
Attention, Public Financiers: Money Is Now Growing on Trees

As polluters pay up for absolution, state treasuries and public pension funds might be able to capitalize on carbon offset credits. Public forests and timberland investments could yield untapped value.

Last month, Alaska Gov. Mike Dunleavy introduced carbon management and monetization bills that could be forerunners of similar legislation, in the 38 states with state forests, seeking to capture some of the economic value of global efforts to reduce carbon emissions. Just a month before, a major U.S. oil company promised the government of Guyana, where it has discovered a massive subsea oilfield, a $750 million deal to buy what are called carbon offset credits for local forest preservation. A week later, JP Morgan asset managers cut a deal to buy $500 million of loblolly pine timberland in Arkansas, Mississippi and Oklahoma, with investment analysts pointing to the trees' hidden environmental value as carbon sinks.

What spurs these actions is a slowly developing global marketplace. In simple terms, carbon offsets are tradable credits earned by property owners and enterprises that take actions to reduce or offset carbon dioxide emissions. Those credits can be sold for hard cash to businesses that pollute, in order for buyers to achieve a zero-carbon or reduced-carbon footprint. An example would be carbon credits earned by large landowners in the Amazon region who refrain from deforestation, which otherwise would yield them a higher land value if exploited for conventional agriculture.

Continue reading.

governing.com

OPINION | Feb. 14, 2023 • Girard Miller

Taxpayers Lose in GOP's War on ESG.

Texas and Florida lawmakers are targeting banks that support environmental, social and governance practices. The result? A hidden tax on residents.

What happens when Florida and Texas blacklist Wall Street's largest municipal bond underwriters because of their support for environmental, social and governance practices? The answer is a hidden tax foisted on their residents amounting to hundreds of millions of additional dollars.

If socialism means state control of production, distribution and exchange of goods and services, then

Florida and Texas fit the description. That's not the case with California, whose embrace of ESG and free markets has allowed it to borrow more cheaply than Florida and Texas even though it has lower credit ratings. Superior demand makes California debt the outstanding performer among the three largest US states.

Companies committed to ESG favor protection of natural resources, human rights, health and safety, community engagement, transparency, compliance with regulatory policies, diversity, equity and inclusion. Investors like the potential. Asset allocation based on ESG criteria has grown to be at least a $35 trillion industry, according to the Global Sustainable Investment Alliance.

Elected officials in Florida and Texas, not to mention half a dozen other states which voted for Donald Trump in the 2020 presidential election, decry ESG as "woke." These southern states, where racist laws prevailed 50 years ago, now prohibit the biggest Wall Street banks from arranging and selling their new bond offerings because they're "woke," often assigning the job smaller firms that may not have the resources or reach to ensure that the borrowers are getting the lowest possible borrowing costs.

Bloomberg Opinion

By Brooke Sample

February 18, 2023

SEC Releases 2023 Examination Priorities for Registered Investment Advisers and Broker-Dealers.

On February 7, 2023, the U.S. Securities and Exchange Commission ("SEC") Division of Examinations (the "Division") released its annual Priorities Report1 for upcoming examinations of registered investment advisers ("Advisers") and broker-dealers ("BDs" and, together with Advisers, "Firms"). To help ensure compliance with federal securities laws, the Division uses a risk-based approach that accounts for market growth, technological advancements, and new forms of risk to investors. By identifying these priorities, the Division strives to achieve its four goals of promoting compliance, preventing fraud, monitoring risk, and informing policy. The Division identified the following specific areas of focus for Advisers and BDs.

Mutual Areas of Focus for Advisers and BDs

Standards of Conduct

The Division is continuing to prioritize the examination of Firms for compliance with applicable standards of conduct, including fiduciary duties for Advisers and Regulation Best Interest2 for BDs. Both standards of conduct obligate Firms to put the interests of investors ahead of their own personal, financial, and professional interests. In relation, the Division will be focusing on investment advice and recommendations in connection with specific products, investment strategies, and account types. The Division is concerned with products that are complex, high cost, illiquid, proprietary, or unconventional. Such products may include derivatives, leveraged exchange-traded funds, exchange-traded notes, variable annuities, non-traded real estate investment trusts, and microcap securities. The Division may also focus on recommendations and advice provided to certain investors, such as senior investors and those saving for retirement. Moreover, the Division noted it may prioritize review of specific account recommendations, including retirement account rollovers

and 529 college savings plans.

Continue reading.

by Scott H. Moss, Ethan L. Silver, William Brannan and Vincent R. Scala

February 16 2023

Lowenstein Sandler LLP

ICE Fills Gaps in Fixed Income ESG Data.

Anthony Belcher, head of sustainable finance at ICE, said the exchange has been filling one of the big gaps in environmental, social and governance data which was fixed income and the link to securities issuance.

Belcher told Markets Media that market participants have been very focused on equities in sustainable finance and ESG, so Intercontinental Exchange saw fixed income as one of the big gaps.

“We can map a company’s ESG data to its fixed income issuance and cover 1.4 million debt securities,” he added. “Clients can now look at ESG from a multi-asset perspective as we also cover municipal bonds and mortgage-backed securities.”

Continue reading.

marketsmedia.com

by Shanny Basar

02.14.2023

Research Highlights Lack of Benefit from Public Funding of Sports Stadiums.

(The Center Square) – A recent academic paper on the economics of sports stadiums again has highlighted how publicly funding professional sports stadiums does not provide the benefits promised by politicians.

The paper highlights how building entertainment districts surrounding stadiums has not changed that formula and alternative tax funding mechanisms – like those planned to be used in Nashville to fund a new $2.1 billion Titans stadium – only serve to obscure the fact so much is public funding is being used.

“The common justification that stadium-related spending results in increased economic activity is not well founded, because most fan spending derives from existing area residents who reallocate their spending from other local leisure consumption options,” the paper said. “Thus, spending at sports events crowds out other local spending and does not represent net new spending to the area.”

Continue reading.

By Jon Styf | The Center Square Feb 13, 2023

Lankford Wants to Stop Federal Subsidies to Professional Sports Stadiums

WASHINGTON, DC – Senators James Lankford (R-OK) and Cory Booker (D-NJ) introduced the No Tax Subsidies for Stadiums Act, a bill to end generous federal subsidies for professional sports stadiums. The bill would close a loophole in the tax code that allows professional sports teams to finance new stadiums with municipal bonds that are exempt from federal taxes. Rep. Earl Blumenauer (D-OR) is leading the bill's introduction in the House of Representatives.

Municipal bonds are intended to give communities a way to finance projects, such as hospitals, schools, and roads, without needing to pay federal taxes on the debt's interest. Using municipal bonds to finance sports stadiums diverts money away from these critical local infrastructure projects.

"Oklahomans should not be forced to pay for new professional sports stadiums in another state with their federal tax dollars when our veterans need better access to care, our federal interstate highways need upkeep, and our debt is skyrocketing past $31.5 trillion. Local taxes can pay for local stadiums," said Lankford. "Our bill provides an opportunity to cut irresponsible federal spending and refocus our priorities on our constitutional tasks and responsibilities, not sports stadiums. I can't see any reason we ever started using federal tax dollars to pay for stadiums, and I certainly don't think we should keep doing it."

"Over the last two decades, billions of American taxpayer dollars have been wasted by subsidizing the costs of professional sports stadiums," said Booker. "It is wrong for wealthy investors to exploit a tool intended for critical local infrastructure projects, like schools and hospitals, in order to finance these stadiums. I am proud to introduce this bill that would put an end to this wasteful practice."

"American taxpayers should not be forced to front the bill for professional sport teams. Billionaire sports owners are perfectly capable of financing their own stadiums to stage their immensely profitable games. Our tax dollars should be used to create communities where all of our families can thrive—communities that are safe, health, and economically secure," said Blumenauer.

The bill would end federal subsidies for stadium financing but would not prevent localities and states from bidding and offering economic incentives to teams. In eliminating this wasteful expenditure, the bill also unties the hands of local governments to finance their stadium subsidies with taxes on tickets and in-stadium purchases—allowing states to target taxes on the people who actually use and benefit from the subsidy. Current tax law does not allow local governments to finance federal stadium subsidies by levying taxes on stadium purchases.

In a 2020 paper included in the National Tax Journal, it was estimated that as much as $4 billion have been lost in federal tax revenue from subsidies to sports stadiums. The current Super Bowl Host Committee believes this year's Super Bowl brought in approximately $500 million to the local Arizona economy.

In addition to last weekend's Super Bowl, Phoenix recently hosted the PGA's Waste Management Open from February 6-12 and Car Week. A professor at Arizona State University says the three events will help the Valley area surpass $1 billion in revenue. When Phoenix hosted Super Bowl XLIX (49) and the Pro Bowl in 2015, the local economy received over $719 million in revenue. Revenue from sales taxes, hotel taxes, gas taxes, and car rental taxes totaled over $26 million.

Lankford is a member of the Senate Finance Committee and serves on the Tax and IRS Oversight Subcommittee.

BDA Bonding Time: A Discussion with Tom Kozlik of Hilltop Securities on Rates and Issuance in 2023

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

- The Fed likely staying the course over first half of 2023 and its impact on Hilltop's issuance prediction
- Municipal credit outlook and the potential need for lifelines for key sectors such as mass transit
- An update on debt ceiling negotiations in Washington, DC

Listen to audio.

Bond Dealers of America

February 13, 2023

Muni Moves in January (Bloomberg Audio)

Joe Mysak, editor of the Bloomberg Brief: Municipal Markets, joins the program to discuss the municipal bond market. Hosted by Paul Sweeney and Matt Miller.

Listent to audio.

Feb 17, 2023

World's Top Junk-Muni Fund Is Loaded With a Rarely Traded Stock.

- **Energy Harbor shares are top holding in 15 of Nuveen's funds**
- **Received in debt workout, shares deliver boon — and a risk**

The biggest holding in the world's biggest high-yield municipal bond fund isn't a municipal bond.

It's a $1.5 billion stake in shares of Energy Harbor Corp., a thinly traded power company that's not listed on any US stock exchange. The Nuveen High Yield Municipal Bond Fund — like many others run by the investment giant — received the stock three years ago after the company's precursor, FirstEnergy Solutions, restructured its debts in bankruptcy.

It hasn't been a bad investment. In fact, the shares have surged so much that it's creating a dilemma for Nuveen — and posing a little-known risk to its investors.

Continue reading.

Bloomberg Markets

By Martin Z Braun and Miles Weiss

February 16, 2023

Illinois Faces Hurdles Steering Budget to Navigate a Recession.

- **Governor Pritzker to give fiscal 2024 budget address Wednesday**
- **Investors look for more progress on pensions, reserves**

Illinois, back from the brink of a junk rating, faces more challenges than other US states maneuvering its budget to weather an impending recession.

Governor J.B. Pritzker, the billionaire Democrat who was reelected in November, will deliver the first state of the state and budget address of his second term on Wednesday. Investors in the lowest-rated US state said they want to know how he plans to prepare for the expected economic slowdown that risks dimming the outlook for the coming fiscal year.

Illinois won a string of upgrades from the three major credit raters starting in mid-2021, which pulled it back from the verge of a non-investment grade rating. Its revenue topped forecasts, and general funds through the first seven months of fiscal 2023 beat the same stretch in the prior year by almost $2 billion. The state used some of that cash to build up its rainy-day fund, pay back pandemic-era federal loans, and put more into its underfunded pensions.

Continue reading.

Bloomberg Politics

By Shruti Singh

February 14, 2023

DeSantis Proposes Barring ESG Criteria in Florida Muni-Bond Sales.

- **State, local governments wouldn’t be able to use ESG criteria**
- **Republican’s proposal builds on plan announced late last year**

Florida Governor Ron DeSantis said he will propose legislation that would bar the state and its local governments from using environmental, social, governance criteria when issuing municipal bonds, expanding his push against what he has called a “woke agenda.”

DeSantis released new details on Monday about his plan to require state and local government investments only be guided on potential returns. The Republican governor has previously said the state’s asset managers must stop using ESG investing strategies if they want to keep overseeing Florida’s money, including $220 billion of pension funds.

“We’re also finally going to make sure that ESG is not infecting other decisions at both the state and local government,” DeSantis said during a press conference in Naples on Monday. “So no investment

decisions at the state or local government with ESG, no use of ESG in procurement and contracting and no use of ESG when issuing local or state bonds."

Continue reading.

Bloomberg Green

By Michael Smith, Danielle Moran and Nic Querolo

February 13, 2023

Muni ETFs Become A Force.

Bloomberg's Max Adler discusses Muni ETFs with Matt Miller and Katie Greifeld on "Bloomberg ETF IQ."

Watch video.

February 13th, 2023

Muni ETFs Are Nabbing Record Cash.

ETFs now account for about 11% of total municipal fund assets, surpassing the total held in closed-end funds, according to data analyzed by strategists at Barclays. Max Adler has more on "Bloomberg Markets."

Watch video.

Bloomberg MarketsTV Shows

February 13th, 2023

S&P U.S. Local Governments Credit Brief: Florida Municipalities, Counties, And School Districts

Overview

Florida municipalities, counties, and schools (or local governments [LGs]) have demonstrated stable credit quality in recent years, which we believe is supported by continued economic development and growth despite the recent pandemic, supply chain disruptions, and a tight labor market that has affected local government portfolios nationwide. S&P Global Ratings expects credit quality for Florida LGs to remain stable in the near term despite the shallow recession predicted for the first half of 2023, due in large part to the added financial flexibility most of the portfolio has realized subsequent to injection of federal stimulus funds during the pandemic and ongoing economic development. Employment growth in Florida exceeds the national rate. Recovery in the leisure and

hospitality sector was achieved during the last two years due to stronger domestic visitor activity, while international visitor activity remains depressed compared with pre-pandemic levels. All the while, business and professional services, financial, and information sectors continue to expand. Florida's unemployment rate has continued to trend below the national rate, at 2.7% as of October 2022, whereas the annual population growth at 1.9% has exceeded the national rate of 0.4% during 2022.

S&P Global Ratings maintains ratings on 101 LGs: 22 schools, 19 counties, and 60 municipalities. Overall, Florida LG credit quality remained stable during 2022, with only 1% experiencing rating movement. Two LGs within the portfolio experienced one-notch upgrades. Hernando County's upgraded rating reflects material improvement in reserves, coupled with stronger financial management policies and practices, whereas Seminole County's credit quality improvement reflects positive operations and economic growth within the county, supported by robust and forward-looking policies and practices. In addition, the portfolio realized one outlook revision, for Indian River County School, to stable from negative due to the district's improved financial profile during the past two years as a result of prudent expense management and revenue growth. The majority of the ratings have a stable outlook, with Winter Haven the only credit on positive outlook due to improving per capita market values, which we expect will continue to support a strong economic profile, while Hillsborough County School District is the only credit on negative outlook, reflecting uncertainty in the district's ability to balance recurring revenues and expenditures, without federal stimulus support, while facing expenditure uncertainty from labor contracts.

Continue reading.

10 Feb, 2023

Fitch to Affirm ST 'F1+' Rating on Houston GO CP Notes Series E-2

Fitch Ratings-New York-13 February 2023: On the effective date of Feb. 15, 2023, Fitch Ratings will affirm the short-term (ST) rating assigned to the $100,000,000 City of Houston, Texas General Obligation Commercial Paper Notes Series E-2 (notes) at 'F1+'. A maximum of $100,000,000 aggregate principal amount of authorized notes may be outstanding at any given time.

The rating action is in connection with (i) the substitution of the current liquidity facility issued in the form of a Credit Agreement provided by Wells Fargo Bank, National Association (Wells Fargo; AA-/F1+/Stable) supporting the notes, with a substitute liquidity facility in the form of a Credit Agreement also to be provided by Wells Fargo and (ii) the reoffering of the notes.

KEY RATING DRIVERS:
On the effective date, the short-term 'F1+' rating will be affirmed based on the support of the substitute liquidity facility to be provided by Wells Fargo. The substitute liquidity facility provides coverage for the principal amount and interest on the maturity dates of the notes.

The substitute liquidity facility will expire on April 22, 2025, unless such date is extended, or upon any prior termination of the substitute liquidity facility. For information on the long-term rating on the City of Houston, TX (AA/Stable), see the press release dated July 28, 2022 "Fitch Affirms Houston, TX's IDR and LT Bond Ratings at 'AA'; Outlook Stable" available on Fitch's website at www.fitchratings.com.

U.S. Bank Trust Company, National Association acting as Issuing and Paying Agent (IPA) will

continue as the Issuing and Paying Agent for the notes, and as IPA, is directed to request an advance under the substitute liquidity facility whenever proceeds of the sale of rollover notes and other funds of the City of Houston are insufficient to pay maturing notes. The substitute liquidity facility provides sufficient coverage for the principal amount of notes and 270 days of interest calculated at 10% based upon a 365 day year.

All notes will be issued at par, with interest due at maturity. Following the occurrence of an event of default under the liquidity facility, Wells Fargo may direct the IPA to immediately stop the issuance of any additional notes. In such event, the substitute liquidity facility will expire after all the notes supported by such liquidity facility mature and have been paid from funds drawn on the substitute liquidity facility. In addition, the substitute liquidity facility may be terminated by Wells Fargo upon the occurrence of specified immediate termination events.

RATING SENSITIVITIES:
Factors that could, individually or collectively, lead to positive rating action/upgrade:

–The short-term 'F1+' rating is Fitch's highest short-term rating and cannot be upgraded.

Factors that could, individually or collectively, lead to negative rating action/downgrade:

–The short-term rating assigned to the notes will be adjusted downward in conjunction with the short-term rating of the bank providing the substitute liquidity facility and, in some cases, the long-term rating of the issuer.

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Additional information is available on www.fitchratings.com

Lynchburg, Virginia: Fitch New Issue Report

Revenue Framework: ‘aa’: Revenues have been rising at a pace approximating the rate of inflation. Fitch Ratings expects growth to generally match inflation over the long term, reflecting continued population growth and economic development activity. The city enjoys strong revenue flexibility given its independent legal ability to increase the property tax rate or levy without limitation. Expenditure Framework: ‘aa’: The natural pace of spending growth is expected to remain in line with to marginally above revenue growth. Moderate carrying costs and broad flexibility to manage labor-related costs allow the city solid leeway to adjust spending throughout economic cycles. Long-Term Liability Burden: ‘aa’: The combined burden of debt and the net pension liabilities is moderate relative to personal income. Fitch expects this metric to remain relatively stable over time due to the city’s manageable future debt needs and relatively modest net pension liability. Operating Performance: ‘aaa’: The city’s healthy financial reserves are well in excess of its target policy. In conjunction with a superior ability to adjust revenues and spending, this leaves the city very well positioned to address cyclical revenue declines.

ACCESS REPORT

Thu 16 Feb, 2023

Florida Seaport Investment Program: Fitch New Issue Report

The ‘AA+’ rating is based on the ‘aaa’ level resilience of the bond structure with exceptional coverage of debt service from the $47 portion of MV title fees deposited to the STTF. Revenues are expected to grow at a pace above inflation consistent with an ‘aa’ assessment reflecting the solid underlying economic and demographic characteristics of the state. The allocation of pledged revenues to the STTF is subject to appropriation by the state, which limits the rating to one notch below the state’s Issuer Default Rating (IDR; AAA/Stable). Key Rating Drivers Exceptional Resilience: The $47 portion of the MV title fee deposited to the STTF generated $268.7 million in fiscal 2022, 9.5% higher than three years prior, before pandemic-related disruptions. Of this amount, $10 million is statutorily directed to the SIP, subject to appropriation, and pledged to bondholders. Following the refunding sale, maximum annual debt service (MADS) is estimated to be $7.8 million in 2041; debt service is limited to the current $10 million STTF allocation to the SIP. Solid Growth Expectations: Fitch expects MV title fee revenues to exceed inflation over time underpinned by the state’s favorable in-migration record and prospects for ongoing economic expansion. The state is forecasting flat revenue trends over the next several years but actual results tend to outperform estimates

ACCESS REPORT

Fri 17 Feb, 2023

IRS Issues Guidance for Energy Tax Credits in Low-Income Communities – Notice 2023-17: McGuireWoods

The Inflation Reduction Act of 2022 (IRA) created several new tax incentives to encourage developing clean energy projects that would benefit underserved communities and individuals.

Among these incentives, Congress included generous adders to the Section 48 investment tax credit (ITC) for qualified solar and wind facilities deployed in specified low-income communities or residential developments (low-income community benefit adders).

To receive these increased credit amounts, project owners need to apply for an allocation of the "environmental justice solar and wind capacity limitation" through a program jointly administered by the Treasury Department and the Department of Energy.

On Feb. 13, 2023, the IRS released Notice 2023-17 establishing the initial guidance on this capacity limitation program and the standards on which projects will be evaluated, and promising more guidance to come.

Continue reading.

McGuireWoods

February 16, 2023

How to Calculate Tax-Equivalent Yield (& Why Investors Should)

Bonds can provide passive income, some of which may be tax-free if you're investing in municipal bonds. The tax-equivalent yield formula can be a useful tool for comparing taxable and tax-free bond investments. Tax-equivalent yield tells you how much of a return a taxable bond would need to generate in order to equal the yield on a tax-exempt bond.

A financial advisor can help you create a balanced portfolio with a blend of bonds and other investment types.

What Is Tax-Equivalent Yield?

Tax-equivalent yield is a calculation that investors can use to compare taxable and tax-free bonds. To understand how it works, it first helps to know a little about bond yields.

Continue reading.

Yahoo Finance

Rebecca Lake, CEPF®

Wed, February 15, 2023

Muni ETFs Gaining Assets From Mutual Funds.

Municipal bond exchange-traded funds are pulling in record cash as Bloomberg TV reported on Monday citing Barclays data, with ETFs making up nearly 11% of total municipal fund assets. But while the overall trend shows flows going into muni ETFs and coming out of muni mutual funds,

that’s not a completely one-way migration.

Most recently, municipal bond ETFs are seeing a hiccup after being on a tear in 2022. The category has seen roughly $600 million in outflows year to date. Meanwhile, mutual funds saw significant outflows in 2022 and have pulled in several billion dollars this year.

Consider also that two of the largest muni bond ETFs have seen opposing flows year to date. The $32 billion iShares National Muni Bond ETF (MUB) has lost more than $567 million year to date, while the $25.4 billion Vanguard Tax-Exempt Bond ETF (VTEB) has gained $340.7 million in the same time period. Although this year muni bond ETFs have seen more than half a billion dollars in outflows, in the past 12 months, the category gained almost $28 billion.

Continue reading.

Yahoo Finance

by Heather Bell

Tue, February 14, 2023

TAX - NEW YORK

Hetelekides v. County of Ontario

Court of Appeals of New York - February 14, 2023 - N.E.3d - 2023 WL 1973029 - 2023 N.Y. Slip Op. 00803

Property owner’s widow, individually as the new property owner and as executor of husband’s estate, brought action against county and county treasurer to recover damages from the allegedly improper tax foreclosure sale of the property, which had been owned by husband and to which widow had obtained title after paying the entire purchase price after the third party who had purchased the property at the sale had assigned the bid to her.

The Supreme Court denied defendants’ motion to dismiss the complaint. Defendants appealed. The Supreme Court, Appellate Division, then affirmed. After a bench trial, the Supreme Court, Ontario County, rendered a verdict in widow’s favor, except as to the federal statutory claims. Defendants appealed, and owner cross-appealed. The Supreme Court, Appellate Division, affirmed as modified. Owner appealed as of right on constitutional grounds and alternatively moved for leave to appeal. The Court of Appeals denied the motion for leave as unnecessary.

The Court of Appeals held that:

- County’s bringing of the tax foreclosure proceeding after husband’s death did not render the proceeding a nullity; abrogating *Matter of Foreclosure of Tax Liens (Goldman)*, 165 A.D.3d 1112, 87 N.Y.S.3d 262, and *Matter of City of Schenectady (Permaul)*, 201 A.D.3d 1, 158 N.Y.S.3d 279;
- Notices of tax foreclosure proceeding complied with statutory requirements;
- County officials’ efforts to give notice of tax foreclosure proceeding complied with due process; and
- Property owner failed to establish that county government had an official policy or custom that caused a violation of her constitutional rights, and thus widow could not pursue *Monell* claim of federal civil rights violations.

County's bringing of in rem tax foreclosure proceeding against deceased owner did not render the proceeding a nullity; a tax foreclosure proceeding was in rem against the "res," i.e., the taxable real property, and not an action in personam commenced against individual to establish personal liability; abrogating *Matter of Foreclosure of Tax Liens (Goldman)*, 165 A.D.3d 1112, 87 N.Y.S.3d 262, and *Matter of City of Schenectady (Permaul)*, 201 A.D.3d 1, 158 N.Y.S.3d 279.

GFOA's Fundamentals Virtual Forum.

Register now to experience a day in the life of a finance officer.

July 10-14, 2023 |. 10 Sessions | A Maximum of 15 CPE Credits

A finance officer needs a broad range of both technical and leadership skills to navigate the complex world of local government finance. Strong financial management requires competencies in **accounting, budgeting, treasury management, procurement**, and **risk management**, in addition to an ability to communicate, collaborate with others, lead teams, and play a role on a team responsible for building a thriving community. GFOA's 2023 Virtual Forum provides an opportunity for those new to government or those with career aspirations of obtaining a leadership position in the field to experience a day in the life of a finance officer.

