the 1994 investment debacle that took it into bankruptcy.

This time, the consequences of unrealized investment losses are unlikely to spawn that kind of financial crisis, but this episode does require a rethinking of several practices in public-sector cash management — not just in California, but nationwide.

It's a saga about how business-as-usual has backfired, so that's where this analysis begins. Many of these arrangements are also familiar to local treasurers and cash managers outside the Golden State, including in Arizona, Colorado, Florida, Michigan, New York, Nevada, Ohio, Oregon, Texas, Virginia and Washington state.

Continue reading.

GOVERNING

OPINION | May 24, 2022 • Girard Miller

What Federal Government Gave to Illinois in Lower Interest Cost from Credit Upgrades It Has Already Taken Away – Wirepoints

Upgrades for states from credit agencies are usually nice because they result in lower interest costs the next time the state borrows money.

But they mean nothing when the same forces that caused the upgrades spike up interest costs for other reasons.

So it is for Illinois. What the federal government hath given the federal government hath taken away.

Illinois’ new bond offering says it all. Whatever benefit Illinois got from credit upgrades, which resulted largely from federal largesse, has been more than cancelled out by higher rates caused by that very largesse.

The facts are in The Bond Buyer, which is the leading journal for the municipal finance trade, which reported on Illinois’s latest bond offering. This month, Illinois priced its new $1.64 billion of general obligation bonds. The true interest cost on the overall deal was 4.64%, says The Bond Buyer.

That’s far higher than Illinois and other municipal bonds yielded over the past few years or even at the start of the year. Illinois’ 10-year bond was trading at the start of the year at 1.67% yield, according to the Bond Buyer, but soared over the course of the year to 4.40% last week. The “spread” for Illinois bonds has worsened this year, too. That’ how much the state’s municipal bond rates exceed Treasury Bill rates. It started the year around 0.65% but is now over 1.2%.

How could that be? Illinois has received multiple credit upgrades over the past 11 months, which Illinois Gov. JB Pritzker and Comptroller Susanna Mendoza proudly remind us about most every week.

The answer isn’t complicated.

The federal government showered cash excessively and indiscriminately on Illinois, its municipalities, other states, their municipalities and the economy in general over the last two years, all under the guise of COVID relief. Total federal “pandemic stimulus” has exceeded $10 trillion with more still to be disbursed. Illinois got nearly $200 billion, including $11 billion that went directly to state government. More importantly, Illinois tax receipts have surged, thanks mostly to the other $189 billion of stimulus.

That put Illinois bonds at less risk of near term default, thereby earning the credit upgrades.

But what’s other the result of a federal cash gusher like that?

Inflation, which is now running at a 40-year high of over 8%. Other matters are contributing to inflation, including Ukraine and supply chain problems. Unquestionably, however, the massive federal stimulus is a primary culprit.

And what’s the consequence of inflation?

Higher interest rates. Bond buyers demand higher rates because they want to be to be compensated for their inflation loss, and the Federal Reserve Board has pushed rates higher to try to fight inflation. Both of those forces are at work. All interest rates are up sharply this year. The benchmark 10-year U.S. Treasury Bill rate is up by over 50% this year. Most other borrowing costs, including municipal bonds across the nation, are up still more.

What will happen to credit ratings when the federal cash runs out?

The Volcker Alliance, a nonprofit group that promotes responsible government spending, issued a report last month singling out three states that are among the most vulnerable for budget stress. They are Illinois, California and Texas. “The problem is that they’ve been using a one-time surge of money from the federal government to pay for long-term expenses, fiscal experts warned Wednesday,” as reported here. “The sobering warning comes even as states are flush with cash, thanks to strong consumer spending and low unemployment.”

The conclusion should be clear. Since nobody can name any reforms or structural budget changes, Illinois' credit upgrades did not result from something the state did. They resulted, instead, from the same force now driving up interest costs for everybody.

That force was reckless federal spending, which was cheered on by Illinois' ruling class. The consequences have been more severe than the benefits. Federal fiscal and monetary policy over the past two years have made an appalling mess of our economy, and the effects on Illinois bonds are an example.

Wirepoints

By: Mark Glennon

May 27, 20223

*Mark Glennon is the founder of Wirepoints.

Texas Forces Companies to Be Neutral on Guns, or Lose Business.

- **Law seeks to protect gun retailers from 'discrimination'**
- **Denies work to companies that cut ties with firearms industry**

To keep doing business with Texas, companies will effectively have to take a vow of neutrality if the latest school-shooting massacre sets off another nationwide furor over gun control.

That's because in June 2021, flanked by Republican lawmakers and officials from the National Rifle Association, Governor Greg Abbott signed a state law that gives firearm makers, retailers and industry groups a special protection, one that relies on language usually reserved to shield people from racism, sexism, ageism or other forms of prejudice.

As a result, companies signing contracts with government agencies there — from school districts and cities to Texas itself — must verify they don't "discriminate" against the industry, seeking to force them to ignore any calls to cut their business ties.

The unusual provision, which has since inspired legislation in other Republican-led states, shows how much power the gun lobby has wielded in the nation's statehouses to fend off any efforts to curtail access to firearms in the wake of mass shootings. The latest occurred Tuesday at an elementary school in Uvalde, Texas, where a gunman killed 19 students and two teachers in the deadliest school shooting since the massacre at Sandy Hook Elementary School in Connecticut a decade ago.

The Texas shooting, which followed a racist attack at grocery store in Buffalo, New York, has reignited the debate over gun control, with President Joe Biden saying it's time to ask when the nation is "going to stand up to the gun lobby."

But such calls have been met with little success before. In fact, as legislative efforts failed in Washington, the gun industry has been successful in state capitols at fending off new regulations — or, in the case of Texas, finding ways to even increase its might.

"Texas has pro-gun legislation which clearly makes a statement at ensuring that the firearms industry is well protected," said Janice Iwama, a professor at American University, who studies the impact of gun legislation.

The National Shooting Sports Foundation, a trade group based in Newtown, Connecticut, has been encouraging other states to enact legislation like Texas', contending that companies in the industry are being denied services by banks. Lawmakers in Oklahoma and Louisiana have advanced similar bills, and additional measures have been introduced elsewhere.

The foundation declined to comment Wednesday, citing respect for the victims of Tuesday's shooting. Spokespeople for Governor Abbott didn't immediately respond to requests for comment.

The Texas law has already cast ripples across Wall Street, where Bank of America Corp., JPMorgan Chase & Co., and Goldman Sachs Group Inc. had been curtailing some ties to gun companies, including by not lending to those that make military-style weapons for civilian use. Citigroup Inc. had also put in place restrictions for retailers that it works with.

The Texas bill requires any public contract valued at or more than $100,000 to include a provision that states the company does not and will not discriminate against a firearm entity or trade association.

For months, lawyers and bankers in Texas have complained in private about the vague nature of the law and the difficulty, if not impossibility, of defining how a bank could be discriminating against a firearms entity.

That led Bank of America, JPMorgan, and Goldman to stop underwriting most municipal-bond deals in Texas as they evaluated it, though Citigroup returned to the market last year. JPMorgan cited the law's ambiguity when it previously announced that it wouldn't bid on most public contracts. The bank this month, however, took a first step to re-enter the market, with its law firm sending a letter to state officials defending the policy. In the meantime, major banks lost business to regional firms who weren't drawn into political debates like the industry's behemoths.

The law is also likely to touch the school district where Tuesday's slaying unfolded. Officials at the Uvalde Consolidated Independent School District recently considered adding a multi-million bond referendum to the November ballot for school improvement projects, according to local news reporting. To float that debt issue, any underwriter would have to promise not to curtail its gun-industry ties.

Bloomberg

By Danielle Moran and Amanda Albright

May 25, 2022

— With assistance by Hannah Levitt, and Jennifer Surane

['Woke' ESG Scores From Credit Raters Draw GOP Ire to Muni Market.]

- **Arizona's Yee weighs avoiding raters' 'political scorecard'**
- **Firms say ESG applied to rating only when relevant, material**

Republicans' growing opposition to the ESG movement is targeting a corner of Wall Street less accustomed to controversy — the credit rating companies.

S&P Global Inc. unveiled a scoring system for governments on categories like human rights, social integration and low-carbon strategies in March. Moody's Corp. released its own scoring system, and Fitch Ratings Inc. in a May report said environmental, social and governance concerns factor into 7% of their U.S. public finance ratings.

Complaints quickly followed from Republican governors and treasurers, who said the companies have no business wading into an area that lawmakers see as politics, not finance. At stake could be some of the millions of dollars in fees paid by borrowers in the $4 trillion municipal market for ratings required by many institutional investors.

"We are leery of the whole ESG rating system for states," South Carolina Treasurer Curtis Loftis, whose state received a 'neutral' grade in S&P's new process, said in an interview. "We may be in perfect harmony with their goals and their methods, but they're not going to order us, like children, to do what they'd like us to do."

Growing Market

ESG-labeled bonds constitute a small but expanding part of the municipal market. Borrowers sold some $48 billion of such bonds in 2021, about 10% of all issuance and almost quadruple the share from five years earlier, according to Bloomberg data.

While Moody's Investors Service, S&P Global Ratings and Fitch are the biggest credit assessors, some state officials say their ratings aren't mandatory. Already, issuers increasingly are opting for a rating from just one of the companies, with single-rated sales totaling 28% of issuance year-to-date, up from 19% in 2008, according to a report from Municipal Market Analytics.

"We have the ability to go to companies that stand for the values that we believe in," Arizona Treasurer Kimberly Yee said in a phone interview. "ESG policies and woke corporations are moving in a direction that I believe is dangerous."

Yee added, "It's a political scorecard, and not a financial scorecard."

It's relatively rare for municipalities to publicly criticize credit rating companies. In 2017, former Chicago Mayor Rahm Emanuel asked Moody's to pull its rating on Chicago's debt, saying that the company failed to recognize the steps he took to shore up the city's finances.

Raters Respond

The rating companies maintain that ESG has long been part of their evaluation process, and the reports are an effort to make the data more transparent. Gregg Lemos-Stein, chief analytical officer at S&P, said the company incorporates ESG factors when it believes they are "relevant and material to creditworthiness."

For its ESG credit indicator report card, S&P said states typically have tools to mitigate risks and scored the majority neutral or moderately negative.

The three firms' approach to ESG differ slightly and comes amid an investor push for such information.

"There is financial materiality to a lot of these factors," said Lauren Kashmanian, director of portfolio management and responsible investing at Parametric Portfolio Associates, citing the effects of rising sea levels and weather events as examples.

The rating companies themselves argue that issues like climate risk can affect a government's financial outlook. For example, erosion of waterfronts or the danger of massive fires or social unrest can be costly for cities and states.

Earlier this month, S&P released a follow-up report about its ESG indicators, answering questions such as, "How is ESG relevant to credit ratings?" (S&P's answer: When it's material to creditworthiness and sufficiently visible.) "Can ESG credit indicators cause upgrades or downgrades?" (No.)

Utah Showdown

The dispute is getting heated in Utah, where S&P said Utah's environmental factors are a moderately negative consideration and the state faces elevated natural capital risk due to long-term challenges regarding water supply.

State officials in April slammed S&P for its scorecard, with Governor Spencer Cox and lawmakers sending the company a letter calling it an undue politicization of the ratings process. State Treasurer Marlo Oaks labeled it "corporate cancel culture," and asked S&P to rescind the ESG metric.

S&P refused. Eden Perry, head of the firm's U.S. public finance practice, last week sent Oaks a letter stating the company "will not allow any issuer to inappropriately influence our analytical processes or our credit rating opinions," according to a copy of the letter obtained by Bloomberg News.

In an interview, Oaks said Perry's letter didn't address his concerns, and the shift to more ESG assessments is a way of "weaponizing capital." Oaks said investors he meets with don't see any value in ESG analysis, but declined to name any because he said there is fear of being "canceled."

"ESG will essentially fundamentally change how we do business in the U.S.," he said.

In fact, regulators including the U.S. Securities and Exchange Commission and the Municipal Securities Rulemaking Board are taking a look at ESG issues in financial markets. The MSRB earlier this year concluded a request for information around ESG disclosure, with some respondents pointing to a lack of clear data from issuers.

"We have heard a lot of investors say, 'When I see an ESG score, I'm not quite sure what to make of that,'" said Patrick Welch, head of ESG at Kroll Bond Rating Agency, a smaller company.

Welch said Kroll focuses only on factors with a clear tie to the underlying credit's risk of default. The company called ESG scoring confusing and "a disservice to market participants" in a report published May 12.

While no state officials have said they will stop working with any of the rating companies, they're keeping their options open. "We're carefully monitoring who we do business with," Arizona's Yee said.

Bloomberg Markets

By Nic Querolo and Skylar Woodhouse

May 25, 2022, 6:30 AM PDT

— With assistance by Joseph Mysak Jr

SEC to Crack Down on Misleading ESG Claims With Fund Rules.

- **Agency seeks to eliminate names that critics call greenwashing**
- **Wall Street regulator proposed plan at meeting on Wednesday**

The US Securities and Exchange Commission is taking its biggest step yet to stop money managers from misleading investors when they claim their funds are focused on environmental, social or governance issues.

The agency proposed a slate of new restrictions Wednesday aimed at ensuring ESG funds accurately describe their investments. Some would also need to disclose the aggregated greenhouse gas emissions of companies they're invested in, according to the SEC.

Concerns are mounting over a lack of consistent standards for investments claiming to be sustainable, with the ESG label slapped on everything from exchange-traded funds to complex derivatives. During the Biden administration, the SEC has been focused on the issue, and has signaled a clampdown was looming.

"It is important that investors have consistent and comparable disclosures about asset managers' ESG strategies so they can understand what data underlies funds' claims and choose the right investments for them," SEC Chair Gary Gensler said in a statement.

In one proposed change, the SEC would expand an existing rule to ensure funds labeled ESG invest at least 80% of their assets in a way that lines up with that strategy.

The agency is also weighing more standardized disclosures about their investment strategies. Those changes could help investors get a better understanding of the underlying investments in a fund and its overall strategy for addressing climate change or social issues like diversity, equity and inclusion.

Republicans oppose the SEC's focus on ESG, and say the agency shouldn't play a role in rating municipal debt and or in making decisions about provide financing to oil, gas and coal companies.

"These proposals are designed to manufacture activism by funds on ESG issues," said Republican Commissioner Hester Peirce, who opposed the proposal.

In a separate move, the SEC announced on Monday that Bank of New York Mellon Corp. unit agreed to pay $1.5 million to settle claims that it falsely implied some mutual funds had undergone an ESG quality review. BNY, which didn't admit or deny the allegations, said that it had taken steps to improve communications with investors.

Globally, some $2.7 trillion is parked in ESG-labeled exchange-traded funds and mutual funds, according to data from research firm Morningstar Inc. This stratospheric growth has fueled concerns about greenwashing — when companies exaggerate their environmental benefits — and prompted criticism for having limited real-world impact on large problems such as climate change and income inequality.

While institutional players are already highly attuned to ESG considerations and can often get the information they need about what's in a fund, retail investors are less able to dig into a portfolio's underlying assets and are "naturally more at risk of greenwashing," said Quinn Curtis, a professor at University of Virginia School of Law.

The proposals are the second set of major ESG-related policy changes that the agency is considering under Gensler. In March, the SEC announced plans to require companies to reveal detailed information about their greenhouse gas pollution and to outline the risks a warming planet poses to their operations.

Asset managers' ability to comply will depend on how much information they can get from the companies they invest in, said Sandra Peters, head of financial reporting policy at the CFA Institute.

The investment industry will spend the coming weeks pouring over the details. The SEC will take public comment for as long as 60 days, and may revise the proposal before holding a second vote to finalize the regulation.

Bloomberg Green

By Lydia Beyoud and Saijel Kishan

May 25, 2022

Texas Republicans Roil Muni Market Again With Energy Law.

- **Issuers drop Wells Fargo, Morgan Stanley from bond deals**
- **Underwriters are in limbo as comptroller implements energy law**

Political contagion in Texas' $50-billion-a-year debt market is moving from guns to oil.

Big Wall Street banks were already shut out of Texas' municipal bond market, where the state and its cities raise money, for policies deemed unfriendly to the gun industry. Now an even larger group could see their public finance businesses hurt by legislation limiting contracts with firms that "boycott" the energy industry.

Banks like Morgan Stanley and Wells Fargo & Co. are losing out on municipal-bond deals or finding that they're essentially sidelined from transactions because of the uncertainty surrounding Texas Comptroller Glenn Hegar's effort to implement the law, which is meant to protect the state's oil and gas industry against the rise of environmental, social and governance standards.

Continue reading.

Bloomberg Politics

By Danielle Moran and Amanda Albright

May 23, 2022

Save The Date: NABL Arbitrage and Rebate Live Webinar!

Date: June 28, 2022, 1:00pm – 2:30pm ET

NABL is hosting a "201 Webinar Series" on Arbitrage and Rebate covering a variety of major topics during the live discussion including:

- Calculations/The Basics
- Temporary Periods, Reserve Funds, and Spending Exceptions
- Elections, Allocations, and Waivers

Participants will hear the latest regarding the practical application of yield restriction and arbitrage rebate rules. You'll gain insights about strategies to reduce rebate liability in an arbitrage positive environment. This is a great opportunity to hear about at-issuance considerations issuers should consider when making arbitrage elections and investment decisions. For the interactive part of the webinar, participate in a discussion of post-issuance considerations and rebate computations.

Registration will open next week; stay tuned for the email and information about the esteemed panelists.

Munis Have Slid This Year as Investors Bail Out. They May Be a Bargain Right Now.

Municipal bonds have taken a beating this year as investors retreat amid rising interest rates. The market, however, could be poised for a comeback thanks to unusually attractive relative yields and strong balance sheets at state and local governments.

BlackRock and Insight Investment are among those arguing that municipal bonds look attractive compared with other bond markets today. The most obvious reason is that yields on tax-exempt 10-year municipal bonds rival those on Treasuries today, around 2.75%, and were yielding more than them as recently as mid-May. That is unusual because unlike Treasuries, interest income from munis are exempt from federal taxes and sometimes exempt from local tax in the states where they are issued, which is typically reflected in lower yields for munis because investors get to keep more of their interest payments.

Tax-exempt 10-year munis with AAA ratings yielded 98 cents for every dollar of Treasury yield on May 25. That's higher than average over the past decade, when they yielded 94 cents for every dollar of Treasury yield. And excluding the first six months of 2020—when investors were concerned that fallout from Covid-19 would cripple state and local governments—they paid out 91 cents for every dollar of Treasury yields since 2012.

That raises one big question: If munis offer such a good deal, why aren't they more popular?

Investors have pulled a net $38 billion from funds that invest in tax-exempt municipal bonds so far in 2022, according to Refinitiv Lipper, with outflows in 18 of the past 19 weeks, including a net $1 billion withdrawal the week ended May 25. That is the longest stretch of withdrawals since 2013.

It is likely because rising interest rates have fueled a selloff in the market in 2022, with the ICE US Broad Municipal Index posting an 8.2% year-to-date loss as of May 25.

"We've had a selloff and now [individual investors] are selling, even though it's the worst possible time to sell," said Vikram Rai, head of municipal strategy at Citigroup. "If mutual-fund flows stabilize, then muni returns will improve."

In other words, individual investors have been chasing performance—that matters because individuals own a greater share of the muni bond market than other corners of fixed-income markets. And the market's performance looks like it's in the early stages of a turnaround, with a 2.1% return for the week ended May 25.

What's more, the muni-market selloff was driven by volatility in the Treasury market, and not fundamental problems with state and local governments' finances. In fact, states have built up their largest fiscal cushion on record, according to Pew Research Center, after municipal governments received unprecedented support from the federal government's response to the Covid-19 pandemic.

"The fundamental backdrop for munis is incredibly strong," said Sean Carney, head of municipal strategy at BlackRock. "At these levels, these valuations, the market is pricing in a lot of bad news. And there's not a lot of bad out there once rates begin to stabilize."

The summer months are usually a good time for municipal bonds, he added, because bond maturities remove supply from the market and interest payments give investors extra cash to reinvest. "Over the next three months…the balance of supply and demand will be much more favorable," Carney said.

The market also stands to get "crossover buyers"—insurers, foreign investors and banks that don't benefit as much from munis' tax exemptions—that are moving into the market with bets that yields may have peaked, investors say.

"Insurance companies, large commercial banks and global investors have not only found value in the taxable muni bond market, but also the tax-exempt market, given their experience of it being a high quality market that produces solid streams of income" said Thomas Casey, senior muni-bond portfolio manager at Insight Investment.

Contrarians who want to take advantage of investors' shifting appetites can buy muni funds, but they come with a risk: The funds offer daily liquidity, so investor withdrawals may force managers to offload bonds at a loss. Most closed-end muni funds use leverage, meaning they borrow short-term and reinvest that borrowed money in long-term securities, introducing extra risk when short-term interest rates move in unpredictable directions. And while open-ended funds generally don't use leverage, strategists say investor withdrawals are weighing on the entire market. So in general, investors in muni funds should prepare to see red on their quarterly statements until interest rates start falling or other investors wade back into the market.

Investors who won't be trading in and out of positions often—a group that should include most individual investors—could instead focus on buying and holding individual bonds in their brokerage accounts.

Investors in high-tax states, such as New York and California, can buy bonds issued locally for a state or even local tax break. The trading costs of muni bonds, known as markups, are notoriously high for individual investors trading bonds. But they have been declining in recent years, according to the Municipal Securities Rulemaking Board—and since 2018 brokerages have been required to report them. In short, markups are a one-time cost that allows an investor to forgo paying fund-manager fees and avoid other risks that come with buying funds.

More individuals may be doing this already. Insight Investment's Casey said that he follows brokerage activity, and has noticed that while investors are still withdrawing cash from muni mutual funds, they have been buying more bonds directly.

For buyers who aren't eager to do the extra research to build a portfolio themselves, large asset managers offer separately managed ladder accounts for smaller investors. BlackRock, for example, offers standardized accounts for investors with as little as $125,000 (or $250,000 with slightly more customization). That structure gives investors some of the benefits of a large manager's credit-research team and relieves them of the burden of research.

Fund managers argue that credit selection will be important if the Federal Reserve causes a recession in its efforts to fight inflation. And they warn that some states' pension funding may suffer as a result of the steep selloff in financial markets this year, which could add hidden risks to seemingly strong fiscal positions.

But there is another trend that benefits investors who are willing to buy munis directly and hold them to maturity: Municipalities default far less often than companies do. The long-term default rate for municipal bonds is around 0.1%, while the comparable rate for corporate bonds is around 7%, according to Moody's.

The municipalities that did default had an average rating in the lowest tier of investment-grade (BBB-) five years before the event. So investors looking to pick individual bonds may want to stick with bonds rated A or higher, especially if economic growth continues to slow.

Among bonds rated A or higher, fund managers from both BlackRock and Insight Investments said they favor municipal bonds with claims on distinct revenue streams from state and local governments, known as "special revenue bonds." Those can include water and sewer services, toll roads and other utilities and essential services.

If the idea sounds simple, that's because it is—people need water and sewer services, so those borrowers will probably keep paying. That highlights why the muni market is one of the only bond markets where individual investors have a fighting chance of solo investing success, even if they don't necessarily have an edge.

Barron's

By Alexandra Scaggs

May 30, 2022

Bonds, Especially Muni Bonds, Are Making a Comeback.

Fixed income served as a strong diversifier in times of equity drawdowns over the past two decades — see the dot-com bubble and burst of the early 2000s and the global financial crisis of 2008. However, that's not been the case during the first four months of this year, with the Bloomberg U.S. Aggregate Index declining alongside the S&P 500 amid record inflation and rising interest rates.

That said, there have been some signs suggesting that the traditional relationship between stocks and bonds is returning. For example, the Bloomberg U.S. Agg has remained flat over the past month while equities have continued their downward trajectory.

Plus, yields are looking much more attractive now than they did a few months ago. Last week's 20-year Treasury auction signals strong demand for Treasuries. The auction was well covered, and 20-year bonds priced at 3.29%, which is less than the pre-auction level of 3.292%.

"Bonds have historically proven their worth during recessionary periods. As recessionary pressures and the cost-of-living squeeze increase in Europe and the U.S., investors are finding their way back into safe-haven assets," according to Russell Investments. "Bonds may continue to be an equity counterweight as market data points are reported in June, largely the consumer price index (CPI) print and any Federal Reserve rhetoric accompanying its expected 50 basis-point (bp) policy rate hike."

With bonds reasserting themselves as a risk ballast in multi-asset portfolios as their yields are now nominally higher, municipal bonds are looking especially attractive.

Tax-adjusted municipal bond yields look attractive when compared to taxable yields. For example, the Bloomberg 1-15 Year Municipal Blend Index (1-17)'s yield-to-worst was 3.1% on May 20, or 4.56% adjusted for a 32% tax rate. Compare that to the Bloomberg Aggregate Bond Index, which yields 3.42%.

In addition, the Bloomberg 1-15 Year Municipal Blend Index (1-17)'s duration is 4.6 years versus the Aggregate's duration of 6.5. In short, municipals provide more attractive yield with less duration.

Within the broader fixed income opportunity set, a shorter-duration profile amid the current volatile rate regime, combined with strong state and government balance sheets, munis such as the American Century Diversified Municipal Bond ETF (NYSEArca: TAXF) or the Avantis Core Municipal Fixed Income ETF (AVMU) could be an attractive opportunity over their taxable counterparts.

TAXF attempts to top the S&P National AMT-Free Municipal Bond Index, and by way of being actively managed, it can capitalize on credit opportunities by allocating up to 35% of its lineup to high yield munis. While junk-rated municipal bonds reward investors with higher yields due to elevated credit risk, these bonds are usually less volatile than high yield corporates.

With a duration of five years, TAXF is in intermediate-term territory, and its credit profile isn't risky. The fund devotes about 12% of its weight to bonds rated BBB, BB, and B, while another 9.44% aren't rated, according to issuer data. The rest of the portfolio is rated AAA, AA, or A.

The actively managed AVMU, meanwhile, looks to outperform the S&P National AMT-Free Municipal Bond Index.

AVMU is home to 453 municipal bonds, 22.28% of which are special tax issues. Another 29% are either state or local general obligation bonds. AVMU's interest rate sensitivity isn't high, suggesting that investors unfamiliar with this ETF may be missing out as they leave other muni products.

AVMU could also be ideal for patient investors looking to circumvent credit risk, as the ETF allocates most of its weight (96%) to bonds rated AAA, AA, or A. The fund had a duration of 6.04 years as of the end of 2021.

ETF Trends

MAY 27, 2022

Fitch: ESG in Credit - Exposure to Social Impacts Report

Related Fitch Ratings Content: ESG in Credit – Exposure to Social Impacts Report

Fitch Ratings-London/Hong Kong-26 May 2022: Social issues are rising in prominence for investors and other stakeholders and as such the exposure issuers have on shifting consumer preferences or social pressures and resistance can manifest as a credit risk in certain situations, Fitch Ratings says in the latest of its ‘ESG in Credit’ series.

These shifts are captured as part of Fitch’s ESG Relevance Scores (ESG.RS) under the Exposure to Social Impacts (SIM) general issues. This category captures credit issues arising from shifting consumer preferences driven by a desire to avoid harm or do good. These shifts are largely outside issuers’ direct control and can be highly dynamic over time. They can affect demand for products and services, impair operations and alter market shares.

Mitigation of risks associated with elements under social impacts, such as strikes, boycotts and shifting consumer preferences, therefore rests heavily on the level of awareness on the part of the issuers of these underlying shifts, and actions to manage their operations to limit their exposure.

The pharmaceuticals, energy and natural resources and tobacco sectors have historically been at the forefront of either regulatory action to manage social impacts, or face various levels of social resistance. With the proliferation of social media, the technology sector is also becoming increasingly exposed to regulatory and consumer shifts in attitudes. Some non-bank financial institutions (NBFIs), as well as certain pools of RMBS transactions, have a higher concentration of higher ESG.RS that indicate medium and high impact from SIM.

The ESG in Credit series provides insights on the credit relevance and materiality of sector-specific ESG credit issues.

‘ESG in Credit – Exposure to Social Impacts Report’ is available at fitchratings.com or by clicking the link above, It focuses on the SIM general issue within Fitch’s ESG.RS framework and scoring templates.

Contact:

Marina Petroleka
Senior Director, Global Head of ESG Research
+44 20 3530 1072
30 North Colonnade
London, E14 5GN
UK

Nneka Chike-Obi
Director, Head of APAC ESG Research
+852 2263 9641

Media Relations: Peter Hoflich, Singapore, Tel: +65 6796 7229, Email: peter.hoflich@thefitchgroup.com
Tahmina Pinnington-Mannan, London, Tel: +44 20 3530 1128, Email: tahmina.p-mannan@thefitchgroup.com
Eleis Brennan, New York, Tel: +1 646 582 3666, Email: eleis.brennan@thefitchgroup.com

Additional information is available on www.fitchratings.com

Exploiting Inefficiencies in the Muni Market with Active Management.

While municipal bonds have always been known for investor benefits such as tax-free income and diversification, the muni market has cheapened amid 2022's heightened volatility – making now an opportune time to invest.

In the upcoming webcast, Exploiting Inefficiencies in the Muni Market with Active Management, James Conn, Senior Vice President, Portfolio Manager, Franklin Templeton, will discuss with Franklin Templeton, one of the industry's largest active muni managers, how they seek out the best opportunities and exploit inefficiencies in the complex muni market.

Franklin Templeton offers the actively managed Franklin Liberty Intermediate Municipal Opportunities ETF (NYSEArca: FLMI) and the Franklin Liberty Municipal Green Bond ETF (NYSE Arca: FLMB) to help ETF investors better access the municipal debt markets.

The Franklin Liberty Intermediate Municipal Opportunities ETF invests in municipal securities with a maturity of three to 10 years and may include debt of any rating, including those below investment grade and defaulted securities. The fund won't focus on any single state and will not invest more than 15% of assets of a single state.

The Franklin Liberty Municipal Green Bond ETF was recently renamed on May 3 – FLMB was previously known as the Franklin Liberty Municipal Bond ETF. The new strategic direction will hold at least 80% of its net assets in municipal green bonds. The ETF will provide exposure to municipal securities that intend to use bond proceeds for projects and programs that promote environmental sustainability.