Over five days, GFOA will present ten sessions that touch on topics a finance officer would likely face in their role. Each session will leverage GFOA's Financial Foundations Framework, Code of Ethics, and suite of best practices to provide additional resources. Attend this virtual event to discover how you can improve your ability to:

- Manage a team of finance professionals and navigate issues related to hybrid work and DEI
- Prepare a budget for large infrastructure initiatives in the community
- Understand different financing options, including those specifically for ESG projects related to your CIP and how to build that into a long-term financial plan for the organization
- Oversee procurement processes and promote transparency and fairness in evaluating competitive options
- Communicate with department heads about new policies for budget monitoring and tracking results
- Develop an approach to accurately forecast cash flow needs
- Understand how to appropriate account for capital assets
- Guard against risks facing your organization, including impacts of climate change and cyber threats
- Lead recruiting efforts to expand your team
- Communicate financial information to elected officials and external stakeholders

Click here for FAQs.

Click here to register.

- Abusive Arbitrage Devices – It's Time to Get Reacquainted – Squire Patton Boggs
- GASB Proposes Guidance to Assist with Application of Subscription-Based Information Technology Arrangement.

- BofA Sees More Muni-Bond Defaults in 2023 After January Uptick.
- NFMA 2023 Annual Conference.
- Guess Who Loses After Florida and Texas Bar ESG Banks?
- Anti-Environmental Investing Law Costing Texas Taxpayers $445 million a Year
- And finally, Damning With Faint Praise – High-Low Shag Edition is brought to us this week by *Johnson v. 3M Company*, in which the Court of Appeals drolly begins its opinion as follows: "Dalton, Georgia, which has been called the 'carpet capital of the world,' boasts on its website that the city is 'unrivaled in its production of carpet.'" There's just something more than a little sad about boasting of unrivaled carpet production. All other countries have inferior potassium.

PUBLIC PENSIONS - CALIFORNIA

Casson v. Orange County Employees Retirement System

Court of Appeal, Fourth District, Division 3, California - January 30, 2023 - Cal.Rptr.3d - 2023 WL 1097958 - 2023 Daily Journal D.A.R. 888

Retired firefighter, who suffered on-the-job injury and received a disability pension from county retirement system, filed petition for writ of mandate after county retirement system imposed a "disability offset" due to firefighter's receipt of pension from California Public Employees Retirement System (CalPERS) from his prior job.

The Superior Court denied the petition, and retired firefighter appealed.

The Court of Appeal held that disability pension was not subject to offset, as firefighter did not elect reciprocity.

Retired firefighter's disability pension from county retirement system was not subject to a "disability offset" based on firefighter's receipt of pension from California Public Employees Retirement System (CalPERS) from his prior job, where firefighter did not elect reciprocity, but chose to treat the two pensions as separate.

When a pensioner receives a service retirement under a pension governed by the County Employees Retirement Law of 1937 and becomes a member of a second pension governed by that law, but does not elect reciprocity, his or her first service pension cannot be considered part of a "disability allowance" under statute prohibiting a pensioner from receiving a disability allowance from two pensions greater than the amount that would have been received if all the pensioner's service had been with only one entity.

WATER LAW - CALIFORNIA

California-American Water Company v. Marina Coast Water District

Court of Appeal, First District, Division 2, California - December 28, 2022 - 86 Cal.App.5th 1272 - 303 Cal.Rptr.3d 227 - 2022 Daily Journal D.A.R. 13,018

County water resources agency and investor-owned water utility brought action against public water district alleging that parties' regional desalination project failed as result of negligence of water district's employees and independent contractors in retaining and supervising member of county water resources agency's board, despite his illegal conflict of interest.

The Superior Court granted water district's motion for summary adjudication, and plaintiffs appealed.

The Court of Appeal held that:

- Fact issues remained as to whether water district waived utility's compliance with Government Claims Act's claims presentation requirement;
- Fact issues remained as to whether water district's attorney had apparent authority to waive its right to statutory notice of claim;
- Trial court's grant of water district's motion for summary adjudication did not comply with its obligation to state its reasons for any determination made in summary judgment order; and
- Summary judgment on limitations grounds was not warranted on county agency's negligence claim against water district.

EMINENT DOMAIN - FLORIDA

Sabal Trail Transmission, LLC v. 18.27 Acres of Land in Levy County

United States Court of Appeals, Eleventh Circuit - February 3, 2023 - F.4th - 2023 WL 1493219

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

The United States District Court for the Northern District of Florida determined that Florida law requiring attorney fees and costs provided measure of compensation. Company appealed.

The Court of Appeals held that state law provided measure of compensation, and, thus, landowners were entitled to attorney fees and costs.

State law provided measure of compensation in proceedings by natural gas company under the Natural Gas Act to condemn property for pipeline easement, and, thus, landowners were entitled to attorney fees and costs as part of compensation under Florida law.

Rule governing eminent domain actions did not preclude application of Florida law requiring award of attorney fees and costs as measure of compensation in proceedings by natural gas company under the Natural Gas Act to condemn property for pipeline easement; rule did not bear on question of measure of compensation to apply under the Natural Gas Act, but governed only practice and procedure, not substantive law.

IMMUNITY - GEORGIA

Johnson v. 3M Company

United States Court of Appeals, Eleventh Circuit - December 21, 2022 - 55 F.4th 1304

Water subscriber brought putative class action against operator of municipal wastewater treatment system and other defendants, asserting claims including nuisance abatement arising from operator allegedly allowing city's domestic water supply to be contaminated with dangerously high levels of toxic chemicals used by local carpet manufacturers.

After removal, the United States District Court for the Northern District of Georgia denied operator's motion to dismiss based on municipal immunity. Operator appealed, and subscriber

moved to dismiss appeal.

The Court of Appeals held that:

- As a matter of apparent first impression, under Georgia law, municipal immunity is immunity from suit rather than just a defense to liability;
- Issue of operator's asserted Georgia municipal immunity was separate from merits of subscriber's nuisance abatement claim, supporting finding that denial of motion to dismiss was immediately appealable pursuant to collateral-order doctrine; and
- Under Georgia law, scope of municipal liability for nuisance claims includes personal injuries beyond those tied to the plaintiff's property.

Issue of wastewater-treatment system operator's asserted Georgia municipal immunity was separate from merits of local water subscriber's nuisance abatement claim, supporting finding that denial of operator's motion to dismiss based on such immunity was immediately appealable pursuant to collateral-order doctrine, even if court was required to consider subscriber's factual allegations in resolving the immunity issue, in action arising from alleged contamination of city's domestic water supply with dangerously high levels of toxic chemicals by local carpet manufacturers.

Water subscriber's filing of fourth amended complaint did not divest Court of Appeals of jurisdiction over wastewater-treatment system operator's appeal from district court's denial of operator's motion to dismiss third amended complaint on grounds of Georgia municipal immunity, in subscriber's claim for nuisance abatement arising from alleged contamination of city's water supply, where fourth amended complaint did not change the nuisance abatement allegations on which operator's municipal immunity defense was based.

Under Georgia law, scope of municipal liability for nuisance claims includes personal injuries beyond those tied to the plaintiff's property.

Under Georgia law, voter-approved amendment of state constitution to constitutionalize common-law doctrine of sovereign immunity, which authorized General Assembly to establish a state court of claims with jurisdiction to try and dispose of cases involving claims for injury or damage against state, preserved the scope of sovereign immunity as it existed at common law and rendered it unmodifiable by the courts.

ZONING & PLANNING - GEORGIA

Carson v. Brown

Court of Appeals of Georgia - February 7, 2023 - S.E.2d - 2023 WL 1792668

Landowner filed petition for a writ of certiorari against the county and its planning director over county zoning board of appeals' decision affirming determination that landowner lacked vested right to develop property at a certain lot size.

Landowner then filed separate action for mandamus relief against planning director and a planner technician for the county, in their individual and official capacities, to have county's moratorium on land-disturbance permits for development at certain densities declared void and to have director and technician ordered to process land-disturbance-permit application under the iteration of the zoning code that allowed for lots of landowner's desired size.

In the mandamus action, the Superior Court partially granted director and technician judgment on

the pleadings. Both sides appealed. The Court of Appeals affirmed in part and reversed in part. After the case returned to the trial court, landowner amended his complaint to add claims for declaratory and injunctive relief against director and technician in their individual capacities, and the Superior Court granted in part and denied in part the parties' motions for summary judgment. Landowner appealed, and planner and technician cross-appealed. In the certiorari action, the Superior Court, Forsyth County, David L. Dickinson, J., affirmed decision of the local zoning board of appeals. Landowner applied for discretionary appellate review. Upon consideration of the appeals in both actions, the Court of Appeals reversed the judgment in the certiorari action and dismissed the appeal and cross-appeals in the action for mandamus, injunctive, and declaratory relief. On certiorari review, the Supreme Court reversed and remanded with direction.

On remand, the Court of Appeals vacated its opinion, adopted the Supreme Court's opinion, and held that:

- Landowner's initiation of process to obtain sewer easements under zoning code's provisions allowing lots of desired size did not grant landowner a vested right to a land-disturbance permit to develop lots of that size;
- Alleged lack of ascertainable standards or objective criteria in county ordinance setting out the administrative procedure for determining vested rights was not a basis to find that landowner had vested rights to a land-disturbance permit for lots of desired size;
- The Court's prior ruling that landowner's purported failure to pursue an administrative appeal did not bar the action for mandamus, injunctive, and declaratory relief was the law of the case; and
- Resolution adopted by county's board of commissioners before landowner applied for land-disturbance permit created a valid moratorium on lots of landowner's desired size.

EMINENT DOMAIN - INDIANA

Guzzo v. Town of St. John, Lake County

Court of Appeals of Indiana - January 19, 2023 - N.E.3d - 2023 WL 309619

In eminent domain action, the Superior Court granted town's motion for summary judgment.

Property owners appealed, and transfer was granted.

The Supreme Court remanded. On remand, the Superior Court denied property owners' motion for partial summary judgment and entered final judgment as to fair market value of property. Property owners appealed.

The Court of Appeals held that:

- Eminent-domain statute defining "residential property," as would trigger particular rate of required compensation, as, inter alia, a single-family "dwelling" does not imply a requirement of habitability, and
- Property at issue was residential property.

Eminent-domain statute defining "residential property," as would trigger particular rate of required compensation, as, inter alia, a single-family "dwelling" does not imply a requirement of habitability.

Condemned property was "residential property" that would require compensation of property owners at statutory rate of 150 percent of fair market value, even though dwelling on property was not subject of personal use, where dwelling was a single-family dwelling, and it was not owned for

purposes of resale, rental, or leasing.

DECLARATORY JUDGMENT - MARYLAND

Dzurec v. Board of County Commissioners of Calvert County, Maryland

Supreme Court of Maryland - January 25, 2023 - A.3d - 2023 WL 383006

County resident brought action seeking a declaratory judgment that county comprehensive plan was "illegally passed" and was "therefore void" because one of the county commissioners had a conflict of interest in the legislation and did not recuse himself.

The Circuit Court granted summary judgment for county. Resident appealed, and the Appellate Court affirmed. Resident petitioned for certiorari review, which was granted.

The Supreme Court held that:

- Maryland common law did not permit resident's sought declaration that county comprehensive plan was illegally passed because its deciding voter should have recused himself due to a conflict of interest, and was therefore void, and
- Preamble of county ethics code did not demonstrate any unique legislative intent on the part of the county commissioners to create an implied right of action.

Even assuming that county resident had standing, Maryland common law did not permit judicial declaration that county comprehensive plan was illegally passed because its deciding voter should have recused himself due to a conflict of interest, and was therefore void; there was no assertion that the adoption of the plan was inconsistent with the requirements of the Land Use Article or a procedural requirement under the county charter or code for the adoption of a legislative act of the county commissioners, and, under separation of powers principles, court would not void plan based on improper legislative motivation.

Preamble of county ethics code did not demonstrate any unique legislative intent on the part of the county commissioners to create an implied right of action that would permit a taxpayer to obtain a remedy in the form of a judicial declaration invalidating a legislative enactment in circumstances in which a commissioner's vote on a legislative action violated the conflicts of interest provisions contained in the county ethics code; county ethics code was substantially the same as the model local ethics laws created by the State Ethics Commission, while preamble was the same as the language in the General Assembly's legislative findings in the Maryland Public Ethics Law, the preamble of the another county's ethics code, and the model ethics laws established by the State Ethics Commission.

POLITICAL SUBDIVISIONS - MICHIGAN

Taxpayers for Michigan Constitutional Government v. Department of Technology

Court of Appeals of Michigan - December 22, 2022 - N.W.2d - 2022 WL 17865554

Taxpayer organization brought action against state and state authorities to enforce the Headlee Amendment that requires certain percentage of state spending to be apportioned to local government.

The Court of Appeals granted mandamus relief for organization, and the matter then came before the Court of Appeals again on motion for reconsideration. The Court of Appeals granted summary judgment in part and denied it in part for both parties. Parties' applications for leave to appeal were granted. The Supreme Court affirmed in part, vacated in part, and remanded.

On remand, the Court of Appeals held that:

- As an issue of first impression, an intermediate school district (ISD) qualifies as a "political subdivision of the state" and "unit of local government" within meaning of Headlee Amendment;
- Community college district controlled of a federally-recognized Indian tribe was not a "political subdivision of the state" within meaning of Headlee Amendment;
- As an issue of first impression, state funding to a public school academy (PSA) by their authorizing body qualified as state spending to a "unit of local government" within meaning of Headlee Amendment; and
- Taxpayer organization was not entitled to mandamus relief.

EMINENT DOMAIN - NEW YORK

74 Pinehurst LLC v. New York

United States Court of Appeals, Second Circuit - February 6, 2023 - F.4th - 2023 WL 1769678

Landlords, through trade associations, brought § 1983 action against the State of New York, the New York Division of Housing and Community Renewal and its commissioner, the City of New York, and the city's rent guidelines board and board members, alleging that the city's amended Rent Stabilization Law, both facially and as applied, effected physical and regulatory takings in violation of the Fifth Amendment's Takings Clause and violated the Fourteenth Amendment's Due Process Clause.

The United States District Court for the Eastern District of New York granted defendants' motion to dismiss for failure to state a claim. Landlords appealed.

The Court of Appeals held that:

- Landlords' facial challenge to the Rent Stabilization Law as allegedly effecting a physical taking failed;
- The Rent Stabilization Law, as applied, did not effect a physical taking of landlords' properties;
- Landlords' facial challenge to the Rent Stabilization Law as allegedly effecting a regulatory taking failed;
- Landlords' as-applied regulatory-takings claim challenging the Rent Stabilization Law was unripe;
- Assuming landlords' as-applied regulatory-takings claim was ripe, the claim failed;
- Assuming that landlords could bring a due-process challenge, the Rent Stabilization Law survived rational-basis review; and
- Sovereign immunity barred landlord's claims against the State of New York and its Division of Housing and Community
- Renewal, and claims against the division's commissioner to the extent they sought monetary relief.

EMINENT DOMAIN - NEW YORK

Bowers Development, LLC v. Oneida County Industrial Development Agency

Supreme Court, Appellate Division, Fourth Department, New York - December 23, 2022 - N.Y.S.3d - 211 A.D.3d 1495 - 2022 WL 17882632 - 2022 N.Y. Slip Op. 07327

Owner of certain real property that had been condemned by eminent domain by county industrial-development agency for use as a surface parking lot associated with hospital and healthcare facility petitioned to annul condemnation determination.

The Supreme Court, Appellate Division, held that agency lacked authority to condemn property because the primary purpose was not a commercial purpose.

County industrial-development agency's determination to condemn certain real property by eminent domain for purposes of using property as a surface parking lot associated with a hospital and healthcare-facility project exceeded its authority and would thus be annulled, where the primary purpose of the condemnation was not a commercial purpose, and agency's authority did not include the power to condemn property for projects related to hospital or healthcare-related facilities.

PUBLIC UTILITIES - OHIO

Corder v. Ohio Edison Company

Court of Appeals of Ohio, Seventh District, Harrison County - December 30, 2022 - N.E.3d - 2022 WL 18140100 - 2022-Ohio-4818

Landowners brought action seeking declaratory and injunctive relief regarding scope electrical transmission line easement, specifically whether electric utility could use herbicides to control vegetation within easement.

The Court of Common Pleas entered a judgment after sua sponte finding that Public Utilities Commission of Ohio (PUCO) had exclusive jurisdiction. Landowners appealed and the Court of Appeals reversed. Utility sought discretionary review and the Supreme Court reversed in part. On remand, the Court of Common Pleas granted summary judgment in the declaratory judgment action favor of landowners. Utility appealed.

The Court of Appeals held that:

- Easements did not authorize use of herbicide to control vegetation;
- Evidence did not support conclusion that purpose of easements was for utility to act preemptively to control vegetation; and
- Use of herbicides was not absolutely necessary for utility to fully clear brush and trees from easements.

Electrical transmission line easements giving electric utility "the right to trim, cut and remove" limbs, trees, and underbrush did not authorize utility to use herbicide to control vegetation within easements; language in easements was ambiguous, and ambiguity was required to be resolved in landowners' favor.

Evidence did not support conclusion that purpose of electric utility's electrical transition line easements was for utility to act preemptively to control vegetation, including by use of herbicides, where there was no history of herbicide use on easements, there was no evidence that herbicide use was contemplated as one of the rights granted in the easements, and utility first contemplated use of herbicides on easements more than 50 years after easements were executed.

Use of herbicides was not absolutely necessary for electric utility to fully clear brush and trees from its electrical transition line easements, as part of the purpose of the easements, and thus herbicide use was not within the scope of the easements, where utility did not contemplate the use of herbicides on the easements for at least the first 50 years of the life of the easements.

PUBLIC UTILITIES - OREGON

Portland General Electric Company v. Alfalfa Solar I, LLC

Court of Appeals of Oregon - January 5, 2023 - P.3d - 323 Or.App. 531 - 2023 WL 107425

Group of renewable-energy-generating facilities sought review of a final order from the Public Utilities Commission (PUC), which resolved a dispute about meaning of provision contained in power purchase agreements (PPAs) in favor of public utility.

The Court of Appeals held that:

- PUC had authority to review public utility's complaint regarding dispute about meaning of provision contained in PPAs, and
- Provision in PPAs providing for a 15-year term during which a "qualifying facility" was entitled to fixed-price term started on date of contract execution, rather than date qualifying facility first delivered power.

Public Utilities Commission (PUC) had jurisdiction to resolve public utility's complaint regarding its dispute with group of renewable-energy-generating facilities about meaning of provision contained within power purchase agreements (PPAs) under statute providing that any person may file complaint with PUC against any person whose business or activities were regulated or enforced by PUC; renewable-energy-generating facilities fell within statutory definition of "persons," their actives as "qualifying facilities" for purposes of the Public Utility Regulatory Policies Act (PURPA) were regulated by the PUC, and nothing in statute limited its application to complaints against public utilities or entities subject only to ongoing regulation by the PUC.

Provision in purchase power agreements (PPAs) providing for a 15-year period during which a "qualifying facility" for purposes of the Public Utility Regulatory Policies Act (PURPA) was entitled to a fixed-price term started on date of contract execution, rather than on date qualifying facility first delivered power; PPAs unambiguously provide that a PPA between public utility and qualifying facility could have a term extending from one to 20 years, but that such term started on date of contract execution, provided that a fixed price option was available only for first 15 years of that term, and that for a contract with a term that is longer than 15 years, fixed price was available only for first 15 years.

WATER LAW - TEXAS

Fort Bend County v. United States Army Corps of Engineers

United States Court of Appeals, Fifth Circuit - February 2, 2023 - F.4th - 2023 WL 1465325

Local political subdivisions brought action under Administrative Procedure Act (APA) challenging United States Army Corps of Engineers' adoption of water control manual (WCM) documenting reservoir regulation plans without including procedures to prevent flooding of their property, Corps' failure to revise WCM after floods, and Corps' failure to acquire their lands when it adopted WCM

and after floods.

The United States District Court dismissed complaint, and plaintiffs appealed.

The Court of Appeals held that:

- Subdivisions' claim was not claim for money damages subject to Court of Federal Claims' exclusive jurisdiction;
- Tucker Act did not provide adequate remedy for harms that subdivisions allegedly faced;
- Fact issues remained as to whether Corps' adoption of revisions to WCM rendered subdivisions' claim moot;
- Fact issues remained as to whether Corps complied with Engineer Regulation (ER) when it prepared WCM;
- Corps' failure to amend WCM after recent flooding events and to acquire additional land when it adopted WCM was discrete agency action;
- ER requiring WCMs to be revised "as necessary" did not impose mandatory duty on Corps;
- Fact issues remained as to whether Corps' non-public documents imposed mandatory duty to acquire additional lands; and
- Reassignment of case to another judge on remand was not warranted.

Political subdivisions' claim for injunctive, declaratory, and mandamus relief under Administrative Procedure Act (APA) requiring United States Army Corps of Engineers to acquire additional land upstream from reservoirs was not claim for money damages subject to Court of Federal Claims' exclusive jurisdiction under Tucker Act, even though relief would require Corps to pay money; subdivisions claimed that Corps' failure to comply with its internal regulations resulted in flooding of their property during floods, claim was not premised on Takings Clause, and they sought only prospective relief.

Tucker Act did not provide adequate remedy for harms that political subdivisions allegedly faced as result of United States Army Corps of Engineers' purported failure to implement procedures to prevent flooding of their property, even though private landowners had sought compensation for takings resulting from floodings, and takings claims could compensate subdivisions for past harms; Court of Federal Claims lacked general equitable powers to grant prospective relief, but district court could order such relief in action brought pursuant to Administrative Procedure Act (APA).

Issue of whether United States Army Corps of Engineers' adoption of revisions to water control manual (WCM) documenting reservoir regulation plans rendered moot political subdivisions' claim that Corps' failure to include procedures to prevent flooding of their property or to acquire their lands violated Administrative Procedure Act (APA) involved fact questions that could not be resolved on motion to dismiss subdivisions' action against Corps.

Issue of whether United States Army Corps of Engineers complied with Engineer Regulation (ER) when it prepared water control manual (WCM) documenting reservoir regulation plans involved fact questions that could not be resolved on motion to dismiss political subdivisions' action under Administrative Procedure Act (APA) alleging that Corps acted arbitrarily and capriciously in adopting WCM.

Engineer Regulation (ER) requiring water control manuals (WCM) to be revised "as necessary" did not impose mandatory duty on United States Army Corps of Engineers to revise WCM for reservoir system after flooding events, and thus federal court lacked jurisdiction under Administrative Procedure Act (APA) to order Corps to revise WCM; regulation did not specify when such conditions required Corps to update WCM, but left that decision to Corps' discretion.

Reassignment of case to another judge on remand was not warranted in political subdivisions' action under Administrative Procedure Act (APA) challenging United States Army Corps of Engineers' adoption of water control manual (WCM) documenting reservoir regulation plans without including procedures to prevent flooding of their property, Corps' failure to revise WCM after floods, and Corps' failure to acquire their lands when it adopted WCM and after floods, even though some of judge's rulings were unconventional; judge's actions would not reasonably cause objective observer to question his impartiality, and reassigning case to another judge would likely entail waste and duplication out of proportion to any gain in appearance of fairness.

SIFMA US Municipal Bonds Statistics.

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

YTD statistics include:

- Issuance (as of January) $22.4 billion, -14.6% Y/Y
- Trading (as of January) $12.5 billion ADV, +21.0% Y/Y
- Outstanding (as of 2Q22) $4.0 trillion, +0.2% Y/Y

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February 6, 2023

BofA Sees More Muni-Bond Defaults in 2023 After January Uptick.

- **First-time payment defaults rose 122% in January from year ago**
- **Forecast reflects a tougher outlook for riskier debt**

Expect more defaults in the $4 trillion municipal-bond market this year, Bank of America Corp. strategists said. Most of the distress will be concentrated in riskier sectors like nursing homes and hospitals.

Muni-bond defaults are forecast to total between $1.7 billion and $2.1 billion in 2023, according to a research note the bank published Friday. First-time payment defaults in January rose 122% year-over-year to $611 million, marking the third highest month since 2019, the note said. Almost all of the defaults were unrated securities in the not-for-profit, nursing home and hospital industries.

The forecast reflects a toughening financial outlook for higher yielding debt that until recently had

benefited from an extended stretch of low interest rates, and in some sectors, stimulus money. Most of the credit pain will likely be concentrated among smaller issues.

Continue reading.

Bloomberg Markets

By Nic Querolo

February 7, 2023

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

Download the S&P report.

S&P U.S. Municipal Sustainable Bond Issuance Outlook 2023: Momentum To Continue

S&P Global Ratings estimates total U.S. municipal sustainable bond issuance could reach at least $54billion in 2023.

Download Slides.

S&P U.S. Muni Sustainable Bonds: Momentum To Continue In 2023

A clear fit between the purpose of many municipal entities and the objectives of sustainable bonds is likely to spur ongoing use of the instruments, although headwinds persist.

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When States Take Over Financially Troubled Local Governments.

A recent bankruptcy filing by Chester, Pennsylvania, highlights the limits and difficulties with state programs in dealing with fiscal stress at the municipal level.

Welcome back to Route Fifty's Public Finance Update! I'm Liz Farmer and this week is the third and final installment of my series on Chester, Pennsylvania's bankruptcy. You can find the first two parts here. This week, I'm taking a look at state oversight of distressed municipalities.

A number of states have programs in which they actively monitor municipal finances and roughly 20 have emergency manager laws allowing for direct intervention. People have long debated how effective these oversight programs are at generating a real recovery and what the right level of intervention even is. Duly elected city officials don't like being told what to do by state overseers.

States on the other hand, typically want troubled cities to just buckle down and take their advice—even if it's tough medicine.

So while the whole point of these programs is to avoid or mitigate extreme distress, they can also create or exacerbate tension between cities and states along the way.

Continue reading.

Foute Fifty

by Liz Farmer

FEBRUARY 7, 2023

The Politics of ESG Investing.

Leaders in conservative states are hesitant to adopt ESG-related principles. Are their positions purely political or substantive as well?

Florida Gov. Ron DeSantis made headlines when he banned the state's pension system in August 2022 from making investment decisions based on environmental, social, and corporate governance guidelines or any other guidelines outside of pure financial performance.

This is one of several recent examples of Republican officials in red states making such decisions when it comes to using ESG or other social responsibility factors in policymaking or administrative decisions.

Around the same time DeSantis announced his decision, Texas banned 10 banks and 348 investment funds from doing business with the state for allegedly boycotting fossil-fuel based energy companies. And before that, Utah threatened to sue S&P over its use of ESG as part of its creditworthiness rating criteria for the state.

Continue reading.

Route Fifty

By Hughey Newsome

Feb 10, 2023

SIFMA Requests Comment Extension on SEC's Equity Market Reforms; Calls for Release of Data

SIFMA requested an extension of the comment period for four rule proposals targeting equity market reform. SIFMA's comment letter concerns proposals on (i) a best execution regulatory framework, (ii) variable minimum pricing increments for quoting and trading NMS stocks, (iii) enhanced order competition and (iv) disclosure requirements regarding order execution information. SIFMA also submitted a FOIA request calling on the SEC to supply certain data relied upon and

referenced in the proposed rulemakings.

Rule Proposals

As previously covered, in December 2022, the SEC issued four rule proposals aimed at reforming the structure of U.S. capital markets:

1. "Regulation Best Execution" (i) providing a best execution regulatory framework for broker-dealers, government securities broker-dealers and municipal securities dealers, and (ii) enforcing written policies and procedures designed to comply with the best execution standard;
2. amendments to Regulation NMS adopting minimum pricing increments (i.e., "tick sizes") for the quoting and trading of NMS stocks;
3. new Regulation NMS Rule 615 (the "Order Competition Rule") establishing regulations to "promote a more competitive, transparent, and efficient market structure for NMS stocks"; and
4. amendments to Regulation NMS Rule 605 ("Disclosure of Order Execution Information") updating the disclosures required for order executions in NMS stocks.

The comments for each proposal are due by March 31, 2023.

FOIA Request

SIFMA submitted to the SEC a FOIA request concerning the following two types of data referenced in the proposals: (i) certain subsets of Consolidated Audit Trail ("CAT") data not publicly available and (ii) publicly available data where the precise source of the data is unclear. SIFMA stated that the use of non-public CAT data in rule proposals is "highly problematic" because the public is then unable to evaluate and "meaningfully comment" on SEC economic analyses and conclusions. SIFMA stated, however, that unattributable CAT data used could help "facilitate the public's review and validation of the [SEC's] economic analyses."

Extension Request

SIFMA requested the comment period be extended to at least 90 days following the SEC's release of the data as requested in the FOIA request. SIFMA stated an extension is appropriate due to the public's inability to fully evaluate the "purported costs, benefits, effects, and economic baselines" of the proposals because of its reliance on undisclosed CAT data. SIFMA added that an extension is also in order in light of the proposals' "breadth and depth of the [] impact on today's markets and market participants" and the lack of analysis as to the collective impact of the rulemakings.

Commentary

From a policy standpoint, the SEC should provide the requested information for transparency and public comment purposes. The SEC may face difficulty in presenting a convincing cost-benefit analysis, however, due to the complexity of the proposals and the assumed costs and benefits.

Hanging out there is a potential legal challenge to these proposals under the Administrative Procedures Act. The requested data would play a crucial role in such a challenge.

Fried Frank Harris Shriver & Jacobson LLP – Steven Lofchie

February 9 2023

GASB Proposes Guidance to Assist with Application of Subscription-Based Information Technology Arrangement.

Norwalk, CT, February 6, 2023 — The Governmental Accounting Standards Board (GASB) has issued proposed implementation guidance that is intended to clarify, explain, or elaborate on existing guidance on subscription-based information technology arrangements (SBITAs).

The Exposure Draft, *Additional Proposal for Implementation Guidance Update—2023*, addresses the single issue of whether a cloud computing arrangement meets the definition of a SBITA as defined in GASB Statement No. 96, *Subscription-Based Information Technology Arrangements*.

If cleared as final implementation guidance, the question and answer in this supplemental Exposure Draft will be added to previously exposed questions and answers to result in a final Implementation Guide, *Implementation Guidance Update—2023*.

The guidance in Implementation Guides is cleared by the Board and constitutes Category B GAAP.

Stakeholders are asked to review the proposal and provide input to the GASB by March 10, 2023. Comments may either be submitted in writing or through an electronic input form.

GFOA is Rethinking Financial Reporting.

Local governments are in an era characterized by declining trust, increasing resource constraints, and increased risk. For these reasons GFOA has launched the Rethinking Revenue and Rethinking Budgeting initiatives. Part of the "rethinking" process is to ask questions and discover what is actually driving these processes and what provides value. Over time, status quo can stagnate while needs change. Similarly, we should be asking questions about financial reporting to determine if current practices are still meeting needs. For example, in a time of decreasing trust in government, we should ask if lengthy, technical financial reports that are published many months in arrears are the most effective way to build trust with government's most important constituency: citizens. In a time of declining resources, we should ask if the finance officer's time is well spent producing these reports, if, in fact, these reports are not the best way to provide accountability to the public. Government finance officers face substantial opportunity costs with their time. Time spent on general purpose external financial reports is time not spent on other forms of decision support and public engagement. For these reasons, we are now launching "Rethinking Financial Reporting."

GFOA's next steps will follow the dictum "a problem well stated is a problem half solved." This means we will conduct rigorous research on questions like: To what extent do financial reports inform decisions and policy making? What is the cost of compliance with GAAP accounting and reporting standards? What do citizens/taxpayers want to know about local government finance? How do they define accountability for the use of their tax dollars?

GFOA's commitment to generally accepted accounting principles (GAAP) remains iron clad, as the consistency and comparability GAAP reporting offers is the best way for governments to meet their obligations to be accountable for the public resources they use to fulfill their public service missions. GFOA also supports financial reporting that is efficient and addresses the information needs of citizens, elected officials and other community stakeholders, and recognizes that current GAAP may not be the best way to achieve these objectives.

Now, we'd like to hear from the GFOA community. A fundamental question of Rethinking Financial Reporting is: "what are the benefits versus the costs of financial reporting?" In this spirit, we'd like to pose a few questions to members as a way to begin the conversation about Rethinking Financial Reporting.

JOIN THE DISCUSSION

Guess Who Loses After Florida and Texas Bar ESG Banks?

Banning Wall Street's biggest municipal bond underwriters has foisted a hidden tax on their residents totaling hundreds of millions of dollars.

What happens when Florida and Texas blacklist Wall Street's largest municipal bond underwriters because of their support for environmental, social and governance practices? The answer is a hidden tax foisted on their residents amounting to hundreds of millions of additional dollars.

If socialism means state control of production, distribution and exchange of goods and services, then Florida and Texas fit the description. That's not the case with California, whose embrace of ESG and free markets has allowed it to borrow more cheaply than Florida and Texas even though it has lower credit ratings. Superior demand makes California debt *the* outstanding performer among the three largest US states.

Companies committed to ESG favor protection of natural resources, human rights, health and safety, community engagement, transparency, compliance with regulatory policies, diversity, equity and inclusion. Investors like the potential. Asset allocation based on ESG criteria has grown to be at least a $35 trillion industry, according to the Global Sustainable Investment Alliance. The iShares ESG Aware MSCI USA ETF has expanded 3,400 times to $20 billion since its inception in 2016, according to data compiled by Bloomberg. No less than Larry Fink, chairman, chief executive officer and co-founder of BlackRock Inc., whose $10 trillion in assets makes it the largest money manager, is a believer. He told his shareholders that Wall Street's embrace of ESG is "capitalism, driven by mutually beneficial relationships between you and the employees, customers, suppliers and communities your company relies on to prosper."

Continue reading.

Bloomberg Opinion

By Matthew A. Winkler

February 13, 2023

Time Bomb of Public Pension Funding Ticks Louder.

The aggregate level for state and local plans is below 50%, inviting a disaster that would outstrip the occasional municipal bankruptcy.

State and local pension funding is one of those perennial crises that always seem to loom but only occasionally produce limited actual disasters in places like Detroit, Puerto Rico or the smaller but

more recent Chester, Pennsylvania. Essentially all 21st-century municipal bankruptcies in the US are due to underfunded pension plans. But none of the defaults so far have led to falling dominoes: soaring municipal bond yields, taxpayer revolts or general government employee strikes. Will state and local pensions stagger along for the next few decades, bankrupting the odd declining city or three but not triggering a general political or economic crisis? Or are we, in Jim Steinman's immortal words, "living in a powder keg and giving off sparks"?

The chart below is the conventional way to look at the pension situation. The vertical axis shows state and local pension assets at stated values (which often contain optimistic valuations of less-liquid assets), divided by actuarial estimates of liabilities. These are estimates by Piscataqua Research, investment consultants who follow this issue closely.

Continue reading.

Bloomberg Opinion

By Aaron Brown

February 13, 2023

The End Is Near for Outdated Government Financial Reporting.

Changes to federal law will require state and local governments to do what they should have done years ago for the benefit of investors and other stakeholders.

By way of a few paragraphs inserted into the recently enacted 4,000-page 2023 National Defense Authorization Act, Congress mandated that state and local governments prepare their annual financial statements in a standardized format that is electronically searchable. The provision effectively drags state and local governments kicking and screaming into the 20th century, if not the 21st.

As worthy an accomplishment as this appears to be, it was resisted mightily by the state and local government financial community. Most prominently, they argue, the measure can potentially result in a major transfer of accounting and reporting regulatory authority from states to the federal government, thereby undercutting what many consider a fundamental principle of federalism. Moreover, state and local officials see it as one more costly unfunded mandate imposed upon their governments.

Continue reading.

Route Fifty

By Michael Granof and Martin J. Luby

FEBRUARY 8, 2023

Scorecard Ranks U.S. States on Water Efficiency, Sustainability Policies.

View the scorecard.

WATER FINANCE & MANAGEMENT

BY WFM STAFF

JANUARY 31, 2023

Achieving Higher ROI and Public Trust Through Transparency: A Winning Strategy for Local Governments.

Public trust in local government is eroding. According to data from Polco, in 2022 less than 50 percent of residents surveyed had confidence in their local government. This is part of a larger and worrying trend. The same data shows that overall confidence in local government fell from 56 percent in 2020 to 48 percent in 2022—an eight-point drop.

The most effective way to bolster trust between local governments and their residents is through transparency. Transparency builds public trust, promotes accountability and efficiency, and simultaneously decreases opportunities for misconduct and fraud.

Achieving transparency in local government is challenging. There may be concerns about the time and costs of implementing transparency measures, as well as worries about the risk of opening the organization and its staff to greater scrutiny and criticism. Since prioritizing transparency can provide such significant benefits for a local government, it's important to understand the potential return on investment of these initiatives.

Continue reading.

American City & County

Written by Mike Bell

10th February 2023

Muni Outlook for 2023 (Bloomberg Audio)

Eric Kazatsky, Senior Municipal Strategist with Bloomberg Intelligence, joins the show to break down the municipal bond market. Hosted by Matt Miller and Kriti Gupta.

Listen to audio.

Bloomberg

Feb 10, 2023

Abusive Arbitrage Devices – It's Time to Get Reacquainted - Squire Patton Boggs

Sometimes it is a good exercise to remind ourselves of some basic rules governing tax-exempt bonds. One such rule is that bonds are taxable arbitrage bonds if an "abusive arbitrage device" is used in connection with the bonds. An abusive arbitrage device is any action that has the effect of: (1) enabling the issuer to exploit the difference between tax-exempt and taxable interest rates to obtain a material financial advantage; and (2) overburdening the tax-exempt bond market.[1] (Keep in mind that an "abusive arbitrage device" is only one specific type of "arbitrage bond." We chose to cover abusive arbitrage devices because they are of renewed relevance and they touch on many arbitrage concepts.) The first element of an abusive arbitrage device has been difficult (to the point of impossibility) to satisfy since Mad Men first aired.[2] However, the Federal Reserve's hawkish monetary policy has now made it much easier to exploit the difference between tax-exempt and taxable interest rates. Thus, it's time to get reacquainted (or acquainted, depending on where you are in your career) with the concept of abusive arbitrage devices. The Public Finance Tax Blog is here to help, with a three-part mini-series of posts on this topic.

Episode 1 – Background and Arbitrage Basics

Background. Issuers are able to issue tax-exempt bonds at a lower interest rate than taxable bonds, because the interest on tax-exempt bonds is not subject to federal income tax. Because the federal government provides the subsidy for tax-exempt bonds, by foregoing the tax revenue on the interest earned, it has put in place various restrictions to ensure that the subsidy is used for its intended purpose. The federal government's primary goal in providing the subsidy, which allows issuers to borrow at a lower cost, is to promote investment by state and local governments, 501(c)(3) organizations, etc. in long-lived, tangible assets. Accordingly, the federal government is willing to provide the subsidy, but only with guardrails that steer the issuer in the right direction (of issuing bonds the proceeds of which are used to finance capital projects).

What is arbitrage? In the tax-exempt bond world, arbitrage is the difference between the yield of the tax-exempt bonds and the yield at which the issuer invests proceeds of those bonds in the taxable market. For example, an issuer of tax-exempt bonds with a 3% interest rate that invests the tax-exempt bond proceeds in taxable securities with a 5% rate of return has made a 2% profit (i.e., positive arbitrage).

Why is it bad? Because the federal government says arbitrage is bad. The exploitation of the difference between the tax-exempt and taxable markets generally does not advance the federal government's primary goal of encouraging investment in long-lived, tangible assets. In fact, if left unchecked, the ability of issuers to earn positive arbitrage could shift the entire cost of a capital project to the federal government. The primary rule that the federal government put in place to prevent issuers from exploiting the difference between these markets is the requirement that an issuer rebate any positive arbitrage to the federal government. Stated another way, the issuer generally cannot retain earnings from the investment of tax-exempt bond proceeds to the extent that those earnings exceed the yield of the tax-exempt bonds. Compliance with the rebate requirement will oftentimes preserve the tax-exempt status of interest on the bonds – but not always.

Preview of Episode 2 – Overburdening (Generally) Not Allowed.

Sometimes paying rebate will not suffice to keep the bonds tax-exempt. Where an issuer has exploited the difference between tax-exempt and taxable interest rates (i.e., earned positive arbitrage) and has also overburdened the tax-exempt bond market, the issuer's bonds will generally be taxable arbitrage bonds, a status that compliance with rebate will not rectify. So what constitutes

overburdening?

Stay tuned . . .

[1] Treas. Reg. Section 1.148-10(a)(2).

[2] 2007.

By Cynthia Mog on February 5, 2023

The Public Finance Tax Blog

Squire Patton Boggs

States Are Scoring Millions in Tax Revenue from Sports Betting.

Ahead of this weekend's Super Bowl, a Route Fifty analysis shows the states where income from sports gambling was the highest.

A record 50.4 million adults in the U.S.—roughly 20% of the population—are expected to bet $16 billion on the Super Bowl this Sunday, according to an annual survey from the American Gaming Association.

The Super Bowl is increasingly a big deal for states, and that's because many of them stand to make money off of it.

In 2022, 27 states brought in a combined $1.5 billion from sports betting. Three of those states raked in more than $100 million in revenue: New York, Pennsylvania and Illinois.

Continue reading.

Route Fifty

By Elizabeth Daigneau

FEBRUARY 9, 2023

Anti-Environmental Investing Law Costing Texas Taxpayers $445 million a Year

Vindictive and meaningless political gestures costing Texas taxpayers

Over the past decade, many industries have placed more emphasis on managing their ESG (environmental, social and governance) risks and investors have been rewarding firms that use ESG data in their investing with increased capital inflows and higher equity valuations. Investment firms also have added offerings that avoid environmentally dangerous industries or invest in companies

that are focused on energy efficiency, water conservation, or wildlife protection. To maximize shareholder value, some banks have also adopted ESG investing practices that evaluate companies on how well they are managing relevant risks including climate risk and governance practices as compared to their peers.

Because of Texas' large oil and gas industry, some Texas lawmakers have chosen to interpret this as an attack on the state, rather than a shift in the priorities and preferences of a functioning market. In 2021, legislators introduced Senate Bill 13, which banned banks that had divested from the oil and gas sector from participating in public finance markets in the state. A similar bill, Senate Bill 19, banned state and local governments from contracting with lenders that are limiting business in the firearms industry. Both laws took effect in September 2021.

Continue reading.

environmentamerica.org

FEBRUARY 9, 2023

How ETFs Are Driving Growth in Municipal Bonds: Morgan Stanley

Municipal bond ETFs are on track to double assets under management by 2026 as obstacles to their growth recede, bringing the tax benefits of muni bonds to more investors.

Key Takeaways

- Ownership of municipal bonds has largely been limited to wealthy investors.
- The growth of muni ETFs is expanding access to these bonds to a broader group.
- Evolving regulatory structures and investment models will likely fuel growth.
- The growth of muni ETFs should have an impact on the muni bond market as a whole.

Continue reading.

Feb 9, 2023

TAX - ILLINOIS

In re County Treasurer and Ex Officio County Collector of Lake County

Appellate Court of Illinois, Second District - December 28, 2022 - N.E.3d - 2022 IL App (2d) 210689 - 2022 WL 17971697

Financial company, as assignee of entity that had purchased property tax debtor's delinquent taxes, petitioned for a tax deed on the property. Debtor subsequently filed for bankruptcy.

After the bankruptcy court lifted the automatic stay on financial company's claim, the Circuit Court granted the petition, and denied debtor's motion to reconsider. Debtor appealed.

The Appellate Court held that:

- Debtor did not effectively redeem real property by tendering delinquent taxes to county clerk more than three years after the extended redemption deadline had passed, and
- Neither the automatic bankruptcy stay nor the confirmation of the bankruptcy plan tolled the redemption period.

Property tax debtor did not effectively redeem real property by tendering delinquent taxes to county clerk more than three years after the extended redemption deadline had passed, and receiving a redemption receipt that was backdated to the redemption deadline; the tax code did not permit the county clerk to unilaterally alter the redemption deadline, accept untimely tender of delinquent taxes, and backdate the receipt, and thus the attempted redemption was a nullity.

Neither the automatic stay triggered by property tax debtor's bankruptcy petition nor the confirmation of his Chapter 13 plan tolled his redemption period for payment of delinquent property taxes; the treatment of tax purchaser's claim in debtor's bankruptcy plan had no tolling effect on debtor's redemption period under property tax code which provided a firm deadline by which the property must be redeemed, and tax purchaser was free to ask the bankruptcy court to lift the stay so it could proceed on its tax-deed claim.

Florida Lawmakers Move to Take Over Disney's Special-Tax District.

If approved, bill would give Gov. Ron DeSantis the power to appoint members to oversee the district, instead of eliminating it, as governor had pledged

Walt Disney Co.'s dominion over its magic kingdom in Florida may be coming to an end.

Republicans in Florida's House of Representatives on Monday filed a bill that would dramatically alter the governance—and even change the name of—the Reedy Creek Improvement District, a special-tax district near Orlando that has allowed Disney to self-govern the land that houses its Walt Disney World Resort for more than 50 years. The move is the culmination of GOP efforts floated last year to rein in Disney's special tax status, though it stops short of eliminating it outright.

The bill, sponsored by Orlando Rep. Fred Hawkins, would rename Reedy Creek as the Central Florida Tourism Oversight District and give Gov. Ron DeSantis the authority to appoint members to its governing body, the five-member board of supervisors. Florida's state Senate would have to approve any such appointments.

Continue reading.

The Wall Street Journal

By Robbie Whelan

Feb. 6, 2023

Disney Special Tax-District Bill Is Approved by Florida Senate.

Measure, which Gov. DeSantis is expected to sign, would move control of the Reedy Creek district to the state

The Florida Senate on Friday approved a bill that would dramatically alter the governance of a special-tax district near Orlando that has allowed Walt Disney Co. to self-govern the land that houses its theme parks, sending the measure to Republican Gov. Ron DeSantis, who is expected to sign it into law.

The bill would rename the Reedy Creek Improvement District—which houses Walt Disney World Resort and other parks and has existed for more than 50 years—the Central Florida Tourism Oversight District. The measure would give Mr. DeSantis the authority to appoint members to its governing body, the five-member board of supervisors, which under current law is essentially handpicked by Disney.

Disney would remain liable under the bill for nearly $1 billion in municipal debt issued by the district to pay for roads, sewers and other infrastructure, rather than shifting that burden to the taxpayers of nearby Orange and Osceola counties. The new district also would retain the ability to levy taxes and issue bonds.

Continue reading.

The Wall Street Journal

By Arian Campo-Flores and Robbie Whelan

Feb. 10, 2023

DeSantis Proposes Barring ESG Criteria in Florida Muni-Bond Sales.

- **State, local governments wouldn't be able to use ESG criteria**
- **Republican's proposal builds on plan announced late last year**

Florida Governor Ron DeSantis said he will propose legislation that would bar the state and its local governments from using environmental, social, governance criteria when issuing municipal bonds, expanding his push against what he has called a "woke agenda."

DeSantis released new details on Monday about his plan to require state and local government investments only be guided on potential returns. The Republican governor has previously said the state's asset managers must stop using ESG investing strategies if they want to keep overseeing Florida's money, including $220 billion of pension funds.

"We're also finally going to make sure that ESG is not infecting other decisions at both the state and local government," DeSantis said during a press conference in Naples on Monday. "So no investment decisions at the state or local government with ESG, no use of ESG in procurement and contracting and no use of ESG when issuing local or state bonds."

Continue reading.

Bloomberg

By Michael Smith, Danielle Moran and Nic Querolo

February 13, 2023

Citi Dropped from Texas $3.4 Billion Muni Deal on Gun Policy.

- **State AG said the bank 'discriminates' against gun industry**
- **Bank spokesperson declined to comment on the removal**

Citigroup Inc. has been dropped from the group of banks poised to handle the biggest-ever municipal-bond transaction from Texas after the state's attorney general's office determined the firm "discriminates" against the firearms industry, barring it from underwriting most government borrowings in the state.

The Texas Natural Gas Securitization Finance Corp. board met on Thursday and took action to "reconstitute" the syndicate on the $3.4 billion deal, according to Lee Deviney, executive director of the Texas Public Finance Authority, the state agency overseeing the borrowing. Citigroup had been listed in the original iteration of the underwriting firms approved by the board in May and is no longer included in the final group.

A spokesperson for Citigroup declined to comment.

Continue reading.

Bloomberg Markets

By Danielle Moran

February 9, 2023

Ron DeSantis to Take Control of Disney's District Board in New Bill.

- **Local governing body would have a change in leadership**
- **Legislation would not impact outstanding debt obligations**

Florida lawmakers are proposing to give Ron DeSantis full control over the board overseeing Walt Disney Co.'s special district, as the Republican governor escalates his fight with the entertainment giant.

A new bill filed Monday would give the governor power to appoint the five-member board of supervisors that runs what is now known as the Reedy Creek Improvement District, a special government entity that's granted sweeping benefits to Disney for half a century. Those appointees will then have to be confirmed by state senators. The new rules prevent anyone with ties to a theme park in the past three years from serving on the board.

"Florida is dissolving the corporate kingdom and beginning a new era of accountability and transparency," Bryan Griffin, DeSantis' press secretary, said in an emailed statement. The former rules "gifted extraordinary special privileges to a single corporation."

Continue reading.

Bloomberg Markets

By Nic Querolo and Felipe Marques

February 6, 2023

S&P U.S. Local Governments Credit Brief: Florida Municipalities, Counties, And School Districts

Overview

Florida municipalities, counties, and schools (or local governments [LGs]) have demonstrated stable credit quality in recent years, which we believe is supported by continued economic development and growth despite the recent pandemic, supply chain disruptions, and a tight labor market that has affected local government portfolios nationwide. S&P Global Ratings expects credit quality for Florida LGs to remain stable in the near term despite the shallow recession predicted for the first half of 2023, due in large part to the added financial flexibility most of the portfolio has realized subsequent to injection of federal stimulus funds during the pandemic and ongoing economic development. Employment growth in Florida exceeds the national rate. Recovery in the leisure and hospitality sector was achieved during the last two years due to stronger domestic visitor activity, while international visitor activity remains depressed compared with pre-pandemic levels. All the while, business and professional services, financial, and information sectors continue to expand. Florida's unemployment rate has continued to trend below the national rate, at 2.7% as of October 2022, whereas the annual population growth at 1.9% has exceeded the national rate of 0.4% during 2022.