Franklin Templeton made the changes to capitalize on the increase in demand for sustainable investment funds, with U.S.-listed ESG funds and ETFs expected to reach $41 trillion in assets by the end of 2022. Money held in sustainable mutual funds and ESG-focused ETFs rose globally by 53% last year to $2.7 trillion, with a net $596 billion flowing into these investments. ESG-related assets account for one in three dollars managed globally.

ETF TRENDS

by MAX CHEN

MAY 24, 2022

The Texas Law That Has Banks Saying They Don't 'Discriminate' Against Guns.

Recent legislation requires firms to declare that they don't "discriminate" against the firearm industry — or risk losing lucrative business with the state.

Four years ago, JPMorgan Chase joined some of the nation's largest banks in publicly distancing itself from the firearm industry after a mass shooting in Parkland, Fla., left 17 people dead.

JPMorgan's relationships with gunmakers "have come down significantly and are pretty limited," Marianne Lake, then the bank's chief financial officer, told reporters. "We do have robust risk management practices and policies associated with this," she said.

The bank, along with Citigroup and other Wall Street firms, did not completely shut the door on gun companies.

Continue reading.

The New York Times

By Stephen Gandel

May 28, 2022

MSRB Guide to 529 Savings Plans.

The new edition of the MSRB's Investors Guide to 529 Savings Plans provides an overview of how individuals and families can invest in a 529 savings plan, a tax-advantaged vehicle to save for college and other education expenses.

Read the guide.

- The SEC's Proposed New Cybersecurity Disclosure Requirements for Public Companies: What Do They Mean for Municipal Issuers and Borrowers? – Orrick
- GFOA Updates Economic Indicator Dashboards.
- New Online Hub to Help Cities Apply for Federal Infrastructure Funding.
- 'Woke Bond Rating'? The Muni Finance Fight Over ESG Scores.
- America's Political Right Has a New Enemy No. 1: ESG Investors
- Ducking the Culture Wars Isn't an Option for Companies Anymore. Fighting Back Is.
- *In re Financial Oversight and Management Board for Puerto Rico* – Court of Appeals holds that lack of specific legislation permitting the plan to modify Commonwealth's pension obligations to public school teachers did not bar confirmation of plan. **Ed. Note:** This one is instructive in that the Court of Appeals laid out the omissions to the Plan of Adjustment that would have obviated this particular litigation.
- And finally, Mel Brooks, Driving Instructor is brought to us this week by *Battaglia v. Lombardi*, in which the Supreme Court of Rhode Island provided us with a comprehensive description of an exotic, heretofore unknown, vehicular maneuver, stating that, "plaintiff positioned his vehicle in the spot, shifted the vehicle into park, and shut the vehicle off." It is our understanding that this is also known as, "parking." Fortunately, it has a happy ending. As the plaintiff explained, "I lifted up the pallet to push it against the chain link fence, and my whole body just went right down this open manhole that I had no idea was there." It is our understanding that this is also known as, "hilarity."

EMINENT DOMAIN - FEDERAL

ATS Ford Drive Investment, LLC v. United States

United States Court of Federal Claims - April 1, 2022 - Fed.Cl. - 2022 WL 986300

In rails-to-trails case, owners of real property adjacent to railroad corridor filed suit against United States, claiming Fifth Amendment taking by Surface Transportation Board's (STB) issuance of notice of interim trail use (NITU) authorizing conversion of railroad line into recreational trail pursuant to National Trail Systems Act, thus acquiring owners' property by inverse condemnation.

Parties cross-moved for summary judgment.

The Court of Federal Claims held that:

- Owners adjacent to corridor along public road lacked cognizable property interest;
- Owners adjacent to corridor acquired by railroad through court decision had cognizable property interest;
- Owners adjacent to corridor acquired by railroad via lost conveyance instruments had cognizable property interest;
- Owners adjacent to corridor acquired by railroad via warranty deed lacked cognizable property interest;
- Summary judgment was precluded as to property interest of owners adjacent to corridor acquired by railroad via quitclaim deed;
- Owners adjacent to corridor acquired by railroad via releases lacked cognizable property interest;
- Owners of parcels adjacent to street running parallel to corridor had cognizable property interest up to centerline of street; but
- Owners of parcels adjacent to street lacked cognizable property interest in other half of street.

EMINENT DOMAIN - FLORIDA

Orlando Bar Group, LLC v. DeSantis

District Court of Appeal of Florida, Fifth District - April 8, 2022 - So.3d - 2022 WL 1051484 - 47 Fla. L. Weekly D827

Restaurant group which operated several bars brought suit against the governor, in his official capacity, the Department of Business and Professional Regulations, and a county, alleging the temporary COVID-19 restrictions enacted by defendants amounted to inverse condemnation entitling the group to compensation.

The Circuit Court granted defendants' motion to dismiss with prejudice and without leave to amend. Restaurant group appealed.

The District Court of Appeal held that:

- *Penn Central* test applied to the determination of whether temporary COVID-19 restrictions on restaurant group's bars constituted a regulatory taking;
- Temporary COVID-19 restrictions did not amount to a categorical regulatory taking;
- Temporary COVID-19 restrictions did not amount to an as-applied regulatory taking; and
- Restaurant group failed to preserve for appeal issue of whether dismissal of its complaint with prejudice and without need to amend was improper.

Penn Central test applied to the determination of whether the temporary COVID-19 restrictions on restaurant group's bars, enacted by governor, Department of Business and Professional Regulations, and county, constituted a regulatory taking, in restaurant group's suit to recover damages for its alleged losses caused by the restrictions; the COVID-19 restrictions did not result in a physical appropriation and per se taking of restaurant group's property, but were merely regulations affecting restaurant group's use of their properties.

Temporary COVID-19 restrictions enacted by governor, Department of Business and Professional Regulations, and county, which prohibited restaurant group from selling alcohol completely for 17 days in its various bars, and incrementally removed these restrictions over the following six months, did not amount to a categorical regulatory taking; the COVID-19 restrictions did not result in a complete or permanent loss of restaurant group's ability to do business.

Under the *Penn Central* test, temporary COVID-19 restrictions enacted by governor, Department of Business and Professional Regulations, and county, which prohibited restaurant group from selling alcohol completely for 17 days in its various bars, and incrementally removed these restrictions over the following six months, did not amount to an as-applied regulatory taking; even though the COVID-19 restrictions economically impacted the restaurant group's various bars, the governor was empowered by the state's emergency powers statute to prohibit the sale of alcohol, and the COVID-19 restrictions were a valid use of the State's police power to protect the general welfare.

COUNTIES - MISSISSIPPI

Board of Supervisors of Jackson County v. Qualite Sports Lighting, LLC

Supreme Court of Mississippi - May 5, 2022 - So.3d - 2022 WL 1420151

Unsuccessful bidder for project involving athletic field lighting system appealed decision of county board of supervisors, which awarded contract to competing bidder.

The Circuit Court denied unsuccessful bidder's motion for entry of scheduling order to extent that it requested a discovery period, denied board's motion to quash subpoenas issued by unsuccessful bidder, and ordered supplementation of record. Board petitioned for interlocutory appeal, which was granted.

The Supreme Court held that statute providing for appeal of a decision of a county board of supervisors, stating that the notice of appeal must designate "all matters that the appellant desires to be made part of the record," does not permit consideration of new evidence on appeal.

On appeal from a decision of a county board of supervisors, if the parties disagree as to what matters should or should not be included as part of the record for the appeal, then the differences should be settled by the circuit court; the circuit court should conduct a hearing to determine which matters are necessary to convey a fair, accurate, and complete account of the proceedings before the board.

PUBLIC PENSIONS - PUERTO RICO

In re Financial Oversight and Management Board for Puerto Rico

United States Court of Appeals, First Circuit - April 26, 2022 - 32 F.4th 67

In Title III debt restructuring proceedings brought pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), Financial Oversight and Management Board for Puerto Rico filed motion for confirmation of modified eighth amended proposed joint plan of adjustment for Commonwealth of Puerto Rico, Employees Retirement System of the Government of the Commonwealth of Puerto Rico and the Puerto Rico Public Buildings Authority.

Creditors objected. The United States District Court for the District of Puerto Rico overruled objections, and confirmed plan. Teachers' associations appealed and filed motions for stay pending appeal. The District Court denied stay motions.

In a case of first impression, the Court of Appeals held that:

- Forward-going teachers' pension obligations under existing retirement regime were a contractual commitment which Commonwealth could reject;
- Notice and hearing was properly provided for rejection of teachers' pension obligations in joint plan of adjustment;
- PROMESA preempted Commonwealth laws calling for forward-going teachers' pension obligations under existing retirement regime;
- Lack of specific legislation permitting the plan to modify Commonwealth's pension obligations to public school teachers did not bar confirmation of plan; and
- New bond legislation authorized issuance of new bonds, conditioned on further accruals or cost-o--living eliminations for participants in teachers' pension plan.

In Title III debt restructuring proceedings brought pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), forward-going teachers' pension obligations under existing retirement regime, while effected by statute, were a contractual commitment as between the Commonwealth of Puerto Rico and its covered employers, which Commonwealth could reject in joint plan of adjustment for Commonwealth of Puerto Rico, Employees Retirement System of the Government of the Commonwealth of Puerto Rico and the Puerto Rico Public Buildings Authority.

In confirming proposed joint plan of adjustment for Commonwealth of Puerto Rico, Employees Retirement System of the Government of the Commonwealth of Puerto Rico and the Puerto Rico Public Buildings Authority, in Title III debt restructuring proceedings, Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) preempted Commonwealth laws calling for forward-going teachers' pension obligations under existing retirement regime.

In Title III debt restructuring proceedings brought pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), lack of specific legislation permitting the plan to modify Commonwealth of Puerto Rico's pension obligations to public school teachers did not bar confirmation of proposed joint plan of adjustment for Commonwealth of Puerto Rico, Employees Retirement System of the Government of the Commonwealth of Puerto Rico and the Puerto Rico Public Buildings Authority; PROMESA only required any approval necessary under applicable law and did not by its plain terms require enabling legislation for every component of the plan, and plan's adjustment of pension obligations was in fact authorized by enabling legislation.

In Title III debt restructuring proceedings brought pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), new bond legislation authorized issuance of new bonds, conditioned on further accruals or cost-of-living eliminations for participants in teachers' pension plan, in joint plan of adjustment for Commonwealth of Puerto Rico, Employees Retirement System of the Government of the Commonwealth of Puerto Rico and the Puerto Rico Public Buildings Authority.

IMMUNITY - RHODE ISLAND

Battaglia v. Lombardi

Supreme Court of Rhode Island - May 5, 2022 - A.3d - 2022 WL 1416719

Pedestrian who was injured when he fell into manhole brought negligence action against city.

After jury verdict for pedestrian, the Superior Court granted city's motion for judgment as a matter of law. Pedestrian appealed, and city cross-appealed.

The Supreme Court held that:

- Trial justice plainly erred by making factual determinations to determine the applicability of the egregious conduct exception to public duty doctrine at the "judgment as matter of law" stage of trial, and
- Whether egregious conduct exception to the public duty doctrine applied was for jury.

Trial justice plainly erred by making factual determinations to determine the applicability of the egregious conduct exception to public duty doctrine at the "judgment as matter of law" stage of trial in negligence action brought against city by pedestrian who was injured when he fell into manhole; factual determinations were impermissibly drawn by the trial justice, who also failed to consider the evidence in the light most favorable to pedestrian as nonmovant and draw all reasonable inferences that supported his position.

Whether egregious conduct exception to the public duty doctrine applied was for jury in negligence action brought against city by pedestrian who was injured when he fell into manhole, given that there were factual disputes as to whether city created circumstances that would force a reasonably prudent person into position of extreme peril, whether city had actual or constructive notice of the perilous circumstances, and whether it failed to remedy that condition after a reasonable amount of time.

PUBLIC UTILITIES - RHODE ISLAND

Freepoint Solar LLC v. Richmond Zoning Board of Review

Supreme Court of Rhode Island - May 11, 2022 - A.3d - 2022 WL 1482502

Solar company sought review of decision of town zoning board of review denying company's application a special use permit to construct a ground-mounted solar energy system in residential zoning district.

The Superior Court reversed. Town petitioned for writ of certiorari.

The Supreme Court held that special use permit requirement of system being within two miles of utility substation did not mean only a substation of specific named utility that provided electricity in area.

Term "utility substation," in town zoning ordinance allowing for ground-mounted commercial solar energy systems within an R-3 residential zoning district by special use permit if certain requirements were met including location of entire lot on which the solar energy system was placed being within two miles of a utility substation, could include an electrical substation with three transformers and did not mean only a substation of a specific named utility that provided electricity in area.

IMPACT FEES - WASHINGTON

Viking JV, LLC v. City of Puyallup

Court of Appeals of Washington, Division 2 - May 10, 2022 - P.3d - 2022 WL 1467526

Commercial builder filed Land Use Petition Act (LUPA) petition challenging city hearing examiner's decision denying builder's request to reduce park impact fee assessed by city as condition of commercial building permit for commercial warehouse.

City filed motion to dismiss, and the Superior Court denied the motion and subsequently denied builder's petition on the merits. Builder appealed, and city cross appealed.

The Court of Appeals held that:

- City's two-tiered hearing examiner review process for reviewing local project permits was not preempted by state law, and
- Builder failed to exhaust its administrative remedies and thus lacked standing to bring LUPA petition.

City's two-tiered hearing examiner review process for reviewing local project permits was not preempted by state law; city code's allowance for no more than one open record hearing and one closed record appeal was consistent with statute governing local government review of project permit applications, city's designation that each examiner's decision may be given effect of final decision of legislative body was consistent with statute governing legal effect of decisions made by examiner, and nothing in statute governing hearing examiner system expressly prohibited two-tiered internal review system.

Commercial builder failed to exhaust its administrative remedies and thus lacked standing to bring Land Use Petition Act (LUPA) petition challenging city hearing examiner's decision denying builder's request to reduce park impact fee assessed by city as condition of commercial building permit for commercial warehouse; city's appellate examiner review process was lawful, builder failed to procure a final determination by city's officer with highest level of authority to make determination so there was no land use decision under LUPA that would permit judicial review of builder's claims, and there were no equitable exceptions to LUPA's exhaustion requirement.

GFOA Updates Economic Indicator Dashboards.

GFOA's economic indicator dashboards provide one location for local government finance officers to stay up-to-date on an array of data to help forecast revenue, expenditures, debt issuance, and more. Dashboards have been updated with inflation data, employment data, economic/market data, housing data, income and personal debt data, and local tax revenue data.

LEARN MORE

Conning Publishes 2022 State of the States Municipal Credit Report, Maintains Stable Outlook for State Credit Quality Despite Concerns About Inflation, Rising Interest Rates.

Interactive Access to Report Data Enables Deeper Understanding of Metrics

- Strong tax collections and unprecedented federal stimulus benefit states, although surplus spending could lower reserves and reduce recession preparedness.
- Less favorable borrowing conditions need to be watched as well.
- Florida, New Hampshire, and Texas break into the top five ranking bucking a historic trend toward Western and Mountain states.
- Housing markets strengthen in the West and South as Americans continue to migrate from the Northeast and Midwest – rural and suburban areas did especially well.
- Interactive features enable a closer look at the report's 13 metrics by state and region.

Continue reading.

Thu, May 19, 2022

S&P U.S. Not-For-Profit Health Care Rating Actions, April 2022

S&P Global Ratings affirmed 24 ratings without revising the outlooks and took nine rating actions in the U.S. not-for-profit health care sector in April 2022. There were 10 new sales in April. The nine rating and outlook actions consist of the following:

- Two downgrades on two health systems;
- Three upgrades on two standalone hospitals and one health system;
- One favorable outlook revision (to stable from negative); and
- Three unfavorable outlook revisions (all to negative from stable).

The table below summarizes S&P Global Ratings' monthly bond rating actions for U.S. not-for-profit health care providers in April. We based the credit rating affirmations and rating actions on several factors within enterprise and financial profiles, including business position, utilization, financial performance, debt levels, bond-issuance activity, physician relationships, and the external regulatory and reimbursement environment. This also incorporates our stable sector view and our assessment of COVID-19, staffing pressures, economic developments, and market volatility.

Continue reading.

16 May, 2022

The SEC's Proposed New Cybersecurity Disclosure Requirements for Public Companies: What Do They Mean for Municipal Issuers and Borrowers? - Orrick

- Governmental entities have increasingly experienced cybersecurity incidents impacting their operations and finances over the last few years, with some breaches costing upwards of $40 million.
- Many issuers and borrowers of municipal bonds are taking steps to defend themselves against such attacks, and may also need to determine how and when to disclose such efforts and any material cybersecurity incidents to the municipal market.
- While the SEC's recently proposed disclosure rules for public companies regarding cybersecurity incidents and related policies do not apply to municipal issuers and borrowers (unless the borrower is a public company) and are not final, they do provide helpful context and guidance for how the SEC may view cybersecurity disclosures in the municipal market.

In light of these considerations, issuers and borrowers in the municipal market should:

- Review the SEC's proposed cybersecurity disclosure rules and their implications for the municipal market, specifically around incident reporting and periodic disclosure of risk management, strategy, and governance.
- Focus on their own cyber defenses and mitigation strategies, since this has been a particular focus of rating agencies on public companies when assessing the strength of a particular credit.

A Growing Problem

In recent years, governmental entities have increasingly experienced cybersecurity incidents impacting their operations and finances. According to a white paper published by KnowBe4 in 2020, the median cost of a data breach for a state was $1.87 million, with some breaches costing upwards of $40 million. Many issuers and borrowers of municipal bonds ("issuers and borrowers") are taking steps to defend themselves against such attacks. They may wonder how and when to disclose such efforts and any material cybersecurity incidents to the municipal market.

The SEC has proposed new disclosure rules for public companies regarding cybersecurity incidents and related policies and procedures. Since the SEC does not have the power to adopt similar rules for issuers and borrowers (unless the borrower is a public company), the proposed rules **do not** apply to issuers and borrowers. They do, however, provide useful context and guidance for how the SEC may view cybersecurity disclosures in the municipal market, specifically around incident reporting and periodic disclosure of risk management, strategy, and governance.

Our governance and data privacy teams published an article summarizing the proposed rules as applied to public companies generally and proposing steps public companies could consider taking now. Our public finance and data privacy teams have prepared this supplement to that article, summarizing the key takeaways for issuers and borrowers. **We encourage you to read this supplement together with the underlying article.**

Applying the SEC's Proposed Rules to the Municipal Market

The SEC's proposed rules fall into two categories: (1) incident reporting; and (2) periodic disclosure of cybersecurity risk management, strategy, and governance. We will treat each category separately.

Incident Reporting

Public Company Rules: The SEC's proposed rules reveal its focus on timely disclosure of material cybersecurity incidents on a public company's Form 8-K by requiring that material cybersecurity incidents are reported within four business days from the materiality determination.

The SEC's proposed rules do not provide specific guidance for what constitutes a material cybersecurity incident. They do provide that the required timing of a public company's Form 8-K filing is tied to the company's determination that the incident is material rather than to its discovery of the underlying incident.

Additionally, the requirement applies to compromises of the company's "information system," which includes systems owned or used by the public company and may include third-party information resources such as cloud infrastructure and service providers.

Finally, the SEC's proposed rules require periodic updates reflecting material changes or additions to previously disclosed incidents. That would include information regarding remediation.

Application to the Municipal Market: In the municipal market context, the disclosure analogue for a public company's Form 8-K is an issuer or borrower's material event notice filed pursuant to its continuing disclosure undertakings and SEC Rule 15c2-12.

Rule 15c2-12 does not specifically require issuers and borrowers to disclose material cybersecurity incidents. Such entities may disclose incidents through voluntary event notices on the MSRB's Electronic Municipal Market Access ("EMMA") website.

In addition, when issuers and borrowers speak to the market through offering documents,[1] quarterly and/or annual continuing disclosure reports, or other communications, they may want to consider disclosing recent material cybersecurity incidents. Issuers and borrowers may also want to consider focusing on developing and/or improving internal reporting systems to facilitate the discovery of and determinations of materiality regarding internal and third-party cybersecurity incidents.

Issuers and borrowers may want to consider the following questions when developing and/or improving reporting systems relating to cybersecurity incidents:

- Do you have a current and tested incident response plan?
- Do you have cybersecurity policies and procedures in place that require employees to quickly escalate cybersecurity incidents to those empowered to make materiality and disclosure determinations?[2]
- Do you have a process in place to assess the range and magnitude of financial impacts of a cybersecurity incident, as they become available, and memorialize materiality determinations?
- Do your contracts with third parties that make up your "information system" provide for incident reporting and the cooperation necessary to make materiality and disclosure determinations regarding third-party cybersecurity incidents?
- Do you have a process in place to track updates regarding previously disclosed cybersecurity incidents and provide such updates to those empowered to make materiality and disclosure determinations?
- Have you discussed with bond or disclosure counsel the implications of any cybersecurity incidents and possible voluntary disclosures?

Periodic Disclosure of Risk Management, Strategy, and Governance

Public Company Rules: The SEC's proposed rules also reveal a focus on public companies' internal risk management, strategy, and governance. Specifically, the proposed rules include changes to Regulation S-K, and corresponding changes to Form 10-K and Form 10-Q to require additional disclosures.

The proposed rules would require a public company to periodically disclose information about the processes of its board of directors and key management relating to cybersecurity issues. Specifically, the SEC proposes disclosure relating to "whether or how the board or board committee considers cybersecurity risks as part of its business strategy, risk management, and financial oversight." The agency would also require disclosure of whether or not a company has a Chief Information Security Officer (including that person's background and reporting line). In addition, the SEC's proposed rules require a public company to periodically disclose whether any members of its board have expertise in cybersecurity, and to provide detail regarding the nature of that expertise. The SEC's proposed rules reveal its increasing desire to obtain detailed and specific disclosures regarding a public company's internal processes and expertise relating to cybersecurity.

Application to the Municipal Market: In the municipal market context, the disclosure analogue for a public company's Form 10-K and Form 10-Q is an issuer or borrower's annual report and quarterly report (if any), respectively, filed pursuant to its continuing disclosure undertakings. As with cybersecurity incident reporting, there is no specific requirement that issuers and borrowers include in annual or quarterly reports information regarding internal risk management, strategy, and governance. However, given the SEC's marked focus on cybersecurity-related disclosure (including the two SEC enforcement actions in 2021 relating to data privacy incidents referenced in footnotes 1 and 2), issuers and borrowers may want to evaluate the quality of their disclosures in this area whether through voluntary event filings, annual and/or quarterly continuing disclosure reports, offering documents, or other communications to the market.

More broadly, issuers and borrowers should review and update their cybersecurity policies and disclosure procedures. They may also want to focus on developing disclosures relating to existing cybersecurity policies and procedures they can update and adapt for quarterly and annual reports and offering documents. Given the SEC's focus on the expertise of individual directors or employees, issuers and borrowers may also consider collecting information regarding cybersecurity expertise that members of their governing bodies and key staff members possess and consider whether an internal Chief Information Security Officer position exists or can be created. In undertaking such efforts, we recommend that issuers and borrowers consider the following questions:

- Do you have comprehensive information security policies
- Have you had any privacy or security incidents that involve confidential or personal data?
- How does your governing body evaluate cybersecurity risk and what role does cybersecurity risk play in its decision-making process?
- Do you have a Chief Information Security Officer, or other individual designated as responsible for information security?
- Which members of your governing body and staff, including the Chief Information Security Officer, if any, possess expertise relating to cybersecurity matters?
- Do you have cyber insurance, and if so, what does it cover and what are the retention and limits?
- Do you conduct periodic risk assessments, and if so, have any identified risks been remediated or added to a security roadmap?
- Have there been any third-party security assessments, and if so, have the identified issues been remediated or added to a security roadmap?

Additional Considerations for the Municipal Market

National Federation of Municipal Analysts

The National Federation of Municipal Analysts published a white paper in November 2020 calling for municipal bond issuers to "conduct a cybersecurity assessment to start the process of addressing cybersecurity risks as soon as possible" and recommending best practices for cybersecurity risk disclosures. Issuers and borrowers may want to review the paper to understand the views of municipal investors in this area.

Rating Agencies

While the SEC’s proposed rules focus on enhancing and standardizing cybersecurity disclosure for public companies, rating agencies remain focused on public companies’ cyber defenses and mitigation strategies when assessing the strength of a particular credit. A recent Moody’s survey revealed that approximately 93% of organizations surveyed have a cybersecurity manager, and approximately 57% of North American organizations surveyed maintain cyber insurance.[3] To remain competitive, issuers and borrowers may want to consider implementing a cybersecurity manager, maintaining cyber insurance, and instituting cyber defenses and mitigation strategies to maintain their relative credit strength.

What’s Next?

The SEC’s proposed disclosure rules for public companies regarding cybersecurity incidents and related policies are not yet final. Orrick will continue to monitor the proposed rules and any related enforcement actions by the SEC, along with potential implications for issuers and borrowers in the municipal market.

---

[1] In *In re Pearson plc* (2021), the SEC imposed a penalty of $1,000,000 against Pearson plc because its risk factor disclosure implied only that the company faced a hypothetical risk of a data privacy incident and failed to disclose that the company had in fact already experienced such a data breach.

[2] In *In re First American Financial Corporation* (2021), the SEC imposed a penalty of $487,616 against First American Financial Corporation because, despite an employee’s discovery of a security vulnerability, the company’s reporting system was insufficient to ensure that the fact of the vulnerability was communicated to senior executives responsible for disclosure.

[3] *See* Cyber risk survey of issuers finds growing investments, but gaps in preparedness, Moody’s Investors Service (March 31, 2022).

by Joseph Santiesteban, Sean Yates

May 17, 2022

Orrick, Herrington & Sutcliffe LLP

Fitch: U.S. State Tax Collections Outperform National GDP and Personal Income

Fitch Ratings-New York/San Francisco-17 May 2022: State tax revenue collections are outperforming U.S. GDP growth, as states with high population growth and those with high personal income taxes were the best performers, according to Fitch Ratings.

“Idaho, Arizona, California, New Hampshire and Utah saw the fastest coronavirus pandemic-era personal income growth, principally from wage growth,” said Olu Sonola, Head of U.S. Regional

Economics. “Idaho stands out as the top performer overall, with its tax collections up nearly 40% in 2021 compared to 2019.”

An unexpected surge in consumer spending and personal income has powered state tax revenues out of the deep, albeit short-lived, pandemic-induced recession of 2020. Retail sales expanded by 18% yoy in 2021 as U.S. consumers shifted discretionary spending into tangible goods, many of which are taxable.

All state economies grew in 2021, with most states also experiencing sufficient growth to erase GDP losses from 2020. The median state lost just over 3% of GDP in 2020 before rebounding over 5%, for net growth of 2% from 2019 through 2021.

Utah, New Hampshire, Washington and Idaho exhibited the highest cumulative GDP growth. Hawaii lags all states in net economic recovery. Oil and gas-rich Alaska, Wyoming, Oklahoma and North Dakota had four of the 10 slowest GDP growth rates. This is likely to change with the recent surge in oil prices.

Wyoming, Alaska, New York and Hawaii experienced the lowest wage growth through the pandemic. Wyoming experienced major downward pressure in its extraction industries, while Alaska, New York and Hawaii saw sustained contraction in the leisure and hospitality sectors.

Idaho, Montana, Utah, Arizona and Texas are notable beneficiaries of sustained positive population trends that are likely to continue, aided by strong economic growth. The pandemic exacerbated the trend in population loss for New York and Illinois, which realized the steepest population declines of the pandemic.

For more information, a special report titled “U.S. States — Revenue and Economic Monitor 1Q22” is available at www.fitchratings.com.

Contact:

Olu Sonola
+1 212 908-0583
olu.sonola@fitchratings.com

Michael D’Arcy
+1 212 908-0662
michael.d’arcy@fitchratings.com

Bryan Quevedo
+1 415 732-7576
bryan.quevedo@fitchratings.com

Nicholas Rizzo
+1 212 908-0596
nicholas.rizzo@fitchratings.com

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email: sandro.scenga@thefitchgroup.com
Elizabeth Fogerty, New York, Tel: +1 212 908 0526, Email: elizabeth.fogerty@thefitchgroup.com

Additional information is available on www.fitchratings.com

New Digital Advancement Municipal Index Shows the Importance of Digital Access for U.S. Cities' Prosperity.

- The Digital Advancement Municipal Index uses 16 key indicators to profile U.S. cities' prosperity in the digital economy.
- The index provides a resource for cities and states to uncover opportunities for targeted action as they prepare to respond to historic federal investments in broadband infrastructure and digital equity.
- The index shows that while digital access and adoption are foundations for a vibrant city, they work jointly with other factors to improve quality of life.

Continue reading.

May 18, 2022

Fitch: ESG Relevance Limited for Most US Public Finance Ratings

Fitch Ratings-New York-16 May 2022: A small portion, 7%, of US public finance ratings (USPF) are affected by environmental, social and governance (ESG) considerations, Fitch Ratings says. Fitch's ESG Relevance Scores (ESG.RS) communicate the extent to which ESG factors affect ratings but do not provide commentary on the ESG practices or qualities of issuers. ESG factors are manageable for most USPF issuers. Fitch's report Where ESG Matters for U.S. Public Finance reviews 12 case studies that illustrate how ESG issues can affect ratings and highlights current ESG focus areas, including issuer disclosure, the transition to a lower-carbon economy and cybersecurity.

Governance is the most important factor, on a singular basis, assessed to have a medium or high relevance for 3% of issuer ratings. This reflects the influence of governance structure and effectiveness, policy formation, and financial performance on credit quality.

Social factors have become more prominent with the assignment of ESG.RS in the community development and social lending (CDSL) sector, conveying the positive rating effect for certain credits of federal agencies' support of housing agencies and the negative effects of unsafe environmental conditions among some housing providers. Overall, social factors influence 2% of Fitch's USPF ratings.

Continue reading.

The States That Could be Headed for a 'Fiscal Cliff'

Three of them, in particular, may see difficulties in the years ahead as federal aid runs dry, according to a good government group.

California, Illinois and Pennsylvania could run into budget trouble in a few years, because they've been using a one-time surge of money from the federal government to pay for long-term expenses, fiscal experts warned Wednesday.

The sobering warning comes even as states are flush with cash, thanks to strong consumer spending and low unemployment. Some states are reaping the rewards of booming oil prices and, until recently, people trading high-flying tech stocks.

The Volcker Alliance, a nonprofit group that promotes responsible government spending, said the three states are among the most vulnerable for budget stresses when funds from the American Rescue Plan run out in 2026. President Biden signed the coronavirus relief law during his first few months in office. It contained $350 billion for state and local government relief.