S&P Global Ratings maintains ratings on 101 LGs: 22 schools, 19 counties, and 60 municipalities. Overall, Florida LG credit quality remained stable during 2022, with only 1% experiencing rating movement. Two LGs within the portfolio experienced one-notch upgrades. Hernando County's upgraded rating reflects material improvement in reserves, coupled with stronger financial management policies and practices, whereas Seminole County's credit quality improvement reflects positive operations and economic growth within the county, supported by robust and forward-looking policies and practices. In addition, the portfolio realized one outlook revision, for Indian River County School, to stable from negative due to the district's improved financial profile during the past two years as a result of prudent expense management and revenue growth. The majority of the ratings have a stable outlook, with Winter Haven the only credit on positive outlook due to improving per capita market values, which we expect will continue to support a strong economic profile, while Hillsborough County School District is the only credit on negative outlook, reflecting uncertainty in the district's ability to balance recurring revenues and expenditures, without federal stimulus support, while facing expenditure uncertainty from labor contracts.

Continue reading.

10 Feb, 2023

Fitch ESG Market Trends 2023 Webinars Series.

Wednesday, February 22

Session 1: 4:30pm HKT/ 8:30am GMT | Session 2: 11:00am EST/ 4:00pm GMT

Challenging macroeconomic conditions, geopolitical tensions and political polarisation are contributing to increased short-term scepticism about the importance of ESG considerations by corporations, investors and governments, but the long-term outlook for sustainable finance remains solid, according Sustainable Fitch's ESG outlook for 2023.

Join Sustainable Fitch's Research analysts on February 22nd as they share their insights on key ESG market trends for 2023 and latest market developments. We will run two sessions to serve the global audience.

The key topics/trends to be discussed will include:

- Economic and political challenges to test ESG's staying power
- Increased focus on climate pledge follow-through and implementation
- Growing physical risks to drive short-term mitigation strategies
- Emerging markets to benefit from focus on nature and climate equity
- Private and retail investors bring new ESG priorities to capital markets

We look forward to your participation to either of the sessions.

REGISTER NOW

Firm Fined for MSRB Registration Failures on Private Placement Offerings.

A broker-dealer settled FINRA charges for (i) conducting a municipal securities business without becoming a member of the MSRB and (ii) failing to amend its FINRA membership application prior to conducting private placement offerings.

According to FINRA, the firm offered customers tax-advantaged state-sponsored securities plans ("529 plans"), which are municipal securities, and collected commissions and fees without first joining the MSRB or employing a qualified municipal principal to supervise the municipal securities business. Additionally, FINRA found that the firm sold several private placements, although its membership agreement did not permit the sale of private placements without obtaining FINRA approval pursuant to FINRA Rule 1017 ("Application for Approval of Change in Ownership, Control, or Business Operations").

FINRA determined that the firm violated MSRB Rule G-2 ("Standards of Professional Qualification"), Rule G-3 ("Professional Qualification Requirements"), Rule G-27 ("Supervision") and Rule A-12 ("Registration"). The firm also violated FINRA Rule 1017 and Rule 3110 ("Supervision").

To settle the charges, the firm agreed to (i) a censure, (ii) a civil monetary penalty of $45,000 and (iii) to certify within 180 days that it either registered with the MSRB or ceased its offering of municipal securities.

February 7 2023

Fried Frank Harris Shriver & Jacobson LLP

Fitch: Bolingbrook (IL) Rating Actions Point to Analytical Differences

Fitch Ratings-San Francisco/New York/Chicago-10 February 2023: The Village of Bolingbrook, IL's recent default on a series of nonrecourse sales tax revenue bonds backed by a narrow area of its tax base would not affect Fitch Ratings' view of the municipality's overall credit quality. While Fitch does not rate the Bolingbrook's dedicated tax or general obligation (GO) bonds, Fitch believes the recent downgrade of Bolingbrook's GO bond ratings by another rating agency highlights a meaningful difference in our approach to the distinctions between dedicated-tax bond obligations ratings and an issuer's GO and Issuer Default Ratings (IDR).

Our ratings definitions state that IDRs "opine on an entity's relative vulnerability to default…on financial obligations whose non-payment would best reflect the uncured failure of the entity," and a default of nonrecourse bonds does not meet this criteria. Fitch determines the legal obligations of issuers and specific pledged tax revenue stream when assigning ratings to dedicated-tax bonds. Transaction documents generally include explicit language that informs bondholders that issuers are not responsible for curing pledged revenue shortfalls. A default on a dedicated-tax bond that does not have any recourse to the issuer's general revenues would not trigger negative rating action on the issuer's IDR because it does not reflect the issuer's general credit quality or willingness to pay its financial obligations.

Fitch generally caps the ratings of local government dedicated-tax bonds at the IDR because we believe such pledges are unlikely to survive the filing of a bankruptcy by the municipality absent legal protections such as a statutory lien. We frequently rate dedicated-tax bonds like Bolingbrook's 2005 sales tax revenue bonds substantially below the local government's IDR, reflecting our view of the limited pledge and its lower resilience to revenue pressures.

The limited offering memorandum for Bolingbrook's unrated bonds explicitly warns that the bonds are payable solely and only from the sales taxes on a concentrated, small retail area encompassing existing retailers and speculative development potential, which makes them "subject to a high degree of risk." The offering statement further explains that the bonds are not general obligations and offered investors "neither the full faith and credit nor the general taxing power" of the municipality as security.

In some cases, municipal market issuers have intervened to prevent payment defaults on dedicated-tax bonds, including hotel tax bonds during the pandemic, even though they were not obligated to do so under the bond's legal structure/terms of the offering agreement. Fitch rates to the explicit obligations of the issuer under the terms of the legal documents and does not assume that a local government would step in to cover the payment obligations of a nonrecourse bond.

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S&P: California's Fiscal 2024 Executive Budget Proposal Closes A Projected $22.5 Billion Budget Gap

Key Takeaways

- We believe the governor's fiscal 2024 budget, as proposed, would largely maintain structural budget balance, although, state-projected revenues could prove optimistic; the California Legislative Analyst's Office forecasts slightly lower fiscal 2024 revenue than the governor's proposal, and neither the office nor the governor anticipates a recession
- The governor's executive budget proposal identifies a $22.5 billion potential general fund budget gap over the next year and a half, which would mostly be closed through reduction of previously approved one-time spending, spending delays, and shifting costs to other state funds
- The governor's proposal would spend down significant amounts of unreserved fund balance, but still increase the restricted budget stabilization fund slightly to $22.4 billion (10.0% of proposed general fund expenditures) in 2024, while at the same time paying down about $1.9 billion of long-term pension and other postemployment benefit liabilities
- While the executive budget forecasts substantial operating deficits throughout its five-year projection, these deficits would be eliminated or reduced to relatively small levels if what the state self-identifies as one-time spending is netted out. The state currently counts $32.4 billion of one-time spending in fiscal 2023, before proposed adjustments.

Continue reading.

7 Feb, 2023

City of Austin Must Pay $90 Million to Acquire Disputed Airport Terminal.

- **Operator resisted city takeover bid for airport expansion plan**
- **Demand for flights has surged as city seeks to add terminals**

A Texas probate court ordered the City of Austin to pay $90 million — nine times more than it had once offered — to the operator of a privately-run airport terminal that municipal officials want to demolish as part of a planned expansion project.

Lonestar Airport Holdings, the operator, had resisted the city's effort to take over the South

Terminal at Austin Bergstrom International Airport, accusing officials of engaging in “municipal thuggery” by attempting to end the New York company’s 40-year lease 34 years early. The city initiated eminent domain proceedings in June, after Lonestar rejected a $10 million offer to buy their lease rights.

The $90 million price tag for the takeover was determined late Monday by three court-appointed special commissioners in Travis County probate court, which administers the area’s eminent domain cases.

Continue reading.

Bloomberg

By Madlin Mekelburg

February 7, 2023

Lubbock, Texas: Fitch New Issue Report

Key Rating Drivers Revenue Defensibility: ‘aa’; Very Favorable Service Area; Some Affordability Pressure: The overall service area assessment considers the very strong customer growth and unemployment rates, as well as household income figures that trail state and national averages. Affordability is incrementally pressured due to moderately elevated rates, and the aforementioned lower-than-average income metrics. The service area is home to Texas Tech University (TTU), which adds to the region’s economic stability. Operating Risk: ‘aa’; Very Low Operating Cost Burden; Manageable Capital Needs: Historical capital investment has been sound, as reflected by the system’s very low life cycle ratio. Operating costs are very low despite the exposure to a wholesale supplier, which represents 60% of water supply. Financial Profile: ‘aa’; Improving Leverage; Stable Financial Margins: The system’s debt amortization and manageable capital spending contribute to the currently very low leverage. Liquidity and coverage of full obligations (COFO) are sound, and thus neutral to the financial profile assessment.

ACCESS REPORT

Thu 09 Feb, 2023

Victoria, Texas: Fitch New Issue Report

Key Rating Drivers Revenue Defensibility: ‘aa’; Favorable Service Area Characteristics; Affordable Service Costs: Revenues are derived entirely from the system’s exclusive right to provide retail water and sewer service within the service area. Service area characteristics are favorable with midrange growth, income and unemployment attributes. The system has independent rate-setting authority, and rates are affordable for the vast majority of the population. Operating Risk: ‘a’; Very Low Operating Cost; Life Cycle Ratio Increasing: The operating risk assessment is supported by the system’s very low operating cost burden, although the system displays elevated investment needs with a high life cycle ratio of 53% in fiscal 2021, up from 43% in fiscal 2017. Estimated capital spending over the next five years focuses primarily on renewal and replacement. Financial Profile:

‘aa’; Very Strong Financial Profile: The system’s very strong financial profile is supported by decreasing leverage over the last five fiscal years, largely attributable to rapid debt amortization. Leverage will increase slightly in Fitch’s scenario analysis from the current 2.9x but remain supportive of the assessment. Fitch expects the liquidity profile to remain neutral to the assessment.

ACCESS REPORT

Tue 07 Feb, 2023

University of California: Fitch New Issue Report

Revenue Defensibility: ‘aa’; Leading Statewide Public Research System; Strong State Support: The ‘aa’ assessment reflects UC’s very strong demand characteristics, as well as a sizable and accretive clinical enterprise and good state operating support. Despite a meaningful decline in summer 2022 enrollment yoy, overall yoy enrollment was steady. The enrollment pipeline remains healthy; freshman applications for fall 2022 were up a sizable 3.5%, though transfer activity was softer due largely to community college enrollment pressures. Selectivity, matriculation and retention levels have remained solid and are reflective of UC’s role as the state’s land-grant research institution system. Operating Risk: ‘a’; Solid Cash Flow at System and Healthcare Enterprise, and Meaningful but Manageable Capital Plans: Solid cost flexibility and consistent cash flow margins are reflected in the ‘a’ assessment, based on systemwide performance indicators. Through 2022, UC generated sufficient cash flow and coverage (adjusted for pension/other post-employment benefits [OPEB]). Margins remain susceptible to growth in compensation and inflation, reflecting UC’s significant pension obligation and union presence. However, systemwide efforts on operating efficiency, collaboration across campuses and medical centers, and continued growth in revenue have preserved operating performance through the worst of the pandemic and have been sufficient to partially support a sizable capital investment program. Financial Profile: ‘aa’; Sizable and Resilient Financial Profile: UC maintains a strong financial position, with generally improving available funds relative to expenses and adjusted debt over time.

ACCESS REPORT

Wed 08 Feb, 2023

Tarrant County Hospital District, Texas: Fitch New Issue Report

The ‘AA’ Issuer Default Rating (IDR) and limited tax bond rating reflect Tarrant County Hospital District’s (TCHD, or the district) very strong revenue defensibility, strong historical and projected operating margins, and financial profile consistent with Fitch’s ‘AA’ category, inclusive of this series 2023 debt. The district has been building liquidity for the past several years in preparation of its two-phase capital improvement plan. TCHD carries only a very modest amount of long-term debt, but under its $800 million bond authorization, it will issue $450 million (including premium) of series 2023 bonds and follow up with a second issuance of approximately $350 million in the next four to five years. In addition to the debt, TCHD’s $1.5 billion of capital spending plans will be partially funded from operating cash flow and reserves.

ACCESS REPORT

Wed 08 Feb, 2023

Lower Colorado River Authority Transmission Services Corp., Texas: Fitch New Issue Report

The ‘A+’ rating reflects the strong financial profile of Transmission Services Corp. (TSC) in the context of its very low operating risk and the strength of its regulated revenue framework in the ERCOT market, in which TSC operates. Transmission revenues are regulated by the Public Utility Commission of Texas (PUCT) and collected from all retail customers within ERCOT. The largest utilities contributing to TSC’s transmission revenues have a collective midrange purchaser credit quality and consist primarily of the largest electric utilities operating within the state. Leverage (measured by net adjusted debt to adjusted funds available for debt service) remained consistently in the range of 8.0x over the last decade, despite large additional capex investments in new and existing transmission assets, primarily funded from new debt. The regulatory process in ERCOT allows capex additions to be included in the transmission tariff in a timely manner, allowing revenues to keep pace with the increased debt costs.

ACCESS REPORT

Wed 08 Feb, 2023

State of Ohio: Fitch New Issue Report

Revenue Framework: ‘aa’: Like most states, Ohio has an unlimited legal ability to raise operating revenues. Its revenue base is diverse and relies on broad-based income and sales taxes. Revenue growth has historically been slow, with state-source revenues expanding in line with, or slightly above, inflation when factoring in the effect of tax policy changes. Direct revenue effects of the tax cuts that Ohio has implemented over the past several biennia have so far been manageable, aided by favorable economic and fiscal trends. Expenditure Framework: ‘aaa’: Ohio retains ample flexibility to cut spending throughout the economic cycle. As in most states, the natural pace of spending growth is likely to be somewhat above revenue growth, requiring ongoing budget management. Carrying costs for debt and retiree benefits are below the median for states. Long-Term Liability Burden: ‘aaa’: Debt levels are conservatively managed and debt primarily consists of GO bonds. On a combined basis, outstanding debt and net pension obligations are below the U.S. states’ median. Operating Performance: ‘aaa’: The state generally has a careful approach to financial operations, consistently achieving budgetary balance and restoring its Budget Stabilization Fund (BSF) during the last economic expansion.

ACCESS REPORT

Thu 09 Feb, 2023

Washington Suburban Sanitary District, Maryland: Fitch New Issue Report

Revenue Defensibility: ‘aa’: Very Strong Revenue Source Characteristics; Very Favorable Service Area: Washington Suburban Sanitary District (WSSD) serves an expansive and very favorable service area that encompasses portions of two counties. Enhancing the district’s independent ability to raise revenues is the authority to levy ad valorem taxes for debt service; to date, this authority has not been utilized. Operating Risk: ‘aa’: Very Low Operating Cost Burden; Moderate Investment Needs: The district’s operating risk profile is very strong, reflected in the very low operating cost burden and low life cycle ratio. Financial Profile: ‘aa’: Stabilizing Financial Profile with Expectations for Declining Leverage: The district’s financial profile assessment reflects its 8.9x leverage ratio in fiscal 2022, moderating from a recent peak of 11.1x as the effects of pandemic-related revenue stresses began to abate. Although leverage is expected to rise in fiscal 2023, Fitch anticipates leverage will decline thereafter, through at least fiscal 2027.

ACCESS REPORT

Fri 10 Feb, 2023

Aurora, Colorado: Fitch New Issue Report

Revenue Defensibility: ‘aa’: Very Strong Revenue Defensibility Supported by Very Favorable Demand Characteristics: Very strong revenue defensibility reflects the city’s autonomy to adjust rates, monopolistic service provision and very affordable rates. Robust growth underpins the very favorable service area, further supporting the assessment. Operating Risk: ‘aa’: Very Low but Rising Operating Costs; Low Life Cycle Ratio: The system’s operating cost burden has been rising and is approximated at $5,400 per million gallons (mg) of treated flows in 2021, excluding estimated stormwater costs. Financial Profile: ‘aaa’: Extremely Strong Financial Profile Supported by Robust Liquidity: The system’s leverage was 2.1x in fiscal 2021 (ended Dec. 31) and is expected to peak in 2023 with the system’s new debt issuance. However, leverage is typically not expected to exceed 3.0x through 2026, which is supportive of the ‘aaa’ assessment.

ACCESS REPORT

Fri 10 Feb, 2023

Prosper Independent School District, Texas: Fitch New Issue Report

Key Rating Drivers Revenue Framework: ‘a’: Rapid taxable assessed value (TAV) and enrollment growth have led to strong revenue gains, outpacing U.S. GDP, and post-pandemic revenue growth prospects remain strong. Fitch expects future enrollment and revenue trends to mirror recent trends, based on current economic development. As is the case with other Texas school districts, Prosper ISD’s independent legal ability to raise revenues is limited by state law. Expenditure Framework: ‘aa’: Fitch expects the natural pace of spending growth to remain slightly above revenue growth, reflecting operating costs for new schools and additional teachers and staff. State support for pension and other post-employment benefits (OPEBs) costs helps keep the fixed-cost burden moderate, and expenditure flexibility is solid. Long-Term Liability Burden: ‘a’: Fitch expects the long-term liability burden to remain elevated but still within the moderate range given the district’s significant capital needs and needs of overlapping issuers over the medium to longer term. Operating Performance: ‘aaa’: Fitch anticipates the district will maintain a high level of operating

flexibility due to its sound expenditure flexibility and supplemented by a sound reserve cushion. Fitch believes the district is well positioned to address challenges posed by future economic cycles. Conservative budgeting practices have helped management navigate the recent rapid growth.

ACCESS REPORT

Fri 10 Feb, 2023

NFMA 2023 Annual Conference.

The Education Committee of the NFMA is happy to announce the opening of registration for the 2023 Annual Conference!

The NFMA will hold its 2023 Annual Conference at **Disney's Grand Floridian Resort & Spa on May 16 – 19**. In addition to a strong slate of panels, the Conference Planning Committee is excited about invited keynote speakers to be announced shortly.

To view the program, click here. To register, click here.

GFOA eLearning: Federal Funds Fair Begins March 7

The Federal Funds Fair is an opportunity for members and interested finance professionals to learn about federal grants available to state and local governments. Hosted by speakers from federal agencies issuing state and local grants, attendees will get the chance to become familiar with different federal grant programs that could benefit their communities.

REGISTER

GFOA Advanced Governmental Accounting in Chicago.

Ready for a deep dive into governmental accounting? This in-person training beginning March 21, is designed to provide participants with a solid working knowledge of specialized accounting and financial reporting used by state and local governments for selected topics through lecture, discussion, and exercises.

REGISTER

- Request for Comment on Draft Amendment to MSRB Rule G-32 to Streamline the Deadlines for Submitting the Information on Form G-32: SIFMA Comment Letter
- SIFMA Urges MSRB to Extend Filing Deadlines in Proposal to Streamline Primary Offering Form Submissions.
- MSRB Proposes Regulation of Solicitor Municipal Advisors.

- MSRB Proposes Rule Amendments to Allow Testimonials in Muni Advisor Advertisements.
- How Public Cash Managers Should Gird for Federal Debt Follies.
- Taxes Done Right: New Analytics for Municipal Securities Wonk it up!
- *UMB Bank, NA v. Parkview School, Inc* – Court of Appeals holds that – in proceedings initiated by trustee for loan made to nonprofit organization operating charter schools – Minnesota court exercised jurisdiction over action by ruling on trustee's petition, which sought declaration that bondholder directive for trustee to enter forbearance agreement was ineffective and instruction not to enter forbearance agreement, before Arizona court exercised jurisdiction by ruling on trustee's motion for appointment of receiver, and thus, under prior exclusive jurisdiction doctrine, Arizona court properly deferred to Minnesota court's ruling in finding that forbearance agreement did not bar appointment of receiver.
- And finally, How You Gonna Keep 'Em Down On The Racetrack When They've Seen Mario Kart is brought to us this week by *Campbell County Board of Commissioners v. Wyoming Horse Racing, LLC*, in which County sought to revoke a previously-granted horse-racing license due to grantee's sad, poignant failure to revive a dying pastime. Positively elegiac. Fortunately, per Homer, life goes on.

BONDS - ARIZONA

UMB Bank, NA v. Parkview School, Inc

Court of Appeals of Arizona, Division 1 - January 5, 2023 - P.3d - 87 Arizona Cases Digest 4 - 2023 WL 106472

Trustee for loan made to nonprofit organization operating charter schools commenced action for a receiver after being authorized to do so by Minnesota probate court.

The Superior Court appointed receiver. Nonprofit organization appealed.

The Court of Appeals held that:

- Notice of claim statute did not apply to trustee's request for appointment of receiver;
- Even assuming one-year statute of limitations applied, receivership action was timely; and
- Arizona court properly deferred to Minnesota court's ruling in finding that forbearance agreement did not bar appointment of receiver.

Request for appointment of receiver made by trustee for loan made to nonprofit organization operating charter schools was not mere predicate to damages claim, and thus notice of claim statute did not apply; trustee requested receivership for prospective protection of bondholders, and to extent trustee requested past-due debt be collected within the receivership, severance of those requests did not redefine the nature of the action.

Receivership action initiated by trustee for loan made to nonprofit organization operating charter schools was timely, even assuming applicability of one-year statute of limitations for actions against public entities; trustee premised receivership action on nonprofit organization's failure to satisfy its obligation to make regular debt payments in full for several years, including defaults that occurred within one year of complaint, and any purported debt acceleration arising from trustee's complaint alleging "total aggregate due and owing" had no bearing on timeliness of receivership action.

In proceedings initiated by trustee for loan made to nonprofit organization operating charter schools, Minnesota court exercised jurisdiction over action by ruling on trustee's petition, which sought declaration that bondholder directive for trustee to enter forbearance agreement was

ineffective and instruction not to enter forbearance agreement, before Arizona court exercised jurisdiction by ruling on trustee's motion for appointment of receiver, and thus, under prior exclusive jurisdiction doctrine, Arizona court properly deferred to Minnesota court's ruling in finding that forbearance agreement did not bar appointment of receiver.

POLITICAL REFORM ACT - CALIFORNIA

Travis v. Brand

Supreme Court of California - January 30, 2023 - P.3d - 2023 WL 1094709

City residents brought action alleging that political action committee created to oppose redevelopment of municipal waterfront failed to disclose identity of entities that supported ballot measure and that it was controlled by political candidates, in violation of Political Reform Act.

Following bench trial, the Superior Court entered judgment in defendants' favor and awarded attorney fees. Plaintiffs appealed and appeals were consolidated. The Second District Court of Appeal affirmed in part and reversed in part. Plaintiffs' petition for review was granted.

The Supreme Court held that as matter of first impression, prevailing defendant under Political Reform Act should not be awarded attorney fees and costs unless court finds that action was objectively without foundation when brought, or that plaintiff continued to litigate after it clearly became so.

PUBLIC UTILITIES - FEDERAL

Consolidated Edison Company of New York, Inc. v. Federal Energy Regulatory Commission

United States Court of Appeals, District of Columbia Circuit - August 9, 2022 - 45 F.4th 265 - Util. L. Rep. P 15,234

Protesting entities separately petitioned for review of the Federal Energy Regulatory Commission's (FERC) orders that approved regional transmission organization's cost allocations for upgrades to transmission owner's facilities.

After consolidation, the Court of Appeals held that:

- The FERC failed to reasonably explain why a "flow-based" method called the "solution-based distribution-factor analysis" (DFAX), which assigned costs based on how much each utility used a facility over time, was permissible to be used to allocate the costs of the upgrades;
- The "de minimis" threshold used in the DFAX violated the Federal Power Act's cost-causation principle and caused undue discrimination;
- The FERC reasonably explained its decision that netting the flows to each delivery point in a zone to calculate total flow in a zone did not violate the Federal Power Act's cost-causation principle and did not cause undue discrimination;
- It was reasonable to use a model of the flow of electricity that assumed that each zone was at peak demand;
- The FERC reasonably read the tariff as requiring an appropriate substitute proxy for the DFAX method;
- Responsibility of public utility outside of transmission organization's region to pay costs associated

with the upgrades ended upon termination of its power exchange transmission service, or "wheeling," agreement with transmission owner; and
- The FERC reasonably came to and adequately explained conclusion that the overall cost allocation for entities outside the transmission organization's region was not unjust or unreasonable.

MANDAMUS - GEORGIA

BCG Operations, LLC v. Town of Homer

Court of Appeals of Georgia - January 26, 2023 - S.E.2d - 2023 WL 412460

Operator of golf course that purchased property with intent to build clubhouse that would serve liquor filed petition for writ of mandate and complaint for inverse condemnation and damages against town, town council, and town's mayor, stemming from town's refusal to accept operator's application for a distilled spirits consumption license.

The Superior Court granted operator's writ of mandamus, ordered town to process and grant operator's application for liquor license, and subsequently denied operator's motion for partial summary judgment seeking damages related to town's refusal to accept operator's application. Operator appealed and town, town council, and town's mayor cross-appealed.