Continue reading.

Route Fifty

By Daniel C. Vock

MAY 11, 2022

BondLink Partners with InspereX to Connect Municipal Issuers to Independent RIAs.

BondLink's integration with InspereX's BondNav trading platform will boost transparency for wealth advisors, demand for municipal bond issuers

BOSTON, MA / ACCESSWIRE / May 10, 2022 / BondLink, the cloud-based investor relations and debt management platform for the municipal bond market, today announced a new partnership with InspereX. This new integration will provide thousands of independent registered investment advisors (RIAs) with access to the financial data and reports that municipal bond issuers share via BondLink directly within the leading fixed income platform, BondNav®.

"The muni bond market is in the midst of a digital transformation and most major organizations have a platform for the transparent exchange of information. But, until now, the 50,000 government bond issuers had been excluded from this shift," said Colin MacNaught, CEO and co-founder of BondLink. "We're excited to combine the necessary and in-depth information that issuers share on BondLink with the trusted BondNav tools to streamline the research of RIAs. This level of transparency and exposure, for both issuers and investors, is crucial, especially in a volatile market."

Last quarter, the municipal bond market experienced a 6.4% loss, its worst quarter in nearly 40 years. As investors pull money out of the traditionally stable asset class, issuers increasingly are turning to platforms such as BondLink to differentiate their bond offerings and provide transparency to investors.

The new partnership will allow registered investment advisers to view BondLink's hosted research pages without leaving the BondNav platform, allowing users to learn about the issuer and their new projects in progress. Users also will be able to quickly access important documents, such as preliminary official statements/official statements, capital improvement plans, voluntary disclosure documents, and more on the integrated platform. The BondNav and BondLink integration will also introduce BondLink's municipal issuers' debt management programs to a new segment of investors.

"We're excited about our partnership with BondLink to allow our users access to vital issuer information which will help them make more informed decisions. This insight into the muni market is especially critical during a period of high volatility like we've seen this past quarter." said David Rudd, President at InspereX.

BondLink has similar integrations with a number of the municipal bond market's leading platforms, including Ipreo, Fidelity Investments, ICE Bonds, and the MSRB's EMMA website.

To learn more about the partnership between BondLink and InspereX, please visit www.BondLink.com and request a demo.

About InspereX

InspereX is transforming how fixed income securities and market-linked products are accessed, evaluated, and traded. Home to the pioneering BondNav® platform – one of the first cloud-native bond aggregation platforms – InspereX provides financial advisors, institutional investors, issuers, and risk managers deep access to fixed income markets across asset classes, as well as industry-leading origination, distribution, and education in market-linked products. Focused on delivering true price transparency, liquidity, best execution targeting price improvement, and the information advantage gained through data-aggregation – InspereX inspires greater confidence through the power of technology. The firm is a leading underwriter and distributor of securities to more than 2,000 broker-dealers, institutions, asset managers, RIAs, and banks. InspereX represents more than 400 issuing entities and has underwritten more than $670 billion in securities. The firm has seven trading desks and more than 200 employees with principal offices in Delray Beach, San Francisco, Chicago, and New York City.

About BondLink

BondLink, a cloud-based investor relations and debt management platform for the municipal bond market, helps issuers engage more bond investors through transparency and actionable insights. Founded by CEO Colin MacNaught, who spent seven years issuing nearly $25 billion in bonds on behalf of the Commonwealth of Massachusetts, and CTO Carl Query, BondLink went live in 2016. BondLink clients issued more than $50 billion in bonds in 2021. BondLink provides its issuer clients with tools to manage their capital financing programs more efficiently while providing investors with the interim financial reports and data they need to close information gaps and make informed decisions through a single platform. The company is backed by top investors within the municipal bond market, including Intercontinental Exchange and Franklin Templeton. Headquartered in Boston, BondLink recently was named to the 2022 GovTech 100, marking its fourth consecutive appearance on the annual list. For more information, visit www.bondlink.com, and connect on LinkedInand Twitter.

Contact Information:
Maddie Hirsch
maddie@calibercorporateadvisers.com

[New Online Hub to Help Cities Apply for Federal Infrastructure Funding.]

The $50 million initiative will provide advice and resources to municipalities, especially small towns, through public sector groups and nonprofits, according to Bloomberg Philanthropies.

A $50 million initiative to aid cities in accessing billions in federal infrastructure funding was announced this week by its sponsors.

The Local Infrastructure Hub is bringing together public sector groups and nonprofits to help local leaders navigate the complicated Infrastructure Investment and Jobs Act application process in order to win grants. Experts will provide free coaching, data analysis and support, among other things, in developing the applications.

Local governments are eligible for funding for a wide range of projects through the $1.2 trillion infrastructure act signed into law last fall. But with nearly 400 separate grants to be doled out over the next 24 months, many communities will struggle to identify and apply for all the funding available to them, according to Bloomberg Philanthropies.

Continue reading.

Route Fifty

By Jean Dimeo

MAY 18, 2022

Understanding the Effects of School Funding.

Key Takeaways

Funding for California's schools has reached record-high levels, although the pandemic has exacerbated longstanding inequities in student outcomes. As policymakers grapple with questions around how much to fund schools and how that funding should be distributed, existing research can provide insights into where and how to use additional funds to improve outcomes. In this review of the research, several key themes emerge:

- **Several years of sustained spending increases improved student outcomes.** A robust body of research shows that across a variety of outcomes such as test scores, graduation rates, and college attendance, student performance improves with greater spending. Over the long term, students gain important benefits on economic outcomes such as wages. Benefits tend to be greater for lower-income students and districts.
- **How—and to whom—spending is targeted matters.** Policies that target district characteristics may not fully address gaps in spending and student outcomes, depending on how funding is targeted across students and schools within the same district. In California, spending is higher for low-income, Black, and Latino students—but current spending progressivity is not enough to close existing test score gaps.
- **The labor market for educators may constrain spending policies and create tradeoffs.** Often, high-poverty schools rely on lower-paid and less experienced teachers, but have smaller class sizes. Large-scale policies to increase spending on new staff—such as the class size reduction of the 1990s—may adversely affect experience and credentials over the short run, limiting potential benefits per dollar.
- **Cost pressures in California schools affect the efficiency of funding.** Declining enrollment, rising employee benefit costs, and staffing shortages in some areas limit how efficiently funding translates into better school resources.

Continue reading.

Public Policy Center of California

Julien Lafortune, with research support from Joseph Herrera

Democrats Renew School Bond Push in $130 Billion Infrastructure Bill.

- **H.R. 604 would revive school infrastructure tax credit bonds**
- **Effort marks fresh push after Build Back Better stalled**

Congressional Democrats are looking to invest $130 billion in the nation's crumbling schools, partly by reviving a type of debt financing killed by tax reform during the Trump administration.

The Rebuild America's Schools Act, which went to committee markup Wednesday, would establish a $100 billion grant program and authorize $30 billion of school infrastructure tax credit bonds, both aimed at high-poverty schools around the country where shabby infrastructure poses a health risk to students and staff.

The bill, introduced by Virginia Democrat Bobby Scott, marks a renewed push to pass school infrastructure funding through a gridlocked Congress after a similar measure folded into President Joe Biden's Build Back Better Act failed. Democrats argue schools desperately need repair, and federal Covid-19 stimulus should be used for emergency purposes, not long overdue projects.

The somewhat obscure securities would likely be embraced by investors in the $4 trillion muni market, and schools would get a new tool for borrowing. "Issuers like having flexibility, and this is a structure that has had a long history in the market," said Jamie Iselin, head of muni fixed income for Neuberger Berman. "There is typically an investor for every type of security."

The debt portion of the proposed bill would reauthorize tax credit bonds, or TCBs, for school construction purposes after former President Donald Trump's Tax Cuts and Jobs Act eliminated them. Unlike tax exempt muni-bonds, which exclude interest from federal taxes, TCBs give a credit or payment to the issuer or investor.

Passage could be politically challenging, especially with midterm elections around the corner. "I can't foresee any type of dynamic that develops in the coming months that makes something like this a potential reality," said Tom Kozlik, head of municipal research and analytics at Hilltop Securities.

TCBs, in some form, have drifted in and out of tax legislation since they were first issued in 1998 as qualified zone academy bonds, or QZABs. The American Recovery and Reinvestment Act of 2009 created qualified school constructions bonds, as well as Build America Bonds, which like TCBs, allowed the federal government to subsidize state and local borrowing.

They were popular among investors because they offered taxable exposure to good credits at attractive spreads, Kozlik said. Many issuers, however, were frustrated when the federal subsidy was cut during the 2013 budget sequestration.

Over half of U.S. school districts need infrastructure overhauls, such as new heating or ventilation systems, in the majority of their buildings, according to a June 2020 report from the Government Accountability Office.

The Covid-19 pandemic threw that need into greater focus, with more than 40% of districts planning to spend American Rescue Plan funds on HVAC improvements, according to Burbio, a school data firm.

Republicans criticized the bill, calling additional funding superfluous in the wake of roughly $200 billion in pandemic aid given to schools with few guardrails. “Forcing schools to start construction projects during record-high inflation and major supply chain crises is completely irresponsible,” said Michigan Representative Tim Walberg.

Bloomberg Markets

By Nic Querolo

May 20, 2022

America’s Political Right Has a New Enemy No. 1: ESG Investors

The popular investing strategy is drawing new partisan attacks ahead of the US midterm elections

Heading into the hotly contested midterm elections, the American political right has a new rallying cry: Down with ESG.

Conservatives have identified the popular investing strategy, which accounts for environmental, social and governance risks, as part of a broader narrative about left-wing overreach and “ wokeness” run amok. Utah Treasurer Marlo Oaks calls it “corporate cancel culture.” Behind the rhetoric lie policies designed to sap the momentum of one of Wall Street’s most successful initiatives in recent years, now worth $35 trillion globally. If it works, it will firmly ensconce ESG in the culture wars, galvanize voters and weaken the resolve of big asset managers to act on climate change and other big, societal issues.

West Virginians are already all too familiar with ESG, according to state treasurer Riley Moore. He’s preparing a list of banks that, he says, will lose the state’s business unless they declare they aren’t boycotting the coal industry and other fossil fuels. “Certainly ‘woke capitalism’ is something they are very familiar with,” he said. “We’re facing threats from that in my state, right now.”

The attacks on ESG escalated last week when former Vice President Mike Pence made the strategy a key theme in an energy-policy speech in Houston. A potential candidate for the 2024 Republican presidential nomination, Pence said large investment firms are pushing a “radical ESG agenda” and took aim at BlackRock Inc., whose Chief Executive Officer Larry Fink is a champion of sustainable investing, and others who have pressed for progress on climate change.

Pence added to the growing public attacks on ESG. On Wednesday, Tesla Inc. founder and libertarian influencer Elon Musk told his 94 million Twitter followers that “ ESG is a scam,” building on a March tweet in which he labeled the practice “the Devil incarnate.” Republican megadonor Peter Thiel called ESG a “hate factory for naming enemies” in a speech at a Bitcoin conference in April, and the Twitter bio of right-wing pundit Glenn Beck now reads, “Against ESG before it was cool.”

With gas prices rising and energy a key factor in Russia’s invasion of Ukraine, it’s becoming easier for Republicans to tie ESG to pocketbook issues of their constituents. Just as Critical Race Theory grew from a catchall for parents unhappy or worried about what their children were learning in public schools to successful efforts to seize control of local school boards, ESG opponents see an opportunity to aim voters' fears of inflation at the finance industry's efforts to combat global warming and other social ills.

It's also a new front in a longstanding battle against further restrictions on fossil-fuel industries, which give generously to Republican party candidates, and more corporate accountability. At the state level, Republican governors and other officials are finding new ways to block major Wall Street firms from state business, including managing pension funds and bond issues, if they apply ESG principles to other parts of their portfolios.

Nationally, the broadsides against ESG bolster calls to abandon, or at least relax, environmental standards in favor of "energy independence." It's also a partisan issue at the US Securities and Exchange Commission, which is trying to require companies to report on their greenhouse gas emissions. In a virtual meeting on the plan in March, the agency's only Republican commissioner, Hester Peirce, turned off her camera in protest, saying that she was trying to reduce her carbon footprint.

Republicans are increasingly using banks and "woke" companies as cudgels for their base voters, said Reed Galen, a co-founder of the anti-Trump group, The Lincoln Project. "If you're taking on a company who has environmental and social justice goals, you don't have to explain ESG to the voters. All you have to do is say 'woke corporation.'"

In the past few years, as the world became more aware of the risks posed by global warming and social unrest, financial firms have rushed to offer investments that promise to account for those risks — and maybe even minimize them. With an ESG slant on everything from loans to complex derivatives, assets are set to balloon to $50 trillion worldwide by 2025, according to estimates from Bloomberg Intelligence.

In the US, a big proportion of that is via public pension funds, which are overseen by state or local officials, or in private sector retirement plans, and receive preferential tax treatment. In response to new federal rules that would allow pension funds to consider ESG alongside traditional fiduciary factors in making investing decisions, almost two dozen states registered their objection, saying the rules would allow investments to be guided by "social causes and corporate goals, even if it adversely affects the return to the employee."

Those states are increasingly considering legislative action. State lawmakers and treasurers have for years been concerned that politically motivated investing strategies reduce long-term profits, said Jonathan Williams, chief economist at the American Legislative Exchange Council. The conservative group, which writes model legislation, is looking to prevent public pensions from making investments using ESG.

Credit ratings agency S&P Global Inc. also has come under fire for using ESG information to evaluate municipal debt. In West Virginia, Moore joined several state treasurers last month to demand the ratings agency drop ESG factors from its rating system. His state got a negative social score and a moderately negative environmental score, signaling higher risk than the vast majority of states, which are rated neutral.

"The ESG movement is nothing but a slippery slope," Moore said, cautioning that states will be forced to "bend the knee to the woke capitalists or suffer financial harm."

S&P Global declined to comment on specific states and instead referred to a paper it published May

9 explaining how its ESG credit indicators work.

Kentucky, Texas and West Virginia have passed legislation that requires financial firms to say whether they have policies that limit doing business with oil, gas and coal companies, a common practice for firms that have made pledges to reduce their own carbon footprint. Banks that demur could lose their licenses in those states. Another 12 states are considering similar measures.

“Once ESG becomes commingled with corporate wokeness, it can become a powerful way for anti-corporate right wingers to talk about it and galvanize voters,’’ said Chris Stirewalt, an expert in US politics, voting trends and public opinion at free-market think tank American Enterprise Institute.

In addition to shunning oil, gas and coal producers as part of climate change policies, investors and employees have encouraged companies in recent years to take positions on LGBTQ rights, gun control and other issues that add to rancor among Republican voters.

Most recently, companies have begun to address the third rail of political issues: abortion. In March, Citigroup Inc. made waves when it said it would cover the travel and medical costs for any of its employees who needed to cross state lines to seek an abortion or other reproductive health care. In response, a Texas lawmaker said the bank could face criminal charges under that state’s abortion law, and Republican members of Congress called for the cancellation of US government contracts with Citigroup, which provides the credit cards that members of the US House of Representatives use to pay for flights, supplies and other goods.

Spokespeople for Citigroup and BlackRock declined to comment. A spokesman for Thiel didn’t respond to messages, nor did representatives for Tesla, run by Musk.

Few expect the Republican attacks on ESG to vaporize the industry. As of now, roughly $3.4 trillion of public retirement money is invested in line with ESG strategies of some sort, according to the sustainable-investing industry group US SIF. Some of the bigger, more liberal states like California and New York are pushing for more restrictive ESG screens for state funds, not less. What’s more, many of the world’s biggest financial institutions have their own goals to cut emissions, which include reducing the amount of business they do with heavy polluters — whether they bill it as ESG or not. Many also have set targets for workforce diversity and elevating women in management, neither of which are politically popular among the right.

Still, the political pressure seems to be taking a toll. BlackRock sent a letter this week to the Texas state comptroller, rebutting the assertion that the firm boycotts the oil and gas industries, and Fink has made it clear he opposes divesting from fossil-fuel companies. The firm also said this year that it won’t back as many shareholder efforts to push companies to reduce their emissions compared with 2021. JPMorgan Chase & Co. is also taking steps to re-establish itself in Texas’s muni-bond market, about eight months after a new law forced that bank out of most deals because of its policies on guns and fossil fuels.

And if Wall Street’s usual suspects can’t be persuaded, others are eager to step in. With the backing of hedge fund manager Bill Ackman and Thiel, Vivek Ramaswamy, a pharmaceutical investor and author of “Woke Inc.,” has started an investing firm that attempts to be an antidote to the “political agendas” and “stakeholder capitalism” of bigger money managers.

In Utah, state treasurer Oaks pointed to real pain points for his constituency. Dixie Power, for example, which delivers power to roughly 25,000 customers, recently learned its longtime auto insurer wouldn’t renew coverage. The utility owns a coal-burning power plant and has stakes in two others, and the insurance company is phasing out business with companies that derive profits from coal, according to Colin Jack, the firm's chief operating officer. The co-op is also set to lose insurance coverage for its coal mine from Lloyd's of London for the same reason.

Fueled by frustration with that and what he sees as other government intrusion into the energy sector, Jack is running as a Republican for a seat in the Utah state legislature.

He may be in line for a powerful endorsement. On Wednesday, less than three hours after tweeting that ESG is a scam, Musk wrote that although he'd voted Democrat in the past, "I can no longer support them and will vote Republican."

Bloomberg

By Jeff Green and Saijel Kishan

May 20, 2022

— With assistance by Benjamin Bain, and Mark Niquette

Princeton Joins School Bond Wave With $600 Million for Expansion.

- **Deal to be split between taxable, tax-exempt securities**
- **Proceeds will help prepare for addition of 500 undergrads**

Princeton University plans to bring its sterling credit rating to a battered bond market with a sale of $600 million of debt to help finance an expansion of its New Jersey campus as it prepares to accommodate hundreds more undergraduate students.

The Ivy League school will issue half as tax-exempt debt through the New Jersey Educational Facilities Authority as soon as Tuesday. The remainder will be taxable, sold through the Trustees of Princeton University. That will make it the latest university to offer taxable securities this year, after schools including Harvard University, the Massachusetts Institute of Technology and Washington University in St. Louis.

Name recognition, top credit ratings and a relatively slow week of tax-exempt issuance will help Princeton's bond sale stand out during a tumultuous stretch for fixed-income. Munis are off to their worst annual start on record, driving benchmark 10-year yields to the highest in eight years.

"Compared to everything else in the market, it should get a great price," said Daniel Solender, head of municipals at Lord, Abbett & Co., who said he has bought Princeton debt in the past and is interested in the tax-exempt portion. "There should be plenty of demand."

When the school sold tax-exempt debt last year, it obtained yields that were below top-rated munis, data compiled by Bloomberg show. Its securities are still trading tight to the benchmark index: Last week, debt maturing in 2029 with a 5% coupon traded at an average yield of 2.81%, or 10 basis points above the BVAL AAA curve. It originally priced in March 2021 at 0.89%, or 2 basis points below the benchmark.

Proceeds of this month's sale will help fund two new groups of dorms under construction as the school plans to add 500 undergrads over four years, beginning this fall.

The bonds are also paying for the phase-out of steam generation for a more efficient hot-water heating system on the existing campus and an efficient system on a new campus in the adjacent township of West Windsor, according to Michael Hotchkiss, a spokesman.

The new campus, the first major expansion in West Windsor, will be built on lands Princeton has owned for more than 100 years and will include by 2023 a geo-exchange facility to heat and cool structures, graduate student housing and a 600-space garage. By 2025, the school will build a tennis and racquet center, a softball stadium, playing fields for rugby and recreational sports and a cross-country course.

In 2021-22, Princeton enrolled 8,382 undergraduate and graduate students. It admitted only 4% of undergrad applicants for that academic year, down from 6% the prior year, according to offering documents.

Strong endowment returns have helped bolster schools' balance sheets, driving the borrowing surge by giving them more leeway to take on debt, according to CreditSights. Taxable debt allows schools more flexibility in how they spend proceeds, but often requires issuers pay higher interest rates.

Princeton is among the richest universities measured by endowment per student, with a fund that was valued at almost $40 billion as of June 2021. Its 47% investment return for the year ended June 2021 ranked it second in the Ivy League behind Brown University.

"Demand in the market seems to be fairly selective, but Princeton is a solid gold name," said Patrick Luby, a municipal strategist at CreditSights.

Bloomberg Markets

By Nic Querolo and Janet Lorin

May 16, 2022, 7:30 AM PDT

— With assistance by Danielle Moran, and Kenneth Hughes

Ducking the Culture Wars Isn't an Option for Companies Anymore. Fighting Back Is.

The culture wars are heating up for U.S. businesses. Many will duck. But those who want to stand their ground should look to Citigroup, the company that messed with Texas and lived to tell the tale.

In March 2018, after a gunman killed 17 people at Marjory Stoneman Douglas High School in Parkland, Fla., then Citigroup CEO Michael Corbat announced a new firearms policy for the bank. The policy, with some caveats, prohibits retailers that are customers of the bank from offering bump stocks or selling guns to people who haven't passed a background check or are younger than 21.

As reported by Bloomberg News, the national gun lobby went into overdrive, accused Citi of being "woke" and lobbied for a law passed last year by Texas Republicans that forbid the state from working with any companies that "discriminate" against the firearms industry.

At stake for Citi and other banks that adopted similar policies was $58 billion in debt underwriting fueled by population growth and infrastructure needs. Citi's ranking as the largest Texas munis manager plummeted while the bank hashed out a recognition from the state attorney general that the policy did not discriminate.

In December, Citi, without making any change to its gun policy, finally resumed business with the state of Texas. It is now leading underwriting for a $1.2 billion bond sale for the Dallas Fort Worth International Airport.

Citi quickly found itself fighting on another front in Texas. Corbat's successor, CEO Jane Fraser, in response to a Texas law banning abortions after six weeks of pregnancy, announced that Citi would pay travel expenses for employees needing to travel out of state to have access to adequate medical resources. "What we did here was follow our past practices. We respect everyone's view on this subject," Fraser said.

Texas state Rep. Briscoe Cain warned Citi that employees who travel outside Texas for an abortion could face criminal charges. He said he would introduce legislation to bar Citigroup from underwriting municipal bonds—again.

Citi has not issued any comments in response. But by standing up to Texas on guns Citi has set a precedent for ignoring the grandstanding and carrying on business as usual. For all the companies that want to demonstrate social purpose and care for employees' needs, but worry about alienating government stakeholders, breaking through the political noise to stand up for values isn't too hard.

In 2019, 181 CEOs of America's biggest companies signed on to a commitment by the Business Roundtable redefining the purpose of the corporation to serve all stakeholders, including workers, as well as shareholders.

The commitment covered rewarding hard work and helping workers adjust to the rapid pace of change in the economy. "We foster diversity and inclusion, dignity and respect," the statement says.

The statement was a reversal of economist Milton Friedman's popular view that shareholders are the only ones who count. It invited debate as to whether companies really should think about their stock price less and pay more attention to their employees. Perhaps without realizing it, the statement also placed them squarely in the middle of the so-called culture wars.

Advocates have pointed out that many of the signatories to the statement have fallen short in their pledges to uphold the interests of all stakeholders. Companies have faced pressure to engage on voting rights, Black Lives Matter, abortion, LGTBQ issues, climate, and #MeToo. Covid-19 vaccination requirements also entered the debate.

This has set companies up to enter politics in a way they studiously avoided before, and not just in Texas. Republican governors in Florida and Georgia are now policing business, as the columnist Heather Cox Richardson puts it.

Disney's confrontation with Gov. Ron DeSantis over education legislation his opponents have labeled the "Don't Say Gay" law put CEO Bob Chapek to the test. He signed the Roundtable commitment. But he first tried to avoid getting involved, saying he didn't want the controversy to become a political football.

His workforce revolted and forced him to apologize to them and stand up to Gov. DeSantis.

Now Chapek is fighting Florida to retain tax breaks and governance of the special district created for Disney, the state's largest employer, since its inception.

The abortion fight has raised the stakes even higher.

The draft under consideration by the Supreme Court to overturn Roe v. Wade has turned the social purpose debate upside down. The landmark ruling in 1973 gave women the freedom to decide if they wanted an abortion. If the ruling takes away that right on a federal level, states like Texas, Georgia, Alabama, Arkansas and Florida have strong anti-abortion laws that will kick in. Other states that would also have the power to decide may follow.

For companies that offer healthcare plans that cover abortion and follow federal guidelines of offering equal healthcare to all their employees, this is a practical problem, as much as a moral one. Many operate in states were abortion would become illegal. Companies such as AT&T, which signed the Business Roundtable statement, may not believe it obligates them to take a stance on abortion. The company has stayed with a policy of public silence on the topic.

But nearly 200 CEOs have recognized that the right of women to make their own decision about abortion rights is good for business. It's an important part of Americans deserving a life of "meaning and dignity," as the Business Roundtable statement put it. Like Citi, Amazon, Starbucks and Tesla have all announced they would help their Texas employees travel for out-of-state abortion services.

For companies that don't live up to their social-purpose commitments, there's a good chance their employees will hold them accountable. Ducking is no longer an option. Citi's experience shows they can put their money where their mouth is and live another day.

Barron's

By Laurie Hays

May 20, 2022

'Woke Bond Rating'? The Muni Finance Fight Over ESG Scores.

Utah officials recently lashed out at a rating agency's use of environmental, social, governance rankings. Investors have an appetite for the metrics, but critics say they're too subjective.

Welcome back to another edition of Route Fifty's Public Finance Update! I'm Liz Farmer and this week, I'm looking at the latest squabble over ESG evaluation—assessing governments' long-term environmental, social or governance risks. As always, send feedback and tips to: publicfinance@routefifty.com.

ESG evaluation has always been a somewhat contentious issue in the investment community because data on those metrics are not standardized. But a recent move by S&P Global to assess states' ESG exposure is sparking new debate, and has conservative lawmakers and interest groups fighting back in one of the most concerted efforts yet to discredit the practice.

At issue are new "ESG credit indicators" S&P released in late March. Each state was given a report card on its environmental, social and governance factors and assigned a ranking of 1 (positive) to 5 (very negative) on each factor. States all generally scored twos and threes for each category. "ESG credit indicators," said S&P in a recent FAQ, "provide additional transparency on what's already incorporated into our credit rating analysis."

Continue reading.

Route Fifty

By Liz Farmer

MAY 17, 2022

SEC's Sanchez Offers Guidance on ESG.

Issuer fears that ESG regulation will lead to disclosure trouble are overblown, the Securities and Exchange Commission's muni office chief said Wednesday.

Dave Sanchez's comments were part of the National Federation of Municipal Analysts' 2022 Annual Conference, where panelists spent considerable time discussing the recent ESG initiatives underway at the SEC and Municipal Securities Rulemaking Board.

Sanchez addressed industry concerns that any disclosure regime centered around ESG will be an exercise in over-disclosure.

The SEC's 2020 guidance on voluntary disclosures related to COVID-19 has received mostly positive marks from the market, but the Commission may be considering expanding some of the provisions on cautionary language going forward.

"We lean heavily on the 2020 SEC statement from the chair and the director of the Office of Municipal Securities talking about cautionary language about your disclosure," said Emily Brock, director of the federal liaison center at the Government Finance Officers Association. "Always very glad to hear Dave mention that there is thinking at the SEC about maybe expanding that information beyond COVID-19 disclosures."

Panelists also used their time to work through how regulators, investors and issuers handle materiality.

"As a practitioner, I kind of always thought of it as like you're trying to cross a river from the information you're holding to disclosing it and there's really one rock in the middle and that's materiality," Sanchez said. "Part of the job of the SEC really is to provide additional touch points in different contexts that help people get across the river to actually disclose this information."

Panelists agreed that some issuers feel they have the right to define materiality on their terms, which is not the standard as defined by the SEC.

"As a former issuer myself, I actually think I suffered from a misunderstanding of securities law as I thought I got to define materiality," said Mark Kim, chief executive at the MSRB. "It's the investors decision to make."

The Supreme Court has ruled that information is material if it would matter in the investment decision of a reasonable investor.

"It's not really in the eye of the beholder," Sanchez said. "There is a standard, it has to be reasonable investors, it's not any investor."

But Sanchez ultimately believes that ongoing dialogue with underwriters, bond counsel or others around materiality, and if it's well-documented, will provide some protection from the SEC.

"If you have a good-faith discussion about whether something is material or not, that ends up providing a lot of protection under securities laws," Sanchez said.

The MSRB's controversial request for information on ESG also served as an important pillar for the discussion. Kim expressed that he was surprised by comments that questioned why the MSRB was asking these sorts of questions, when he thought market participants would be asking why the board didn't do this sooner.

Kim compared the ESG RFI to the RFI issued in 2018 on third-party yield curves, which is still a concern that persists today.

"While I'll be the first to admit that we have absolutely no regulatory authority over third-party vendors that are offering yield curves and benchmarks to the industry, we do have the responsibility to ask that question," Kim said.

SOURCE MEDIA

By Connor Hussey

May 18, 2022

A Muni Minute: Tit-for-Tat

Municipal investors often sift through various issues that include underfunded pensions, a lack of market liquidity, and inconsistent financial disclosure. However, there is a new area of concern that is causing indigestion among market participants: political and corporate agendas.

On April 22, Florida Governor Ron DeSantis signed a bill dissolving a handful of special taxing districts created prior to 1968, most notably the Reedy Creek Improvement District (Reedy Creek). The move was significant since Reedy Creek allows The Walt Disney Company to exert considerable governmental autonomy over the area within and around its nearly 25,000-acre theme park. Interestingly enough, the legislation was introduced not to provide any sort of societal or economic benefit, but to penalize Disney for denouncing a controversial gender bill that was signed into law earlier this year.

While the ability of the special district legislation to withstand legal challenges remains uncertain, questions still remain regarding the treatment of nearly $1 billion of municipal bonds issued by Reedy Creek. State law dictates that outstanding bonds from a dissolved special district will be transferred to overlapping municipalities, which in this case largely includes Orange County, FL. However, whether the county chooses to honor the bonds is unclear, potentially creating a larger issue for the state and more importantly, for investors.