The Court of Appeals held that:

- Cross-appeal from grant of writ of mandamus and order requiring town to process and grant application was moot;
- Grant of writ of mandamus precluded award of monetary damages;
- Statute requiring showing of pecuniary loss for which compensation in damages was unavailable to enforce private right of action by mandamus supported determination that grant of mandamus precluded award of damages; and
- Even if reliance on statute in denying award of monetary damages was error, denying award of damages was not erroneous.

Statute requiring plaintiff to show pecuniary loss for which compensation in damages was unavailable to enforce a private right by mandamus supported determination that grant of writ of mandamus in favor of operator of golf course, seeking order requiring town to process and grant operator's application for distilled spirits consumption license, precluded award of monetary damages based on delay in issuing license; the right associated with a license to sell liquor by the drink was in the nature of a private right to the individual, rather than a public right of the citizens as a whole.

Even if trial court was mistaken in relying on statute requiring plaintiff to show pecuniary loss for which compensation in damages was unavailable to enforce a private right by mandamus to support determination that grant of writ of mandamus in favor of operator of golf course, seeking order requiring town to process and grant operator's application for distilled spirits consumption license, precluded award of monetary damages due to town's delay in issuing license, denial of monetary damages award was not erroneous, since denial was also based on alternative, independent reasoning; trial court denied award of monetary damages on basis that awarding damages in addition to mandamus would amount to an impermissible stacking of remedies.

EMPLOYMENT - ILLINOIS

Yates v. City of Chicago, Illinois

United States Court of Appeals, Seventh Circuit - January 25, 2023 - F.4th - 2023 WL 382348

Aviation security officers brought action against city and state officials alleging that city's decision to end their classification as law enforcement personnel violated Due Process Clause.

The United States District Court dismissed claims against officials and entered summary judgment in city's favor. Officers appealed.

The Court of Appeals held that:

- City's decision to end officers' classification as law enforcement personnel did not violate Due Process Clause, and
- City was not promissorily estopped from ending officers' classification as law enforcement personnel.

City's decision to end aviation security officers' classification as law enforcement personnel did not violate Due Process Clause, even if city ordinance granting them law enforcement status gave them cognizable property interest in their classification; state denied ordinance's validity under state law, through their union, all aviation security officers received hearing on question whether they were law enforcement officers, and Illinois Labor Relations Board ruled against them, and officers did not claim that union had breached its duty of fair representation.

Under Illinois law, city was not promissorily estopped from ending aviation security officers' classification as law enforcement personnel; officers' collective bargaining agreement (CBA) with city did not promise that aviation security officers would remain law enforcement officials, CBA contained zipper clause saying that parties could not rely on anything that was not written into agreement, and city's field manual that set out aviation security officers' rights and duties expressly reserved city's right to make changes.

MANDAMUS - LOUISIANA

Pineville City Court v. City of Pineville

Supreme Court of Louisiana - January 27, 2023 - So.3d - 2023 WL 534255 - 2022-00336 (La. 1/27/23)

City court and city court judge petitioned for writ of mandamus against city and its mayor, seeking order requiring city to fully fund court clerks' salaries and benefits associated with their employment.

The District Court granted defendants' peremptory exception of no cause of action and dismissed petition. Plaintiffs appealed. The Court of Appeal reversed and remanded. Defendants sought writ of certiorari, which was granted.

The Supreme Court held that:

- Payment by city of amounts exceeding statutory minimum was not purely ministerial act that could

be compelled by mandamus, and
- Amendment of mandamus petition was not warranted.

Payment by city of amounts exceeding minimum in statute governing salary of city court clerks and deputy clerks was not purely ministerial in nature, but discretionary, and thus, mandamus action was inappropriate vehicle for city court and city court judge to seek order requiring city to fully fund clerks' salaries and benefits associated with their employment; statute did not expressly provide any compulsory language for payments exceeding statutory minimums, nor did it clearly define any amounts exceeding minimums for which governing authorities were mandated responsibility, and issue of whether statutory minimums set in 1960 were no longer reasonable was policy concern involving discretion exercised by legislative branch of government.

Amendment of mandamus petition by city court and city court judge seeking order requiring city to fully fund clerks' salaries and benefits associated with their employment was not warranted under statute governing amendment after a peremptory exception of no cause of action was sustained, although city and judge could properly seek mandamus to fund minimum set forth in statute governing salary of city court clerks and deputy clerks, where city was currently funding above statutory minimum, and statutory language concerning amounts above statutory minimum, and nature of demand by city court, clearly had elements left to governing authorities' discretion.

CHARTER AMENDMENT - MAINE

Fair Elections Portland, Inc. v. City of Portland

Supreme Judicial Court of Maine - January 26, 2023 - A.3d - 2023 WL 407801 - 2023 ME 9

Voters petitioned for review of city's decision to classify their proposed modification to city charter establishing public financing mechanism for city elections as revision of charter requiring recommendation of charter commission for submission to voters, instead of amendment to charter requiring direct submission to voters.

The Superior Court denied petition. Voters appealed.

The Supreme Judicial Court held that:

- Issue of whether proposed modification was revision or amendment was moot, and
- Exception to mootness for questions of great public concern did not apply.

Issue on appeal of whether voters' proposed modification to city charter establishing public financing mechanism for city elections was revision of charter requiring recommendation of charter commission for submission to voters or amendment to charter requiring direct submission to voters was rendered moot by voters' approval of ballot question establishing mechanism for public campaign financing that was proposed by charter commission; commission's ballot question was substantially similar to voters' proposed modification, despite broadening scope of funding mechanism, and difference between fully funding program, as required by commission's ballot question, and sufficiently funding program, as required by voters' proposed modification, was inconsequential because outcome was same.

Exception to mootness for questions of great public concern did not apply, on appeal by voters from denial of their petition for review of city's decision to classify their proposed modification to city charter establishing public financing mechanism for city elections as revision of charter requiring recommendation of charter commission for submission to voters, instead of amendment to charter

requiring direct submission to voters; framework for determining whether a proposed charter modification was amendment or revision that was mixed question of fact and law was more than adequate guidance for municipalities.

PUBLIC UTILITIES - MAINE

Maine Coalition to Stop Smart Meters v. Public Utilities Commission

Supreme Judicial Court of Maine - January 24, 2023 - A.3d - 2023 WL 364533 - 2023 ME 8

Objector sought review of order of Public Utilities Commission denying reconsideration of order approving revised terms and conditions for electric utility's smart-meter opt-out program.

The Supreme Judicial Court held that:

- Evidence was sufficient to support Commission's finding that solid-state electric meters were safe with regard to radiofrequency (RF) radiation exposure, as could support conclusion that allowing electric utility to offer solid-state meters, instead of analog meters, as an alternative to smart meters for consumers concerned about potential health effects of radiation emitted by smart meters, and
- Commission's conclusion that provision of solid-state meters as alternative would result in safe, reasonable, and adequate facilities and service was not arbitrary, unreasonable, unjust, or unlawful.

Evidence was sufficient to support finding of Public Utilities Commission that solid-state electric meters were safe with regard to radiofrequency (RF) radiation exposure, as could support conclusion that allowing electric utility to offer solid-state meters, instead of analog meters, as an alternative to smart meters for consumers concerned about potential health effects of radiation emitted by smart meters would result in safe, reasonable, and adequate facilities and service, as required by statute; testing performed by another utility indicated that solid-state meters emitted RF radiation at levels similar to those emitted by analog meters.

Conclusion of Public Utilities Commission that electric utility's plan to provide solid-state meters, instead of analog meters, as alternative to smart meters for consumers concerned about potential health effects of RF radiation emitted by smart meters would result in safe, reasonable, and adequate facilities and service was not arbitrary, unreasonable, unjust, or unlawful; there was evidence that solid-state meters emitted RF radiation at levels similar to those emitted by analog meters, and manufacturers were no longer producing analog meters.

BONDS - PENNSYLVANIA

Wilmington Trust, N.A. as Trustee of $29, 615, 000 Philadelphia Authority for Industrial Development Senior Housing Revenue Bonds v. Pavilion Apartments PENN LLC

United States District Court, E.D. Pennsylvania - January 13, 2023 - Slip Copy - 2023 WL 187568

Wilmington Trust, N.A., as Trustee of the $29,615,000 Philadelphia Authority for Industrial Development Senior Housing Bonds, filed a mortgage foreclosure action against Pavilion Apartments PENN LLC ("Pavilion"). Wilmington Trust subsequently moved to appoint a receiver to manage the

mortgaged property, a low-income senior housing project.

The Court held an evidentiary hearing on the Motion and on January 3, 2023, entered an order granting it.

COUNTIES - WYOMING

Campbell County Board of Commissioners v. Wyoming Horse Racing, LLC

Supreme Court of Wyoming - January 31, 2023 - P.3d - 2023 WL 1182776 - 2023 WY 10

Operators of live horse racing, historic horse racing, and simulcast events sought judicial review under the Wyoming Administrative Procedure Act (WAPA) of county board of commissioners' resolution revoking and superseding permits to conduct simulcast operations, asserting the resolution exceeded county's statutory authority under the Wyoming Pari-Mutuel Act.

The District Court ordered the resolution to be set aside. County appealed.

The Supreme Court held that:

- The resolution was subject to judicial review under WAPA, and
- County lacked express or implied authority under the Pari-Mutuel Act to adopt resolution revoking its prior approvals.

County board of commissioners' resolution, which revoked and superseded prior approvals of pari-mutuel and simulcast permits authorizing operators to conduct simulcast operations in county, was not legislative action, but instead was an administrative decision subject to judicial review under Wyoming Administrative Procedure Act (WAPA), even though resolution generally imposed conditions on all future approvals for simulcasting; resolution specifically revoked county's prior approvals for particular operators and thereby aggrieved or adversely affected them.

Pari-Mutuel Act only granted county authority to approve, or, impliedly, to deny a corporation's request for approval for proposed pari-mutuel and simulcast operations as a condition precedent to Wyoming Gaming Commission issuing a pari-mutuel permit or authorizing the corporation to conduct simulcasting off the permitted premises, and therefore, after Gaming Commission had issued permits and authorized simulcasting, county board of commissioners lacked express or implied authority under the Act to adopt resolution that revoked its prior approvals of simulcasting off of permitted live horse racetrack premises within county.

Request for Comment on Draft Amendment to MSRB Rule G-32 to Streamline the Deadlines for Submitting the Information on Form G-32: SIFMA Comment Letter

SUMMARY

SIFMA provided comments to the Municipal Securities Rulemaking Board (MSRB) on their Request for Comment on Draft Amendment to MSRB Rule G-32 to Streamline the Deadlines for Submitting the Information on Form G-32 (the Notice).

View the SIFMA Comment Letter.

MSRB Proposes Regulation of Solicitor Municipal Advisors.

The MSRB proposed new MSRB Rule G-46 ("Duties of Solicitor Municipal Advisors") that would "establish the core standards of conduct and duties of 'solicitor municipal advisors' when engaging in solicitation activities that would require them to register with the SEC and the MSRB as municipal advisors."

The proposal would:

- require such solicitors to provide full and fair written disclosure regarding any material conflicts of interest and material legal or disciplinary events to solicitor clients;
- prohibit solicitor municipal advisors from publishing any materially false or misleading information regarding the capacity, resources or knowledge of the solicitor client. Solicitors must also have a reasonable basis for making any material representations;
- require solicitors to disclose material facts related to the solicitation including (i) the advisor's role and compensation and (ii) material conflicts of interest; and
- prohibit solicitor municipal advisors from delivering inaccurate invoices or making payments for the purpose of retaining a municipal advisory activity engagement.

In addition, the proposal would codify previously issued interpretive guidance concerning the requirements applicable to solicitor municipal advisors under MSRB Rule G-17 ("Conduct of Municipal Securities and Municipal Advisory Activities"), MSRB Rule G-42 ("Duties of Non-Solicitor Municipal Advisors") and IAA Rule 206(4)-1 ("Investment Adviser Marketing"). The proposal would also amend MSRB Rule G-8 ("Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers and Municipal Advisors") to add specific recordkeeping obligations relating to a solicitor municipal advisor's solicitation of advisory services.

February 1 2023

Fried Frank Harris Shriver & Jacobson LLP

MSRB Proposes Rule Amendments to Allow Testimonials in Muni Advisor Advertisements.

The MSRB proposed to amend MSRB Rule G-40 ("Advertising by Municipal Advisors") to allow for the use of testimonial statements in municipal advisor advertisements.

In addition to allowing the use of testimonials, the proposal would (i) establish supervisory obligations specific to testimonial use, (ii) modify the definition of municipal advisory client with regard to soliciting municipal securities business to align with MSRB Rule G-38 ("Solicitation of Municipal Securities Business") and (iii) create a conforming obligation under MSRB Rule G-8 ("Books and Records to be Made by Brokers, Dealers, and Municipal Securities Dealers and Municipal Advisors") to keep any records relating to testimonial advertising, including any record of payment for testimonials.

Fried Frank Harris Shriver & Jacobson LLP

January 31 2023

SIFMA Urges MSRB to Broaden Proposed Exemption on Requalification.

SIFMA asked the MSRB to broaden a proposed exemption to allow individuals who have been out of the securities industry for a limited time to requalify as municipal advisors without having to retake examinations. SIFMA urged the MSRB to harmonize the exemption with requirements for muni dealers and broker dealers.

In its comments, SIFMA said that such harmonization is important because many firms and individuals are dually registered with FINRA and the MSRB. SIFMA also requested that the MSRB's relief be extended to municipal advisor principals.

Fried Frank Harris Shriver & Jacobson LLP

January 31 2023

SIFMA Urges MSRB to Extend Filing Deadlines in Proposal to Streamline Primary Offering Form Submissions.

In a Comment Letter on the MSRB's proposal to standardize deadlines on Form G-32 requirements in connection with primary offerings, SIFMA urged the MSRB to extend the window for underwriters to file official statements.

SIFMA recommended that the MSRB extend the deadline for underwriters to file official statements through the Electronic Municipal Market Access Dataport system ("EMMA") to ensure that the finalized statements are accurate. SIFMA said that the current requirement to file the official statement "within one business day after receipt of the official statement from the issuer or its designee, but by no later than the closing date" does not consider that certain information may not be available until after the security is sold, nor does it account for statements received outside of normal business hours.

SIFMA recommended that the MSRB establish a single deadline no later than the closing date of an offering for underwriters to submit all applicable information to EMMA for both NIIDS-eligible and ineligible primary offerings. For transactions where no placement agent or underwriter is involved, SIFMA said that the municipal advisor involved should be required to submit a Form G-32 filing.

Fried Frank Harris Shriver & Jacobson LLP

January 30 2023

How Public Cash Managers Should Gird for Federal Debt Follies.

If a congressional debt ceiling deadlock persists and capital markets seize up, states and localities will still have to pay their bills. Public financiers need to be ready to adjust their portfolios to establish a liquid cash buffer.

It's *Groundhog Day* again on Capitol Hill as the perennial piñata of the federal debt ceiling has returned to center stage in the political theater. Meanwhile backstage, prudent public cash managers will be donning their risk manager hats to make sure government workers' paychecks don't bounce if a deadlock persists.

For those new to this dramaturgy, Congress has been setting a limit on the amount of federal debt outstanding since 1917, which invites perennial squawking by don't-tax-don't-spend fiscal hawks. Since 1960, the debt limit has been raised 78 times, 49 of them under Republican presidents and 29 times when Democrats occupied the White House. What's different this time, at least so far, is that a voting bloc in the House has elevated the issue to a stagy level that magnifies the risks to capital markets that could develop if the hawks are able to hold control of that chamber over the debt issue.

So far, it looks like the anti-spenders are trying to craft a proposal that would keep certain checks flowing for Social Security retirees, law enforcement, defense and other off-limits spending channels, while freezing or trimming everything else. How that would impact federal payments to the states — which account for a third of their total revenues — is beyond the scope of this column. Instead, let's focus on the implications for state and local cash and payroll managers of a debt ceiling crisis in capital markets if the U.S. Treasury debt market and operations of the Federal Reserve system are held hostage in the political fray.

Continue reading.

governing.com

by Girard Miller

Jan. 31, 2023

State and Local Governments Face Persistent Infrastructure Investment Challenges.

Costs grow to address critical repair backlogs and limit impact on public safety after decades of underinvestment

State and local governments across the United States spend roughly half a trillion dollars annually on transportation and water infrastructure, with about one-quarter paid for through grants from the federal government. This spending includes investments in new projects as well as general upkeep and operating costs for roads, bridges, and public transit systems, as well as the development and maintenance of state and locally managed water resources.

Still, experts warn that these commitments will not be enough to keep pace with the growing backlog of needed repairs, or the significant upfront investments required to modernize core public infrastructure systems. In a 2019 report, researchers from the Volcker Alliance, a nonprofit organization focused on public finance issues, estimated that the costs for delayed repairs and maintenance that has accumulated nationally over the past 50 years could reach nearly $1 trillion. That represents about 5% of the nation's gross domestic product (GDP), but the estimate is likely

low. Last year, The American Society of Civil Engineers projected these costs could be double that amount.

Making matters worse are the imminent effects—climbing temperatures, rising sea levels, and increasing precipitation, for example—that a changing climate will have on already vulnerable infrastructure systems. Estimates of the additional investments needed to make core public services, such as access to clean water, more resilient to these changes range in the hundreds of billions of dollars.

Continue reading.

The Pew Charitable Trusts

By: Fatima Yousofi & Susan Banta

February 3, 2023

Risky Muni Debt Is Getting Riskier.

Risky municipal debt is getting riskier, according to a recent report from Moody's Investors Service. More muni borrowers reported defaults in the last quarter of 2022 than have since the second quarter of 2020, when early-pandemic shutdowns prompted a wave of repayment problems.

Increasing costs for labor and materials have strained operations and delayed construction on some of the projects these bonds finance. Some nonprofit borrowers are seeing a fall-off in donations. Nursing homes and senior care facilities, a large portion of the high-yield market, are less able to attract new residents in the wake of the Covid pandemic. All those factors will lead more borrowers to fall behind on payments in 2023, Moody's projects.

Most municipal debt is backed by taxes. But the borrowers behind high-yield and unrated muni bonds tend to be charitable organizations or one-off projects that are authorized to borrow at tax-exempt rates because they are seen to have some public good.

"The unrated/high-yield municipal bond sector has moved into a new phase," the report said.

Even with the uptick, muni default rates remain extremely low. For bonds rated by Moody's, the likelihood of default over a five-year period is 0.08%, much lower than corporate debt.

The Wall Street Journal

By Heather Gillers

Feb 2, 2023

Five S&P U.S. Public Pension And OPEB Credit Points To Watch In 2023.

Key Takeaways

- Funded ratios likely to fall for fiscal 2023 as market continues pullback, according to S&P Global Ratings' current economic forecast.
- High inflation could affect pension funding as sponsors experience budgetary stress, but is unlikely to directly alter funded ratios in 2023.
- Retiree health care plans lacking prefunding may see rapid cost increases.
- Pension obligation bond (POB) issuance is expected to remain low as interest rates remain high.
- Lagging payroll growth could lead to compounding cost pressure.

Continue reading.

31 Jan, 2023

S&P U.S. Charter Schools Rating Actions, 2022

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In 2022, S&P Global Ratings took more positive than negative rating actions on U.S. charter schools, reflecting a sector that remains healthy due to increasing demand. Robust federal stimulus funding has led to greater financial flexibility for many of the schools we rate. We raised twice as many ratings (12) as we lowered (six). Moreover, the number of downgrades in 2022 was the lowest in a given year for the past decade (chart 2).

Continue reading.

1 Feb, 2023

S&P U.S. Higher Education Rating Actions, 2022

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S&P Global Ratings lowered 21 ratings and raised 15 ratings on U.S. colleges and universities in 2022. Among the upgrades, we raised the ratings on six Illinois universities by one notch within the 'BB' or 'BBB' categories subsequent to the upgrade on the State of Illinois on May 6, 2022. In addition, we raised the rating on Vanderbilt University to 'AAA' on Nov. 22, 2022, based on a history of exceptional operating performance, increasing endowment, and continued improvement in selectivity and matriculation. Among U.S. colleges and universities that we rate, 19, or 4%, are rated 'AAA'.

Continue reading.

1 Feb, 2023

Fitch: US Not-for-Profit Hospital Cyberattacks Could Signal Greater Risk

Fitch Ratings-New York/Austin/Chicago-03 February 2023: Recent coordinated cyberattacks on US

not-for-profit (NFP) hospitals and health systems' websites are unlikely to drive any downgrades, but the attacks highlight the growing risks and capabilities of threat actors who could cause greater harm through more malicious attacks that affect healthcare delivery, Fitch Ratings says.

The websites of a number of US hospitals were taken down in a single coordinated distributed denial of service (DDoS) attack, which sent a flood of traffic to overload a server or website, slowing or shutting them down, potentially for days. This seems to be the most widespread and coordinated attack against the sector to date, with roughly 20 hospitals reporting and some affected hospitals and systems likely not publicly disclosing an attack. Some affected entities have been able to quickly restore their websites, and it currently appears that no personal healthcare information or data was compromised in these attacks.

Given what we know at this point, the DDoS attacks are not expected to have any material financial or operational effect on targeted hospitals due to their brief and relatively superficial impact. However, deployment of a more sophisticated cyber weapon that compromises service and affects a hospital's financial profile could negatively affect ratings. Critically, the disruption highlights the risks to the sector of a similarly scaled, but more severe, attack that could have dire effects on health and safety.

KillNet, the hacking group that has claimed responsibility for the attacks, has previously targeted healthcare organizations, according to recent release from Health and Human Services' Health Sector Cybersecurity Coordination Center that indicates that follow-on ransomware attacks are likely. Healthcare and public health is one of the sectors that the Cybersecurity and Infrastructure Security Agency (CISA) has identified as a critical infrastructure sector, which is the focus of federal security policy. KillNet has also taken credit for similar attacks on other entities outside of the US.

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Orrick Team Prevails in Long Court Fight to Preserve Approximately $4.5 Billion in Bay Area Transportation Funding.

Removing a significant legal roadblock to an estimated $4.5 billion in transportation funding for the San Francisco Bay Area, the California Supreme Court this week let stand a series of lower court decisions orchestrated by a cross-practice Orrick team through five years of litigation.

This action by California's high court involves a challenge by the Howard Jarvis Taxpayers Association to legislation and a voter-approved ballot measure providing for a $3 toll increase on seven state-owned toll bridges in the region to fund transportation projects to relieve traffic congestion.

Our team has led the successful defense of the legislation and ballot measure on behalf of the Metropolitan Transportation Commission and the Bay Area Toll Authority. This has included four favorable judgments in the trial courts, as well as the precedent-setting appeals court decision in 2020 which the state Supreme Court let stand this week.

The Orrick team has been led by partners Devin Brennan and Eric Shumsky, associate Max Carter-Oberstone, as well as partner Christine Reynolds, former partner Brian Goldman, of counsel Michael Weed and former associates Monica Haymond and Ethan Fallon.

January.30.2023

Financial Accounting Foundation Announces Changes to Online Access to Accounting Standards Codification and Governmental Accounting Research System.

Norwalk, CT, January 30, 2023 — The Financial Accounting Foundation (FAF) today announced it will provide free, enhanced online access to the Accounting Standards Codification® and the Governmental Accounting Research System™ in an effort to make financial accounting standards even more widely accessible to stakeholders and the public.

The FAF has not yet determined the firm date for this change to online access to the accounting standards, but it is expected to occur this spring.

The Accounting Standards Codification® ("the Codification") is the complete and official version of Generally Accepted Accounting Standards (GAAP) published by the Financial Accounting Standards Board (FASB) and used by public companies, private companies, nonprofit organizations, and employee benefit plans in the United States. The Governmental Accounting Research System™ ("GARS") is the complete and official version of GAAP published by the Governmental Accounting Standards Board (GASB) and used by states, cities, and other governmental entities in the United States.

While free versions of both the Codification and GARS have been available online for years, the new system will provide enhanced features compared to the current free offering (known as "Basic View"). These include enhancements to navigation, search, printing, copy/paste, and the ability to provide feedback.

As a result of this move, the “Professional View” paid subscription service will be eliminated and users who previously accessed Professional View can instead use the enhanced free versions of the Codification and GARS. Current Professional View subscribers will be transitioned off the current system. Pro-rated refunds will be issued for those subscribers whose paid terms extend beyond the cutover date.

“We believe this move, which is consistent with a recent recommendation from the Investor Advisory Committee of the U.S. Securities and Exchange Commission, will increase our stakeholders’ access to these important resources, and thereby improve the understanding and implementation of financial accounting standards in the United States,” said FAF Executive Director John Auchincloss.

Green Transaction Evaluation: Washington Suburban Sanitary District's Consolidated Public Improvement Bonds Of 2023

Green Transaction Evaluation: Washington Suburban Sanitary District’s Consolidated Public Improvement Bonds Of 2023
The Washington Suburban Sanitary District (the district or WSSC Water) was created in 1918 and operates as a public corporation of the state of Maryland under the Public Utilities Article. WSSC Water provides water supply and sewage disposal to nearly 2 million people in Montgomery and Prince George’s counties in Maryland. WSSC Water is issuing consolidated public improvement bonds, the second series of which will be green bonds worth $20 million. The net proceeds of the green bonds will provide funding for (i) the planning, design, and construction of improvements to a water filtration plant in order to reduce solids discharge, (ii) the planning, design, and construction or rehabilitation of large diameter water transmission mains and large system valves and other appurtenances including meter and pressure reducing valves, (iii) other projects that have been designated by the commission as “green projects”, and (iv) the cost of issuance.