More troubling is that this is not the first instance in which politics have collided with the municipal market. In 2018, multiple large financial institutions began implementing policies that restricted business relationships with certain firearms manufacturers. In response, Texas Governor Greg Abbott, along with the governors of several other states that derive a material amount of economic activity from the firearms industry, signed laws that prohibited municipalities from having contractual relationships with companies that discriminate against the firearms industry. The Texas bill effectively prevented Citi Group, the largest municipal underwriter in the state, from doing business with local municipalities. Both actions caused concern in the capital markets, with the former showing the power that major financial institutions can wield to effectively cut off financing to certain sectors of the market, and the latter effectively reducing competition amongst municipal underwriters, possibly resulting in increased borrowing costs for public finance issuers.

Legislation and corporate actions fueled by political agendas that unnecessarily rile the capital markets represent a policy mistake, in our opinion, especially when the measures effectively restrict consumer choice. Investors can abstain from investing in securities that do not meet their investment criteria, and issuers have the ability to work with whichever financial institution that they believe will help them best accomplish their objectives. However, corporate policies and legislation that instead make these choices for the end user generally do more harm than good in that they tend to limit competition, push higher costs onto consumers, and are typically met with retaliatory measures.

While it is nearly impossible to predict the next target of a political attack, investors should be wary of municipalities with an overreliance on any one specific industry or company, potentially leaving them in the crosshairs of political battle between corporate America and state legislatures. We do not foresee any related issues with municipal sectors that rely on state appropriations for a significant portion of their funding, including K-12 schools and public higher education institutions. This is because education-related funding cuts are typically politically unpalatable, and generally are only utilized in the event of a state budget shortfall. Nevertheless, we view these politically charged disruptions as one-off events, and municipal bonds remain an excellent option for investors looking for tax-exempt income with very limited credit risk.

SAGE ADVISORY

By Brett Adelglass, Sage Portfolio Management

MAY 10, 2022

How to Avoid Political Jockeying With ESG Bond ETFs.

374Like so many current issues, environmental, social, and governance (ESG), at least in the eyes of some experts, has an element of political polarization to it.

That situation is amplified by lack of clarity and uniformity pertaining to how index providers score securities on the basis of ESG, prompting some experts to speculate that this could be a legitimate issue to contend with as the universe of fixed income assets aiming for ESG consideration grows.

As reflected by exchange traded funds like the newly minted SPDR Nuveen Municipal Bond ESG ETF (MBNE), there is demand for fixed income strategies that combine bonds and ESG principles. In fact, despite its rookie status, MBNE could be at the right place at the right time because issuance of green munis is soaring, while some state financial regulators are clamoring for more clarity on exactly what constitutes ESG.

For example, Utah recently clashed with index giant and credit ratings agency Standard & Poor's (S&P) over ESG ratings, asserting that the firm's standards are too ideological.

"In addition to rating governments on meaningful financial criteria, in March the biggest of the top three credit-rating firms began to apply an environmental, social and governance, or ESG, rating system. But Utah isn't about to submit to these subjective standards. State officials, including myself, recently wrote a letter to S&P objecting to the ESG indicators and ratings it has assigned to Utah and calling for the company to withdraw them," writes Utah Treasurer Marlo Oaks in an op-ed for the Wall Street Journal.

Regarding MBNE, the ETF can allay concerns on both sides of the aisle. For starters, Utah isn't one of the top 10 state exposures in the new ETF, and that group combines for about 70% of the fund's roster.

Second, MBNE is actively managed, indicating that it can skirt some of the thorny political issues associated with some parts of ESG investing while focusing on the business of identifying the best opportunities among green municipal bonds.

That's not to say MBNE doesn't have standards — it does. Bonds entering the fund must meet certain ESG traits. However, as an actively managed fund, MBNE has flexibility in a space that needs it.

Markets "encapsulate many different views of the future and their organic structure allows for quick adaptation. ESG scores, by contrast, rigidly hold to one viewpoint and are slow to pick up on changes in the world," adds Oaks.

ETF TRENDS

by TOM LYDON

MAY 12, 2022

Announcing GFOA's First Annual Fundamentals Virtual Forum.

GFOA's First Annual Fundamentals Virtual Forum will be held **July 11-15, 2022**. This virtual training opportunity is designed for new government finance staff who are either starting their career journey or transitioning to public finance from the private sector. Seven of the ten virtual forum sessions will be based on topics from GFOA's Certified Public Finance Officers (CPFO) program.

LEARN MORE

The Muni Market is Becoming More Concentrated.

Retail investors are a staple of the municipal bond market, holding about three-quarters of the nearly $4 trillion in outstanding bonds. But, according to recently released Federal Reserve data, the value of muni bonds directly held by retail investors fell by $18 billion during the fourth quarter of 2021, reaching their lowest levels since 2008.

Many retail investors are turning toward mutual funds and, increasingly, exchange-traded funds (ETFs) for exposure, which offer more diversification and better liquidity than direct ownership. In addition, actively-managed funds can tailor strategies to reduce risk during specific economic cycles or capitalize on opportunities as they arise.

This article will look at how the rise of muni bond funds could impact the market and the most significant funds in the space.

Continue reading.

municipalbonds.com

by Justin Kuepper

May 19, 2022

Florida's DeSantis Says Control of Disney District Will Likely Go to State.

Florida Governor Ron DeSantis said on Monday that control of Walt Disney Co.'s special government district would likely go to the state and not local governments if it's dissolved next year.

"After seeing them threatening to raise taxes on their citizens, we are not going to be in a situation where we're just going to be giving them, locally control," he said during a press briefing when asked about the possibility of property taxes rising as a result. "More likely that the state will simply assume control and make sure that we're able to impose the law and make sure we're collecting the taxes."

DeSantis signed legislation last month that will dissolve in 2023 the Reedy Creek district, where Disney's Florida amusement parks and hotels are based, unless it's explicitly reauthorized by the state's legislature. The new law emerged after a month-long feud between the Republican governor and Disney in which the entertainment giant criticized a law DeSantis backed that limits school instruction about gender identity and sexual orientation.

DeSantis said that he is working on proposals and will collaborate with the state legislature. While he didn't provide any concrete details, he said that Disney would be responsible for paying back the nearly $1 billion in municipal bonds issued by the special district.

"That debt will not end up going to any of these local governments," he said. "It's not going to go to the state government, either. It's going to absolutely be dealt with, with the taxpayers who are currently in that district."

State Takeover

The Florida governor made the comments amid ongoing concern by some residents that dissolving Disney's special district could lead to tax increases if municipalities have to take on the burden of the company's debt and provide additional services.

Reedy Creek is governed by a five-member board of supervisors, elected by local landowners. A state takeover could put control of the district, which provides water, sewer, power and other services to Disney World, in the hands of gubernatorial appointees. The district collected revenue of $306 million last year from taxes and user fees, according to its annual report.

While some of other special districts in the state that were affected by the legislation signed last month may be amended or re-authorized, DeSantis said Disney would not maintain control of the government.

"Obviously with Reedy Creek, the path forward is Disney will not control its own government in the state of Florida," he said. "They will pay their fair share of taxes, and they will be responsible for paying the debts. At the end of the day, all we're doing is putting them on a level playing field with all the other companies in Florida, making sure there's no special privileges, no special deals, but that debt will be honored."

Shares Down

DeSantis said that local taxes would not rise as a result, as the local governments will not see any additional liabilities.

"We're working on some proposals," DeSantis said. "I think we've got it pretty much what we want to do, but I'm going to work with the legislative leaders for, who are going to come in after the election to make sure that we're all in agreement."

Disney shares fell 1.2% to $106.04 at 1:47 p.m., extending its decline this year to 31.6%. Still, Disney reported last week that subscribers to its Disney+ streaming service beat Wall Street estimates and that the company more than doubled of its theme park revenue thanks to surging attendance. The results suggest that DeSantis' criticism of the company is not discouraging average Americans from using the company's products.

Bloomberg Politics

By Nathan Crooks

May 16, 2022

— With assistance by Christopher Palmeri

Why Disney's Special District Is Harder To Dissolve Than It Seems.

Florida Gov. Ron DeSantis signed a bill to dissolve a Disney special district, but now many wonder what this means for future debts and taxes.

In the latest political battle brewing in Florida, Gov. Ron DeSantis signed a bill revoking the Walt Disney Company's special district status, and he didn't waste time — it was signed just days after the legislation was introduced in late April.

The bill is widely seen as retaliation for the company taking an official stance against the governor's so-called "Don't Say Gay Bill."

"But then for Disney to come out and put a statement and say the bill should have never passed and that they are going to actively work to repeal it, I think, one: was fundamentally dishonest, but two: I think that crossed a line," DeSantis said.

But the bill has brought up questions about what exactly happens when a special district suddenly dissolves. Although there isn't a good precedent for this, a number of legal experts have suggested this may end up backfiring for the governor.

To explain why, let's go back to how this all started.

Walt Disney first began buying up marshland in Central Florida in the 1960s. The company quietly bought the acres through shell corporations and cash transactions, because if news broke that Disney was making a park, the price of land would skyrocket. By the time the secret got out, Walt Disney was meeting with legislators and business leaders to secure tax breaks, other benefits, and of course, the special district status.

In 1967, Disney got the state to approve of the Reedy Creek Improvement District, and the agreement was made "in perpetuity." Disney would still pay its state and federal taxes, but it would also fund and run its own government of Reedy Creek. It did that by levying its own taxes to pay for services like power, water, roads and fire protection as they built the parks.

And that continues today: Tax revenue from Disney properties fund Reedy Creek's services like waste management and recycling or its own emergency services.

A key part of this structure is that the government can issue its own municipal bonds to pay for infrastructure projects. They're essentially loans from Disney's many investors, and because municipal bonds are usually exempt from federal taxes, they're often cheaper to borrow. And Disney is continually paying some back: $60 million of the district's $170 million budget last year went to debt payments on bonds that were issued to fund projects like roads and a pedestrian bridge.

It's worth noting there are actually tens of thousands of special districts in the country. Disney is unusual because it's the only taxpayer in the entire district, and Disney is the largest employer in a state that is pretty dependent on tourism. It wields a unique "Walt Disney World is the economic engine that drives Central Florida and indeed much of Florida's tourism business," Lori Rozsa, reporter with the Washington Post, said. "Walt Disney World has been a huge influencer of politics in Florida since its inception, clearly since they got this treatment that they were able to get pretty much what they wanted from the legislature. A lot of local politicians and some people in Tallahassee call them bullies because they have a legion of lobbyists."

Now, the big question is: What will actually happen when this powerful mini-government suddenly dissolves?

The state was able to circumvent that "in perpetuity" requirement by targeting any special districts made *before* the year the state constitution was ratified.

"… But they also will be considering termination of all special districts that were enacted in Florida prior to 1968, and that includes the Reedy Creek Improvement District," DeSantis said.

So, while this move might be legal, the bill doesn't address those pesky municipal bonds mentioned earlier — since bonds are debts, and someone always has to pay debts.

State law dictates that when a special district is dissolved, paying its debt falls to the area's local government. For Reedy Creek, there are four local governments that would get the burden.

The state has one year to figure out where those debts are going, since the law goes into effect in June 2023. Though DeSantis insists Disney will eat the cost, the bill doesn't detail how, and it's unclear what legislative options he has left.

"It's clear that this was not thought through on the legislative level either by the governor's office and certainly not by the legislators," Rozsa said. "They barely debated it. Disney has the strong hand here. Ready Creek Improvement District has a strong hand."

Taxes in the surrounding counties could rise up to 25%. Now all eyes are on DeSantis to see if this deal may cement his status as a rising GOP star or politically backfire for his re-election campaign later this year.

By Newsy Staff

May 11, 2022

[U.S. Bond Funds See Outflows for 19th Straight Week.]

May 20 (Reuters) – U.S. bond funds continued to face huge outflows in the week to May 19 on fears that the Federal Reserve would raise interest rates higher than previously expected to keep inflation under control.

According to Refinitiv Lipper data, investors offloaded U.S. bond funds worth $8.39 billion in the 19th straight week of net selling.

U.S. Federal Reserve Chairman Jerome Powell said this week that the central bank will “keep pushing” to tighten U.S. monetary policy until it is clear that inflation is declining.

Investors sold U.S. municipal bond funds worth $3.05 billion in their biggest disposal in three weeks and exited taxable funds worth $5.52 billion.

U.S. high yield bond funds saw $2.93 billion worth of liquidation, which was the biggest weekly net selling in five weeks, and short/intermediate investment-grade funds posted outflows of $3.74 billion.

Meanwhile, U.S. short/intermediate government & treasury funds obtained inflows for a second straight week, worth $3.4 billion.

U.S. equity funds suffered a sixth consecutive week of outflow, amounting to $3.85 billion, although selling reduced 54% compared with a week ago.

U.S. large-cap equity funds received inflows of $2.59 billion after five straight weeks of net selling, but small- and mid-cap funds faced outflows of $1.83 billion and $0.69 billion respectively.

U.S. growth and value funds, both witnessed net selling of $1.7 billion and $200 million, respectively.

Among sector funds, financials, and consumer discretionary posted outflows of $1.34 billion and $0.61 billion, but utilities and healthcare lured inflows worth $0.78 billion and $0.69 billion.

Meanwhile, investors drew $20.31 billion out of U.S. money market funds as selling continued for a second week in a row.

Reporting by Gaurav Dogra and Patturaja Murugaboopathyin Bengaluru; Editing by Hugh Lawson

---

- **Ed. Note:** We wish to inform you that this week’s newsletter is in fact, uh, *intentionally* lame in order to allow you to catch your breath after last week’s monster issue. And we’re sticking to that

story.
- Fitch: Where ESG Matters for U.S. Public Finance
- S&P Hits U.S. States With Politicized Credit Scores: WSJ Opinion
- Why Wall Street Can't Escape the Culture Wars.
- Land Value Capture and Municipal Financing for Sea Level Rise Adaptation Infrastructure and Health Outcomes; RFP
- And finally, Rated R, For The Brutal Dismemberment Of Narrative Logic is brought to this week by *Robinson v. Village of Sauk Village*, in which a police chase of a stolen vehicle driven by Mark Coffey came to an initial (foreshadowing!) stop in a gas station parking lot in the standard-issue, cinematic fashion. Boxed-in bad guy, five squad cars, guns drawn – "including an AR-15 assault rifle and a shotgun" and the associated screaming about hands and such. And what happens next? So glad you asked. Does he surrender? Go down in a hail of gunfire? (I know, I know, the suspense is killing me too.) So here's the opening sentence of the next paragraph of the Supreme Court's opinion: "A little over one minute after [officer] arrived in the parking lot, Coffey drove away." He drove away. "Nice to see you fellas, gotta be going." Spoiler Alert: Coffey's later shot and killed, so it all works out in the end.

IMMUNITY - ILLINOIS

Robinson v. Village of Sauk Village

Supreme Court of Illinois - April 21, 2022 - N.E.3d - 2022 IL 127236 - 2022 WL 1180112

Pedestrian brought personal injury action against police officers and villages arising from his being struck by vehicle driven by car theft suspect who engaged in police chase involving his taking off from parking lot after initial chase, switching vehicles, and then hitting pedestrian during more police chase.

The Circuit Court granted summary judgment for officers and villages under Local Government and Governmental Employees Tort Immunity Act. Pedestrian appealed. The Appellate Court reversed. Officers and villages petitioned for leave to appeal, which was allowed.

The Supreme Court held that:

- Direct restriction or control of freedom of movement is needed to show custody for purposes immunity under Act for injury inflicted by an escaped or escaping prisoner, overruling *Townsend v. Anderson*, 2019 IL App (1st) 180771, 443 Ill.Dec. 87, 161 N.E.3d 211, and
- Suspect was not an "escaped or escaping prisoner" at time he hit pedestrian.

A mere show of authority by police officers is not sufficient to establish that a person is "held in custody" under section of Local Governmental and Governmental Employees Tort Immunity Act giving local public entities and public employees absolute immunity from liability for any injury inflicted by an escaped or escaping prisoner, as defined in Act to be a person "held in custody"; rather, "custody" requires direct restriction or control of a person's freedom of movement to a particular place for at least a limited period of time; overruling *Townsend v. Anderson*, 2019 IL App (1st) 180771, 443 Ill.Dec. 87, 161 N.E.3d 211.

Car theft suspect was not in "custody" when police officers pointed their weapons at him and ordered him to show his hands in church parking lot after first part of police chase, and thus suspect was not an "escaped or escaping prisoner" under section of Local Governmental and Governmental Employees Tort Immunity Act giving local public entities and public employees absolute immunity from liability for any injury inflicted by an escaped or escaping prisoner, as defined by Act to be a person "held in custody," where suspect remained in vehicle with engine running and door closed, officers did not block suspect's path with squad cars or otherwise limit his movement, and suspect drove out of parking lot with no physical impediment a little over one minute after arriving.

DEVELOPMENT - INDIANA

Munster Steel Co., Inc. v. CPV Partners, LLC

Court of Appeals of Indiana - March 28, 2022 - N.E.3d - 2022 WL 893777

Property seller brought action against property buyers, asserting that buyers' development agreement with town, municipal development commission, and municipal redevelopment commission triggered sale contract's subsequent-sale provision, which required buyers to pay a fee to seller if they resold the property within two years following the closing of the sale contract.

The Superior Court denied seller's motion for summary judgment and granted buyers' motion for summary judgment, determining that the development agreement constituted an equitable mortgage, not a sale. Seller appealed.

The Court of Appeals held that agreement was executed to secure a subsisting debt, and thus agreement constituted an equitable mortgage, not a sale for which property seller could collect fee under subsequent-sale provision.

Development agreement between property buyer and town was executed to secure a subsisting debt, and thus the agreement constituted an equitable mortgage, not a sale for which property seller could collect a fee from buyer under subsequent-sale provision of contract in which seller sold the property to buyer; transfer of property to town under the agreement was intended as security for the performance of buyer's obligations to complete the first segment of development project and to secure funding for second segment of the project, and agreement called for reconveyance of town's right, title, and interest in the property simultaneously with buyer's deposit of the funds for the second segment as satisfaction of a debt.

EMINENT DOMAIN - IOWA

Matter of Condemnation of Certain Rights in Land for Extension of Armar Drive Project By City of Marion

Supreme Court of Iowa - May 6, 2022 - N.W.2d - 2022 WL 1434872

Family trust that owned undeveloped land appealed determination of Compensation Commission awarding it $403,000 as just compensation for city's condemnation of part of the land.

The District Court limited testimony of trust beneficiary, who testified as property owner, regarding comparable sales and, following a jury trial, entered judgment awarding owner $82,900 in damages. Trust appealed. The Court of Appeals affirmed. Trust applied for further review, which was granted.

The Supreme Court held that:

- Beneficiary’s testimony and evidence of comparable sales, which included deeds, were not inadmissible on hearsay grounds;
- Beneficiary acquired personal knowledge of comparable sales, as required for admission of lay opinion testimony; but
- As an issue of first impression, beneficiary was unqualified to testify as expert regarding specific allegedly comparable sales of developed property.

Property owner’s testimony and evidence of allegedly comparable sales, including deeds for other property sales from which sale price could be calculated within $500 based on the transfer tax paid, were not inadmissible on hearsay grounds, in condemnation proceeding regarding owner’s property that was subject to partial taking, under exceptions to hearsay rule for public records, for records of documents that affect interest in property, and for statements in documents that affect an interest in property, statute governing instruments affecting real estate, and rules governing authentication of records.

Property owner acquired personal knowledge of allegedly comparable sales of other properties, as required for admission of lay opinion witness testimony as to value of owner’s property in condemnation proceeding to determine just compensation for partial taking of land, even though owner was not buyer, seller, or real estate agent in the other sales transactions, where owner reviewed public real estate records and personally inspected the other sites.

Property owner of undeveloped land was unqualified to testify as expert regarding specific allegedly comparable sales of developed property, for purposes of valuing owner’s property that was partially taken in condemnation proceeding, where owner was former restaurant manager with limited real estate experience.

EMINENT DOMAIN - NEW YORK

Chynn v. County of Suffolk

Supreme Court, Appellate Division, Second Department, New York - April 20, 2022 - N.Y.S.3d - 2022 WL 1160930 - 2022 N.Y. Slip Op. 02541

Claimants brought actions seeking just compensation and direct damages for loss of oceanfront properties condemned by county as part of extensive project to reconstruct beaches and restore dune network on several barrier islands that were damaged during hurricane.

Following joint bench trial, the Supreme Court, Suffolk County, entered judgments awarding first claimant $1,750,000 and second claimant $1,830,000 as just compensation for the taking of real property. County appealed.

The Supreme Court, Appellate Division, held that:

- Upward adjustment of 3% to value of claimants’ homes to account for changing market conditions was not warranted;
- Downward adjustment of 2% to market value of claimants’ homes based on market conditions was not warranted; and
- Upward adjustment of 5% to market value of claimants’ homes to account for condemnation blight was not warranted.

Upward adjustment of 3% per year to market value of claimants' homes to account for changing market conditions between date of the common comparable sale and vesting date was not warranted in condemnation proceeding seeking just compensation for claimants' loss of oceanfront properties condemned by county as part of extensive project to reconstruct beaches and restore dune network on several barrier islands that were damaged during hurricane, although claimants' expert appraiser testified that review of market conditions in the area showed that market had been increasing during relevant period; expert also testified that he did not have any data or other evidence to support proposed market conditions adjustment.

Downward adjustment of 2% to market value of claimants' homes based on market conditions was not warranted in condemnation proceeding brought by claimants seeking just compensation for loss of oceanfront properties condemned by county as part of extensive project to reconstruct beaches and restore dune network on several barrier islands that were damaged during hurricane; county's expert appraiser based determination that downward adjustment was warranted on sales survey created by real estate company, but there was no way to determine how mean and median values reported in survey were calculated, and there was no data to support expert's theory that the housing market in relevant area was similar to that in survey during relevant period.

Upward adjustment of 5% to market value of claimants' homes to account for condemnation blight was not warranted in condemnation proceeding seeking just compensation for claimants' loss of oceanfront properties condemned by county as part of extensive project to reconstruct beaches and restore dune network on several barrier islands that were damaged during hurricane; claimants failed to establish that any affirmative conduct by county unreasonably interfered with or further depressed value of subject properties sufficient for condemnation blight theory to apply.

EMINENT DOMAIN - NORTH DAKOTA

Sauvageau v. Bailey

Supreme Court of North Dakota - April 28, 2022 - N.W.2d - 2022 WL 1260311 - 2022 ND 86

County Joint Water Resource District filed petition seeking to take landowners' property by quick take eminent domain for flood control easement.

The District Court denied landowners' motion to dismiss and landowners' motion for a preliminary injunction. Landowners filed petition for supervisory writ.

The Supreme Court held that district was acquiring more than flood control easement over landowners' property, and thus could not use quick take procedure.

County joint water resource district was acquiring more than flood control easement over landowners' property, and thus could not use quick take procedure to acquire the property interest, where district intended to close the public road, remove all structures from the property, engage in disturbance of the surface and subsurface, and inundate the property with water, and landowners would be left with only a reverter interest with no value.

EMINENT DOMAIN - TEXAS

Harris County Fresh Water Supply District No. 61 v. Magellan Pipeline

Company, L.P.

Court of Appeals of Texas, Houston (1st Dist.) - April 19, 2022 - S.W.3d - 2022 WL 1144636

After administrative phase of condemnation proceeding for pipeline-installation easement resulting in award to fresh-water-supply district of $160,000 over amount pipeline companies had already paid district for the easement, district filed a plea to the jurisdiction and objections to the award, arguing that the award failed to award district adequate compensation for companies' acquisition of the easement.

The County Civil Court at Law granted companies a permanent easement, awarded the district the $160,000 additional compensation, and denied district's request for additional compensation. District appealed.

The Court of Appeals held that:

- District was not operating within governmental immunity's bounds with respect to condemnation proceeding, and thus district's governmental immunity from suit was abrogated;
- District waived its right to assert either that companies lacked condemnation authority because they were not common carriers or that condemnation was precluded by paramount-publi--importance doctrine; and
- Even if district could dispute companies' common-carrier status, sufficient evidence supported finding that companies qualified as common carriers.

Fresh-water-supply district was not operating within governmental immunity's bounds with respect to condemnation proceeding in which pipeline companies sought easement to install pipeline underneath district's property, and thus district's governmental immunity from suit was abrogated; proceeding was filed by companies at district's request, district entered contractual agreements with companies in which it was contractually obligated to participate in the proceeding, district initiated the judicial phase of the proceeding by filing objections to compensation award that it received at close of administrative phase, and, in the judicial phase, district affirmatively sought to oppose the condemnation and to recover damages for companies' alleged breach of the agreements.

Fresh-water-supply district waived its right to assert either that pipeline companies lacked authority to condemn an easement underneath district's property that companies sought for building a pipeline because they were not common carriers or that condemnation was precluded because district's use of the property companies sought to condemn served an issue of paramount public importance over companies' use, where district entered contract with companies in which it agreed that it would not contest companies' authority to condemn the easement and that the scope of condemnation proceeding would be limited to any additional compensation that district might be due in excess of compensation that companies paid it before initiating the proceeding.

Sufficient evidence supported finding that pipeline would be used to serve customers unaffiliated with companies that owned pipeline and, thus, supported a finding that companies qualified as common carriers, as required for companies to have authority to condemn a pipeline-installation easement underneath fresh-water-supply district's property; evidence indicated that third parties unaffiliated with the companies used pipeline to transport refined petroleum products, and eventual pipeline was being built to accommodate volume commitments from those third parties.

ZONING & PLANNING - WASHINGTON

Kanam v. Kmet

Court of Appeals of Washington, Division 2 - May 3, 2022 - P.3d - 2022 WL 1397407

County resident brought action against city seeking declaratory judgment declaring invalidity of two city zoning ordinances.

Superior Court granted city's motion to dismiss and denied resident's motion for reconsideration.

The Court of Appeals held that:

- Resident lacked standing, and
- City's joint comprehensive growth management plan with county did not confer taxpayer standing.

County resident failed to show that he was affected in any material way by ordinances of city that he did not inhabit, and thus, he lacked standing to bring action against city to obtain judgment declaring the invalidity of two city zoning ordinances which made using building he sought to purchase for storage purposes a non-conforming use that would require him to obtain a conditional use permit, where he did not allege that he was a city purchaser, did not allege he was a city resident or that he owned any real property in the city, and did not allege that his interest in the building at issue was more than speculative.

City's joint comprehensive growth management plan with county did not make county resident a city taxpayer so as to confer taxpayer standing to bring action against city he did not inhabit to obtain declaratory judgment to declare invalidity of two city ordinances which made using building he sought to purchase for storage purposes a non-conforming use that would require him to obtain a conditional use permit; prospective purchaser did not show that city ordinances were connected in any way to the joint plan, as nothing in the plan universally adopted or even cited the ordinances, nor did he show that county could jointly enforce the city ordinances.

ANNEXATION - ILLINOIS

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

Appellate Court of Illinois, Second District - April 21, 2022 - N.E.3d - 2022 IL App (2d) 200780 - 2022 WL 1183531

Village brought action against successor owners of original landowner, alleging they breached a recorded annexation agreement, and sought damages or, in the alternative, injunctive relief in form of specific performance.

The Circuit Court granted successor owners' motion to dismiss for failure to state a claim and awarded attorney's fees in their favor. Village appealed.

The Appellate Court held that:

- Annexation agreement was a covenant that rant with land to bind successor owners, and
- Village sufficiently pled a claim that successor owners that purchased portion of subject property were bound to terms of annexation agreement.

Annexation agreement between village and original landowner was a covenant that ran with the land that bound successor owners to its terms and obligations, where agreement expressly stated that it was "binding upon heirs, executors, administrators, successors, and assigns," and on parties to agreement, very purpose of agreement was for village to annex property to develop it, and agreement clearly provided privity of estate between village and successor owners as it provided that it was binding on successors, and thus, village and each successor owner had a legally recognized interest in the development of the property.

Village sufficiently pled a claim that successor owners that only purchased a portion of the subject property were bound to terms of an annexation agreement between village and original landowner, which required successors to extend credit to village proportionate to amount of lots they owned in a subdivision in order for village to construct roads; although agreement neither expressly provided for nor expressly precluded application of terms of the agreement when a subsequent owner purchased less than entire property, terms clearly contemplated possibility that the subject property would be subdivided and developed in stages and phases, which was entirely consistent with proportionally burdening successor owners with obligations.

Why Wall Street Can't Escape the Culture Wars.

Appealing to the customers of the future may be uncomfortable for bank CEOs, but it's a commercial imperative.

Wall Street has always been involved in politics even if bank bosses sometimes want to pretend disinterest. In the past, they were able to stick mainly to battles about tax and regulation. Now, it is ever harder to avoid the U.S. culture wars.

Citigroup Inc. Chief Executive Officer Jane Fraser has stuck her head highest above the parapet with vaccine mandates to combat Covid and pledges of support for female staff in states that are banning or criminalizing abortions.

Jamie Dimon at JPMorgan Chase & Co. wouldn't answer the question directly on Bloomberg TV this week, but he did say the bank would always look after the health of its staff. His institution and Goldman Sachs Group Inc. are both discussing policies like Citigroup's now that the Supreme Court appears set to overturn Roe V. Wade, Bloomberg reported.

Continue reading.

Bloomberg Opinion

by Paul J. Davies

May 9, 2022

Fitch: Where ESG Matters for U.S. Public Finance

View the Fitch Special Report.

Mon 16 May, 2022

Fitch: Friendlier Skies for US Airport Metrics Post-COVID

Fitch Ratings-New York/Austin-11 May 2022: Most U.S. airports are approaching pre-pandemic passenger traffic despite the most recent COVID variant stunting growth during the early months of 2022, according to Fitch Ratings in its latest peer review for the sector. However, the sector is still up against inflation and a hesitant full return of business and international travel.

Since its last peer review Fitch has revised the Rating Outlook for nearly all U.S. airports to Stable from Negative. A notable outlier is New York's John F. Kennedy International Airport (JFK) Terminal One Group Association, L.P., which still has a Negative Outlook even after two downgrades since the pandemic began. "The JFK terminal still has heightened exposures to international traffic and is less financially flexible than other U.S. airports due to limited liquidity and heightened dependency on volume driven airline fees," said Director Jeffrey Lack.

Increased debt issuances are also signalling a return to normal with many airports already coming to market in 2022, among them Myrtle Beach, SC; Pittsburgh, PA (Allegheny County); and Syracuse, NY. While airports are seeing improved leisure traffic, international and business travel is still lagging. "With broader economic inflation on the rise, customer facility charge rates may increase moderately over a debt term to support rising debt and/or operating project costs," said Lack. This is especially true for midrange and smaller airports.

Fitch's 'Peer Review of U.S. Airports' is available at 'www.fitchratings.com'.

Contact:

Jeffrey Lack
Director
+1-312-368-3171
Fitch Ratings, Inc.
2600 Via Fortuna, Ste. 330
Austin, TX 78746

Jennie Mu
Associate Director
+1-646-582-4748

Seth Lehman
Senior Director
+1-212-908-0755

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

Additional information is available on www.fitchratings.com

Fitch: US Not-for-Profit Hospital Margins Decline with Operating Pressures

Fitch Ratings-Chicago/New York/Austin-12 May 2022: Not-for-profit hospitals and healthcare systems are pressured as they continue to face significant operating challenges, Fitch Ratings says. Revenue declines during pauses in elective procedures due to coronavirus surges and escalating operating expenses due to coronavirus care and high labor costs are leading to thinner margins, as we discuss in our report US Not for Profit Hospitals and Health Systems Face Mounting Operating Stress. Without effective, ongoing cost-cutting or the ability to grow top-line revenues, operating margins will continue to decrease.

We expect margins to improve later this year but will likely stabilize at levels lower than those seen prior to the pandemic. Healthcare providers have generally been able to absorb what are now the well-known implications under surge conditions, but they no longer have the benefit of federal stimulus funds to boost liquidity and help cover higher incremental operating expenses or lost revenue.

Operations will improve as staffing costs moderate and surgical volumes return, similar to months following prior surges. Hospitals will need to maintain some level of coronavirus care capacity going forward as the virus becomes endemic, especially if variants are difficult to contain and vaccination rates and immunity levels begin to wane. This will require resources to be able to sustain operations through periods of lower revenues and elevated expenses.

The vast majority of credits in our rated portfolio have healthy balance sheets, which continue to provide cushion to manage through inflationary pressures and intermittent coronavirus disruptions. Current balance sheet strength is a key credit factor, stabilizing ratings in the sector. However, additional coronavirus surges and negative equity market trends will erode the existing balance sheet cushion, which could lead to negative rating actions.

Contacts:

Kevin Holloran
Senior Director, US Public Finance
Sector Leader, Not-For-Profit Healthcare
+1 512 813-5700
Fitch Ratings, Inc.
2600 Via Fortuna, Suite 330
Austin, TX 78746

Mark Pascaris
Director, US Public Finance
+1 312 368-3135

Sarah Repucci
Senior Director, Fitch Wire
Credit Policy – Research
+1 212 908-0726

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

S&P: Will Prolonged Higher Fuel Prices Slow The Rebound In U.S.

Transportation Demand?

Key Takeaways

- Volatile fuel prices historically have not affected the credit quality of transportation infrastructure issuers and we expect the current higher prices will be credit neutral if they last for a limited time.
- The impact of rising fuel prices on demand and activity at airports and ports is generally negligible. However, higher fuel prices can translate into lower toll road traffic growth rates if sustained because travelers take fewer discretionary trips, while, conversely, boosting mass transit volumes as drivers become riders.
- Given significant pent-up demand for travel within the airport and toll road sectors due to lockdowns during the pandemic, we believe consumers are willing to absorb higher fuel prices for leisure travel for a limited duration, mitigating the effects of elevated costs and airfare increases in the near term.
- Longer term, we expect U.S. consumers could temper their travel behavior if elevated fuel prices and inflationary pressures persist or increase on a real basis due to market conditions or factors like carbon taxes.

Continue reading.

12 May, 2022

Biden Administration Releases $45B for Broadband to States.

Guidance for the infrastructure program says states must make affordable broadband available to the middle class, too, and cannot exclude cities from being considered for the funding.

The Biden administration on Friday made $45 billion in broadband funding from the bipartisan infrastructure act available to the states, emphasizing that they make sure any internet service that's built is affordable not only to those with low incomes but to the middle class as well.

"The internet is absolutely essential to every American's success," Deputy Commerce Department Secretary Don Graves told reporters on a call. "That's why it's unacceptable that in 2022, millions of Americans are still without it."

In addition, the department's National Telecommunications and Information Administration emphasized in its notice of funding opportunity that states should make the dollars available to cities and nonprofits, like farm cooperatives, that want to start a broadband service to compete with private companies.

Continue reading.

Route Fifty

By Kery Murakami

MAY 13, 2022

[Sustainable Outlook: Managing Climate Risk Through Intelligent Engineering Controls and Infrastructure With Erin Rothman, CEO and Founder of StormSensor]

Urban flooding is one of the most economically damaging impacts of climate change on metropolitan areas, and is only increasing in degree and frequency.

On this episode of Sustainable Outlook, host Molly Barker is joined by Erin Rothman, CEO and founder of StormSensor, a climate technology company working with cities across the nation to combat this problem by helping them manage climate risk through the creation and deployment of intelligent stormwater, sewer, and coastal engineering controls and infrastructure.

With 15 years of stormwater and remediation experience, Erin discusses her career change from consulting to launching her own company, what led to her to create StormSensor's technology, and what sets StormSensor's technology apart from other competing technologies working to address the impacts of climate change on water resources and systems to ensure the long-term sustainability of our municipal cores.

Click here to listen to the audio.

May 10 2022

K&L Gates LLP – Molly K. Barker

[Land Value Capture and Municipal Financing for Sea Level Rise Adaptation Infrastructure and Health Outcomes; RFP]

Original Date Posted: May 13, 2022 5:00 am

Due Date:
June 13, 2022, by 4:00 p.m. Pacific Time unless amended by addenda

City of Seattle Request for Proposals

Title: Land Value Capture and Municipal Financing for Sea Level Rise Adaptation Infrastructure and Health Outcomes

Proposal Due Date: Submissions are due June 13, 2022, by 4:00 p.m. Pacific Time unless amended by addenda.

The City of Seattle (City) Office of Sustainability & Environment (OSE) is seeking a qualified consultant team to develop a strategy to implement land value capture (LVC) and/or other revenue-generating municipal finance mechanisms to finance:

- infrastructure in the Duwamish Valley to protect the residential and industrial communities from expected sea level rise impacts, and,
- improvements to improve health, equity, and wealth building outcomes for residents (e.g., affordable housing, parks, workforce development, and other supportive services).

This will be done in partnership with the impacted communities, as part of a holistic strategy to establish the Duwamish Valley Resilience District (DVRD). A "Resilience District" is a geographic strategy, focused on adapting to flood risk and other climate change impacts, as part of a comprehensive approach to enable residents and businesses to thrive in place. The work will be managed through a partnership with the Office of Planning & Community Development (OPCD) and Seattle Public Utilities (SPU). Additionally, the work will require the Consultant to work closely with the City team and other consultants not part of this solicitation (community engagement, financing, and organizational development) to both co-design processes and undertake the work.

Optional Pre-Proposal Meeting: The City will host an online optional, pre-proposal meeting on Thursday, May 26, 2022, at 10 a.m. Pacific Time. Please notify City contacts of your interest in attending the pre-proposal meeting, so that they can provide you with a link to the meeting and manage any technical issues that arise.

Project Budget: $75,000

The full RFP and associated documents can be viewed and downloaded at the City's Consultant Connection at https://consultants.seattle.gov/category/bids-proposals/.

Emerging small businesses, as well as minority-owned, disadvantage-owned, women-owned, and service-disabled veteran-owned enterprises are encouraged to submit a response to this RFP. The City of Seattle is an Equal Opportunity Employer and selection of the Consultant is subject to applicable laws and ordinances regarding equal opportunity employment.

CLICK HERE TO DOWNLOAD THE RFP

Cracking the Zoning Code.

Understanding local land-use regulations and how they can advance affordability and equity

Local governments use zoning to control what types of buildings are allowed where and what sorts of uses are allowed within them. But this century-old tool—ostensibly created to separate industrial uses from residential uses—was also used to separate people of different races and classes.

As currently implemented, zoning can hinder progress toward achieving more inclusive communities, shared prosperity, better health, and stronger environmental protections. But when carefully designed and equitably implemented, zoning can help expand the supply of housing, increase housing affordability, and improve racial equity within a jurisdiction. Zoning can be a particularly effective tool when combined with incentives to develop subsidized housing and policies that discourage the displacement of people with low incomes. But zoning has limits: it defines allowed uses, but any change in a community also ultimately reflects the economy of the neighborhood and metropolitan area, which in turn determines whether developers are willing to invest.

In this feature, we explore the components of zoning codes and their implications, investigating not just zoning's role in influencing housing conditions and access but also how zoning rules are created, modified, and enforced—and by whom. We describe how zoning affects housing availability and how that influences the ability of people with different incomes, races, ethnicities, and other backgrounds to live in communities that best meet their needs. We also define key terms related to zoning and land use in the glossary and include a list of additional resources where readers can learn more about key zoning-related research.

[Continue reading.](#)

The Urban Institute

by Yonah Freemark, Lydia Lo, Eleanor Noble, and Ananya Hariharan

May 2022

Muni Issuance Poised to Surge Into a Historically Weak Market.

- **Gauge of 30-day visible supply is highest since early December**
- **Index has risen to $20.2 billion of announced offerings**

US municipal-bond sales are poised to accelerate to the fastest past of 2022, adding to the strains on what is already a historically weak market for state and city debt.

The nation's local governments are expected to sell $20.2 billion of debt over the next month, the most since early December, according to a Bloomberg index that tracks municipal bond sales announced for the next 30 days. The gauge doesn't represent the full tally of what actually hits the market, as many deals come with less than a month's notice.

Among the larger offerings on the calendar, Illinois, which received two credit upgrades last week, plans to sell $1.8 billion of debt, while the Port Authority of New York and New Jersey expects to market $910 million. New York's Dormitory Authority will issue $751 million for school-district improvements and the San Francisco Bay Area Rapid Transit District has scheduled $758.6 million of general-obligation green bonds.

The supply surge comes as the muni market is down nearly 10% in 2022, the worst annual start on record, as soaring inflation and the prospect of tighter monetary policy roil global fixed income. Municipal borrowing costs have risen as a result — benchmark 10-year muni yields have climbed almost 200 basis points since the start of the year, to the highest since March 2020.

Issuers are selling against a backdrop of weak demand. Spooked investors have yanked cash from muni mutual funds for 12 straight weeks, pulling out about $2.7 billion in the week through May 4, according to Refinitiv Lipper US Fund Flows data.

There have been signs that retail investors are tiptoeing back in, and some money managers say it's a good time to buy because municipal credit remains strong.

Kathy Jones, chief fixed-income strategist at Charles Schwab & Co., said she likes munis as a way to gradually add duration as prices cheapen.

"What we are seeing is investors trying to take on a little more income by going into longer-duration bonds," Jones told Bloomberg Television's Surveillance on Tuesday. "There are two areas we really like. One is municipal bonds. You can get on a tax-equivalent basis for a very high-income earner north of 5% in high-quality municipal bonds."

Bloomberg Markets

By Danielle Moran

May 10, 2022

— With assistance by John McCorry

[Supreme Court Clarifies Constitutional Analysis Regarding Municipal Commercial Sign Restrictions: Day Pitney]

The U.S. Supreme Court's recent decision in *City of Austin v. Regan National Advertising of Austin*, 596 U.S. ___ (2022), clarified the thorny issue of whether a municipal regulation is to be considered content based or content neutral in the context of regulation of commercial speech. The city of Austin, Texas' sign regulation, like many such regulations, distinguishes between on-premises signs and off-premises signs. Off-premises signs are those that have content that does not relate to the property on which the sign is located. These off-premises signs are typically classified as billboards. The complainant sought city approval to digitize some of its preexisting billboards, which the city refused to permit. The complainant filed suit and argued that the city's code regulated content in violation of the First Amendment, which required application of a strict scrutiny standard of review. The District Court held that the regulation was content neutral, applied an intermediate scrutiny standard and upheld the provision. The Court of Appeals reversed, finding the on-premises/of--premises dichotomy to be content driven. Thus, the regulation could not satisfy strict scrutiny and was therefore unconstitutional.

All the reviewing courts looked to the Supreme Court's prior decision in *Reed v. Town of Gilbert*, 576 U.S. 155 (2015) for guidance. In Austin, Justice Sotomayor, writing for the majority, held that a "regulation of speech is facially content based under the First Amendment if it 'target[s] speech based on its communicative content'—that is, if it 'applies to particular speech because of the topic discussed or the idea or message expressed,'" citing *Reed*, 576 U.S. at 163. In distinguishing the Court's decision in Reed, where the Court applied strict scrutiny to invalidate the sign regulation at issue, Justice Sotomayor noted that "[u]nlike the regulations at issue in *Reed*, the City's off-premises distinction requires an examination of speech only in service of drawing neutral, location-based lines. It is agnostic as to content." Hence, the Court reasoned, "absent a content-based purpose or justification, the City's distinction is content neutral and does not warrant the application of strict scrutiny." The Austin regulation, unlike the provision in *Reed*, "[did] not single out any topic or subject matter for differential treatment." The distinguishing feature of Austin's code rested solely on location. Therefore, reasoned the Court, the holding of the Court's decision in *Reed* did not require the application of strict scrutiny,

Having determined that the intermediate scrutiny analysis applied, the Court noted that "If there is evidence that an impermissible purpose or justification underpins a facially content-neutral restriction … that restriction may be content based," and that in order "to survive intermediate scrutiny, a restriction on speech or expression must be 'narrowly tailored to serve a significant government interest.'" Apparently, the parties disputed whether or not Austin could satisfy those standards and therefore the matter was remanded for further adjudication.

The upshot of the *Austin* decision is that location-based distinctions in signage ordinances, without more (as noted above), are not *per se* content based under *Reed* and therefore are analyzed under the intermediate scrutiny test pursuant to *Metromedia, Inc. v. San Diego*, 453 U.S. 490 (1981). In so doing, the Court defined "content-based" restrictions by narrowly looking to the subject matter or viewpoint of the restriction, rather than by accepting the more all-encompassing position of the three dissenting justices, who argued that off-premises restrictions are content based because they discriminate against certain signage based on the messages they convey, "e.g., whether they promote an on- or off-site event, activity or service." Utilizing the intermediate scrutiny standard, per the majority's opinion, is likely to permit municipalities to continue to apply different restrictions for on-premises signs as compared to off-premises signs.

Day Pitney Advisory

Day Pitney Author(s) Christopher John Stracco, Katharine A. Coffey

May 9, 2022

Sustainable Bond Issuance Could Wane in 2022, Long-Term Outlook Still Bright.

Green, social, and sustainability bond issuance was $203 billion in the first quarter, down 11% on a sequential basis. Market observers say that the decline is attributable to the Federal Reserve boosting interest rates and Russia's invasion of Ukraine, among other factors.

However, a temporary issuance blip doesn't derail the long-term outlook for sustainability-linked bonds and related fare, indicating that when central bank tightening cools, the SPDR Bloomberg SASB Corporate Bond ESG Select ETF (RBND) could be an exchange traded fund to consider.

Citing macro headwinds, Moody's ESG Solutions said "we now anticipate GSSS bond volumes will be roughly flat compared with last year's total, with around $1 trillion of issuance for the whole of 2022. At an instrument level, we now forecast $550 billion of green bonds, $125 billion of social bonds, $175 billion of sustainability bonds and $150 billion of sustainability-linked bonds."

RBND debuted in November 2020 and tracks the Bloomberg SASB® US Corporate ESG Ex-Controversies Select Index. That index avoids bonds issued by companies that could be considered controversial. The bulk of the ETF's 447 holdings are dollar-denominated, investment-grade fare.

RBND's option-adjusted duration is 7.68 years, putting it in intermediate-term territory. While that's not short enough to be immune from rate hikes, intermediate-term bonds are usually the least correlated to stocks, indicating that RBND offers some portfolio diversification benefits. Additionally, the fund can act as a core fixed income holding for investors looking for sustainable bond solutions. Fortunately, the overall trajectory of that segment remains attractive despite the aforementioned 2022 hurdles.

"We continue to see many drivers supporting growth in the sustainable debt markets despite weaker issuance in the first quarter and our expectations for suppressed issuance the remainder of the year," added Moody's. "The need for climate mitigation and adaptation financing, accelerated decarbonization efforts to achieve net zero goals, growing regulatory attention on sustainability and a continued focus on the interconnectedness of environmental and social objectives will all support the sustainable debt markets over the long term."

About 55% of RBND's holdings are rated AAA, AA, or A, and the fund is reflective of the fact that more non-financial issuers are entering the green/sustainable bond markets, as financial services debt accounts for just 34.43% of the fund's portfolio.

"From a sectoral standpoint, nonfinancial corporates held a leading share of green bond issuance in the first quarter, with issuance of $52 billion representing 50% of the global total, up from a 37% share of market in the last quarter of 2021 and 42% during Q1 2022. Following non-financial corporates, financial institutions accounted for $27 billion, or 26% of global green bond issuance," concluded Moody's.

ETF TRENDS

by TOM LYDON

MAY 16, 2022

Fitch: Public Power Credit Unaffected by Glen Canyon Dam Drought Measures

Fitch Ratings-Austin/New York-13 May 2022: The US Bureau of Reclamation (BOR) recently announced urgent drought response actions at Lake Powell, which are designed to preserve water levels and power generation at the Glen Canyon Dam, the second-largest hydroelectric power source in the US southwest. The announced actions will preserve minimum levels of power supply from this low-cost, carbon-free hydroelectric resource for regional public power utilities in the short term. Still, consensus is needed among the entities that rely on Lake Powell for water and power to address declining hydrology in the Colorado River Basin if power generation is to be sustained longer term, says Fitch Ratings.

Reduced hydroelectric output, as a result of the Colorado River Basin drought, is driving replacement power costs higher for purchasing utilities but the increases are manageable. The BOR increased project energy and capacity rates charged to purchasing utilities by 8% and reduced available allocations in December 2021, given the region's increasingly severe drought conditions. The BOR indicated it would no longer purchase power in order to firm deliveries to purchasing utilities, given increasing market energy prices in the western US.

Utilities rated by Fitch are absorbing the incremental cost caused by reduced supply in 2022 and are replacing the lower generation with additional purchased power, increased output from other owned generation, or reduced off-system (optional, non-customer) sales. To the extent the project's power supply remains curtailed, replacement power costs for Fitch-rated public power issuers should continue to be recovered through rate adjustments.

The Colorado River Storage Project (CRSP), which includes the 1,320MW Glen Canyon Dam power plant, provides cost-based energy supply at typically below market prices to 130 public entity customers: 53 native American tribes, 60 municipalities, cooperatives and irrigation districts, and 17 other entities. Four Fitch-rated utilities receive between 5% and 18% of their total power supply from the project: Colorado Springs, Colorado; Platte River Power Authority, Colorado; Tri-State Generation and Transmission Association, Inc., Colorado; and the Utah Municipal Power Agency, Utah. Two additional rated systems, Fort Collins, Colorado and Provo, Utah, purchase power from the above-named utilities.

The Glen Canyon Dam constitutes only one of multiple generation sources for the Fitch-rated utilities, limiting the credit effect of generation shortages, even in the event of full cessation of power from the facility. However, the reduction of low-cost power supply from Glen Canyon is just one example of the sector's broader operating cost pressures, which are highlighted in Fitch Ratings 2022 Outlook: U.S. Public Power and Electric Cooperatives. Additionally, lower generation from

Glen Canyon reduces carbon-free electricity as the sector is pursuing cleaner, non-emitting electric sources.

Glen Canyon Dam, Lake Powell, and the Glen Canyon Dam power plant together form the largest project of the CRSP and are collectively owned and managed by the BOR. The project controls water releases from the Upper Colorado River Basin to the Lower Basin and generates hydroelectric power, accounting for approximately 75% of CRSP's generating capacity.

The entire Colorado River Basin is experiencing progressively worse drought conditions since 2000. Lake Powell's water surface elevation is 3,523 feet, the lowest since the lake was originally filled in the 1960s. The lowest elevation at which Lake Powell can generate hydropower is 3,490 feet.

The BOR took unprecedented action to send more flow into Lake Powell from upstream reservoirs and release less water downstream. The two actions are estimated to increase water levels by approximately 16 feet, protecting the sole water supply to local communities and the BOR's operational ability to transfer water from the upper Colorado River Basin and preserve hydroelectric generation.

Contacts:

Kathy Masterson
Senior Director, US Public Finance
+1 512 215-3730
Fitch Ratings, Inc.
Terrace 1
2600 Via Fortuna, Suite 330
Austin, TX 78746

Jeb Spengler
Director, US Public Finance
+1 415 732-5615
Fitch Ratings, Inc.
One Post Street, Suite 900
San Francisco, CA 94104

Sarah Repucci
Senior Director, Fitch Wire
Credit Policy – Research
+1 212 908-0726

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

The above article originally appeared as a post on the Fitch Wire credit market commentary page. The original article can be accessed at www.fitchratings.com. All opinions expressed are those of Fitch Ratings.

MSRB Analysis Finds Notable Shift in Trading Volumes in Municipal Market Over Last 15 Years.

Washington, D.C. — A new MSRB analysis reveals a significant decrease in trading volumes in the municipal securities market over the 15 years from 2007 through 2021, mainly due to a dramatic decline in the variable rate market. The report also identified spikes in trading volumes and unique trading activity during periods of market disruption or dislocation.

Over the 15-year period studied, the market saw a 67% decline in par amount traded and a 16% decrease in the number of trades, with the declining trend in number of trades most apparent in recent years. While yields also have declined significantly over the last 15 years, during periods of market disruption or dislocation, such as the global financial crisis and the start of the COVID-19 pandemic, trading volumes and yields generally tended to spike amid a notable rise in customer sales—both in terms of par traded and number of trades—and decline in customer purchases as compared to other trade types.

“Of all the periods of market disruption during the last 15 years, the global financial crisis of 2008 had the most lasting impact on the municipal securities market,” said John Bagley, chief market structure officer. “In particular, the sudden and dramatic decline in trading of variable-rate municipal securities in 2008 led to a fundamental shift in the municipal market structure over the subsequent years.”

The number of trades of variable-rate securities fell from 25% of the overall market in 2007 to an average of just 4% by 2009, while par traded fell from 70% of the overall market in 2007 to 44% in 2009, following a significant decrease in trading associated with tender option bond programs and the auction rate securities market. The variable-rate market has never recovered, with the number of trades averaging between 1% and 4% of overall trades between 2009 and 2021 and par amount traded declining further to 23% of total par traded in 2021.

Meanwhile, trading in the fixed-rate municipal market has not seen the same level of change as the variable-rate market. While trade sizes have increased, particularly in the tax-exempt market, the overall number of trades and par amount traded in the fixed-rate market remained relatively steady for the 10 years between 2007 through 2017, though they declined significantly starting in 2018, with 2021 volumes reaching the lowest levels in terms of number of trades and the second lowest in terms of par amount traded since 2007.

Date: May 11, 2022

Contact: Leah Szarek, Chief External Relations Officer
202-838-1300
lszarek@msrb.org

S&P Hits U.S. States With Politicized Credit Scores: WSJ Opinion

The ratings agency seeks to penalize fossil-fuel producers. Its ‘ESG’ push is unlikely to end there.

Ideological criteria will now influence the credit ratings of state and local governments, thanks to S&P Global Ratings. In addition to rating governments on meaningful financial criteria, in March the biggest of the top three credit-rating firms began to apply an environmental, social and governance, or ESG, rating system. But Utah isn’t about to submit to these subjective standards. State officials, including myself, recently wrote a letter to S&P objecting to the ESG indicators and ratings it has assigned to Utah and calling for the company to withdraw them.

ESG is sometimes dressed up to look objective with quantitative “metrics” and complex “analytical frameworks.” But this blurs the distinction between subjective judgments and objective financial assessments.

S&P Global says it “incorporates [ESG] risks and opportunities into the credit rating analysis” of public issuers. This includes ambiguous and open-ended categories such as how a state scores on “managing carbon,” “political unrest stemming from community and social issues” and “adverse publicity that results in reputation risk.” Leaving no doubt as to the measurement’s subjectivity, S&P notes, “reflecting ESG risks and opportunities within our credit rating analysis will require a qualitative view of an entity’s capacity to anticipate and plan for a variety of emerging risks.” Unlike quantifiable financial metrics, this qualitative view depends entirely on the beliefs of whoever constructs it.

It’s easy to see that those beliefs are left-wing. S&P assigns a lower ESG score to states that have both “physical risks” like earthquakes and natural disasters and a larger percentage of their economy tied to natural resource extraction, such as Texas, Alaska and Louisiana. S&P’s Environmental category, after noting federal-state partnerships’ financial mitigation of natural disasters, focuses its assessment on the costs of making the transition to “net zero” and the policy changes it predicts will be necessary to “curtail” greenhouse-gas emissions.

Certainly, if a state’s finances are overly concentrated on any one particular industry this will affect its financial outlook because of the risk that revenue could decline should that industry’s fortunes contract. But a traditional credit rating takes into account the diversity of industry in a state already, so why create an ESG metric that could be politicized? Instead of focusing on the financial risk associated with economic concentration, the ESG metric highlights if a state or local government allows what S&P thinks is too much oil, gas or coal extraction.

Further, there are national security, economic and even environmental benefits for U.S. states to produce traditional energy. Many countries are searching for sources of natural gas and oil so they can lower their dependence on Russia after its invasion of Ukraine. In that environment, states like Texas, Alaska and Louisiana have a tremendous market advantage and could see improved cash flows. Not only are their fossil fuel revenues benefiting a free democracy, Russia’s natural gas exports to Europe burn 41% dirtier than American natural gas. Exporting U.S. natural gas would create a significant environmental benefit. Authoritarian regimes like Russia threaten, among other things, the environment, human rights, free societies and democratic government—all factors that should be important to ESG proponents. That S&P’s ESG metrics completely ignored or missed these variables exposes some of the major flaws of ESG ratings. Such scores place a value judgment on political issues that do not have one right or wrong answer, are highly complex, and are impossible to predict.

As the Russian situation has shown, ESG assessments depend on variables that can change rapidly. Before Russia attacked Ukraine, Europe was moving away from fossil fuels and military spending. That changed almost overnight. This is why markets are so valuable; they encapsulate many different views of the future and their organic structure allows for quick adaptation. ESG scores, by contrast, rigidly hold to one viewpoint and are slow to pick up on changes in the world. The minds behind S&P’s ESG metrics seem to believe that a transition to green energy is inevitable and therefore punish states that produce traditional energy for “climate transition risk.” But no one really knows what this “climate transition” will look like. There are no widely accepted, economically viable alternatives to fossil fuels in the market. No one knows where they’ll come from, what they’ll be or when they’ll arrive.

ESG metrics’ false certainty about future events, and consequent inability to keep up with unanticipated current events, causes capital to be misallocated. They create bubbles in favored industries while starving others that could be profitable.

The solutions to our most difficult challenges—such as climate change—can come only through innovation. Foisting rigid ESG factors onto the market discourages innovation by mandating conformity, penalizing creativity and punishing the industry with the greatest incentive to find alternatives—the energy sector. Fracking has reduced U.S. carbon emissions immensely, but it could cost you under S&P's ESG metrics.

Utah has prudently managed its finances over decades and as a result maintains the highest possible credit rating from all major firms, allowing the state to borrow money at the lowest rates and save taxpayer dollars. But under the new ESG regime, those financial factors may be supplanted by subjective, political ones.

These metrics also threaten Utah and other states' democratic sovereignty. The ESG disclosures many corporations have felt compelled to release have also led to frivolous legal action and shareholder resolutions, an additional fiscal drag on businesses. Extending this regime into the municipal sphere is an invitation to litigation and other coercive tactics that will sabotage states' self-determination and independence.

States like Utah value our constitutional republic, which has ensured freedom, and free markets, which have fostered innovation and generated prosperity for generations. Any states, governmental jurisdictions, corporations, individuals, and investors who also hold those beliefs should join us in standing against ESG.

The Wall Street Journal

By Marlo Oaks

May 8, 2022 5:22 pm ET

Mr. Oaks is treasurer of Utah.

Municipal Bond Struggles Continue In 2022 (Bloomberg Radio)

Eric Kazatsky, Senior US Municipals Strategist with Bloomberg Intelligence, discusses the latest news from the municipal bond market. Hosted by Paul Sweeney and Matt Miller.

Listen to audio.

Bloomberg Radio

May 13, 2022

World's Richest Family Bet on Munis, Japanese Stocks, Coinbase.

- **WIT added new positions in Japanese equities, Coinbase shares**
- **Firm cut exposure to emerging market fund in the first quarter**

An investment firm for the Walton family ramped up its position in a U.S. municipal bond fund and added a sizable stake in Japanese equities, while also betting on small-cap stocks and Coinbase Global Inc. before tumultuous declines.

WIT LLC, an acronym for the Walton Investment Team, invests mostly in low-cost exchange-traded funds. It held about $5.1 billion in U.S. stocks and ETFs at the end of last quarter, a filing with the US Securities and Exchange Commission showed Friday.

The firm, which oversees money for the world's wealthiest family, added 3.9 million shares of the iShares MSCI Japan ETF worth about $239.3 million, its biggest new stake and its fifth-largest overall. WIT also bought about $150 million in small-cap stocks through new positions in Vanguard and iShares index funds. The largest holding is the Vanguard FTSE Emerging Markets ETF, which was worth $1.6 billion at the end of the quarter even after it was whittled down.

Its next two largest stakes are in debt funds: the Vanguard Short-Term Treasury ETF and the iShares Short-Term National Muni Bond ETF. WIT added to both positions in the first quarter as front-end yields surged on expectations of accelerated Federal Reserve interest-rate increases.

While the vast majority of the positions are in index funds, WIT also acquired $15 million of Coinbase, the cryptocurrency exchange whose shares have tumbled 73% this year, and 64% since March 31.

The Walton family's fortune is estimated to be in excess of $200 billion, according to the Bloomberg Billionaires Index. About half of that is tied to Walmart Inc., the company founded by Sam Walton in 1950.

SEC rules require investors managing more than $100 million in U.S. equities to disclose their holdings, though family offices can appeal to keep these documents confidential.

Bloomberg Markets

By Pierre Paulden

May 13, 2022

TAX - ARIZONA

South Point Energy Center LLC v. Arizona Department of Revenue

Supreme Court of Arizona - April 26, 2022 - P.3d - 2022 WL 1218639

Non-Indian lessee of land owned by the federal government in trust for Indians initiated lawsuits seeking refund of payments for county property taxes imposed on power plant it operated on the land.

The Arizona Tax Court consolidated the lawsuits and granted summary judgment for the county. Lessee appealed. The Court of Appeals reversed and remanded. County's petition for review was granted.