Download

Impact Bonds: Bumps in the Road Give Way to a Smoother Ride Ahead

After a record-breaking approximately $1 trillion of green, social, sustainability, and sustainability-linked bonds (GSSS bonds) in 2021, the biggest impact bond story of 2022 was that new issuance fell for the first time in almost a decade. While ESG investing has come under fire from all sides in recent months, the primary culprit for the slowdown in the market for sustainable debt issuance was the same as it was for global fixed income markets overall: a surge in inflation and the Fed’s attempt to combat it by raising interest rates made it more expensive for businesses to raise capital through debt issuance.

Continue reading.

SAGE ADVISORY

By Doug Benning, Vice President & Senior Research Analyst

JANUARY 30, 2023

GFOA Preconference Seminar Feature: The Importance of Cash Flow Forecasting

GFOA recommends that governments perform ongoing cash forecasting to ensure that they have sufficient cash liquidity to meet disbursement requirements and limit idle cash. However, GFOA research indicates that many governments fail to meet the standards outlined in this best practice. This preconference seminar, Friday, May 19, will provide an overview of cash flow forecasting, discuss how to conduct both simple and complex cash flow analysis, and outline the tools available to help governments with this important task.

REGISTER

Financial Accounting Foundation Board of Trustees Notice of Meeting.

Meeting Notice.

02/01/23

Community Members Voice Concerns Over Buffalo Bills Stadium Deal.

- **Public hearing held Thursday in Orchard Park, New York**
- **Several residents were skeptical of the stadium proposal**

Community members expressed skepticism at a public hearing Thursday evening about a proposed deal to build a new National Football League stadium near Buffalo, New York, with $850 million in municipal subsidies.

The concerns raised at the Orchard Park meeting included the potential use of eminent domain, pollution stemming from construction, the lack of a dome in the Buffalo Bills arena's design and whether this is an appropriate use of public funds.

Since there was "substantive negative comment" at Thursday's meeting, the Erie County Stadium Corporation will hold another public hearing on the stadium plan at the end of February, Stephen Gawlik, senior counsel for the corporation who ran the session, said in an interview during a hearing recess.

"I love the Bills. I have my Bills mafia hat," said Jay Knavel, a 20-year veteran of the Orchard Park Fire District. "At the same time, a lot of respect needs to be paid to the homeowners who have been around longer than the Bills. And since they're not paying as much taxes as the residents, that respect needs to be paid."

Proposals for new professional sports stadiums have long touched off debates over whether the benefits justify the costs, as well as the question of public funds helping teams that are private businesses.

Patrick Dell is also a Bills fan but had mixed emotions about the new stadium.

“I’m happy that this new stadium will keep the team in Buffalo, but I’m not happy with the amount of money they’re spending,” added Dell, 34. “Buffalo is not a wealthy area. It’s the definition of a middle class city.”

The Bills and the National Football League will contribute $550 million to the $1.4 billion 60,000-seat stadium, with Erie County and New York State providing the rest.

Buffalo native Erik Ortiz, 27, thought the stadium being built in Orchard Park, an affluent suburb about 15 miles (24 kilometers) southeast of Buffalo, wasn’t ideal.

“I wish it was more inner city,” Ortiz said. “I think building the stadium closer to the waterfront would bring the city together and bring in a lot of revenue.”

The new home of the Bills would rise across the street from Highmark Stadium, where the team has played since 1973.

In the coming days, the legal team of New York’s principal economic development public-benefit corporation, will review all oral and written remarks from the hearing and determine if there was “substantive negative comment,” in which state officials will publicly review the comments, according to Laura Magee, a spokesperson for Empire State Development.

Bloomberg Markets

By Maxwell Adler

February 2, 202

Buffalo Bills Stadium Deal Faces Public Vetting as Final Approval Nears.

Project has secured among the highest public funding for a stadium in US sports history

The Buffalo Bills and New York State officials are nearing final approval to build a new National Football League stadium in Orchard Park, New York, with $850 million in municipal subsidies.

On Thursday, the Erie County Stadium Corporation, a subsidiary of New York’s principal public-benefit corporation, will hold a public hearing on the $1.4 billion stadium project at 5 p.m. local time. Residents will have the chance to weigh in on the merit of the deal — which ranks among the largest taxpayer contributions ever for a pro football facility — as well as the community benefits agreement.

Locals from Erie County could hold up the project if there are substantive negative comments. If the hearing goes smoothly, the deal will be sent to the Erie County legislature and executive for signoff before construction can commence, according to Laura Magee, a spokesperson for Empire State Development. The NFL has already approved the deal.

Continue reading.

Bloomberg CityLab

By Maxwell Adler

February 2, 2023

How One State Is Rolling Out an EV Charging Tax System.

Iowa got a head start four years ago when it passed a tax on kilowatt hours sold. Here's what they've learned so far.

While state lawmakers are currently debating new taxes for charging electric vehicles, Iowa is set to collect those taxes starting in July. Four years ago, when EVs were still rare on Iowa roads, legislators approved a law that taxes kilowatt hours sold.

Today, electric vehicles are still a small but growing share of the cars on the road. At the end of 2022, there were 4 million vehicles registered in the state overall. Of those, 6,000 were battery electric vehicles and 4,700 plug-in hybrids.

Route Fifty spoke with Stuart Anderson, the director of the transportation development division at the Iowa Department of Transportation, about the state's experience so far in preparing for the new tax. Here are five key takeaways from that conversation.

Continue reading.

ROUTE FIFTY

by DANIEL C. VOCK

FEBRUARY 2, 2023

Fitch: TX Perm School Fund Cap Has Minimal School District Credit Impact

Fitch Ratings-Austin/New York-31 January 2023: Fitch Ratings expects minimal negative effects on the credit profiles of school districts that issue debt without the benefit of the Texas Permanent School Fund's (PSF, or the program) 'AAA' guarantee as a result of the program's currently limited capacity.

School districts must have an investment-grade rating in order to qualify for the PSF guarantee. School districts with a weaker demographic profile, which are often lower rated, will receive priority under the program, and available capacity will be allocated based on need. Those districts forced to issue without the guarantee will face increased borrowing costs, but these costs should be easily absorbed by wealthy, higher-rated districts. Although the prioritization of lower credit quality school districts could weaken the program's aggregate pool quality over time if the program's guarantee cap is not raised, Fitch's cash flow modelling demonstrates that the program has ample cushion to mitigate this risk.

The program's leverage capacity is restricted by both state statute and IRS rules. The IRS limit (currently the constraining limit) is capped at 5.0x the fiscal-year 2009 book value of the fund, or $117.3 billion. The amount of guaranteed bonds was approximately $109 billion at the end of October 2022.

PSF management is working with state and federal regulators to expand the capacity limit, but timing of a resolution is uncertain. Until then, guarantee capacity will be based on bonds maturing or bond issuance amounts that are lower than the authorized amount. As of 4Q22, approximately $4.3 billion of bonds were scheduled to mature in 2023, or about 4% of the total.

Wealthier school districts' strong and growing tax bases support their ability to absorb higher borrowing costs and repay debt. Tax base growth has been driven by population inflows and home price appreciation. Home prices in Texas have softened slightly in the past few months, but generally remain near peak levels observed over the past three years.

In addition to potentially higher borrower costs, building materials and labor cost inflation may also cause some school districts to pause capital projects and postpone debt issuance. Non-residential construction materials and labor costs have trended up since the beginning of the pandemic, and issuers may wait until building supply availability improves and costs decrease. Other districts may not be able to wait on much-needed improvement and repairs due to strong enrollment growth and the need for additional classroom space.

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Pendergast Elementary School District No. 92, Arizona: Fitch New Issue Report

The 'AA–' Issuer Default Rating (IDR) reflects the district's sound operating performance, supported by its solid expenditure flexibility and healthy financial cushion. The IDR also incorporates the district's low long-term liability burden and weak revenue framework. The Arizona Legislature in its 2016 and 2017 sessions (52nd and 53rd Legislatures) approved amendments to various sections of the Arizona Revised Statutes that provide unlimited tax (ULT) bondholders with a statutory lien on

ad valorem taxes of cities, towns, counties, school districts, community college districts and various special districts in the state.

ACCESS REPORT

31 Jan, 2023

Manchester, Connecticut: Fitch New Issue Report

The 'AAA' Issuer Default Rating (IDR) and GO bond rating reflect Manchester's capacity to sustain a high level of fundamental financial flexibility throughout economic cycles. The town's high gap-closing capacity is supported by its unlimited legal ability to raise revenues and solid expenditure flexibility. Fitch Ratings expects the town's long-term liability burden will remain low relative to its economic resource base and fixed-cost spending to remain a moderate portion of total governmental spending.

ACCESS REPORT

31 Jan, 2023

TAX - FLORIDA

Solomon v. Shands Teaching Hospital and Clinics, Inc.

District Court of Appeal of Florida, First District - December 20, 2022 - So.3d - 2022 WL 17815601 - 48 Fla. L. Weekly D1

After unsuccessfully requesting a refund of ad valorem taxes paid on state university teaching hospital and clinics, corporations leasing, managing, and operating the teaching hospital and clinics and related faculty practice plan filed a complaint for declaratory judgment and related relief against county's property appraiser, county's tax collector, and executive director of Florida Department of Revenue, seeking a declaration that their properties were immune from taxation.

The Circuit Court granted corporations' motion for summary judgment, finding that the State was the equitable owner of the properties. County property appraiser and tax collector appealed.

The District Court of Appeal held that the State, through state university, was equitable owner of the properties, which were therefore immune from ad valorem taxation.

The State, through state university, was equitable owner of university teaching hospital and clinics, which were therefore immune from ad valorem taxation; owners were nonprofit corporations that implemented university's health affairs mission, properties were used for delivery of health care services, patient care, medical education, scientific research, and/or for charitable purposes in furtherance of that mission, owners were supervised by and their governance controlled by university, owners regularly provided financial support to university's health affairs mission and were recognized and relied upon by the State as virtually an arm of university, university controlled key property rights, and properties would revert to university's benefit in event of dissolution of either owner.

Muni CEF Update: Great Time To Buy But Not Without Challenges

Summary

- What a difference a year makes – a year ago Muni bond yields were barely above 1% while Muni CEF discounts were close to zero.
- This time around both bond yields and CEF discounts are at very attractive levels. At the same time, the sector faces two challenges which we discuss in this article.
- We continue to see value in funds like BTT, NAD and NZF.

Continue reading.

Seeking Alpha

Jan. 31, 2023

Taxes Done Right: New Analytics for Municipal Securities

The U.S. municipal securities market is a prominent part of the fixed income landscape, with municipal bonds (e.g., debt offered by states, counties, cities) and municipal fund securities (e.g., 529 and ABLE savings programs). With municipal bonds in particular, issuers usually enjoy special taxation status and, as a result, investors seeking tax-efficient investments might generally assume they're tax-free.

But this is not exactly true. When modeling municipal bonds, it becomes immediately clear that tax-exempt status is not absolute. The payments investors receive from the bonds are usually a mixture of tax-free interest and potentially taxable principal cash flows.

Therefore, investors may still be subject to taxation—in particular, to capital gains tax or even ordinary income tax due to the de minimis rule. This impacts investors' after-tax cash flows, thus changing the bonds' risk and return properties.

From an analytics perspective, it presents a problem since one cannot treat all cashflows equally and discount them with a tax-free discount curve that is normally used for the municipal market. So, what to do?

To avoid the proverbial apples and oranges conundrum, it is necessary to convert all cash flows to "after-tax" status; in other words, cash flows an investor receives after paying all taxes.

For the conversion, one can use the following expression to compute the tax due for all relevant cashflows.

Continue reading.

FactSet

By Rustem Shaikhutdinov | February 1, 2023

What To Do When Your Muni Bond Rating Is Withdrawn.

Publicly traded corporations that fail to file audited financial statements as prescribed by the SEC risk their stock tanking and being delisted from the exchange. Grave consequences to be sure. Yet there is no consequence to those municipal bond issuers for the same failure to file. Until now.

Moody's rating agency has finally had enough of dealing with municipal bad citizens. We count 861 CUSIPs on which they have withdrawn their ratings. Many issuers have multiple CUSIPs owned by investors just like you. In the Muniverse, 861 CUSIPs is not huge. But it's a beginning. Sure, the issuer may have decided to dump Moody's, causing the rating agency to withdraw their rating. Still, it's an impressive number and something to my knowledge that hasn't been done on this scale before.

How do we investors assess a bond issuer's ability to continue paying the coupons when due without timely financials or a credit rating report from a rating agency? The answer is, we can't.

Perhaps Moody's ratings withdrawal is a wakeup call that municipal bond issuers must file their financials or risk the consequences.

Actions To Take

What if your bond issuer fails to file its financial statements and/or their ratings agencies withdraw their ratings. Suddenly you are flying blind. Often financials aren't filed for an entire year after close of the fiscal year on which they're reporting. A lot can change during that time. For example, on June 4, 2021, S&P Global withdrew ratings on various local government and utility debt. Here's what they said:

> …the withdrawal is due to insufficient information. Specifically, the withdrawals reflect our failure to receive adequate and timely financial information necessary to maintain surveillance of the ratings in accordance with our applicable criteria and policies. Such financial information includes, for example, audited financial statements or similar financial information.

There are many money managers and municipal bond funds that cannot hold non-rated bonds. Withdrawn ratings may force them to sell. As you may have experienced, selling begets lots more selling in Muniland. Bond prices plummet.

If you self-manage your municipal bonds, use the Electronic Municipal Market Access (EMMA) website (emma.msrb.org) that publishes municipal annual reports and audited financial statements. You'll find disclosure documents, trade activity and ratings. If you use the Schwab retail trading platform, you have access to Moody's reports when you click the name of the issuer before buying or selling a bond. Both the MSRB and Schwab information are free. Perhaps your bond platform offers free rating reports too.

Using free information systems such as the MSRB makes sense for all municipal bond investors. Checking on the issuers whose bonds you own that are not following the rules by filing timely financials can save you thousands in losses should the bond tank.

As the economy slows, tax receipts will decline. Certain municipalities may not wish to disclose what

is happening to them. So they just miss the filing date of their financials. If you see this happen and your bond is not insured, sell.

Forbes

by Marilyn Cohen

Feb 3, 2023

Active Muni Funds Can Stake Their Claim in 2023.

Municipal bonds, the subject of a recent debate here at VettaFi, are nonetheless an area that some market watchers are tapping for a "renaissance" of sorts this year. After a difficult 2022, municipal bond yields may benefit from higher interest rates that should be settled in the early stages of 2023. That presents an appealing opportunity for active muni funds, with one candidate to watch being the Franklin Dynamic Municipal Bond ETF (FLMI).

One crucial part of the municipal bond story in the last few months, though, may be the swap investors made from muni bond mutual funds into muni bond ETFs. According to Franklin Templeton's SVP and Head of ETF Product and Capital Markets, David Mann, mutual funds investing municipal bonds did see $140 billion in outflows last year, but muni bond ETFs actually added $30 billion in net inflows.

"Active fixed-income ETFs allow portfolio managers to stay nimble and avoid sectors and parts of the credit spectrum that might encounter increased stress, all while leveraging the same creation/redemption operational efficiencies used by index funds," Mann said in a recent note in his newsletter, "One Mann's ETF Opinion."

As part of a trend in ETFs in which the vehicle is increasingly adding value to the fixed income market, Mann pointed to the increasing use of ETFs for municipal bond investing as a "huge tailwind" for the government bond segment.

Looking ahead to 2023, municipal bonds may also benefit from a lack of supply and growing demand. Governments across the country are relatively flush right now, with a lot of redeemed money coming out in the next few years outpacing supply.

That makes active muni funds a particularly interesting area, with FLMI an active muni bond ETF to watch. The ETF charges 30 basis points for its approach, investing in tax-free muni securities with a maturity mostly in a range of three to ten years. FLMI has outperformed its ETF Database Category and FactSet Segment Averages over the last three months, returning 8.2% compared to 6.3% and 5.3% respectively on top of $5.9 million in net inflows.

Fixed income may be back in style this year, but with so many options, investors may want to consider how active muni funds can ably navigate a complicated and ever-shifting landscape. For those investors interested in muni bonds, FLMI is a strategy to consider in the weeks to come.

ETF TRENDS

NICK PETERS-GOLDEN

FEBRUARY 2, 2023

The SEC's Fast-Approaching Cybersecurity Overhaul for Public Companies and Regulated Entities.

As the SEC staff picks up the pace of cyber investigations, Chair Gensler continues the push to beef up the Enforcement Division's already meaty toolkit.

TAKEAWAYS

- The SEC has nearly doubled the size of its Crypto Assets and Cyber Unit and has aggressively pursued cyber-related enforcement actions against public companies and regulated entities.
- In a few months the SEC will finalize new rules governing firms' cybersecurity obligations, ushering in an unprecedented wave of oversight.
- Companies must proactively prepare for changes to the cyber-regulatory regime by assessing the adequacy of their security protocols, disclosure controls and procedures, and disclosures to investors regarding cyber matters.

Continue reading.

By Brian E. Finch, David Oliwenstein, Sarah M. Madigan

Feb 2, 2023

Pillsbury Winthrop Shaw Pittman LLP

- I Know It When I See It – What is a Capital Expenditure? – Squire Patton Boggs
- Municipal Securities Regulation and Enforcement: 2022 Year in Review and Look Ahead: Ballard Spahr
- Hawkins Advisory: The Federal Reserve's Regulation ZZ Implementing the Adjustable Interest Rate (LIBOR) Act
- The Debt Ceiling Battle Hits Home.
- State & Municipal Treasurers Publish Letter Encouraging McCarthy to Make Deal on Federal Debt Ceiling.
- Governmental Accounting for Non-Accountants: GFOA Webinar
- And finally, Warren City, Michigan – Where Shame Goes To Die! is brought to us this week by *Warren City Council v. Fouts*, in which Mayor James Fouts submitted a budget to the city council, "which, included a line item of $615,000 for the City of Warren Downtown Development Authority (DDA) for "Contractual Services" and a line item of $75,000 for DDA for "Community Promotions." The city council, "met to consider the recommended budget and decided it would revise the budget to allocate $0 for DDA "Contractual Services" and $10,000 for DDA "Community Promotions." Oh, did we forget to mention that the mayor is also the chairperson of the DDA and that the $75k "Community Promotions" budget was for an ad campaign featuring – you guessed it! – Mayor Fouts himself? Don't worry, Mayor Fouts went ahead and directed the city finance department to go ahead and fund his original allocations anyway. Can't let that whole separation of powers nonsense get in the way of those sweet, sweet Contractual Services.

BALLOT INITIATIVES - CALIFORNIA

City of Oxnard v. Starr

Court of Appeal, Second District, Division 6, California - January 19, 2023 - Cal.Rptr.3d - 2023 WL 312378

City brought action against proponent of city initiatives, seeking to have two initiatives passed by voters declared void. Proponent brought anti-SLAPP motion seeking dismissal of the suit and attorney fees.

The Superior Court denied the anti-SLAPP motion. Proponent appealed.

The Court of Appeal held that:

- City's post-election lawsuit against proponent implicated protected activity for anti-SLAPP purposes;
- City had power to seek to invalidate initiatives and did not have duty to defend initiatives, for purposes of proponent's anti-SLAPP motion;
- Proponent was proper defendant in city's lawsuit, for purposes of proponent's anti-SLAPP motion;
- Initiative modifying rules governing city's legislative bodies was not invalid under exclusive delegation rule, for purposes of proponent's anti-SLAPP motion;
- Initiative modifying rules governing city's legislative bodies was legislative in nature and thus was not invalid, for purposes of proponent's anti-SLAPP motion; and
- Initiative amending sunset date of local sales and use tax increase was administrative in nature and thus was invalid, for purposes of proponent's anti-SLAPP motion.

ZONING & PLANNING - CALIFORNIA

Socal Recovery, LLC v. City of Costa Mesa

United States Court of Appeals, Ninth Circuit January 3, 2023 - 56 F.4th 802 - 2023 Daily Journal D.A.R. 54

Sober living home operators brought actions alleging that city's denial of their applications for special use permits and reasonable accommodation requests violated Fair Housing Act (FHA), Americans with Disabilities Act (ADA), and California Fair Employment and Housing Act (FEHA).

The United States District Court for the Central District of California entered summary judgment in city's favor, and operators appealed. Appeals were consolidated.

The Court of Appeals held that:

- Operators had standing to bring actions;
- Operators were not required to present individualized evidence of actual disability of their residents;
- As matter of first impression, operators can satisfy "actual disability" prong of disability discrimination claim on collective basis; and
- Operators were not required to show that city subjectively believed that their residents were disabled.

Sober living home operators had standing to bring actions alleging that city's denial of their

applications for special use permits and reasonable accommodation requests violated Fair Housing Act (FHA), ADA, and California Fair Employment and Housing Act (FEHA), even though they were not disabled or "handicapped," and some residents may not have been disabled; city ordinances' requirement that sober living homes be located at least 650 feet away from any other sober living home or any state-licensed drug and alcohol treatment center prevented operators from conducting their normal business operations.

Sober living homes and other dwellings intended for occupancy by persons recovering from alcoholism and drug addiction were protected by Fair Housing Act (FHA), ADA, and California Fair Employment and Housing Act (FEHA) from illegal discrimination against disabled without need for home operators to present individualized evidence of actual disability of their residents; operators only had to establish—through house rules, admissions requirements, or testimony of house employees and residents—that they had policies and procedures to ensure that they served or would serve those with actual disabilities and that they adhered or would adhere to such policies and procedures.

Sober living home operators can satisfy "actual disability" prong of disability discrimination claim under Fair Housing Act (FHA), ADA, and California Fair Employment and Housing Act (FEHA) on collective basis by demonstrating that they serve or intend to serve individuals with actual disabilities.

In determining whether city regarded sober living home residents as disabled, for purposes of ADA, home operators were not required to show that city subjectively believed that all of their residents—or some specific residents—were disabled.

PREEMPTION - FLORIDA

Fried v. State

Supreme Court of Florida - January 19, 2023 - So.3d - 2023 WL 309000

Municipalities, counties, elected officials, and one private citizen brought actions, which were consolidated, for declaration invalidating statutes that imposed civil penalties against governmental entities and individual officers for violating a statute that expressly preempted the whole field of firearm and ammunition regulation.

The Circuit Court granted summary judgment in part for plaintiffs. State appealed. The First District Court of Appeal reversed. Plaintiffs applied for review.

The Supreme Court held that:

- The statutes that imposed civil penalties against local officials for violating the firearm preemption statute abrogated common law legislative immunity for local officials as to the preemption statute, and
- Governmental-function immunity did not preclude enforcement of statute that allowed lawsuits against local governments for violating the firearm preemption statute.

Statute that imposed civil penalties against local officials for violating a statute that expressly preempted the whole field of firearm and ammunition regulation abrogated common law legislative immunity for local officials as to that preemption statute.

Statutes that imposed civil penalties against local officials for violating a statute that expressly

preempted the whole field of firearm and ammunition regulation did not violate legislative immunity arising from the separation of powers in the Florida Constitution, despite argument that the preemption statute at issue authorized the judiciary's interference with legislative acts of local officials.

Florida Constitution's article on local government was not a basis on which legislative immunity could preclude enforcement of statutes that imposed civil penalties against local officials for violating a statute that expressly preempted the whole field of firearm and ammunition regulation; the article at issue expressly granted the legislature plenary authority over local governments, and those governments, which included counties and municipalities, were creatures of the State without any independent sovereignty.

While state legislators are immune from civil suits for their acts done within sphere of legislative activity, legislative immunity does not shield individuals who knowingly and willfully act contrary to or beyond limits of state law that provides for statutory penalties against government officials.

Governmental-function immunity did not preclude enforcement of statute that allowed lawsuits against local governments for violating a statute that expressly preempted the whole field of firearm and ammunition regulation.

LIABILITY - GEORGIA

City of Alpharetta v. Francis

Court of Appeals of Georgia - January 19, 2023 - S.E.2d - 2023 WL 311338

Residents of home brought action against city, asserting that negligent maintenance of storm water drainage systems caused flooding in home and alleging claims for inverse condemnation, personal injuries, trespass, nuisance, punitive damages, and attorney fees.

The trial court denied city's motion to dismiss. City applied for interlocutory review, which was granted.

The Court of Appeals held that:

- Notice failed to satisfy requirement of ante litem notice requirement that notices include specific amount of monetary damages sought from municipal corporation, and
- Court would decline to consider residents' claim that requirements of ante litem notice statute did not apply to inverse condemnation claim.

Notice that residents of home submitted to city, indicating intent to sue, failed to satisfy requirement of ante litem notice statute that notices, in describing extent of injury, include specific amount of monetary damages being sought from municipal corporation; while notice indicated residents would seek damages for complete and total taking of property in amount to be proven at trial, believed to be between $350,000 and $500,000, as well as medical damages between $75,000 and limitations of applicable insurance policies, and promised to supplement notice with formal demand, no such demand was ever filed, and notice merely provided estimated range of potential damages and failed to identify insurance policies under which residents sought to recover.