The Supreme Court held that:

- As a matter of first impression, the Indian Reorganization Act does not expressly exempt state and

local taxes imposed on permanent improvements affixed by non-Indian lessees to land owned by the federal government in trust for Indians when the parties agree that the lessee owns those improvements, and
- Ad valorem tax imposed on power plant was not preempted by the Act.

The Indian Reorganization Act does not expressly exempt state and local taxes imposed on permanent improvements affixed by non-Indian lessees to land owned by the federal government in trust for Indians when the parties agree that the lessee owns those improvements.

Non-Indian lessee owned power plant on land purportedly acquired by the federal government under the Indian Reorganization Act and held in trust for the benefit of the tribe, and thus, the Act did not expressly preempt county's ad valorem property tax on the plant, since the lease provided that lessee owned the permanent improvements.

Florida Governor Ron DeSantis Says the State Will Likely Take Control of Disney's Reedy Creek Improvement District.

At an event in Sanford this morning, Florida Governor Ron DeSantis said that the state would likely take control of Disney's Reedy Creek Improvement District.

Since the Governor signed the bill dissolving Reedy Creek Improvement District last month, many questions have been raised about how dissolving the district will be achieved in practice and if any debt will be passed onto the local Orange and Osceola counties.

He said today, "The path forward is, Disney will not control its own government in the state of Florida. Disney will have to follow the same laws that every other company has to follow in the state of Florida. They will pay their share of taxes, and they will be responsible for paying the debts."

Despite his comments this morning, DeSantis has still not laid out a clear plan to dissolve Reedy Creek. He said today that his plan would be presented to the legislature after the November 2022 elections, which leaves very little time before the June 1 2023 termination date.

The creation of the Reedy Creek Improvement District in 1967 allowed Disney the luxury of establishing its own independent government that handles many aspects of the Walt Disney World property, including emergency services, infrastructure, and construction permitting.

These latest developments follow escalating tensions between DeSantis and Disney CEO Bob Chapek regarding Disney's opposition to Florida's HB 1557, also known as the 'Don't Say Gay' bill.

Disney's Bob Chapek has yet to make any public comments on the situation regarding Reedy Creek Improvement District.

Posted: Monday May 16, 2022 1:04pm ET by WDWMAGIC Staff

Permanent Dial-In Option Makes TEFRA Hearings Easier Than Ever - Forever: K&L Gates

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) requires a public hearing as a form of public approval for certain types of tax-exempt private activity bonds. Thanks to COVID-19, holding a hearing is easier than ever with the new permanent option to have the hearing via teleconference. Of course, issuers still have to be careful to meet state open public meeting laws when applicable.

For a long time, the Treasury Department and the IRS resisted requests to allow phone teleconferences to satisfy the public comment hearings required by TEFRA. New Treasury Regulations in 2018 specifically noted public entities' desire to hold teleconference hearings and denied the request, saying, "although these technologies may be effective for other purposes, they cannot replace a conventional public hearing conducted in-person because they are not sufficiently reliable, publicly available, susceptible to public response, or uniform in their features and operation." 83 FR 67685.

THEN CAME COVID-19

With in-person hearings often impossible, issuers either had to hold virtual hearings or not issue bonds at all. The IRS stepped in to address the problem by issuing temporary guidance that allowed teleconference hearings through 31 March 2022. Rev. Proc. 2020-21, Rev. Proc. 2020-49, Rev. Proc. 2021-39. The new guidance permitted virtual TEFRA hearings so long as the public could join by calling a toll-free telephone number.

Video conference services – whether Zoom, WebEx, Microsoft Teams, Google Meet, GoTo Meeting, etc. – have proven to be reliable channels for public participation, and also generally offer the option to dial in on a toll-free line. The experience gained by governmental entities in offering meetings over video services and teleconference during the pandemic convinced the IRS to allow virtual meetings permanently.

In Rev. Proc. 2022-20, the IRS noted that "the experience using telephonic hearings during the COVID-19 pandemic has shown that telephonic access has in fact made it easier for the public to express its views regarding a proposed private activity bond issue." Therefore it determined to allow public hearings to be held telephonically indefinitely.

TELEPHONIC TEFRA HEARING REQUIREMENTS

As a practical matter, most governmental entities' virtual meeting offerings have been on a videoconference service that permits access by telephone (sometimes calling the participant's number, sometimes using computer audio, sometimes providing call-in numbers.). The requirement of the regulation, however, is to provide a toll-free telephone number for the public to dial into the meeting on:

> "A hearing that is held by teleconference accessible to the residents of the approving governmental unit by calling a toll-free telephone number will be treated as held in a location that, based on the facts and circumstances, is convenient for residents of the approving governmental unit for the purpose of § 1.147(f)-1(d)(2). Provided the requirements of the preceding sentence are satisfied, governmental units are not precluded from offering additional access to the hearing by other telephone numbers, internet-based meeting technology, or in-person attendance."

Rev. Proc. 2022-20 (emphasis added). As long as the toll-free number is available, the regulation acknowledges and allows videoconference to be offered as well.

Even though public participants in a virtual meeting may all be dialing in from the local area, a true toll-free number is required to satisfy the requirement (though the issuer may also offer a local number along with the toll free number).

BE AWARE OF ANY OPEN PUBLIC MEETING ACT REQUIREMENTS

The TEFRA regulations at 26 CFR § 1.147(f)-1(d)(3) give issuers broad latitude in procedures for holding the hearing, whether to create a hearing report, and which representative(s) of the issuer will hold the hearing, so long in each case that "interested individuals have a reasonable opportunity to express their views."

Depending on whom an issuer selects to hold the TEFRA hearing, it may trigger Open Public Meeting Act (OPMA) requirements under applicable state law.

For example, Washington State's OPMA (Chapter 42.30 RCW) passed in 2022 encourage governments to provide online and telephonic access to public meetings, but also require meetings to be held in a physical location accessible to the public (outside of a declared emergency). The Governor's Proclamation 20-28.14 requiring virtual meeting access is due to expire on 1 June 2022. After that date, all public entities in Washington will be required to hold meetings with a physical location for the public to attend.

Therefore, if the governing body of a public entity in Washington is holding TEFRA hearing, the OPMA requirements may prevent it from holding the hearing as a teleconference. Washington Public entities may avoid triggering OPMA requirements by designating a representative to hold the TEFRA hearing. Similar situations may exist in other states.

With those few considerations understood, the new ability to hold TEFRA hearings as teleconferences is a valuable new tool provided by the IRS and should help public authorities save time and effort on coming bond issuances.

Click here to read Rev. Proc. 2022-20.

By Scott A. McJannet and Cynthia M. Weed

Thursday, May 12, 2022

State Blue Sky Laws: Shedding Light on Exclusions from Municipal Bond Exemptions

We continue our series exploring the lack of uniformity – and sometimes lack of guidance – that makes it challenging to interpret state Blue Sky laws. Today's example addresses the exclusion from the use of the municipal issuer exemption if the securities being issued are paid from a non-governmental source.

Summary:

Some states exclude from the municipal exemption the registration of municipal securities that are paid from a non-governmental industrial or commercial enterprise, unless the payments and insured are guaranteed by a person whose securities are exempt from registration under certain other enumerated sections of the law.

Issue:

There is substantial disagreement among these states as to whether conduit 501(c)(3) bonds, student loan bonds and single family mortgage revenue bonds constitute bonds payable from revenues to be received from a non-governmental industrial or commercial enterprise.

Sub-Issue:

What is a non-governmental industrial or commercial enterprise? Most states do not include a formal definition, leaving practitioners having to interpret those state's laws with little or no guidance. One state that does define non-governmental industrial or commercial enterprise includes non-profit corporations in the definition, but another state excludes non-profit corporations within the definition of what is a non-governmental industrial or commercial enterprise. This is confusing to say the least – making one struggle to reconcile these polar opposite approaches.

Bottom line:

State opinions can sharply differ regarding exclusions from municipal bond exemptions. The lack of guidance and uniformity can make practicing in this area confusing, which is why it's key to rely on experienced consultants.

by Christopher Andreucci

May 12, 2022

Harris Beach PLLC

Extension for Issuance of 30-Year Municipal Bonds in Connecticut.

During the 2022 Legislative Session, the General Assembly passed, and the Governor signed into law, HB 5506, commonly referred to as the Implementer (the "New Law").

For municipalities issuing bonds and refunding bonds, prior to July 1, 2022, the law allowed a term of up to 30 years for bonds and refunding bonds issued from July 1, 2017 to July 1, 2022. The New Law now makes the 30-year authorization permanent for bonds, and the New Law extends the expiration by five years, until July 1, 2027, for refunding bonds. Municipalities may issue refunding bonds with a maturity of up to 30 years only if their legislative bodies adopt a resolution to do so by a two-thirds vote.

Please note that the Connecticut statutory provisions discussed above do not address the potential tax implications related to issuing 30-year bonds or refunding bonds. Municipal issuers should consult with the professionals that assist them with their bond issuances. If you have any questions about this alert, please feel free to contact any of Pullman & Comley's Public Finance attorneys.

[DeSantis Culture War With Disney Sees Lawsuit by Florida Trio Thrown Out.]

A federal judge threw out a lawsuit by three Florida residents who claim Governor Ron DeSantis trampled on Walt Disney Co.'s freedom of speech, finding numerous holes in their filing and ruling the company can fight its own battle.

The entertainment giant enjoys privileges through a special municipal district that encompasses Walt Disney World and its resorts, including access to the lower-cost municipal debt market for certain projects. The three residents alleged that the governor's move to dissolve the district as punishment in a political fight violated the company's First Amendment rights.

But they failed to show that Disney "faces any hindrance" in making its own case if it chooses to, the judge said Tuesday.

DeSantis, a Republican and potential 2024 presidential candidate, signed a law in April that will dissolve the Reedy Creek Improvement District unless there is further legislative action, after Disney announced its opposition to the state's new parental rights law that restricts classroom instruction on sexual orientation and gender identity.

Because the law's provisions aren't in effect yet, U.S. District Judge Cecilia Altonaga added that the claims aren't ready for litigation and adjudication. And she found the law wouldn't affect the plaintiffs anyway, who therefore lack standing to sue.

"They do not allege direct harm as a result of the challenged law, and they do not plausibly allege any credible threat of direct harm in the future," she wrote.

While they said in their suit that they feared they would have to assume the tax burden that Disney shoulders under its special tax status, the judge shrugged off the claim.

"That indirect and highly speculative alleged injury cannot support federal jurisdiction," she wrote.

The case is Michael Foronda v. Ron DeSantis, 22-cv-21376, U.S. District Court, Southern District of Florida (Miami).

Bloomberg

By Katia Porzecanski

May 11, 2022

— With assistance by Danielle Moran

- GASB Issues Omnibus Statement Addressing Wide Range of Practice Issues.
- Puzzling Pieces: Component Unity Identification, Classification, Disclosure, and Display – GFOA
- Seventh Circuit Provides Rare Guidance On "Statutory Liens" – Cadwalader
- Which Municipal Bond Issuers Have the Speediest Audit Times?
- S&P Cyber Brief: Reviewing The Credit Aspects Of Blockchain
- DeSantis's Dissolution of Disney District Stumps Credit Raters.
- [Members-Only Discussion] Down the Due Diligence Rabbit Hole on 5/18
- *Matter of Oklahoma Development Finance Authority for Approval of Not to Exceed $800,000,000*

- *Ratepayer-Backed Bonds* – Supreme Court of Oklahoma holds that ratepayer-backed bonds issued by Oklahoma Development Finance Authority (ODFA) pursuant to February 2021 Regulated Utility Consumer Protection Act to finance recovery of natural gas costs incurred by public utility during two-week period of record cold temperatures did not violate constitutional debt-limitation provisions.
- And finally, Not Since Martin Luther Nailed His Ninety-Five Risk Factors To GASB's Door is brought to us this week by *Matter of Oklahoma*, in which the Supreme Court of Oklahoma stated that, "Fifteen Protestants filed a response to the application and challenge the bonds on several grounds but focus primarily on the constitutionality of the bonds." No word yet on whether the Catholics have filed a motion to intervene, but brace yourself for the coming schism.

PUBLIC UTILITIES - CALIFORNIA

California Public Utilities Commission v. Federal Energy Regulatory Commission

United States Court of Appeals, Ninth Circuit - March 17, 2022 - 29 F.4th 454 - 22 Cal. Daily Op. Serv. 2913 - 2022 Daily Journal D.A.R. 2667

California Public Utilities Commission (CPUC) and other state agencies petitioned for review of Federal Energy Regulatory Commission's (FERC) decisions, awarding to three California-based public utilities upward adjustments, or "incentive adders," to their rate of return on equity, over CPUC's objection that utilities should not receive awards as their participation in California independent system operator (CAISO) was involuntary and mandated by state law, so adder could not induce utilities to remain members of CAISO.

The United States Court of Appeals for the Ninth Circuit granted petitions and remanded. On remand, FERC determined that utilities' membership in CAISO was voluntary under California law, so incentive adders were warranted. CPUC and other California agencies petitioned for review of remand orders.

The Court of Appeals held that:

- FERC's remand orders did not violate mandate rule;
- *Erie* doctrine did not apply to require FERC to defer to California's interpretation of California law; and
- FERC reasonably interpreted California law as allowing utilities to voluntarily leave CAISO.

Federal Energy Regulatory Commission (FERC) did not violate mandate rule, in remand orders reaffirming award of incentive adders to public utilities' rate of return on equity because their participation in California independent system operator (CAISO) was voluntary and not mandated by California law; on remand FERC did not decide issue that Court of Appeals had already decided, as court did not definitively hold that California law prevented utilities from leaving CAISO without approval, or deviate from court's mandate that remanded case for further proceedings and instructed FERC to inquire into utility's specific circumstances as to whether it could unilaterally leave CAISO and, thus, whether incentive adder could induce utility to remain in CAISO.

Federal Energy Regulatory Commission's (FERC) conclusion, in remand orders reaffirming award of incentive adders to public utilities' rate of return on equity because their participation in California independent system operator (CAISO) was voluntary and not mandated by California law, that Erie doctrine did not apply, was not arbitrary, capricious, or contrary to law, since incentive adder and requirement that utility be voluntary member of CAISO to qualify for adder arose from federal law, and federal law as source of right sued upon did not change merely because California law dictated whether membership in CAISO was voluntary.

Court of Appeals would apply de novo review, rather than according deference, to Federal Energy Regulatory Commission's (FERC) interpretation of California law, in remand orders reaffirming award of incentive adders to public utilities' rate of return on equity because their participation in California independent system operator (CAISO) was voluntary and not mandated by California law, since FERC was not interpreting its own electricity regulations and instead was interpreting California law and public policy, in which FERC lacked specific expertise, and Congress had not assigned FERC task of interpreting state statutes.

Under California law, as predicted by Court of Appeals, Federal Energy Regulatory Commission's (FERC) interpretation, in remand orders reaffirming award of incentive adders to public utilities' rate of return on equity, that utilities' participation in California independent system operator (CAISO) was voluntary and not mandated by California law, was not arbitrary, capricious, or contrary to law, under Administrative Procedure Act (APA); California failed to identify any California Code provision mandating CAISO membership, statutory provisions that California relied on merely directed creation of CAISO and encouraged utilities to join, and California courts would not defer to prior administrative decision suggesting the contrary, as it was inconsistent with relevant California statute.

IMMUNITY - ILLINOIS

Schultz v. St. Clair County

Supreme Court of Illinois - April 21, 2022 - N.E.3d - 2022 IL 126856 - 2022 WL 1180973

Husband, as special administrator of wife's estate, brought wrongful death and survival action against county, county 911 agency, county emergency telephone system board, and unidentified 911 dispatchers, alleging that defendants engaged in willful and wanton conduct by refusing to dispatch 911 services, which resulted in wife's death.

Defendants moved to dismiss, arguing that they were entitled to absolute immunity under the Local Governmental and Governmental Employees Tort Immunity Act and that wife's conduct was sole proximate cause of her injuries and death.

The Circuit Court granted motion. Husband appealed. The Appellate Court affirmed. Husband petitioned for leave to appeal and petition was allowed.

The Supreme Court held that:

- As matter of apparent first impression, husband's allegations implicated limited immunity provided by Emergency Telephone System (ETS) Act, rather than absolute immunity provided by Tort Immunity Act, but
- Dispatcher's refusal to dispatch police to convenience store to prevent wife from driving under the influence of alcohol was not proximate cause of wife's death.

Husband’s allegations that public safety answering point (PSAP) employee’s intentional or reckless refusal to dispatch vital emergency services resulted in wife’s death implicated limited immunity provided by Emergency Telephone System (ETS) Act, rather than absolute immunity provided by Local Governmental and Governmental Employees Tort Immunity Act; ETS Act’s limited immunity provision, by its plain language, governed scope of liability relating to PSAP employee’s “performance…or provision of 9-1-1 service[,]” and, further, ETS Act, which provided comprehensive rules and regulations applicable to 911 dispatchers in relation to answering, receiving, or dispatching emergency services, was both more specific and more recent than Tort Immunity Act, indicating that legislature intended it to govern.

Emergency dispatcher’s refusal to dispatch police to convenience store to prevent motorist from driving under the influence of alcohol was not proximate cause of motorist’s death, which occurred when motorist drove her vehicle off the road while driving away from convenience store, where dispatcher did not furnish motorist with vehicle or alcohol or facilitate her decision to get into her vehicle and drive while intoxicated, and, at most, dispatcher’s alleged conduct furnished condition by which motorist’s injury was made possible, and thus it could not be established that injury to motorist would not have occurred absent dispatcher’s alleged refusal to dispatch police.

BONDS - OKLAHOMA

Matter of Oklahoma Development Finance Authority for Approval of Not to Exceed $800,000,000 Ratepayer-Backed Bonds

Supreme Court of Oklahoma - May 3, 2022 - P.3d - 2022 WL 1312957 - 2022 OK 41

Oklahoma Development Finance Authority (ODFA) filed application for approval of issuance of ratepayer-backed bonds pursuant to February 2021 Regulated Utility Consumer Protection Act to finance recovery of natural gas costs incurred by public utility during two-week period of record cold temperatures.

Ratepayers filed protests challenging bonds.

On assumption of original jurisdiction, the Supreme Court held that:

- ODFA followed correct statutory process for authorization to issue bonds, and
- Bonds did not violate constitutional debt-limitation provisions.

Oklahoma Development Finance Authority (ODFA) followed correct statutory process pursuant to February 2021 Regulated Utility Consumer Protection Act for authorization to issue ratepayer-backed bonds to finance recovery of natural gas costs incurred by public utility during two-week period of record cold temperatures; ODFA gave proper notice of its application and required hearing, and final financing order set out parameters of bonds’ issuance, terms, conditions, requirements, and interest.

Ratepayer-backed bonds issued by Oklahoma Development Finance Authority (ODFA) pursuant to February 2021 Regulated Utility Consumer Protection Act to finance recovery of natural gas costs incurred by public utility during two-week period of record cold temperatures did not violate constitutional debt-limitation provisions; bonds would be repaid through a charge on each ratepayer’s monthly bill, such charge was secure revenue source, and money to directly pay bonds was reliable, predictable fees from outside sources, rather than from one state entity to another.

PUBLIC RECORDS - OREGON

City of Portland v. Bartlett

Supreme Court of Oregon - April 28, 2022 - P.3d - 369 Or. 606 - 2022 WL 1260316

City sought declaratory judgment that public records sought by requester, and ordered produced by district attorney, were exempt from disclosure as attorney-client privileged material.

Requester filed counterclaim seeking declaratory judgment that records must be disclosed. The Circuit Court granted city's motion for summary judgment and denied requester's motion for summary judgment. Requester appealed. The Court of Appeals reversed and remanded. City obtained leave to appeal.

The Supreme Court held that:

- Communications between city attorney and city officials that were over 25 years old were not exempt from disclosure under public records law on ground that they were subject to attorney-client privilege, and
- Public records law prevailed over any inconsistent city law.

Communications between city attorney and city officials that were over 25 years old were not exempt from disclosure under public records law on ground that they were subject to attorney-client privilege; although documents were exempt from disclosure at time they were prepared, 25-year sunset provision applied to all public records.

Application of public records law for disclosure of communications between city attorney and city officials that were over 25 years old did not interfere with "structure and procedures" of city's government, and therefore home rule under Oregon Constitution, but instead was application of general law addressed primarily to substantive social, economic, or other regulatory objectives of the state, and therefore public records law prevailed over any inconsistent city law; even legislature's disclosure requirement and that provision's related effect on evidentiary privilege, as applied to city's attorney-client communications, were somehow inconsistent with provisions of city code that made reference to that privilege, city would have to comply.

MUNICIPAL ORDINANCE - WASHINGTON

Bass v. City of Edmonds

Supreme Court of Washington - April 21, 2022 - P.3d - 2022 WL 1178491

Individual gun owners brought action against city under the Uniform Declaratory Judgment Act challenging city ordinance that made it a civil infraction to allow a minor, at-risk person, or prohibited person access to a firearm that was not secured by a locking device, or to store unlocked firearm.

The Superior Court granted gun owners' motion for summary judgment in part and concluded that the ordinance provision that made it a civil infraction if a minor, at-risk person, or prohibited person obtained a firearm from an owner's premises that was not secured by a locking device was preempted by state law. City appealed. The Court of Appeals affirmed in part and reversed in part by concluding that the entire ordinance was preempted by state law. Supreme Court granted review.

The Supreme Court held that:

- Individual gun owners had standing to challenge unauthorized access provision of city ordinance that made it civil infraction to knowingly or reasonably allow minor, at-risk person, or prohibited person access to firearm and that person obtains firearm, and
- City ordinance that made it a civil infraction to allow minor, at-risk person, or prohibited person access to firearm that was not secured by locking device or to store unlocked firearms was preempted by state statute that preempted entire field of firearms regulation.

S&P Cyber Brief: Reviewing The Credit Aspects Of Blockchain

Key Takeaways

- Cyberattacks affecting issuer creditworthiness increased in 2021 and are continuing with regularity in 2022.
- Blockchain is often cited as a security control option to avoid malware and distributed denial-o--service (DDoS) attacks, but using blockchain introduces other risks.
- Cryptography, including digital signatures, differentiates a blockchain ledger from a centralized database, providing additional security.
- Credit risks of using blockchain could be administrative, operational, legal, and regulatory.

Continue reading. [Free registration required.]

5 May, 2022

DeSantis's Dissolution of Disney District Stumps Credit Raters.

- **Moody's and S&P say it's unclear how new law affects bonds**
- **Disney's tax district has sold about $1 billion of muni bonds**

Florida Governor Ron DeSantis's move to punish Walt Disney Co. by dissolving its debt-issuing district has befuddled two of the major credit rating companies that assign high marks to its municipal bonds.

Moody's Investors Service and S&P Global Ratings have changed their outlooks on the property tax bonds sold by the Reedy Creek Improvement District to "developing" — a rare designation that doesn't give bondholders much insight on how their investment will fare. The outstanding securities are rated Aa3 by Moody's and AA- by S&P, the fourth-highest levels available.

"Developing scenarios do not come up every day," said Geoffrey Buswick, a managing director in S&P's U.S. public finance team. "They are typically associated with an event where, depending on the outcome, the committee could see different credit paths." To put this in perspective, out of the more than 20,000 municipal securities rated by S&P, there are only six that have a developing outlook, according to the company.

This means that depending on how the dissolution pans out, the credit quality of the district's debt "could improve, remain the same, or weaken," analysts at Moody's wrote in an April 26 report. Those at S&P noted there is "at least a one-in-three chance" that the bonds could be positively or negatively impacted by the legislative action, but "future events remain unclear."

The vagueness speaks to how unusual it is for lawmakers to upend a corner of the $4 trillion municipal-bond market in a matter of days. Florida Republicans introduced the bill that could strip Disney of self-governing privileges on April 19, and in under a week it passed both legislative chambers and was signed by DeSantis.

Reedy Creek has about $1 billion of debt outstanding, which includes property-tax and utility bonds, according to data compiled by Bloomberg.

Meanwhile, Fitch Ratings took a stronger stance, moving the bonds to a negative watch. Dissolving the district and transferring its property will be complicated, increasing the likelihood of negative ratings actions, said Michael Rinaldi, Fitch's head of U.S. local government ratings.

The law says that without further legislative action, Reedy Creek would be dissolved in June 2023, giving stakeholders about a year to decide on next steps — whether it's transferring responsibilities to other local governments or creating a successor district. But for now, it seems that bondholders and ratings analysts will just have to sit tight.

Bloomberg Markets

By Danielle Moran

May 3, 2022

[Jobs Act Directs Private Activity Bonds to Clean Energy, Carbon Capture: Holland & Knight]

Highlights

- The Infrastructure Investment and Jobs Act provides a "once in a generation" investment into the nation's infrastructure, including $62 billion for clean energy, in addition to traditional infrastructure such as roads, bridges, transit and airports.
- Direct funding is set aside for several important climate programs, including electrification of the transportation system, buildout of the nation's power grid and cleanup of abandoned mines.
- Carbon capture, utilization and storage equipment, and direct air capture technologies are eligible for private activity bond financing through a new category of exempt facility bonds: qualified carbon dioxide capture facilities.

Continue reading.

Holland & Knight

by Luisella Perri | Woody Vaughan | Peter Baumgaertner | Michael L. Wiener | Caroline Sage

MAY 2, 2022

Increasing Higher Education Cyberattacks Add to Financial Pressures: Fitch

Fitch Ratings-Austin/Chicago/New York-05 May 2022: The higher education sector has seen a rapid increase in the number and severity of cyberattacks since 2020, at a time when many of these institutions are already grappling with financial and operating stress related to the pandemic, Fitch Ratings says. The sector is viewed as a target-rich environment due to the large amount of sensitive data, namely intellectual property (IP) and personally identifiable information (PII), that these institutions maintain for student curriculum, research and operations.

Threat actors took advantage of the pandemic to cause disruption to the higher education sector at a time when it was facing unprecedented challenges and a sharp shift to online delivery. Colleges and universities became much more reliant on remote third-party learning platforms and personal student devices to conduct classes, significantly increasing the exposure for these institutions. Insufficient digital infrastructure and network protection protocols can be material vulnerabilities across the sector.

A unique risk facing the sector is the theft of research data and IP by nation-state actors. In the past two years, more than 200 universities publicly disclosed they were victim to this type of theft, according to a 2021 threat intelligence report from BlueVoyant. Attacks targeting medical and biotech research accelerated during the pandemic, although the main target is still industrial and defense technology information. These cyberattacks could result in the loss of competitive grants and future patent royalty revenues, both critical lines of revenue for research-heavy institutions. In cases where staff or researchers are implicated, the risk of legal and financial repercussions are elevated. Federal contracts generally have cyber hygiene requirements with which universities may need to comply in order to conduct research or receive federal funding.

Investment in cyber preparedness is critical, as underfunding will continue to be exploited by bad actors as long as profit incentives remain high and outweigh the perceived risks of criminal prosecution. Institutions with larger financial cushions typically have more flexibility to afford material IT spend to shore up cyber defences or to respond to an attack. However, these costs would place a greater burden on institutions facing pre-existing operating pressures or with limited financial reserves. The average total cost of a data breach in the higher education sector is about $3.9 million, according to a 2020 Ponemon Institute report.

This effect of cybercrime is exacerbated by labor and funding issues. According to BlueVoyant, 77% of sector CIOs listed hiring and retaining IT talent as a top institutional priority that was hindered by uncompetitive salaries. Another two-thirds reported that IT funding has not recovered from budgetary cuts over the past decade. Preliminary Fitch median data suggest that overall capital spending still trails pre-pandemic levels.

Ransomware attacks against universities doubled through 2020, per BlueVoyant, and, together with ransom demands, continue to increase. Ransomware trends, such as double extortion, where attackers do not return access to data and threaten to leak stolen data if a ransom is not paid, are a critical risk, as college and university databases contain a wealth of sensitive information. Cyber breaches that disclose confidential information carry financial, legal and reputational risks, and the risk of enforcement actions, due to regulations regarding privacy and confidentiality.

In the event of a cyberattack, Fitch would assess the effect on financial metrics and performance disruption to operations and provision of services, delays in revenue generation, ransomware payments or unexpected capital costs. Cyber risk is an asymmetric credit consideration reviewed as part of our assessment of management and governance, where only weaker characteristics may affect the rating and are reflected in an elevated Environmental, Social and Governance (ESG)

Relevance Score.

Contacts:

Omid Rahmani
Associate Director, US Public Finance
+1 512 215-3734
Fitch Ratings, Inc.
Hearst Tower
300 W. 57th Street
New York, NY 10019

Emily Wadhwani
Senior Director, US Public Finance
+ 1 312 368-3347
Fitch Ratings, Inc.
One North Wacker Drive
Chicago, IL 60606

Sarah Repucci
Senior Director, Fitch Wire
Credit Policy – Research
+1 212 908-0726

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

---

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

View the current list.

6 May, 2022

Fitch: U.S. to Recover All Pandemic-Driven Job Losses by Q3 2022

Fitch Ratings-New York-02 May 2022: The U.S. post-pandemic employment recovery continued at a remarkably steady pace in Q1 2022; all jobs lost at the onset of the pandemic are expected to be fully recovered by Q3 2022, according to Fitch Ratings.

“Thirteen states have recovered all job losses resulting from the pandemic. The state median jobs recovery rate is 89 percent, up eight percentage points from Q4 2021,” said Olu Sonola, Head of U.S. Regional Economics. “Hawaii and Louisiana are the only states to not have recovered at least 70 percent of all jobs lost during the pandemic.”

The states that have recovered all jobs lost to the pandemic are Arkansas, Florida, Georgia, North Carolina, Tennessee, Texas, Arizona, Idaho, Indiana, Montana, South Dakota, Utah and Colorado.

As of Q1 2022, Nebraska, Maine and New Mexico led continuing recoveries on a quarter-ove-

-quarter basis, increasing by 14.3, 12.0 and 11.7 percentage points, respectively.

The median unemployment rate at the end of Q1 2022 of 3.6% now equals the February 2020 pre-pandemic rate of 3.6 percent. The unemployment rate is now below the pre-pandemic level in 27 states.

At the end of 1Q 2022 a key measure of labor market shortages, the ratio of job openings to the unemployed, was a median 1.9 across all states. However, labor market shortages continue to be particularly acute in the West and Midwest regions.