Court of Appeals would decline to rule on home residents' claim that requirements of ante litem notice statute did not apply to inverse condemnation claim brought against city; residents did not raise such argument before trial court, and trial court did not rule on issue.

MUNICIPAL ORDINANCE - ILLINOIS

Lintzeris v. City of Chicago

Supreme Court of Illinois - January 20, 2023 - N.E.3d - 2023 IL 127547 - 2023 WL 329492

Vehicle owners brought putative class action against home rule city, seeking declaratory and injunctive relief and damages arising from city's ordinance imposing administrative penalties for recovery of impounded vehicles when there was probable cause to believe vehicle was used in certain enumerated offenses.

The Circuit Court dismissed action on pleadings. Owners appealed, and the Appellate Court, 2021 WL 2952783, affirmed. Owners petitioned for leave to appeal, which was allowed.

The Supreme Court held that:

- Provision of Vehicle Code authorizing municipalities to impose "a reasonable administrative fee" for costs associated with properly impounded vehicles did not preempt ordinance;
- Ordinance pertained to city's local government and affairs, supporting finding that ordinance was not preempted by Vehicle Code, regulating vehicles generally;
- Penalty imposed by ordinance was intended as civil rather than criminal, supporting finding that imposition of penalty did not violate double jeopardy; and
- Penalty was not so punitive as to render it criminal in nature, supporting finding that imposition of penalty did not violate double jeopardy.

MUNICIPAL GOVERNANCE - MICHIGAN

Warren City Council v. Fouts

Court of Appeals of Michigan - December 29, 2022 - N.W.2d - 2022 WL 17997585

City council brought action against mayor seeking a writ of mandamus, declaratory judgment, and injunctive relief, alleging that mayor violated city charter, Uniform Budgeting and Accounting Act (UBAA), and recodified tax increment financing act (RTIFA) by spending unappropriated money from city budget.

The Circuit Court granted preliminary injunctive and declaratory relief in city council's favor. Mayor appealed.

The Court of Appeals held that:

- Court properly granted declaratory judgment in city council's favor stating that mayor was not entitled to proceed with his own budget as if it had been passed by city council, and
- City council showed that it was likely to prevail on merits of its mandamus claim against mayor.

City charter permitted city council to unilaterally amend mayor's recommended budget when passing general appropriations resolution, and thus court properly granted declaratory judgment in city council's favor stating that mayor was not entitled to proceed with his own budget as if it had been passed by city council; charter required mayor to prepare and submit a proposed budget to city council, but also stated that city council was required to pass "a" budget and not "the" budget, charter described budget submitted by mayor to city council as "a recommended budget" and as a "budget proposal," and city council had power to "adopt a budget" for next fiscal year.

City council had clear legal right to have mayor act in accordance with city charter and Uniform Budgeting and Accounting Act (UBAA) and recodified tax increment financing act (RTIFA) and mayor had clear legal duty to comply with law authorizing only those expenditures that were approved by city council, and thus city council showed that it was likely to prevail on merits of its mandamus claim against mayor, as required for issuance of preliminary injunction to enjoin mayor's further expenditure of unappropriated money; city charter gave city council sole power within city to appropriate money, mayor's legal duties to follow expenditure rules in charter were ministerial in nature, and mayor had no discretion to determine whether money had been appropriated for particular program or project.

IMMUNITY - NORTH CAROLINA

Devore for Horton v. Samuel

Court of Appeals of North Carolina - December 20, 2022 - S.E.2d - 2022 WL 17814512 - 2022-NCCOA-834

Guardian ad litem for elementary school student struck by car after exiting school bus brought negligence action on behalf of child against multiple defendants, including operator of afterschool childcare center to which student was heading when he was struck by car.

Operator then filed third-party complaint against bus driver and local school board that employed bus driver, alleging claims for contribution and indemnity. Board filed motion to dismiss on ground that third-party claims were barred by governmental immunity. After a hearing, the Superior Court denied the motion. Board appealed.

The Court of Appeals held that:

- As matter of first impression, limited waiver of governmental immunity for school bus negligence claims against local school boards applies only to claims brought in Industrial Commission and does not apply to third-party claims asserted in court, and
- Board's excess liability insurance coverage did not waive board's governmental immunity for school bus negligence claims.

Governmental immunity that applies to counties and other municipalities applies to a local school board because it is a governmental agency, and is therefore not liable in a tort or negligence action except to the extent that it has waived its governmental immunity pursuant to statutory authority.

Limited waiver of governmental immunity for school bus negligence claims against local school boards applies only to claims brought in Industrial Commission and does not apply broadly to third-party claims asserted in court; although State may be joined in court proceedings as third-party defendant for contribution or indemnification, and Tort Claims Act provides that liability of local school boards in school bus negligence cases shall be same as tort claims against State Board of Education, statute merely explains that local school board's liability, together with other aspects of case, shall be same as provided with respect to tort claims against State Board of Education and does not unambiguously provide that boards are considered state agency or include express statutory authorization to pursue claim outside Industrial Commission.

Local school board's excess liability insurance coverage did not waive board's governmental immunity for school bus negligence claims, under statute allowing local boards of education to waive governmental immunity from tort actions in superior courts by purchasing liability insurance; policy

stated that it was not “intended by the Insured to waive its governmental immunity” and that policy provided coverage “only for occurrences or wrongful acts for which the defense of governmental immunity is clearly not applicable or for which, after the defenses are asserted, a court of competent jurisdiction determines the defense of governmental immunity not to be applicable.”

PUBLIC RECORDS - PENNSYLVANIA

Auslander v. Tredyffrin/Easttown School District

United States District Court, E.D. Pennsylvania - December 5, 2022 - F.Supp.3d - 2022 WL 17418625

Taxpayer brought § 1983 action against school district, alleging First Amendment violation arising from district’s refusal to allow taxpayer to make verbatim verbal recordings of copyrighted educational materials used by school which were provided by private contractor.

Parties cross-moved for summary judgment.

The District Court held that district’s refusal to allow taxpayer to record the materials did not violate taxpayer’s First Amendment free speech right.

School district’s refusal to allow taxpayer to make verbatim voice recording of copyrighted educational classroom materials used by district, during taxpayer’s visual inspection of those materials, did not violate taxpayer’s First Amendment free speech right; pursuant to Copyright Act, author had exclusive right to reproduce the copyrighted work, and district had contractual obligation to protect author’s copyright.

NASBO: Many Revenue Forecasts for Fiscal 2023 Revised Upward as States Monitor Economic Conditions

Overview

Revenue forecasts play a vital role in budget decisions for the current year as well as future spending plans. NASBO’s revenue forecast webpage compiles recent forecasts from across the country. States vary in the frequency and timing of revenue forecasts. However, as shown in NASBO’s *Budget Processes in the States*, nearly all states release a revenue forecast in the late fall or early winter to help guide upcoming budget deliberations.

Fiscal 2023 Revenue Forecasts

Many states have revised revenue forecasts upward for the remainder of fiscal 2023 following better than projected growth in tax collections year-to-date. As highlighted in NASBO’s *Fall 2022 Fiscal Survey of States*, revenue projections in fiscal 2023 enacted budgets were 3.1 percent lower than preliminary actual collections for fiscal 2022. However, this decline is largely attributable to differences in the timing of fiscal 2022 figures and fiscal 2023 estimates. More recent collections data for fiscal 2023 suggest that general fund revenues will come in stronger than enacted revenue projections. In the Fiscal Survey of States, 33 states had already reported revenues exceeding original budget forecasts for fiscal 2023.

In addition to better-than-expected growth in tax collections so far in fiscal 2023, many states revised revenue forecasts upward for the remainder of the fiscal year after examining a series of

economic indicators. A number of states' forecasts discussed the current overall strength of the labor market including the low unemployment rate, job gains, and elevated wage growth. Many states also said consumer spending has been higher than anticipated due partly to pent-up demand. Other revenue sources have also seen gains including severance taxes from the strength of the oil and natural gas sector.

Fiscal 2024 Revenue Forecasts
While many states have revised their revenue forecasts upward for the remainder of fiscal 2023, their projections for fiscal 2024 remain conservative as they monitor uncertain economic conditions which could produce a range of outcomes. In their fiscal 2024 revenue forecasts, most states are assuming nominal growth in tax collections, although at a much slower rate than the double-digit growth in both fiscal 2021 and fiscal 2022. States cited concerns about a weakening macroeconomic outlook due to several factors including rising interest rates, inflationary pressures limiting real growth, recent layoff announcements, the stock market correction, and the continued impact of geopolitical events.

Outlook
As states work to finalize their budgets for fiscal 2024, they will continue to monitor the economic outlook. In the spring many states will release an updated revenue forecast for fiscal 2024 taking into consideration any changes in the economy. Over the past several years, states have taken steps to prepare for a potential economic slowdown through actions such as building up rainy day funds to record levels, maintaining structural balance, increasing pension payments, paying down long-term debt, and using one-time funds for one-time purposes.

National Association of State Budget Officers

By Brian Sigritz

The Debt Ceiling Battle Hits Home.

The battle over the debt ceiling is nightmare fuel for Treasury markets. It's also a headache for state and local governments that rely on the municipal bond market to finance everything from roads and public transportation to schools.

"It puts me a bit on edge," Howard Cure, a partner at Evercore who leads the investment bank's muni bond research team, told MM.

House GOP budget hawks haven't identified what cuts they'd like to make in exchange for a vote on the debt limit. And Biden administration officials are adamant that they won't abide Speaker Kevin McCarthy's attempt to link Treasury's ability to make bond payments — a cornerstone of the global financial system — to spending cutbacks.

Continue reading.

POLITICO

By SAM SUTTON

01/23/2023

State & Municipal Treasurers Publish Letter Encouraging McCarthy to Make Deal on Federal Debt Ceiling.

They say a default would be 'catastrophic' and devalue portfolios, damaging pension funds and 401(k) plans.

Eleven U.S. state treasurers and the comptrollers of Maryland and New York City have sent a letter to House Speaker Kevin McCarthy demanding the House of Representatives vote to increase the debt limit to prevent "catastrophic consequences" they say would damage pension funds, 401(k) plans and other retirement and educational savings vehicles.

In addition to the Maryland and NYC comptrollers, the letter was signed by the state treasurers of Colorado, Connecticut, Delaware, Illinois, Maine, Massachusetts, Nevada, Oregon, Rhode Island, Vermont and Washington.

The letter outlines their concerns that the federal government will be forced to default on its debt, which hit the current limit of $31.4 trillion last week. The Treasury Department has taken "extraordinary measures" to make sure the government can meet its financial obligations, but those will likely only work until June. If a default happens, the signatories say, "the value of portfolios invested across asset classes would decrease significantly."

Continue reading.

Chief Investment Officer

By Michael Katz

January 26, 2023

Why Some Executives Wish E.S.G. 'Just Goes Away'

The environmental, social and corporate governance investment trend is booming, but it has also become a big distraction for business leaders.

Corporate leaders open up about E.S.G.

At a cocktail party this week in Davos, one executive told DealBook something he — and most of the attendees at the World Economic Forum — would most likely never say in public: "I hope E.S.G. just goes away."

The executive, whose company is involved in the carbon industry, clarified that he still believes that it is vital to focus on climate, but that environmental, social and corporate governance — as the business approach is formally known — has become too broad and distracting. He's just one of many executives who have talked to DealBook about coming to terms with how politically charged E.S.G. has become, and about how to deal with it.

Continue reading.

The New York Times

By Andrew Ross Sorkin, Ravi Mattu, Bernhard Warner, Sarah Kessler, Michael J. de la Merced, Lauren Hirsch and Ephrat Livni

Jan. 19, 2023

The Thematic ESG Approach in US Municipal Bonds.

Executive summary

US municipal (muni) bonds play an important role in funding public services and infrastructure, hence they are fundamentally well positioned for responsible investment strategies. Muni bond issuers affect the quality of life of most Americans and will be key in the transition to a low carbon economy.

Like their peers across many fixed income asset classes, muni bond investors have started to address ESG factors more explicitly to mitigate risk in their portfolios. Some have also gone beyond seeking better risk-adjusted investment performance to adopt an ESG thematic strategy, which involves allocating capital to themes or assets that are tied to certain environmental or social outcomes. This approach, and more broadly weighing the real-world outcomes of muni bond holdings (both positive and negative), is less common than the risk mitigation approach, but momentum is building.

The two approaches are not necessarily mutually exclusive and could deploy the same techniques (for example exclusion or engagement). If anything, the US muni bond market is well suited to embracing both ESG strategies simultaneously, given the many public benefits funded by proceeds.

Continue reading.

Principles for Responsible Investment

18 January 2023

Green Could Add Value in Municipal Bond Rebound.

While municipal bonds tracked aggregate bond benchmarks lower in 2022, munis were less bad than Treasuries and some other corners of the bond market, prompting some market observers to bet on municipal debt as the 2023 rebound story.

Indeed, there are compelling reasons to consider exchange traded funds such as the SPDR Nuveen Municipal Bond ESG ETF (MBNE). Notably, despite last year's weakness, fundamentals for municipal bonds remain sturdy, indicating the asset class's 2022 slump was more a symptom of the Federal Reserve raising interest rates, not a direct commentary on municipal debt.

Specific to MBNE, which debuted last April and is actively managed, is pertinent to advisors and income investors at a time when a municipal bond rebound could be in the offing, but also as market participants look to add environmental, social, and governance (ESG) overlays to this corner of the bond market.

“Coupled with the potential opportunity in municipal bonds, a focus on environmental, social, and governance (ESG) investing has permeated fixed income markets. More and more, investors are seeking to allocate to issuers aligned with a wide range of sustainability goals and practices. Expectations for ESG municipal issuance in 2023 range from $50B to $60B, compared to $45B in total issuance last year, indicating longer-term commitments to sustainable finance,” wrote Brianna Roberts, research strategist at State Street Global Advisors (SSGA).

While MBNE is still less than a year old, investors shouldn’t view age as a negative in this case. In fact, the fund’s status as an actively managed product is already proving to be a positive trait.

“MBNE uses an active management style to help identify inefficiencies while allocating assets toward the most ESG-oriented areas of the market,” added Roberts. “Despite a challenging environment, MBNE ranked in the 12th percentile among its active peers, both ESG and non-ESG, in December 2022.6 MBNE also ranks near the lowest quintile based on gross expense ratio relative to its peers in the US Fund Municipal National Intermediate category.”

MBNE can leverage active management to unearth muni debt that not only meets strict ESG criteria but bonds that offer investors above-average levels of income and attractive value traits. Under one umbrella, those three objectives are difficult for many index-based products to deliver on.

With an option-adjusted duration of 4.92 years, MBNE holds 100 bonds and sports a 30-day SEC yield of 2.76%, according to issuer data.

ETFTRENDS.COM

by TOM LYDON

JANUARY 25, 2023

Moody’s 2023 ESG and Sustainable Finance Outlook: Cadwalader

Moody’s published its 2023 Outlook – Macroeconomic challenges to exacerbate ESG credit risks on January 9, 2023, laying out various macroeconomic challenges it expects as a result of climate-related and other issues. Among other things, Moody’s expects four trends from 2022 to continue having an impact on credit risk: (1) macroeconomic, financial, and geopolitical consequences from the pandemic and Russia-Ukraine conflict; (2) persistent challenges associated with access to and the affordability of basic services; (3) continued scrutiny of corporate decarbonization pledges; and (4) difficulties arising from a complex regulatory landscape for companies and issuers’ governance capabilities across the credit cycle. It also expects that companies with high exposure to climate transition risk will set and endeavor to meet ambitious emissions reductions goals with more transparency and credibility. However, Moody’s also concludes that the transition plans of non-financial companies most exposed to carbon transition risks are least likely to disclose ambitious and detailed plans, increasing the challenges these companies confront in light of anticipated regulatory and market scrutiny. In addition, the constantly shifting ESG regulatory framework and varying perspectives on disclosures and investing practices may further complicate compliance, especially for financial institutions. Lastly, as the exposure to and understanding of physical climate risks improves, so will investor focus on companies that face greater exposure—which may be intensified by increasing regulation of high-risk companies.

Taking the Temperature: Moody’s predictions underscore the longevity of ESG-focused

investing and also emphasize the credit risks that high-exposure companies and sectors will face in the future as they transition to a low-carbon economy. The inconsistent regulatory landscape and, in the U.S., politicized nature of climate change, complicate how companies approach governance and disclosure regarding sustainability and other ESG issues. Moody's Outlook succinctly summarizes what we have been observing and expect to continue in 2023.

By Kya Henley
Associate | Global Litigation

January 20, 2023

Cadwalader

S&P Outlook For U.S. Charter Schools: Credit Profiles Hold Steady

Sector View: Stable

Charter school demand continues to grow, per-pupil funding levels are healthy overall, significant federal funds remain available, and we expect credit stability for states. These positives partially offset increased expense pressures, enabling the sector to enter 2023 with greater financial flexibility.

Continue reading.

24 Jan, 2023

What's Next for State, Local Cybersecurity Grants?

Fifty-four of the 56 entities eligible for year one federal grants applied, and 10 have fulfilled the second part of the process by submitting their cybersecurity plans. A notice of funding opportunity is expected year two in the spring.

States had until mid-November to apply for their — and their local government partners' — share of nearly $200 million worth of federal cybersecurity grants. Now that applications are in, what's next?

Most — but not all — eligible entities applied for the State and Local Cybersecurity Grant Program (SLCGP), and under a fifth have completed both of the two key parts needed before they can receive funds, said Trent Frazier, deputy assistant director for Stakeholder Engagement at the Cybersecurity and Infrastructure Security Agency (CISA), who spoke as part of a FedInsider panel this week. CISA is reviewing the applications alongside FEMA.

The four-year grant program keeps progressing, too, and the notice of funding opportunity for the second year's round of awards is due out in late spring, to the tune of $400 million, Frazier said.

Continue reading.

govtech.com

January 13, 2023 • Jule Pattison-Gordon

Critics Take Aim at State and Local ARPA Spending on Prisons and Jails.

The American Civil Liberties Union is among those raising questions about federal Covid aid from the American Rescue Plan Act going to corrections projects.

State and local governments that directed federal Covid relief funding toward jail and prison costs are under fire from civil rights advocates.

The American Civil Liberties Union last week urged the Treasury Department's Inspector General to require states and counties that used hundreds of millions of dollars of American Rescue Plan Act aid to build or expand prisons and jails to shift those funds toward expenses more directly related to fallout from the public health crisis.

Treasury's inspector general's office has said that a county in Iowa could use the Covid relief funds to expand a juvenile detention facility because governments are allowed to use ARPA money to backfill revenue lost during the pandemic. And under that revenue replacement category they have a great deal of flexibility to spend the funding as they choose.

Continue reading.

Route Fifty

by Kery Murakami

JAN 26, 2023

Legislative Analysis for Counties: The Consolidated Appropriations Act of 2023

On December 23, 2022, the U.S. Congress enacted a Fiscal Year (FY) 2023 omnibus appropriations bill to fund the federal government through September 30, 2023. Enactment of the omnibus followed a series of Continuing Resolutions (CR) to fund the federal government and avert a government shutdown since the beginning of the federal fiscal year on October 1, 2022. President Biden signed the $1.7 trillion omnibus appropriations bill into law on December 29, 2022.

For the second year in a row, discretionary spending levels for FY 2023 were not limited by statutory spending caps prescribed by the Budget Control Act of 2011. As such, the White House, congressional leadership, and top appropriators negotiated topline spending levels over several months.

The FY 2023 omnibus includes several key investments of importance to counties detailed in this report. These include, but are not limited to, full funding for the Payments in Lieu of Taxes (PILT) program and significantly invests in the RECOMPETE pilot program and technology hubs authorized by the bipartisan CHIPS and Science Act. These programs and others funded by the bill, including a $550 million increase in wildland fire suppression, will enable counties to provide critical services

and plan for economic sustainability and growth in 2023.

Continue reading.

National Association of Counties

JANUARY 17, 2023

Spending American Rescue Plan Act Funds: A Primer for Municipalities

The American Rescue Plan Act (ARPA) of 2021 is a $1.9 trillion legislative package that includes funding for states, local governments and tribal nations to respond to the economic and public health impacts of the COVID-19 pandemic. While initially restricted, subsequent guidance from the federal government has expanded what those funds can be used for. However, to avoid being required to repay the funds, it is important that all spending complies with the act and subsequent regulations.

As we are now seeing many cities and counties using the awarded funds, this article will provide an overview of how and when the funds can be spent and identify the major compliance requirements.

How can the funds be spent?
Under the ARPA, cities and counties may use funds to cover a wide range of expenses related to the pandemic, including:

- **Premium pay:** Funds can be used to provide additional compensation for "eligible workers performing essential work during the COVID-19 public health emergency or to provide grants to third-party employers [non-municipal employees] with eligible workers performing essential work." Premium pay is designed to compensate workers who took on additional burdens or sacrifices because of the pandemic. Eligible workers include those whose work was necessary to maintain continuity of critical infrastructure sectors. A complete list of those sectors can be found in the 2020 House of Representatives HEROES Act. In addition to the critical infrastructure sectors, the chief executive or equivalent of a recipient may designate additional sectors as critical, provided doing so is necessary to protect the health and wellbeing of the residents of the jurisdiction.
- **Lost revenue:** Funds can be used to replace revenue lost because of the pandemic. Cities or counties can calculate the amount of revenue lost as a result of the pandemic or they can use the standard allocation of $10 million, whichever is less.
  Water, sewer and broadband: Funds can be used for water, sewer and broadband projects. Investment in these types of projects is generally limited to those that are necessary. Necessary projects would typically include those eligible for funding under the EPA's Clean Water State Revolving Fund or Drinking Water State Revolving Fund.
- **Public health emergency relief and negative economic impacts:** Funds can be used to address the public health emergency created by the pandemic, including aiding of households, small businesses and nonprofits, or to aid impacted industries like tourism, travel and hospitality. To determine if a program or service is eligible for funds under this provision, the city must identify the need or negative impact of the pandemic and identify how the program, service or intervention would address the need. An eligible use under this category must be in response to COVID-19 itself or a harmful consequence of the economic disruption resulting from it.

There is no requirement for preapproval of projects.

Ultimately, although it is up to each city to determine how best to use the ARPA funds, we expect that most recipients will elect to use the funds under the "lost revenue" category. Once selected, those funds can be used for government services, which include any service traditionally provided by a government, unless the Department of the Treasury has stated otherwise.

What is the administrative process for spending ARPA funds?
To ensure that funds are not used for ineligible purposes and that there is no fraud, waste or abuse of the funds, cities and counties are required to take certain administrative steps regarding their use of ARPA funds. These include the following:

- **Keeping records:** Financial records and other supporting documents related to an award and spending must be kept for a period of five years after all funds have been expended. This expressly includes those records that show the award funds were used for eligible purposes.
- **Reporting:** Recipients are required to submit an interim report, project and expenditure reports, and annual recovery plan performance reports.
  – Interim reports must identify expenditures by category. These reports were due on Aug. 31, 2021.
  – Project and expenditure reports must include the financial date, information on contracts and subawards over $50,000, types of projects funded, and other information regarding the use of the funds. For larger recipients, with a population of more than 250,000 or receiving more than $10 million, these reports are to be made quarterly. For all others, these reports are to be submitted annually by April 30.
  – Cities and counties with a population of more than 250,000 must submit performance reports that include a description of projects funding, performance indicators and objectives for each award. These plans must be posted on the recipient's public-facing website.
- **Single audit:** Cities and counties spending more than $750,000 in federal awards in a fiscal year are subject to an audit under the Single Audit Act.
- **Civil rights compliance:** Recipients receiving funds are required to meet legal requirements relating to nondiscrimination and nondiscriminatory use of federal funds. Those requirements include ensuring that entities receiving funds do not deny benefits or services, or otherwise discriminate based on race, color, national origin (including limited English proficiency), disability, age or sex (including sexual orientation and gender identity).

It is important for recipients to carefully follow the guidelines and requirements for spending ARPA funds to ensure they are using the funds in a way that is compliant with federal regulations and meets the needs of their community.

What is the timeline for spending ARPA funds?
A recipient must use ARPA funds to address eligible costs incurred during the period of March 3, 2021 through Dec. 31, 2024. The funds must be obligated for spending by Dec. 31, 2024, and must be spent by Dec. 31, 2026. Costs for projects incurred before March 3, 2021 are not eligible for reimbursement.

What are consequences for missing a requirement?
Beyond using the funds improperly, enforcement related to the reporting and other requirements is loose. According to guidance issued by the Treasury Department, if a city misses a reporting deadline, it should submit the necessary report as soon as possible. There is no penalty for late reporting, but it could lead to a finding of non-compliance. In that case, the city could be subject to a corrective action plan or "other consequences as appropriate." Use of the funds for ineligible expenditures could result in a city being required to repay the funds.

The actual economic impact of the pandemic on cities and counties might be up for debate. Some

saw revenues increase, but the ARPA has provided much-needed funds to address aging infrastructure or to expand broadband. Initially, it was expected that the program would limit eligible expenses, but with the subsequent guidance, a city or county can likely use the funds for any legitimate government function. Before doing so, it is important that each use be carefully evaluated to avoid any payback requirements.