Labor market shortages have contributed to elevated wage growth across many states. Year-on-year statewide increases in average hourly earnings range from 0.2 in Hawaii to 10 in New Mexico. Generally, the states with a higher ratio of openings to the unemployed have a higher rate of wage growth since Q1 2021.

For more information, a special report titled "U.S. States Labor Market Quarterly Tracker 1Q 2022" is available at www.fitchratings.com.

Contact:

Olu Sonola
Head of U.S. Regional Economics
+1-212-908-0583
Fitch Ratings, Inc.
300 W 57th Street
New York, NY 10019

Vicky Raso
Associate Analyst
+1-646-582-3649

Blythe Logan
Associate Analyst
+1-646-582-3640

Media Relations: Elizabeth Fogerty, New York, Tel: +1 212 908 0526, Email: elizabeth.fogerty@thefitchgroup.com

Additional information is available on www.fitchratings.com

S&P U.S. Public Parking Facilities Ratings And Outlooks: Current List

View the list.

4 May, 2022

S&P U.S. Transportation Infrastructure Sector Update And Medians: U.S.

[Parking Sector View Is Now Stable]

Key Takeaways

- We are revising our U.S. parking sector view to stable from negative based on improving health and economic conditions, which we believe will continue to drive a recovery in parking demand over the next 12 months. Overall, we expect demand recovery coupled with prudent management actions–including parking rate increases or expense reductions, if necessary–will provide credit stability.
- Parking ratings remained relatively stable through the pandemic, with only five downgrades as of May 4, 2022, across a small universe of 20 issuers. Four of the five parking systems downgraded were rated in the 'BBB' category or lower, with two being speculative grade going into the pandemic. Several parking bonds, specifically those tied to airport or mass transit systems, were redeemed, refunded, or defeased by another government entity during the pandemic as parking volumes significantly declined.
- Our analysis of 2020 and 2021 parking medians revealed positive management actions and extraordinary support provided to limit the financial implications of the precipitous drop in utilization, with median debt service coverage (S&P Global Ratings-calculated) declining to a vulnerable (but still sufficient) near 1.0x in 2020 and 2021 from a strong 1.33x in 2019.
- Over the longer term, ongoing challenges and exposures to future health-and-safety-related mobility restrictions, behavioral changes of users (such as a shift to more remote work), evolving urban centers, and technological innovations (such as video conferencing, online shopping, and charging stations for electric vehicles) will likely influence future parking demand.

Continue reading.

4 May, 2022

[JPMorgan Made Surprise Bid to Underwrite Mega Texas Muni Deal.]

For months, JPMorgan Chase & Co. has been largely absent from the Texas municipal-bond market because of a new GOP state law targeting Wall Street banks for their gun policies.

But the bank raised its hand when a Texas financing authority put out a request for proposals last month for a $3.4 billion muni deal it's aiming to sell by August to cover costs incurred by utilities during a deadly 2021 winter storm. The offering is poised to be the largest muni sale ever in the state.

JPMorgan was one of the roughly 40 banks that submitted a proposal, according to Lee Deviney, executive director of the Texas Public Finance Authority, which formed the entity that's selling the bonds.

The New York-based bank didn't make the cut Friday when the Texas Natural Gas Securitization Finance Corp. named the underwriters. Some 30 firms didn't get picked, Deviney said. Jefferies Financial Group Inc. was tapped as the senior manager, with Morgan Stanley and Hilltop Securities as co-managers.

Patricia Wexler, a spokesperson for JPMorgan, declined to comment.

JPMorgan hasn't underwritten any municipal-bond sales by the state or its cities since the law, known as Senate Bill 19, went into effect in September, according to data compiled by Bloomberg. It has underwritten two small Texas transactions — both under $20 million — since the measure took effect. Those deals were sold by nonprofit industrial development corporations, a category that appears to be outside the the scope of the law, which targets governmental entities.

The GOP law doesn't allow governments to enter into contracts of over $100,000 with companies unless they provide a written verification that they don't "discriminate" against firearms entities.

In September, JPMorgan told Bloomberg News its business practices should permit the bank to certify compliance with the law. But it said the legal risk of the "ambiguous law" prevented it from bidding on most transactions with Texas public entities.

It's unclear whether the bank has now certified compliance with the law, but its response to the request for proposal suggests it may have. Banks submitting proposals for the storm-bond transaction had to certify they're in compliance with Texas laws, including Senate Bill 19, according to the request for proposals.

Bloomberg Markets

By Amanda Albright and Danielle Moran

May 6, 2022

Florida Taxpayers Sue DeSantis Over Disney Special District Repeal.

Florida residents near Walt Disney World filed a lawsuit claiming they will be on the hook to pay $1 billion in Disney's bond debt if the special district is abolished.

Florida residents in counties surrounding Disney World filed a lawsuit against Governor Ron DeSantis on May 3, alleging the repeal of Walt Disney's special district would saddle taxpayers with $1 billion worth of bond debt.

DeSantis signed off on abolishing the Disney district on April 22 seemingly in retaliation of Disney CEO Bob Chapek slamming Florida's passage of the "Don't Say Gay" law. Residents of the surrounding Osceola counties now claim DeSantis violated their rights and interest when dissolving the Disney tax breaks and Reedy Creek Improvement District. They seek to block the law.

"It is without question that Defendant Governor DeSantis intended to punish Disney for a 1st Amendment protected ground of free speech," the lawsuit states, via The Hollywood Reporter. "Defendant's violation of Disney's 1st Amendment rights directly resulted in a violation of Plaintiffs' 14th Amendment rights to due process of law."

Continue reading.

IndieWire

by Samantha Bergeson

May 4, 2022 3:05 pm

Inflation Isn’t All Bad for Tobacco Bonds Battered by Selloff.

- **Illinois settlement, inflation boost payouts to $7.3 billion**
- **About $90 billion muni bonds are backed by settlement payments**

There’s a little bit of good news for tobacco municipal-bond investors who have been battered by the market sell-off. The inflation that fueled the rout to begin with is, in a fortunate twist, boosting the revenue backing their holdings.

Payments to U.S. states this year under a 1998 national settlement with major tobacco companies rose by 10%, despite a decline in cigarette sales, according to figures disclosed late last month by the National Association of Attorneys General. That’s in part because under the settlement, the companies have to increase their annual payments to adjust for inflation.

Tobacco companies led by Altria Group Inc. paid 46 states and territories about $7.3 billion, the highest since 2013, the data show. Along with a one-time windfall from a legal settlement, the 7% inflation adjustment helped offset a 6.1% cigarette sales decline.

“Inflation this year was helpful for tobacco bonds from a payment stance,” said Sarah Gehring, a municipal credit analyst at UBS AG.

That said, it hasn’t helped returns. Junk and non-rated tobacco bonds have lost about 16.3% so far this year, the worst sector among high-yield municipal debt, according to Bloomberg indexes. High-yield muni funds, suffering from a flood of investor redemptions, typically sell tobacco bonds first because they are among the most liquid high-yield muni securities. By contrast, investment grade tobacco bonds have lost 8.9% this year, about the same as the overall market.

Investors have pulled about $8.2 billion from high-yield muni funds this year amid a broad bond-market selloff and are on pace to break the record set in 2013, according to Refinitiv Lipper US Fund Flows data.

“A lot of the movement we see in tobacco is really technically driven,” said Dan Barton, head of municipal research at Insight Investment Management.

Tobacco bonds are the worst-performing sector within high-yield munis

Illinois Settlement

State and local governments settled with cigarette makers to compensate taxpayers for decades of public health costs associated with smoking. Some governments have sold bonds, borrowing against the payments they expect to receive over years from this settlement. Payments on about $90 billion tobacco bonds outstanding, by par value, are based on cigarette shipment volumes, according to data compiled by Bloomberg.

To be sure, most of the payment increase to states this year came from an extra $546 million Illinois received to settle a dispute over money withheld by tobacco manufacturers. Excluding Illinois’ windfall, payments rose 2% on average because of the inflation adjustment, according to UBS.

The tobacco settlement agreement requires manufacturers to boost their annual payments at least 3% — or more if inflation is higher. Inflation rose 7% in the 12-months ended December 2021 and has since increased to 8.5%.

After rising in 2020, the first year of the pandemic, tobacco sales fell in 2021 as federal pandemic stimulus payments wound down, said Gehring.

And those declines continue. Altria estimated that domestic cigarette industry shipment volume decreased 6.3% in the first quarter of 2022.

Smoking Habits

A combination of higher gas prices, consumer-goods inflation and the recent conclusion of Covid-19 relief programs is likely weighing heavily on smoking habits, according to Bloomberg Intelligence analyst Kenneth Shea.

Last week, the Biden administration disclosed details on a proposed ban on menthol cigarettes, which make up around 30% of U.S. cigarette sales, according to Barclays Plc.

Tobacco bonds issued in the last few years are structured to withstand significant smoking declines. Illinois bonds issued in 2017 and rated A by S&P Global Ratings Inc, were structured to withstand annual tobacco shipment declines of about 18% without defaulting.

However, junk and non-rated tobacco bonds — which have a higher ratio of outstanding debt to annual payments from the companies and long maturities — are vulnerable to lower smoking rates and more sensitive to regulatory changes. Earlier vintages of the bonds assumed smaller annual consumption declines, of 3% to 4%, and carry greater risk.

In addition to its annual payment of about $260 million, Illinois received an extra payment to resolve a long-running dispute with tobacco companies over allegations the state wasn't enforcing a statute aimed at protecting them from losing market share to firms that didn't sign onto the 1998 agreement.

Since the national settlement imposed significant costs to the tobacco companies that participated, states adopted laws assessing similar costs on cigarette makers that didn't participate to level the playing field. Disputes arose in Illinois and other states over the enforcement of the statues and as a result tobacco companies withheld payments.

In 2013 and 2021, arbitration panels found that Illinois had upheld its obligation. The settlement resolves the companies' dispute with Illinois until 2028.

Although the additional payment is positive for Illinois tobacco bond holders, prices on the $670 million securities are little changed as the muni market contends with near-record outflows.

Bloomberg Markets

By Martin Z Braun

May 4, 2022

Office of Management and Budget Issues Buy America Implementation Guidance: Nossaman

The Office of Management and Budget ("OMB") recently issued initial Buy America implementation guidance required by Sections 70901-52 of the Infrastructure Investment and Jobs Act (P.L. 117-58; "IIJA").

The Buy America preference applies to federally supported public infrastructure projects, including the structures, facilities and equipment for highway, transit, water and energy projects in the United States. Effective May 14, 2022, the Buy America preferences require that:

Continue reading.

By Alyn Shen, Shant Boyajian on 05.02.2022

Nossaman LLP

What Does the Dynamic Nature of Yield Curve Indicate?

In the last few weeks, many investors were alarmed by the "inverted yield curve," as for some, it indicates a financial recession being imminent in the near future. The yield curve movements and its inversion are two of the closely tracked phenomena by many fixed income investors.

The dynamic nature of the yield curve typically showcases how certain market forces and political decision making are impacting capital markets, and more importantly, the economy in general. From normal yield curve to flattened shape and then to some form of inversion are all indicative of the financial market conditions at a particular time – and, since it illustrates time/maturity related to the interest rates, investors watch the yield curve shapes very closely.

In this article, we will take a closer look at the different shapes of the yield curve and what the current yield curve indicate.

Continue reading.

municipalbonds.com

by Jayden Sangha

May 05, 2022

State Sales Tax Breadth and Reliance, Fiscal Year 2021.

Key Findings

- Sales taxes account for 29.52 percent of state tax revenue, but most sales taxes are imposed on narrow—and still-narrowing—bases, with average sales tax breadth of only 29.71 percent and a median of 35.72 percent.
- Sales tax bases range from 19.32 percent of personal income in Massachusetts to 93.89 percent in Hawaii; the Massachusetts base is extremely narrow, while the Hawaii base features significant tax pyramiding.
- Within states with a sales tax, the mean taxpayer cost of sales taxes is $1,131, or about $199 per

percentage point on the tax rate.
- An ideal sales tax is imposed on all final consumption, both goods and services, but excludes intermediate transactions to avoid tax pyramiding.
- Sales tax breadth has declined from a mean of 98 percent in 2000 to the current 29.52 percent, reflecting continued erosion that has largely been offset by an increase in the mean state rate from 5.16 to 6.00 percent over the period.
- The pandemic has yielded temporary fluctuations as the amount and composition of consumer expenditures has changed, though long-term sales tax trends remain highly visible in the data.

Continue reading.

Tax Foundation

by Jared Walczak

May 4, 2022

What Is a Zero-Coupon Bond?

Learn more about what zero-coupon bonds are, how they make money, and how they might fit into your portfolio.

Most bonds in the investment universe work by providing a stream of regular interest payments to the investor over the life of the bond. When a typical bond comes due — or when the bond reaches its maturity — the investor receives the face value of the bond, and the transaction formally ends.

Zero-coupon bonds are debt securities that are sold at deep discounts to face value. As their name indicates, they don't pay periodic interest payments, but they do reach full maturity at a certain point, and the bondholder then receives the face value of the bond, plus any accrued interest.

Understanding zero-coupon bonds

Zero-coupon bonds make money by being sold to investors at substantial discounts to face value. Zero-coupon bonds compensate for not paying any interest over the life of the bond by being available for far less than face value. Put another way, without a deep discount, zero-coupon bonds wouldn't be especially competitive.

Continue reading.

The Motley Fool

Sam Swenson, CFA, CPA

May 4, 2022

GASB Issues Omnibus Statement Addressing Wide Range of Practice Issues.

Norwalk, CT, May 9, 2022 — The Governmental Accounting Standards Board (GASB) today issued guidance addressing various accounting and financial reporting issues identified during the implementation and application of certain GASB pronouncements or during the due process on other pronouncements.

The issues covered by GASB Statement No. 99, *Omnibus 2022*, include:

- Accounting and financial reporting for exchange or exchange-like financial guarantees
- Certain derivative instruments that are neither hedging derivative instruments nor investment derivative instruments
- Clarification of certain provisions of:
  – Statement No. 34, *Basic Financial Statements—and Management's Discussion and Analysis—for State and Local Governments*
  – Statement No. 87, *Leases*
  – Statement No. 94, *Public-Private and Public-Public Partnership and Availability Payment Arrangements*
  – Statement No. 96, *Subscription-Based Information Technology Arrangements*
- Replacing the original deadline for using the London Interbank Offered Rate (LIBOR) as a benchmark interest rate for hedges of interest rate risk of taxable debt, with a deadline of when LIBOR ceases to be determined by the ICE Benchmark Administration using the methodology in place as of December 31, 2021
- Accounting for the distribution of benefits as part of the Supplemental Nutrition Assistance Program (SNAP)
- Disclosures related to nonmonetary transactions
- Pledges of future revenues when resources are not received by the pledging government
- Updating certain terminology for consistency with existing authoritative standards.

The requirements of Statement 99 that relate to the extension of the use of LIBOR, accounting for SNAP distributions, disclosures for nonmonetary transactions, pledges of future revenues by pledging governments, clarifications of certain provisions in Statement 34, and terminology updates are effective upon issuance. The requirements related to leases, PPPs, and SBITAs are effective for fiscal years beginning after June 15, 2022, and all reporting periods thereafter. The requirements related to financial guarantees and the other requirements related to derivative instruments are effective for fiscal years beginning after June 15, 2023, and all reporting periods thereafter. Earlier application is encouraged and is permitted by individual topic to the extent that all requirements associated with an individual topic are implemented simultaneously.

[Members-Only Discussion] Down the Due Diligence Rabbit Hole on 5/18

Join us for a panel discussion on NABL's 2022 report on Due Diligence in Primary Offerings on **Wednesday, May 18, 2022, 3:00pm-4:00pm ET / 12:00am – 1:00pm PT**.

"Due Diligence Considerations in Primary Offerings of Municipal Securities", published in January of this year, provides NABL members with tools for consideration when undertaking due diligence reviews for issuer and underwriter clients in connection with primary offerings of municipal securities, and, after establishing a working definition of due diligence, covers why, when, where, and how due diligence is undertaken. Panelists will walk through the Report and provide insight surrounding due diligence reviews, including lessons learned and "war stories" from deals gone awry.

Register by May 18, 2022 at 10:00am ET to join. The roundtable discussion is geared toward junior bond practitioners, and NABL invites attendees of its recent Essentials conference to come prepared with any burning questions left unanswered from the seminar in Denver. This session is a NABL-member benefit and not eligible for continuing legal education (CLE).

Click here to register.

Muni Carnage Could Create Opportunity.

Municipal bonds and the related exchange traded funds are languishing as interest rates rise, but a silver lining could materialize.

While the first four months of 2022 have been rough on munis, some market observers believe that rare opportunity could avail itself in this corner of the bond market. That could be a boon for an array of exchange traded funds, including the VanEck Vectors Muni Allocation ETF (MAAX).

“Relative to other fixed income investments, muni yields are attractive, too. One common metric to analyze the relative attractiveness of the muni market is the municipals over bonds (MOB) spread,” says Cooper Howard of Charles Schwab. “It’s a ratio of the yield on a AAA muni to that of a Treasury before considering the tax benefits that munis offer. Since the start of the year, the MOB spreads for most maturities have been steadily climbing and are now above their five-year averages.”

MAAX is a relevant consideration in terms of finding opportunity and value with muni bonds because the ETF’s 19 holdings are other ETFs and closed-end funds spread across varying credit qualities and durations.

Current MAAX components include the VanEck Vectors Long Muni ETF (MLN), the VanEck Vectors High Yield Muni ETF (HYD), and the VanEck Vectors Short High Yield Muni ETF (SHYD).

“Although prices have fallen, it’s largely due to rising interest rates and not credit concerns. As a result, we believe the risk of defaults in the muni market remains low,” adds Howard. “The ongoing economic recovery, combined with the multiple rounds of federal aid, have helped bolster most state and local governments’ finances. Tax revenues have surged and rainy day funds (a pool of money a state can use under certain circumstances) are also at record highs, according to the National Association of State Budget Officers. Generally, states have used rainy day funds to help counteract the negative impact of declining revenues.”

Translation: With prices down, yields up, and state and local finances mostly sturdy, some high-yield muni exposure could be warranted. With HYD, SHYD and other holdings, MAAX offers those credit opportunities, and the ETF sports a 30-day SEC yield of 2.74% — confirmation that investors are compensated for credit risk.

To that end, 68% of MAAX’s holdings carry investment-grade ratings, while only 9.58% have junk grades, indicating that credit risk is minimal with this fund.

ETF TRENDS

by TOM LYDON

MAY 2, 2022

Muni Audit Reporting Times Worsened Over Last Decade.

Municipal bond issuers took an average of 164 days from the close of their fiscal years to complete their comprehensive annual audits in 2020, up from 147 in 2009, a worsening trend that is beginning to affect issuers' credit ratings.

That's according to Merritt Research Service and the University of Illinois Chicago's Government Finance Research Center's new report comparing municipal bond issuers' audit times.

"In the interest of good governance and transparency and having adequate information to properly price these issues in the market, we felt that this is really important in terms of bringing attention to this issue," said Deborah Carroll, director of the Government Finance Research Center at the University of Illinois Chicago. "Unfortunately, the trend is going the wrong way."

Corporate bond issuers have median audit times of 60-90 days due to Securities and Exchange Commission requirements. Municipal bond issuers report audit times which are two to three times longer, averaging 140 to 160 days.

Late audits do weigh on ratings. S&P Global Ratings put New Orleans and 12 other local governments on a negative watch last week over failed filings.

"The withdrawal of the affected ratings could follow if we do not receive fiscal 2020 financial statements within 30 days," the agency said. "We consider the financial statements necessary to maintain and assess our ratings on these issuers. Accordingly, the ratings are now at risk of being withdrawn, preceded by any change to the rating we consider appropriate given available information."

If issuers provide their 2020 financial statements within 30 days, S&P said it would conduct a full review and take a rating action within 90 days of the negative watch action.

Both co-authors of the report stressed the timeliness of the report considering such recent actions by S&P.

"We think that's an appropriate action by the rating agencies and it's really needed from the marketplace itself in order to recognize that there's greater risk where there's not timely disclosure," said Rich Ciccarone, president of Merritt Research Services.

The report divides muni bond issuance into categories of revenue bonds, which includes hospitals and healthcare systems, community colleges, private higher education, public higher education, airports, retail electric, toll roads, water and sewer and wholesale electric. The report also includes government bonds, which are split up by cities, counties, dedicated tax, school districts and states and territories. All categories' audit times have increased in the period from 2009-2020.

The report cites community colleges as having the largest increase in median audit time, 24 days, but notes a potential cause in the significant growth in the number of issuers between 2009 and 2020, which increases the variation in audit completion times among individual issuers.

Issuers in the hospital and healthcare sector increased their median audit time by 10 days, water and sewer issuers by 9 days, and retail electric sector issuers increased by 8 days. Public higher education fared better, increasing a median of 1 day and toll road issuers increased by just 2 days in the period 2009-2020.

For what is designated governmental bond sectors, school districts increased their audit time by 22 days, counties increased by 16 days, the dedicated tax sector 11 days, cities by 10 days and states and territories worsened their audit time by 2 days.

But some audit times were affected significantly during the 2019-2020 period as a result of COVID-19, especially in the revenue bond category of health and higher education sectors.

"During this time, when staffs were short and people were becoming accustomed to remote work, we certainly expected audit times for all sectors to become slower," the report said.

But that isn't exactly how it turned out. Community colleges continued their lag in 2019-2020, worsening their median audit time by 13 days but issuers in public higher education increased their audit times by 5 days, followed by issuers of hospitals and healthcare systems which increased their reporting time by 4 days.

For government issuers during 2019-2020, issuers in the retail and wholesale electric and toll roads sectors maintain audit times that are considerably faster than all other sectors combined.

But states and territories are among the most affected by COVID-19, as the median audit time increased by 11 days between 2019 and 2020. The audit time for cities only increased by 2 days in the same time frame.

"Between 2019 and 2020 in most of the sectors, we do see an increase in audit times, as we would expect, because COVID-19 sort of screwed everything up for this time period," Carroll said. "But we're not seeing a huge increase in the timeliness of these audit completions."

But not all issuers wait years to complete their audits. The report also ranks the top 3 issuers in each category, as Port Authority of New York & New Jersey comes in first for airports, Sioux Falls, South Dakota comes in first for cities and Santa Barbara County, California wins for counties, all completing their audits in under 90 days.

"Generally speaking, that puts them very much on par with the private sector corporate bond issuers, which I think is a really great sign," Carroll said.

By Connor Hussey

BY SOURCEMEDIA | MUNICIPAL | 05/03/22 02:12 PM EDT

Which Municipal Bond Issuers Have the Speediest Audit Times?

Compared with corporate bond issuers, municipal bond issuers typically take two to three times longer — 140 to 160 days — to complete their audits between fiscal year-end and the date of the Independent Auditor's Report signature, according to data research from Merritt Research Services.

This year the Government Finance Research Center at the University of Illinois Chicago partnered with Merritt, which has been tracking and reporting the time it takes for municipal bond-related audits to be completed and signed after fiscal year-end since 2007, to develop its latest analysis.

The new report includes an overview of audit time trends since 2009 and identifies the timeliest audits for the 2020 fiscal year, grouped by municipal credit sector. The analysis covers the nearly

10,000 municipal bond audits in the Merritt database found in CreditScope.

Median audit times for municipal bond issuers have generally been increasing since 2009, especially between 2019 and 2020, most likely due to the onset of the COVID-19 pandemic.

Among the revenue bond sectors, wholesale electric, hospitals and health care systems, and private higher education had the fastest audit times for FY2020. For the governmental bond sectors, school districts and dedicated tax had the fastest audit times in FY2020.

Revenue bond sector issuers are generally faster in completing their audits than issuers in the governmental bond sectors, the analysis found.

Among the top performers in FY2020, all issuers except for states and territories completed their audits in 90 days or less, putting them on par with corporate bond issuers.

Interest groups ranging from bond investors to government watchdogs to regulators have regularly called for faster audit times from municipal bond issuers, said Deborah Carroll, director of the Government Finance Research Center at UIC.

"Timely audit reporting is essential for credit evaluation and proper pricing in the municipal bond market and is an important indicator of good governance and stewardship," said Carroll, UIC associate professor of public administration.

While there are several newcomers highlighted in this year's report, many of the top performers in FY2020 were also recognized in FY2019 suggesting consistent leadership in debt management, according to Richard A. Ciccarone, president of Merritt Research Services, an Investortools Company.

"All of the 2020 audit time exemplars and audit firms deserve commendation, particularly those that remained among the fastest to complete their audits from last year," Ciccarone said.

University of Illinois Chicago

3-May-2022

Barclays Says to Buy Disney District Munis Amid DeSantis Feud.

- **If dissolution goes through, investors could see 'upside'**
- **Reedy Creek has about $1 billion of outstanding muni debt**

The municipal bonds caught in the middle of a feud between the Walt Disney Co. and Florida Governor Ron DeSantis look attractive given the securities' protections for bondholders, according to strategists at Barclays Plc.

The Reedy Creek Improvement District, a special district in central Florida that encompasses the Walt Disney World Resort and theme parks, has racked up about $1 billion of outstanding municipal debt over the years — and now those bonds have been thrown into limbo amid the fight. In April, DeSantis signed a law that would dissolve the district in 2023 barring further legislative action.

Some of the investment-grade bonds have cheapened since DeSantis announced that he wanted the legislature to consider ending the special privileges that Disney enjoys in the state through the special district that was created in 1967. Debt due in 2026 traded at a spread of 86 basis points on Friday, compared to as little as 30 basis points in early April.

Investors and analysts have been trying to figure out how Florida's unusual move to dissolve the district will play out in the municipal-bond market. Credit-rating companies have noted the uncertainty surrounding the situation, and have held off on downgrading the bonds. Research firm Municipal Market Analytics said last week that it's a buying opportunity, and Barclays is now voicing a similar view.

Strategists at Barclays say the Reedy Creek bonds are protected by the state of Florida's pledge not to impair the debt for the life of the obligations. The security on the bonds is "expressly contingent" on the state's pledge not to limit or alter Reedy Creek's right to own projects or collect taxes, which constitutes a non-impairment clause, they said.

"If the dissolution goes through, we could see upside to bonds from current levels; if it does not, we would not expect much downside; hence, this risk-reward seems attractive to us," strategists Clare Pickering, Mayur Patel and Mikhail Foux wrote in a note to clients published Friday.

There is potential for upside in the debt because the investor protections mean that the bonds may have to defeased, or paid off, in order for the district's dissolution to go through, according to Barclays. There are several ways of defeasing outstanding bonds including a tender, make-whole or refunding, the strategists wrote.

"Most options will likely result in price appreciation of outstanding bonds from current levels," they said.

The new Florida law doesn't specifically outline a succession plan for the district's responsibilities and its debt. Reedy Creek told bondholders that it expects to explore options while continuing to pay debt service, according to an April regulatory filing. The filing noted Florida's pledge to bondholders.

"We find the district's bonds are attractive at current levels and recommend buying RCID taxable and tax-exempt bonds," the Barclays strategists wrote.

Bloomberg Markets

By Danielle Moran

May 6, 2022

Kansas City Bonds And American Dream Mall (Radio)

Joe Mysak, Editor of the Bloomberg Brief: Municipal Markets, discusses the latest news from the municipal bond market. Hosted by Paul Sweeney and Matt Miller.

Listen to audio.

Bloomberg Radio

May 06, 2022

TAX - NORTH DAKOTA

[Hudye Group LP v. Ward County Board of Commissioners]

Supreme Court of North Dakota - April 28, 2022 - N.W.2d - 2022 WL 1260305 - 2022 ND 83

Taxpayer sought review of decision of county board of commissioners denying taxpayer's applications for abatement or refund of taxes.

The District Court affirmed. Taxpayer appealed.

The Supreme Court held that taxpayer's mailing of his applications to city assessor's office did not constitute filing of the applications in the county auditor's office, under statute requiring such applications to be filed in county auditor's office by particular date in order to be timely; city assessor's office and the county auditor's office were not the same.

TAX - MARYLAND

[Mayor and City Council of Baltimore v. Thornton Mellon, LLC]

Court of Appeals of Maryland - April 28, 2022 - A.3d - 2022 WL 1260300

Purchaser of residential property at tax sale filed complaint to foreclose right of redemption. After judgment foreclosing the right of redemption was entered, purchaser moved to substitute its assignee as the plaintiff and for order directing the city to issue a tax deed to its assignee, and city moved to strike the substitution and to strike, or alternatively, respond to motion for order directing it to issue a tax deed to assignee.

The Circuit Court granted purchaser's motions and denied city's motions. City appealed. The Court of Special Appeals affirmed. City petitioned for writ of certiorari, which was granted.

The Court of Appeals held that:

- Tax-sale statute providing that, in an action to foreclose the right of redemption, "[i]f the court finds for the plaintiff, the judgment vests in the plaintiff an absolute and indefeasible title in fee simple," when read in context of related statutory provisions including the requirement that the judgment order execution of a deed, does not mean that the judgment itself vests fee simple title in the certificate holder but rather that the certificate holder acquires equitable title upon the entry of the judgment and that the deed conveys legal title;
- Entry of judgment foreclosing owner's right of redemption does not extinguish the tax certificate; and
- A judgment foreclosing owner's right of redemption, following tax sale, is assignable.

[Green Meets Munis in Brand New MBNE.]

Experienced fixed income investors know about municipal bonds. That's a given. More recently, many have been getting wise to green bonds, or debt issued to fund environmentally friendly projects.

Those concepts meet in the SPDR Nuveen Municipal Bond ESG ETF (MBNE), which debuted in April. The actively managed MBNE is sub-advised by Nuveen. MBNE, which attempts to beat the Bloomberg 3-15 Year Blend (2-17) Municipal Bond Index, is off to an impressive start, as highlighted by $32.29 million in assets under management in just about a month on the market.

That's an encouraging sign for multiple reasons, not the least of which is the point that bonds of nearly all styles are struggling this year due to interest rate tightening by the Federal Reserve. Importantly, MBNE's impressive start is relevant because it shows that there's appetite for the marriage of green bonds and municipal debt.

"The municipal bond market saw another record year for sustainable bonds in 2021, with $46 billion in issuance across the three categories of green, sustainability, and social bonds. This was an increase over the $27 billion in ESG-labeled issuance in 2020," writes Parametric's Lauren Kashmanian. "Based on current growth projections for labeled bonds in the municipal bond market, issuance could grow to $60 billion this year. To put these numbers in perspective, sustainable-labeled issuance in the municipal market totaled 9.7% of overall municipal bond issuance in 2021, up from a 5.5% share in 2020. This could increase to about 13% of total projected annual issuance for 2022."

Home to 94 bonds, MBNE sports an option-adjusted duration of just over five years, meaning that this is an intermediate-term ETF. MBNE's current yield is 4.38%, according to issuer data. That's arguably staggering by the standards of traditional muni bond funds, and it far exceeds what investors earn on 10-year Treasuries.

While MBNE only holds 94 bonds, that number could be due to the fund being actively managed and the growth in green muni space.

"The green bond category covers a range of issuers and sectors that continues to expand, including sustainable building projects, wastewater management, renewable energy, climate-adaptive infrastructure, and clean mass transit," adds Kashmanian.

Last year, green munis accounted for 47% of overall sustainable bond issuance. Spotting sources of growth for green municipal bonds isn't difficult.

"Green buildings and water-related improvements represented the two largest shares of green muni bond issuance in 2021, each at 33%, followed by public transportation at 20%," concludes Kashmanian.

ETF DATABASE

BY Tom Lydon

May 09, 2022

Seventh Circuit Provides Rare Guidance On "Statutory Liens" - Cadwalader

On April 21, 2022, the U.S. Circuit Court of Appeals for the Seventh Circuit issued a decision interpreting the Bankruptcy Code's definitions of "statutory lien" and "judicial lien," holding that a lien imposed by the Chicago Municipal Code was "judicial" rather than "statutory" because it arose partly as the result of a "quasi-judicial" process rather than "solely by force of a statute." *In the*

Matter of Mance, No. 21-1355, 2022 WL 1182416 (7th Cir. April 21, 2022). In the Seventh Circuit's view, the fact that a "quasi-judicial" process functioned as an "essential prerequisite" to the imposition of the lien and determined the amount of the lien was sufficient for it to qualify as a "judicial" rather than a "statutory lien," notwithstanding that the lien was ultimately imposed automatically by operation of a municipal ordinance rather than directly by a court order.

Statutory liens are an important tool in municipal finance, because unlike some other types of liens, they are not cut off by Section 552 of the Bankruptcy Code in the event of a municipal issuer's bankruptcy.1 Whether a municipal investor will qualify as a "secured" or "unsecured" creditor in a municipal bankruptcy therefore may depend on whether that investor's lien qualifies as a "statutory lien." Notwithstanding the importance of "statutory liens" to municipal finance, however, judicial decisions on the nature of "statutory liens" are relatively rare, particularly at the federal appellate court level. The Seventh Circuit's *Mance* decision now adds to the relatively small library of appellate court decisions that can offer issuers and investors guidance on the nature of "statutory liens."

Background

The *Mance* appeal arose out of a long-running series of cases—including the U.S. Supreme Court's 2021 decision in *Chicago v. Fulton*2 —in which the City of Chicago (the "City") impounded motor vehicles for various parking- and driving-related infractions. The Chicago Municipal Code provides that any vehicles so impounded "shall be subject to a possessory lien in favor of the City in the amount required to obtain release of the vehicle." M.C.C. § 9-92-080(f). The issue in this particular appeal was whether the City's possessory lien on a vehicle that it had impounded should be deemed a "judicial lien" or a "statutory lien" under the Bankruptcy Code. If the lien was found to be "judicial" rather than "statutory," then it would be avoidable pursuant to a provision of the Bankruptcy Code authorizing individual debtors to avoid liens on motor vehicles. See 11 U.S.C. §§ 522(f), (d)(2).

Definitions and Examples of "Statutory" and "Judicial" Liens

The Seventh Circuit concluded that the lien under the Chicago Municipal Code was "judicial," not "statutory." In doing so, it applied the Bankruptcy Code's definitions of "judicial lien" and "statutory lien."

Specifically, the Bankruptcy Code defines a "judicial lien" as one "obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding." 11 U.S.C. § 101(36). By contrast, a "statutory lien" is defined as a lien "arising solely by force of a statute on specified circumstances or conditions . . . , but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute." 11 U.S.C. § 101(53). The Seventh Circuit noted that, under these definitions, the classification of a lien depends on the events that must occur before the lien attaches, with a "statutory lien" arising "solely by force of a statute," and a "judicial lien" resulting from some type of "legal or equitable process or proceeding."

As an example of a "statutory lien," the Seventh Circuit cited a mechanics' lien, which by statute attaches to improved property once payment for a mechanic's work on the property is due and goes unpaid. Such a mechanics' lien may require a filing with a county clerk in order to be perfected, but this filing requirement, in the Seventh Circuit's view, did not constitute the type of "legal or equitable process or proceeding" that would convert the lien from a "statutory" to a "judicial lien."

By contrast, the "textbook" example of a "judicial lien," in the Seventh Circuit's view, was a court-ordered money judgment, where a court must enter judgment for the winning creditor before the lien can arise.

"Quasi-Judicial" Proceedings Give Rise to a Judicial Lien

With these definitions and examples in mind, the Seventh Circuit next turned to the specific procedures required in order for the City to obtain a lien on an impounded vehicle. The Court acknowledged that these procedures fell "somewhere in between" the easy examples of a mechanics' lien and a money judgment, but ultimately determined that the "quasi-judicial" nature of the required procedures placed the impoundment lien on the "judicial" rather than the "statutory" side of the line.

Among other things, before an impoundment lien can be imposed, the Chicago Municipal Code requires the underlying traffic violations to undergo an administrative process through which they become "final determinations of liability." As part of this administrative process, the vehicle owner can contest the charged violation in an in-person proceeding or by writing. If the vehicle owner is unsuccessful in this first phase of the process, the vehicle owner can also file an appeal under the Illinois Administrative Review Law. Only after the owner has lost the appeal does the traffic violation become a "final determination."

Following a "final determination," more legal process is required in order for the City to impound the vehicle if the fines go unpaid. The City must issue a notice to the vehicle owner, and the owner has the right to petition for a hearing to prove that she is not liable for the fines. Only after the owner failed to prevail at such a hearing would the City be able to impound the vehicle, at which point the impoundment lien would attach.

Notably, the Seventh Circuit acknowledged that the last step of lien attachment was "automatic," with the lien attaching automatically by operation of the ordinance upon impoundment of the vehicle, "without further action by a judge or quasi-judicial official." The City therefore had some basis to argue that the impoundment lien was a "statutory lien." The Seventh Circuit concluded, however, that it could not simply "ignore all the prior legal process that must occur before the City's possessory lien arises." In light of this prior legal process, the Court concluded that the impoundment lien did not arise "solely by statute," and instead was dependent on a "legal . . . process or proceeding." Therefore, the lien was a "judicial" rather than a "statutory lien."

Distinguishing the Third Circuit's *Schick* Case

In response to an argument by the City that the position ultimately adopted by the Seventh Circuit would create a circuit split, the Seventh Circuit attempted to distinguish the Third Circuit's decision in *In re Schick*, 418 F.3d 321 (3d Cir. 2005). The *Schick* case had some superficial similarities to *Mance*, because it addressed a New Jersey statute that imposed a lien on a motorist's property in the event the motorist failed to pay certain surcharges related to underlying traffic violations, including for reaching a certain number of violation points.

The Seventh Circuit nonetheless identified what it viewed as a "critical difference" between the processes leading to the liens in *Schick* and in *Mance*. Specifically, the New Jersey statute in *Schick* pertained only to surcharges, not to the underlying vehicle violations that were subject to judicial proceedings. The Third Circuit therefore concluded that "the underlying traffic proceeding charging the driver with a motor vehicle offense [was] too remote to constitute the required judicial process or proceeding necessary to find a judicial lien." On that basis, the Third Circuit concluded that the resulting lien was a "statutory lien."

In *Mance*, by contrast, the Seventh Circuit concluded that the statutory structure did not separate the underlying vehicle violation that was subject to quasi-judicial proceedings from any related fees (analogous to the "surcharges" at issue in *Schick*). Indeed, in *Mance* the amount of the lien itself was determined in the underlying quasi-judicial proceedings, and this lien amount included additional fees and penalties incurred in the course of those proceedings, whereas in *Schick* the amount of the surcharges was dictated separately by "statute and administrative regulations" and not determined by the underlying proceeding against the driver. The Seventh Circuit therefore concluded that in *Mance*, unlike in *Schick*, the quasi-judicial proceedings were "essential prerequisites for a valid impoundment lien," and were "not too far removed from the impoundment lien" for it to qualify as a "judicial lien."

The Seventh Circuit's method of distinguishing *Schick* suggests that, in determining whether a particular lien is "statutory" or "judicial," it may not be sufficient to perform a binary analysis of whether or not judicial proceedings play a role in the creation of the lien. Instead, it is necessary to analyze the precise relationship between any judicial proceedings and the creation of the lien, including how far "removed" the judicial proceedings are from the ultimate creation of the lien.

It will be interesting to see whether the City accepts the Seventh Circuit's attempt to distinguish *Mance* from *Schick*, or instead seeks review by the U.S. Supreme Court on the theory that *Mance* has created a circuit split between the Seventh and Third Circuits.

Tax Liens as Statutory Liens

In response to another argument by the City, the Seventh Circuit sought to reconcile its interpretation of the distinction between "judicial" and "statutory liens" with legislative history indicating that Congress intended for tax liens to qualify as "statutory liens." The City pointed out that federal tax liens result from judicial and quasi-judicial processes, such that under the Seventh Circuit's analysis in *Mance* they should technically qualify as "judicial" rather than "statutory liens," contrary to Congressional intent.

In a somewhat puzzling analysis, the Seventh Circuit conceded that "[t]ax liens are unquestionably statutory," but then suggested that the status of tax liens as statutory was not really a function of the definitions in the Bankruptcy Code and instead resulted from Congress's prerogative to "single out a particular category of liens and classify it." The Seventh Circuit's analysis on this point is arguably in tension with the general principle that statutory text should control over legislative history, because Congress "singled out" tax liens and "classified" them as statutory only in the legislative history. As such, the Seventh Circuit's interpretation of the Bankruptcy Code's statutory definitions of "judicial lien" and "statutory lien" should arguably override that Congressional classification. Given that the status of tax liens was not directly at issue in *Mance*, however, the Seventh Circuit's statements on this issue are arguably not binding, and the exact status of tax liens in light of the *Mance* analysis may need to await a future decision.

Takeaways

In bankruptcy, holding a "statutory lien" can make all the difference between being a secured creditor entitled to payment in full and being an unsecured creditor entitled only to pennies on the dollar (if that). And yet, as *Mance* illustrates, whether a particular lien qualifies as a "statutory lien" can be a surprisingly fact-intensive question, notwithstanding the deceptive simplicity of the Bankruptcy Code's definitions. In particular, the fact that the final step in imposing the lien occurs by operation of statute may not be sufficient for the lien to qualify as a "statutory lien" if judicial or quasi-judicial proceedings preceded this final, statutory step.

Mance therefore serves as a reminder that municipal issuers and investors alike should engage in a careful and nuanced analysis of exactly what type of lien is likely to be created by a particular transaction before issuing or investing in municipal debt. *Mance* helpfully provides some additional guidance on this issue, but is likely far from the final word on the matter.

FOOTNOTES

1 See 11 U.S.C. § 552(a) ("[P]roperty acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case").

2 See Ingrid Bagby, Michele C. Maman, Casey John Servais, & Eric G. Waxman, Stand Pat, Don't Act: U.S. Supreme Court Holds that Mere Retention of Debtor Property Does Not Violate Bankruptcy Code Section 362(a)(3), Pratt's Journal of Bankruptcy Law (April/May 2021), available at https://www.cadwalader.com/uploads/media/Pratt_reprint_cadwalader.pdf.

Tuesday, May 3, 2022

Retail Investors Tiptoe Back Into Muni Bonds as Yields Beckon.

- **Number of daily trades is rising, a sign of retail activity**
- **Buyers may be lured by higher yields after muni market selloff**

Retail investors are showing signs of tiptoeing back into the $4 trillion tax-free bond market by one measure, signaling that key holders of the debt may be looking for bargains.

The number of daily trades surpassed 60,000 on a few days in late April, levels last seen during the 2020 pandemic-induced selloff. In March, that figure averaged around 42,600, according to trade data from the Municipal Securities Rulemaking Board.

The increase in the number of daily trades exceeds the growth in the total dollar value of trades. That suggests that more trades are of smaller size, typically a sign of retail investors getting more active.

To the extent individual investors are buying, they're doing so after muni bonds have been getting weaker all year. Average yields are about 3.2%, compared with 1.1% at the end of last year, according to Bloomberg index data. Excluding a brief time in the early part of the pandemic, current levels are the highest in years. And for some securities, yields can be even higher, which is attracting investor interest.

"Tax-exempt yields above a 4% have caused people to re-engage in the asset class," said Christopher Lee, head of municipal-bond sales for Wells Fargo's Corporate & Investment Bank & Co. He said the rising number of trades is a "gauge of retail engagement."

The number of muni trades per day has surged, a sign of retail activity

If more retail investors are buying, they're still only taking baby steps. Investors have pulled money out of muni bond mutual funds for 11 straight weeks through the week ended Wednesday, according to Refinitiv Lipper US Fund Flows data.

“We have been seeing a lot more interest from retail investors lately,” Nisha Patel, a managing director at Parametric Portfolio Associates LLC, said. “While yields may go higher due to pressure from market outflows, I think we are in an opportunistic range of yields already,” she said. “These are yields that the market has not seen since 2018, excluding the start of the pandemic.”

While historically retail investors were the biggest holders of tax-free bonds, institutional investors have been acquiring a growing share of the market in recent years. Households and nonprofits directly held about 28% of muni bonds at the end of 2020, according to Citigroup Inc.

Max Christiana, a portfolio manager for Belle Haven Investments, said it’s hard to know when the market has reached an absolute bottom, but it doesn’t make sense to wait.

“It would be wise for investors to lock in yield during this buying period, rather than arrive at the party too late when the market normalizes,” Christiana said.

Bloomberg Markets

By Skylar Woodhouse and Amanda Albright

May 2, 2022

American Dream Mega Mall Lost $60 Million Last Year.

- **Pandemic stunts New Jersey mall’s revenue from attractions**
- **Mall had $173 million revenue and $232 million expenses**

American Dream, the struggling megamall near the New Jersey Turnpike, lost about $60 million in 2021, according to a securities filing.

The 3.5-million-square-foot shopping and entertainment complex, home to an indoor ski slope, amusement park and water park, generated about $173 million in revenue, mainly from attractions and rent. Expenses totaled $232.4 million, according to a three-page unaudited financial report.

American Dream was walloped by the pandemic as successive waves of the coronavirus discouraged shoppers and tourists. The mall’s ski hill was hit by a fire in September that also disrupted dozens of shops and eateries. The mall was 80% leased as of April 1, according to a separate filing. The ski slope plans to reopen Memorial Day weekend.

Mall owner Triple Five Group is seeking a four-year extension to repay $1.7 billion in construction financing, Bloomberg News has reported.

American Dream last year had sales of about $305 million, or 15% of the $2 billion that a 2017 forecast projected it would bring in during its first year of operations. In addition to the construction loans, the mall has about $290 million of sales-tax supported municipal-bonds and $800 million of municipal-debt backed by payments in lieu of property taxes.

The mall reported $2.6 billion in total liabilities and about $500 million in equity.

Bloomberg Markets

By Martin Z Braun

May 3, 2022

[BlackRock's Carney: Munis to Hold Well Amid Rising Rates]

Sean Carney, BlackRock's head of municipal strategy, says municipal bonds will "hold in well" as the Federal Reserve raises rates. He speaks with Taylor Riggs on "Bloomberg Markets: The Close."

Watch video.

Bloomberg Markets: The Close

May 3rd, 2022

Financial Accounting Foundation Board of Trustees: Notice of Meeting

Meeting Notice

05/03/22

Puzzling Pieces: Component Unity Identification, Classification, Disclosure, and Display - GFOA

Although the basic shape of the financial reporting entity for state and local governments has been around for nearly 30 years, the Governmental Accounting Standards Board (GASB) has made many incremental changes over time. Most recently, GASB Statements No. 84, *Fiduciary Activities*, No. 90, *Majority Equity Interests*, and No. 97, *Certain Component Unit Criteria*, and Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans have introduced such changes. So, it is not terribly surprising that governments sometimes struggle to determine which entities should be included in a set of basic financial statements prepared in accordance with generally accepted accounting principles (GAAP), how they should be reported, and how both determinations should be explained.

DOWNLOAD

Government Finance Officers of America

Publication date: April 2022

Author: Michele Mark Levine

Bonds Are Starting to Look Attractive. Investors Should Be Careful in Chasing

Yield.

With the Federal Reserve aggressively raising interest rates, bonds' yields have been climbing (and their prices falling). Pros are mixed on when is the time to buy.

As bond yields remained ultralow for many years, dividend stocks didn't have a lot of competition for income investors' attention. But now, as the Federal Reserve continues to raise interest rates and tighten monetary policy to fight raging inflation, the competitive landscape has changed dramatically and swiftly.

Investors, however, need to use caution before they start chasing fast-rising bond yields. The 10-year U.S. Treasury note's yield was shade below 3% this week, up from about 1.5% at the end of 2021. Bond yields and prices move in opposite directions—in this case, pressuring prices in various fixed-income classes such as high yield, investment-grade corporates, and municipals ahead of what's expected to be more rate hikes and tightening by the Fed.

Still, "for the first time in over a year, we are starting to see interest from our client base in allocating to fixed income," says Robert Michele, chief investment officer at J.P. Morgan Global Fixed Income, striking a more upbeat view about bond-investing prospects at current levels.

Institutional investors such as pension funds and insurers, he says, have shown interest in investment-grade corporates yielding in the 4.5% neighborhood and even around 5% with longer maturities, among other assets.

Some individual investors, Michele adds, have been putting money into municipal bonds, whose yields have also risen nicely this year, as well as some taxable bonds.

Michele says that market expectations for the federal-funds rate—the central bank's short-term interest rate benchmark—indicate that it will be at roughly 3.25% a year from now, compared with the current target of 0.25% to 0.5%. (The Fed is expected to boost that Wednesday by a half percentage point.)

Michele believes that short-term rates of 3.25% a year from now—or in that vicinity—makes sense, and is something that bond investors can live with. "It feels like we've put in a bottom in terms of bond prices for the next six-to-nine months," he says.

Still, the bond market is fraught with crosscurrents.

Tom Tzitzouris, head of fixed-income research at Strategas, says that while sophisticated investors can trade in and out of Treasuries as yields and prices bounce around, "for the long-term investor, I don't see this as an entry point."

He wants to see the 10-year Treasury note's yield to move up to around 3.25%, or even a little higher. "I do believe the 10s can get up there," Tzitzouris says. "I don't know if we're going to get up there next week or next month or next year. [But] that would be a good point for a buy-and-hold investor" to jump into bonds.

Tzitzouris adds that he doesn't see much value in the 10-year at its recent yield range because it's "below even the most optimistically low inflation expectation over the next decade of 3%."

Michele is a little more upbeat about fixed-income opportunities, including investment-grade corporate bonds. "There's still a high degree of confidence that the Fed has enough tools in this cycle to engineer a soft landing," he says, adding that corporate profitability has been strong.

He also likes municipal debt, which “might be the one part of market that’s is the most underappreciated.” Ten-year AAA municipal bonds recently had taxable equivalent yields of roughly 4%, well above where they were at the beginning of the year.

Barron’s

By Lawrence C. Strauss

May 4, 2022 10:30 am ET

- Easy Muni Money Vanishes and Issuers Are Paying Up.
- Some States’ Anti-ESG Push Garners Support In Congress.
- West Virginia Blasts S&P ESG Scoring as ‘Politically Subjective’
- Fitch: Florida’s Reedy Creek Dissolution Bill Heightens Bondholder Uncertainty
- Florida’s $1 Billion Disney Question.
- And finally, Let He Who Is Without Psychosis Cast The First Table Leg is brought to us. this week by *Ghodsee v. City of Kent*, in which a mother called the police to report that her son “was not taking his medication, was ‘agitated’ and ‘delusional.'” We were about to say something like, “Oh, bless that poor man” when it occurred to us that his condition rather accurately describes Your Editor’s typical Tuesday afternoon. We did, however, take some comfort in the fact that he has not yet, “pointed what appeared to be a table leg at them like a gun.” Yet.

INSURANCE - FLORIDA

White v. Ascendant Commercial Insurance, Inc.

District Court of Appeal of Florida, Third District - March 30, 2022 - So.3d - 2022 WL 945497 - 47 Fla. L. Weekly D774

Passenger, who was injured in automobile accident with school board’s bus while riding in his employer’s work vehicle, brought action against school board and his employer’s liability insurer.

After passenger settled with school board for $175,000 and school board was dismissed with prejudice, passenger sought to recover uninsured motorist (UM) benefits from his employer’s insurer. The Circuit Court granted insurer’s motion for summary judgment. Passenger appealed.

The District Court of Appeal held that:

- School board was not self-insured government entity, for purposes of being classified as uninsured or underinsured;
- Passenger did not exhaust school board’s liability insurance policy limits, and, thus, UM coverage under employer’s insurance policy was not triggered; and
- Trial court could make determination that school board was not underinsured without jury first determining passenger’s total damages.

School board was not self-insured government entity, for purposes of being classified as uninsured or underinsured under uninsured motorist (UM) statute, with regard to accident involving school board bus; school board regularly paid premiums to insurance company for liability coverage, school board’s $200,000 retained limit did not render it a self-insurer, and insurance policy plainly indicated that school board was not self-insured.

Passenger, who was injured in automobile accident with school board's bus while riding in his employer's work vehicle, did not exhaust school board's liability insurance policy limits, and, thus, uninsured motorist (UM) coverage under employer's insurance policy was not triggered; school board's insurance policy provided limit of $200,000, passenger settled with school board for $175,000, and UM coverage under employer's policy was only triggered when tortfeasor's insurance coverage was exhausted through payment of judgments or settlements.

Trial court could make determination that school board was not underinsured, with regard to incident in which passenger was injured in automobile accident with school board's bus while riding in his employer's work vehicle, based on amount of passenger's settlement agreement with school board, without needing jury to first determine passenger's total damages, in passenger's action against his employer's insurer to recover uninsured motorist (UM) coverage; it was trial court's proper function to make the initial determination of law as to whether UM coverage was available.

MUNICIPAL CORPORATIONS - LOUISIANA

In re City of St. Martinville

Court of Appeal of Louisiana, Third Circuit - March 23, 2022 - So.3d - 2022 WL 853866 - 2021-700 (La.App. 3 Cir. 3/23/22)

After mayor vetoed ordinance passed by city council amending its special legislative charter to convert mayoral position from full-time to part-time, city filed petition for declaratory judgment, seeking judgment declaring that mayor was precluded from vetoing actions taken by city council.

Following hearing, the District Court, the Judicial District granted declaratory judgment in favor of city. Mayor appealed.

The Court of Appeal held that:

- Mayor had power to veto actions of city council, and
- City, rather than mayor, was responsible for costs associated with action.

Mayor of city that had adopted special legislative charter had power to veto actions of city council as provided in statute specifying that Lawrason Act applied if city charter of municipality governed by special legislative charter was silent on a matter; while Act previously only applied to municipalities not governed by special legislative charter, change to existing law made it clear that distinction existed between a charter being silent on an issue versus conflicting with Act by specifying the Act applied when charter was silent, and city's special legislative charter was silent on the issue of veto.

City that had adopted special legislative charter, rather than mayor, was responsible for costs associated with declaratory judgment action filed by city seeking judgment declaring that mayor was precluded from vetoing actions taken by city council; city instituted litigation and named mayor as a person of interest, and mayor responded to suit in her capacity as mayor for the city.

PUBLIC UTILITIES - NORTH CAROLINA

Daedalus, LLC v. City of Charlotte

Court of Appeals of North Carolina - April 5, 2022 - S.E.2d - 2022-NCCOA-203 - 2022 WL 1009836

Developer brought action against city, alleging that city's collection of sewage and water capacity fees as mandatory precondition of connecting developer's existing water and sewer infrastructure to city's water and sewer systems constituted an unlawful ultra vires action.

The Superior Court partially granted developer's summary judgment motion, ruling that city's collection of capacity fees were ultra vires, granted developer's motion to amend order to correct clerical error, and granted city's motion for certification of judgment by issuing a second amended order stating that the order was certified for appeal.
City appealed.

The Court of Appeals held that:

- Trial court did not properly certify interlocutory order for appeal;
- Interlocutory order did not compel immediate payment of a significant amount of money;
- Court of Appeals would exercise its discretion to grant city's petition for writ of certiorari to reach merits of city's appeal of interlocutory order; and
- City's collection of fees was ultra vires.

Sewage and water capacity fees charged to developer by city were charged for future discretionary spending and not for contemporaneous use of system or for services furnished, as required by version of statute in effect at time, and thus city's collection of fees was ultra vires, although city collected fees at time user requested service and not at time property owner sought building approval and fees were used to reserve specific capacity space; fees were charged to pay for capacity costs associated with serving new growth, fees were paid at time of application for new service, service connection fees consisted of tapping fee and capacity fee, and funds from collected fees were deposited into city's general water and sewer fund that carried over time to fund future operations.

DEVELOPMENT FEES - NORTH CAROLINA

TAC Stafford, LLC v. Town of Mooresville

Court of Appeals of North Carolina - April 5, 2022 - S.E.2d - 2022-NCCOA-217 - 2022 WL 1009481

Real estate developer brought action against town alleging inverse condemnation, refund of illegally exacted fees, and breach of contract, and further seeking declaratory, injunctive, and mandamus relief in connection with town's requirement that developer make off-site improvements as condition of development approval.

The Superior Court granted developer's motion for summary judgment and petition for writ of mandamus, denied town's motion for summary judgment, and reserved determination of financial issues. Town appealed and moved to stay or enjoin execution or enforcement of the order and writ of mandamus. The same Court subsequently granted developer's motion for attorney fees and costs, granted in part developer's motion for reimbursement of expenditures, and dismissed developer's remaining claims. Town and developer appealed.

The Court of Appeals held that:

- Town lacked statutory authority to withhold issuance of certificates of occupancy or other development approvals for subdivision or to condition such approvals on completion of off-site improvements;
- Real estate developer was entitled to award of mandatory attorney fees;
- As matter of apparent first impression, funds paid by developer to entities other than town were not “exactions” under statute requiring municipalities to return illegally exacted funds with interest;
- Remand was required for trial court to conduct additional proceedings to determine how much developer was entitled to recover from town; and
- Issuance of writ of mandamus rendered moot all other claims by developer against town.

IMMUNITY - WASHINGTON

Ghodsee v. City of Kent

Court of Appeals of Washington, Division 1 - April 18, 2022 - P.3d - 2022 WL 1133772

Detainee, who had been shot by county police officer and detained pursuant to Involuntary Treatment Act, and detainee’s mother brought negligence action against city and county.

The Superior Court granted summary judgment in favor of city and county. Detainee appealed.

The Court of Appeals held that:

- Issue of whether county owed duty to detainee pursuant to special relationship exception to public duty doctrine was properly before court;
- Designated mental health professionals (DMHP) did not have definite, established, and continued relationship with detainee;
- Language of non-emergency detention (NED) order did not create “take charge” duty;
- Police officers did not owe detainee duty to detain him more swiftly; and
- City and county were entitled to statutory immunity.

City and county were entitled to statutory immunity for actions with regard to decision to detain detainee pursuant to Involuntary Treatment Act, in negligence action brought by detainee and mother against city and county; statute plainly provided immunity for actions, as well as decision-making, taken related to decision regarding whether to detain person for evaluation and treatment, and detainee did not demonstrate that either city or county owed him individualized duty of care as matter of law, as necessary to establish gross negligence.

Fitch: Ransomware a Growing Cyber Risk for US Corporates, Financials, Govt

Fitch Ratings-New York/Chicago-27 April 2022: The frequency, severity and sophistication of ransomware attacks in the U.S. rose dramatically in 2021 from the prior year, a trend that is expected to continue as long as profit incentives remain high and outweigh perceived risks of criminal prosecution. While Fitch has not taken credit rating actions in any sector from a ransomware attack, risks are increasingly negative for affected issuers due to rising ransom costs amid increasingly effective extortion techniques, and the increasingly diverse proliferation of attacks given the interdependency of systems and businesses across the supply chain.

In 2021, there were 421.5 mil. attempted ransomware attacks in the U.S. and 623.3 mil. globally, up 98% and 105% YoY, respectively, according to a March 2022 report from the Senate Committee on Homeland Security and Governmental Affairs. Ransom payments are also increasing; for 1H21, financial institutions reported $590 million in ransomware payments, exceeding all payments made in 2020.

Cybercrime has increased since the pandemic as businesses expanded their remote access capabilities and digital footprints. According to the Senate report, ransomware attacks on government entities outpaced attacks on the private sector. Sectors such as healthcare and financial services that possess valuable personal sensitive information, payment data or intellectual property tend to be targeted most.

Cyber criminals indiscriminately targeted high-value organizations with substantial financial resources and increasingly small-medium-sized enterprises across the globe throughout 2021. Cyber criminals are increasingly utilizing denial of service (DoS) and other burgeoning extortion techniques such as ransomware-as-a-service (RaaS) and are continually rebranding to evade law enforcement. The stealing and encrypting of sensitive personal data in double- and multi-pronged extortion attacks have also grown dramatically. These attacks often occur by utilizing leak sites on the dark web with the threat of releasing of sensitive data and personal information.

Increased incidents have led to executive orders and proposed legislation to address these risks. There were also several high-profile arrests within several ransomware groups and some even claiming to have shut down, even if temporarily. In the U.S., the Cybersecurity and Infrastructure Security Agency (CISA) has mandated minimum hygiene levels and the FBI patched vulnerable servers via a court order. The SEC recently proposed new rules for enhanced and standardized cybersecurity incident reporting disclosures by publicly traded companies within four business days of the event.

These positive steps are additive, with potential material benefit from increased levels of transparency regarding cyber risk, and the elevation of these risk concerns to the board and executive levels. This is critical as boards establish budgets for risk management, but more importantly approve risk parameters and choose leadership that establishes risk culture.

Fitch will review any reported, known or identified cyber incident individually, assessing the effects of a cyber event relative to ratings headroom and financial, operational and reputational impacts. As cybersecurity is an asymmetrical risk, Fitch does not give credit for favorable cyber hygiene and risk management, but deficient cybersecurity management can adversely affect ratings.