American City & County

Written by Baxter Drennon

27th January 2023

Baxter D. Drennon is a partner at law firm Hall Booth Smith. He is based in Little Rock, Ark., and handles complex litigation involving commercial disputes, product liability and medical malpractice. In addition, Baxter represents municipal government entities and is the city attorney for Benton, Ark.

A Small Catholic College's Closure Hints at More to Come.

- **Holy Names University defaults on debts amid economic strain**
- **More distress coming for higher-ed in 2023, analysts say**

Economic strains that have pushed a number of colleges and universities to the brink show no signs of stopping, with Holy Names University in Oakland, California, the first to default on its debt in 2023.

The Roman Catholic school with fewer than 1,000 students defaulted on a $49 million loan, according to a Jan. 3 filing, after the almost 155-year-old institution announced it would be closing its doors at the end of the academic year.

The closure is likely a harbinger of what's to come as S&P Global Ratings has warned less selective, regional institutions will struggle in the new year. Growing competition, falling enrollment trends and higher expenses could weaken credit quality. At the same time, waning risk appetite ahead of a looming recession means struggling schools' access to the $4 trillion municipal-bond market could be limited.

Continue reading.

Bloomberg Markets

By Allison Nicole Smith

January 24, 2023

How a Bankrupt City's Pension System Hit a Breaking Point.

You're reading Route Fifty's Public Finance Update. To get the latest on state and local budgets, taxes and other financial matters, you can subscribe here to get this update in your inbox twice each

month. You can find a full archive of these newsletters here.

Welcome back to Route Fifty's Public Finance Update! I'm Liz Farmer and this is the second installment of my series on Chester, Pennsylvania's bankruptcy. (Click here to read Part I.)

As with most—if not all—municipal bankruptcies, there's a lot of blame being thrown around. But in Chester's case, sentiments on all sides appear particularly caustic. So much so that for nearly two years, the receiver's team has been working out of a sparsely furnished office a half-block away from City Hall. In courtroom testimony earlier this month, receiver Michael Doweary described being called the "N-word" during a verbal altercation with Mayor Thaddeus Kirkland. Doweary, meanwhile, has accused city officials of nepotism and fiscal malfeasance, if not outright corruption.

Continue reading.

ROUTE FIFTY

by LIZ FARMER

JANUARY 24, 2023

States Reimagine Power Grids for Wind and Solar Energy.

The rate of grid expansion needs to double to bring wind and solar online and would cost $700 billion. Advocates want utilities and grid operators to build infrastructure that aligns with the states' clean energy goals.

For years, many states have set ambitious goals and incentives to promote renewable electricity projects. Now, more of those states are turning their attention to the transmission lines, substations and transformers needed to get that electricity from wind farms and solar plants into homes and businesses.

Congress has invested billions in boosting clean energy. But the money won't lower emissions as much as predicted without "more than doubling" the last decade's rate of grid expansion, Princeton University researchers noted last year. That expansion is needed to support the new renewable energy projects coming online, as well as the growing number of electric vehicles, heat pumps and other technologies requiring electricity.

Jon Wellinghoff, former chair of the Federal Energy Regulatory Commission and the CEO and founder of GridPolicy Consulting, which works with governments and companies to support clean energy deployment, agreed that expanding the grid needs to be a top priority.

Continue reading.

Alex Brown, Stateline.org

Jan. 26, 2023

Over $1 Billion Now Available to Convert Bus Fleets to Cleaner Fuels.

Purchases of electric and hydrogen-powered buses are among the projects eligible for a new round of federal grants.

States, local governments and tribes can now apply for nearly $1.7 billion in federal funding through a pair of grant programs geared toward transitioning the nation's bus fleets to cleaner fuels, like electric or hydrogen power.

The money, available under the 2021 infrastructure law, includes $1.2 billion this fiscal year for the Low or No Emission Vehicle Program, which covers purchases or leases of buses that cause less air pollution than models that run on fuels like diesel. Grants from that program can also fund the construction or lease of facilities and equipment to support the new vehicles.

In addition to battery and hydrogen-powered buses, rubber-tired trollies with power from overhead electric wires are eligible for funding, as well as other options that can meet federal requirements.

Continue reading.

Route Fifty

by Bill Lucia

JAN 27, 2023

A New Initiative Seeks to Help Small Cities Access Infrastructure Funding.

The program will work with communities to assemble strong grant applications that can win some of the billions of dollars available.

Thanks to the 2021 infrastructure law, billions of dollars are available to communities to invest in clean energy, transit, affordable housing, good-paying jobs and environmental justice initiatives. But for small and rural communities, these funds are often out of reach.

Many such communities don't have the staff or financial capacity to assemble strong grant applications. That's where a new initiative that aims to connect governments with the capital and training necessary to kickstart their projects comes in.

The 10,000 Communities Initiative is the brainchild of the Milken Institute, a nonprofit think tank. Its goal is to help thousands of communities access infrastructure funds over the next year.

Continue reading.

ROUTE FIFTY

by MOLLY BOLAN

JANUARY 26, 2023

Adding the Limited Buydown to WIFIA Loans.

The EPA's WIFIA loan program offers several interest rate management features that are highly beneficial for large-scale infrastructure financings, including a U.S. Treasury-based fixed-rate lock for construction and permanent drawdowns, post-execution rate resets until draw, and no-penalty cancellation and prepayment.

All are enabled, directly or indirectly, by a statutory framework that WIFIA shares with its predecessor, the DOT's TIFIA program, and a recent successor, the DOE's CIFIA program.

But one loan feature is missing from WIFIA's specific statute – a limited interest rate buydown. The limited buydown allows the program to lower, within specified limits, a loan's execution interest rate to what it would have been on the day the loan's application was accepted. Even at a well-run program, there will inevitably be a significant amount of time between loan application acceptance and final execution for complex infrastructure financings. Treasury rates can easily rise during this time, especially in the current economic environment, and that introduces a big element of uncertainty into the cost of the project's long-term financing. A limited buydown enables the program to help mitigate this pre-execution interest rate risk when it's a factor that could stall project development and construction. Like other interest rate management features, the limited buydown is a useful tool for achieving an infrastructure loan program's core policy objective of enabling and accelerating U.S. public infrastructure renewal.

A limited buydown provision was added to TIFIA's statute in the MAP-21 Act of 2012. The provision, with more specific language, was included in CIFIA's statute when the program was established in 2021 by the Infrastructure Investment and Jobs Act. For both programs, the maximum interest rate reduction is 1.50 percent, which is quite significant in the context of current Treasury rates.

Despite being closely modelled on TIFIA law, WIFIA's statute didn't include a limited buydown provision when the program was established in 2014, nor was it added in subsequent WIFIA-related legislation even though CIFIA's proponents and federal policymakers were clearly aware of the provision's usefulness. It's hard to see why the WIFIA program, which makes extensive and innovative use of all its interest rate provisions, was skipped over in the case of a limited buydown. Perhaps pre-execution interest rate risk is not as an important factor for WIFIA's highly rated public water agencies as it is for TIFIA's project financings or CIFIA's carbon pipeline development?

If that – or something like it – is the reason, adding the limited buydown to WIFIA's statute should now be re-considered for two very different types of potential program borrowers. The provision would be useful for both, albeit also in different ways, and although neither have been frequent WIFIA applicants to date, that may change soon.

The Limited Buydown and CWIFP Loans

The first type of potential borrower will be the large-scale water management and dam projects expected to apply to the Army Corp's WIFIA section, the Corps Water Infrastructure Finance Program (CWIFP). CWIFP has received about $81 million in funding to support about $7.5 billion of loans and is scheduled to start accepting applications in spring 2023.

CWIFP applicants are likely to include complex, multi-party, and multi-jurisdictional project financings for major foundational infrastructure assets. This type of project is closer to TIFIA's toll roads or CIFIA's multi-state pipelines than to WIFIA's municipal water system assets. They have a long development period with many highly uncertain variables, not the least of which is the cost of

long-term financing. Bringing everything to the stage where loan agreements can be executed, and construction started, is inherently a lengthy process subject to many risks. In contrast to WIFIA's current post-execution interest rate management features, the limited buydown can help reduce rate risk during this, pre-execution, phase of project development. For many projects, that may be an especially valuable aspect of a CWIFP loan application.

The Limited Buydown and SWIFIA Loans

The second type of borrower that could benefit from a WIFIA limited buydown doesn't directly involve infrastructure projects, but infrastructure lenders – state revolving funds, or SRFs. The sub-optimal levels of leverage at SRFs, especially smaller funds in mostly rural states, have long been recognized, as has the potential for WIFIA loans to help address the issue. As federal funding becomes less certain and increasingly subject to unexpected restrictions or re-allocations (e.g., earmarks in the 2023 Consolidated Appropriations Act), the ability of SRFs to leverage in a flexible, cost-effective way can also become an important tool for state-specific planning and prioritization.

The 2018 SRF-WIN Act proposed several WIFIA loan features designed to encourage more program lending to SRFs, but the ultimate legislative result, SWIFIA, did not include them. Yet, well-designed program loan features are arguably the most effective way to overcome the SRF's reluctance to leverage their portfolios.

A WIFIA limited buydown could encourage smaller, unleveraged SRFs to take the first step towards leverage by providing additional certainty at an early, low-cost stage in the loan application process. The likely maximum interest rate of the executed loan will be set on the day the application is accepted. That's valuable to help the SRFs planning and decision-making with more specific numbers, and perhaps also to visualize how the leverage would work in more concrete terms. If Treasury rates start rising, the application's potential value also becomes intrinsic and measurable. But if the SRF decides to discontinue the process for whatever reason, there are no penalties for withdrawing an application. In effect, the limited buydown makes a WIFIA loan application a small but realizable goal that will potentially improve an SRF's future leverage if the fund decides to go forward, but not cost very much if it does not.

Adding the Limited Buydown to WIFIA's Statute

An amendment that adds a limited buydown provision to WIFIA's statute would be very straightforward. The language can basically be copied from TIFIA law or (even better) from CIFIA's more recent version. And soon there should be proposed legislation to place it in. The Water Infrastructure Finance and Innovation Act Amendments of 2022 will almost certainly be re-introduced in the next Congress. This bill contains budgeting and other clarifications that are especially important for CWIFP's implementation, but the proposed amendments will apply to all WIFIA borrowers.

Notably, an amendment to extend WIFIA's maximum loan term to 55 years is already included. A limited buydown amendment would provide a similar incremental enhancement of WIFIA loan features. Both serve an important role at this stage of WIFIA's development – to expand the program's base of potential borrowers and help accelerate U.S. water infrastructure projects in other, equally critical sectors.

WATER FINANCE & MANAGEMENT

By JOHN RYAN

JANUARY 16, 2023

John Ryan is principal of InRecap LLC. InRecap is focused on debt alternatives for the recapitalization of basic public infrastructure. Ryan has an extensive background in structured and project finance. He recently served as an expert consultant to the U.S. Environmental Protection Agency and is a frequent contributor to WF&M on WIFIA topics.

Stormwater Research Centers Funded after WEF, NMSA Support.

Research centers focused on stormwater infrastructure will be established through federal funding after extensive support from the Water Environment Federation (WEF) and the National Municipal Stormwater Alliance (NMSA).

Congress has provided $3 million in initial funding for the establishment of three to five Centers of Excellence for Stormwater Infrastructure Technologies (CESITs), a new program authorized in the Infrastructure and Investment in Jobs Act (IIJA) of 2021.

The CESITs are to:

- Conduct research on and create an inventory of new and emerging stormwater control infrastructure technologies;
- Analyze innovative financial programs supporting stormwater infrastructure implementation;
- Provide technical assistance to states, tribal communities, and local governments who want to implement innovative stormwater infrastructure technologies;
- Collaborate with educational institutions as well as public and private organizations including community-based public-private partnerships; and
- Establish and maintain a national electronic clearinghouse center to collect data and disseminate information and findings from CESITs to the stormwater sector.

“The stormwater sector is extremely data-poor, especially regarding the performance of new and emerging technologies,” says Seth Brown, Executive Director of NMSA. “These centers have the potential to bridge the gap between research and application in our sector through support of technology-focused initiatives.”

WEF and NMSA proposed the concept of creating stormwater centers of excellence as part of their annual Stormwater Policy Recommendations to Congress document, which has resulted in multiple other stormwater policy legislative successes since 2017 when the first recommendations document was released.

“This funding in the FY23 federal budget is a result of over five years of advocacy before Congress by WEF and NMSA and our members to establish stormwater centers of excellence across the nation that will help communities employ the right technologies and practices to address their local stormwater management challenges,” said Walt Marlowe, Executive Director of WEF.

Despite billions of dollars of investment over the last three decades, urban stormwater runoff remains the largest growing source of water pollution across the U.S. Additionally, studies show that there has been a significant increase in extreme rain events over the last 50 years globally and projections are that floodings impacts are expected to accelerate in the future.

“Performance of stormwater infrastructure is critical to meeting the growing needs in the sector,”

said Brown. “The CESITs could support existing efforts, such as the Stormwater Testing and Evaluation for Products and Practices (STEPP), which is a program established by WEF and now shepherded by NMSA to drive innovation in the stormwater sector by objectively, robustly, and consistently evaluating the performance of stormwater technology.”

The IIJA additionally created a stormwater planning and implementation grant program, as proposed in the recommendations document. While that program was not funded in 2023, the initial funding for the CESITs will help communities be ready for planning and implementation of grant funding in the future.

Marlowe concluded, “On behalf of WEF and NMSA, we thank Congress for creating and funding the new CESIT program. We will now work with the U.S. Environmental Protection Agency and stakeholders to ensure that the CESITs and other federal stormwater resources help communities address their stormwater management needs.”

WATER FINANCE & MANAGEMENT

BY WFM STAFF

JANUARY 26, 2023

Federal Agencies Release National Blueprint for Transportation Decarbonization: Nossaman

On January 10, 2023, the Biden-Harris administration released the U.S. National Blueprint for Transportation Decarbonization (“Blueprint”), representing a major step in advancing the president’s clean transportation agenda and addressing the growing climate crisis caused by greenhouse gas (GHG) emissions. The Blueprint arrives as preliminary U.S. carbon-emissions data for 2022 show yet another year of increased emissions, indicating that the country is not on course to meet its commitment under the Paris Agreement to halve economy-wide emissions by 2030.

The Blueprint, jointly developed by the U.S. departments of Energy (DOE), Transportation (DOT), Housing and Urban Development (HUD) and the Environmental Protection Agency (EPA), stems from a memorandum of understanding (MOU) signed by the four agencies last September to formalize their commitment to aggressively reducing GHG emissions in the transportation sector, the largest source of emissions in the United States.

Continue reading.

By Frank Liu on 01.19.2023

Nossaman LLP

TAX - CALIFORNIA

Grosz v. California Department of Tax and Fee Administration

Court of Appeal, Second District, Division 1, California - January 9, 2023 - Cal.Rptr.3d - 2023 WL 128304 - 2023 Daily Journal D.A.R. 246

Taxpayer brought action seeking declaration that California Department of Tax and Fee Administration (DTFA) had a duty to collect sales and use tax from internet retailer for sales which were made by third-party merchants on retailer's website but which were fulfilled by retailer.

The Superior Court sustained DTFA's and retailers' demurrers without leave to amend, and taxpayer appealed.

The Court of Appeal held that DTFA determination as to whether internet retailer or third-party merchants was the "retailer" in any given transaction was a discretionary determination.

California Department of Tax and Fee Administration (DTFA) determination as to whether internet retailer or third-party merchants on retailer's website was the "retailer" in any given transaction in which merchants made sale which was fulfilled by retailer was a discretionary determination, and thus taxpayer did not have standing to bring action seeking declaration that DTFA was required to pursue internet retailer for the sales and use taxes related to those transactions; there was no statute or regulation that conclusively established which entity that the DTFA had to pursue for sales and use taxes related to the transactions, and statute indicated that there might be multiple "persons" who the DTFA could regard as "retailers" for the purposes of a single transaction.

TAX - MISSISSIPPI

Mississippi Hub, LLC v. Baldwin

Supreme Court of Mississippi - January 19, 2023 - So.3d - 2023 WL 311343

Taxpayer filed petition for declaratory judgment against county and its assessor and, in alternative, appealed county board of supervisors' assessment of value of underground natural gas storage facility.

The Circuit Court entered summary judgment in favor of county and assessor. Taxpayer appealed.

The Supreme Court held that:

- Taxpayer timely filed appeal within 20 days after mailing of notice of Department of Revenue's final approval of tax roll;
- Taxpayer was not limited to evidence it presented to county board of supervisors; and
- Opinion by taxpayer's expert on economic obsolescence was admissible evidence sufficient to defeat summary judgment.

Deadline for taxpayer to appeal county's assessment of value of underground natural gas storage facility was 20 days after mailing of notice of final approval of ad valorem tax roll by Department of Revenue, not 10 days after decision by county board as to assessment of taxes; reading statute with 20-day deadline as limited to situations in which board adjusted an assessment for purposes of equalization was not consistent with a subsection requiring notice to any taxpayer objecting to an assessment after final approval of the tax roll or statute referring to questioning the assessment's validity after its final approval.

Taxpayer appealing assessment was not limited to evidence it presented to county board of supervisors when it objected to assessment for natural gas storage facility, but was entitled to trial de novo; statute required appeal "in the manner provided by law," and another statute required issue of the assessment to be "tried anew."

Opinion by taxpayer's expert on economic obsolescence of natural gas storage facility was admissible evidence sufficient to defeat summary judgment for county in taxpayer's declaratory judgment action and on taxpayer's appeal of assessment; county failed to show that expert did not comply with the mandated approach.

Whether taxpayer's expert departed from proper legal standard for determination of value in opinion on economic obsolescence was a question of law subject to de novo review by Supreme Court on taxpayer's appeal of summary judgment for county in suit challenging assessment of natural gas storage facility.

Muni Bonds to Start 2023 (Bloomberg Audio)

Joe Mysak, editor of the Bloomberg Brief: Municipal Markets, joins the program to discuss the municipal bond market. Hosted by Paul Sweeney and Matt Miller.

Listen to audio.

Jan 27, 2023

Residents of Suburban Atlanta's Newest City Are Already Trying to Secede.

The ink isn't even dry on the incorporation charter for the new City of Mableton in Georgia, and already there's a sizable faction that is trying to secede from it.

Residents of Atlanta's unincorporated Cobb County suburbs voted in November to establish a diverse new city of roughly 71,000 residents called Mableton. That city isn't even today-years-old — it won't become a working municipality until leaders are elected in March — but there is already a sizeable faction vying to de-annex, or secede, from it.

Hundreds of would-be Mableton city residents flooded the Cobb County Police Training Center auditorium on Jan. 18 to voice their dissent at a town hall hosted by Georgia state Representative David Wilkerson, who is also against the incorporation of Mableton in its current form. The discussion centered around how people could legally carve their residential areas out of the Mableton city boundaries. Wilkerson said a bill was in the works that would allow them to de-annex, but that they would have to pressure state lawmakers in their local delegation.

Continue reading.

Bloomberg CityLab

By Brentin Mock

January 24, 2023

S&P: California's Atmospheric River Brings Widespread Damage But Has Limited Credit Impact To Date

Key Takeaways

- A Presidential disaster declaration was issued for 58 counties, providing federal aid to recovery efforts and typically covering 75% of the cost of repairs. However, FEMA reimbursements typically cover only infrastructure repair and replacement costs and not related revenue stream disruptions.
- As of Jan. 20, 2023, California estimates $533 million in governmental infrastructure damage incurred by local jurisdictions and an additional $113 million incurred by the state itself, for a total of $646 million.
- Issuers with available cash on hand to cover initial cleanup costs and that employ emergency and financial planning practices tend to fare best in the aftermath of major storms. FEMA reimbursements are also an important part of rebuilding but may take time to receive, so an issuer's liquidity and reserves are instrumental in the period following an event.
- Historically, many communities hit by storms see a temporary bump in sales taxes during rebuilding. While this provides revenue enhancement during a difficult time, rebuilding generally replaces what was lost rather than generating new economic growth.

Continue reading.

26 Jan, 2023

I Know It When I See It – What is a Capital Expenditure? - Squire Patton Boggs

According to Wikipedia, the fount of all knowledge, the phrase "I know it when I see it" is a colloquial expression by which a speaker attempts to categorize an observable fact or event, although the category is subjective or lacks clearly defined parameters. This phrase was famously used in a U.S. Supreme Court decision to describe the threshold test for obscenity. (See *Jacobellis v. Ohio*, 378 U.S. 184 (1964)). Although this blog post will, unfortunately, likely not become as well known as the *Jacobellis* case, it will discuss, "What is a Capital Expenditure?" My guess is that a lot of tax-exempt bond advisors use intuition when determining that certain expenditures qualify as "capital expenditures" for tax-exempt bond purposes. In other words, they know a capital expenditure when they see one. However, the question as to what constitutes a "capital expenditure" under the tax-exempt bond rules may be difficult to answer at times.

Treas. Reg. Section 1.150-1(b) defines "capital expenditure" as:

> any cost of a type that is properly chargeable to capital account . . . under general Federal income tax principles. For example, costs incurred to acquire, construct, or improve land, buildings, and equipment generally are capital expenditures.

Without the example provided, I am not sure I would know what type of expenditure is "chargeable to capital account." Luckily, the example makes it clear that both the acquisition of a building and the construction of a building clearly qualify as capital expenditures. However, it becomes more difficult to determine whether an expenditure "improves" a building. For example, does a

replacement of windows in a building "improve" a building or merely "maintain" the building under general Federal income tax principles? Does it matter if some of the old windows were cracked, or that the new windows are more energy efficient?

Continue reading.

By Cynthia Mog on January 23, 2023

The Public Finance Tax Blog

Squire Patton Boggs

Hawkins Advisory: The Federal Reserve's Regulation ZZ Implementing the Adjustable Interest Rate (LIBOR) Act

This Hawkins Advisory describes the Federal Reserve's recently published regulation, which clarifies the federal law treatment of United States dollar-denominated LIBOR contracts that do not adequately provide for interest rate-setting that can function independent of USD LIBOR or other inquiry-based determination of interbank lending or deposit rates. The Regulation establishes the substitute interest rate benchmarks that will be automatically substituted for USD LIBOR upon the expected June 30, 2023 end of USD LIBOR rate publication in the absence of prior action by contracting parties and clarifies related operational details.

View the Hawkins Advisory.

FINRA Issues 2023 Examination and Risk Management Program Report: What It Says and How to Respond

On January 10, FINRA published its "2023 Report on FINRA's Examination and Risk Management Program" (Report) — FINRA's third annual compendium of guidance, covering key topics and emerging risks for member firms to consider when evaluating the efficacy of their compliance programs and operations procedures. Among other things, the Report identifies relevant rules, summarizes noteworthy findings, outlines effective practices, and provides additional resources that may be helpful to member firms when assessing their compliance obligations.

This year, the Report is organized into five sections: (1) Financial Crimes, (2) Firm Operations, (3) Communications and Sales, (4) Market Integrity, and (5) Financial Management. The Financial Crimes section is a new addition for this year, whereas each of the other four sections were included in last years' report. In addition to adding the Financial Crimes section, this year's Report also builds on the structure and content of the 2021 Report and 2022 Reports by adding: (i) new material (findings and effective practices) to existing sections; and (ii) new topics to the Market Integrity section. The Financial Crimes section (its topics and emerging risks) is summarized below, followed by a summary of the regulatory obligations and related considerations for each of the new Market Integrity topics.

I. Financial Crimes

This new section of FINRA's annual report is a deliberate effort by FINRA to focus on areas where member firms face potential criminal exposure. It includes one new topic (Manipulative Trading) and two topics that were previously included in the Firm Operations section (Cybersecurity and Technology Governance and Anti-Money Laundering, Fraud, and Sanction).

Manipulative Trading (new): Certain FINRA rules prohibit member firms from engaging in impermissible trading practices, including manipulative trading, including, among others: Rules 2010 (Standards of Commercial Honor and Principles of Trade), 2020 (Use of Manipulative, Deceptive, or Other Fraudulent Devices), 5210 (Publication of Transactions and Quotations), 5220 (Offers at Stated Prices). Additionally, under Rule 3110 (Supervision), member firms are required to supervise their associated persons' trading activities, and a firm's supervisory procedures must include a process for the review of securities transactions.

Cybersecurity and Technological Governance: Rule 30 of SEC Regulation S-P requires member firms to have written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information. In addition to member firms' compliance with SEC regulations, FINRA reminds firms that cybersecurity remains one of the principal operational risks facing broker-dealers and expects firms to develop and maintain reasonably designed cybersecurity programs and controls that are consistent with their risk profile, business model, and scale of operations.

Anti-Money Laundering, Fraud, and Sanction: FINRA Rule 3310 (Anti-Money Laundering Compliance Program) requires that each member firm develop and implement a written AML program that is approved in writing by senior management and is reasonably designed to achieve and monitor the firm's compliance with the Bank Secrecy Act (BSA) and its implementing regulations.

Notably, each of the "emerging risks" identified in this year's Report fall within the ambit of Financial Crimes:

Manipulative Trading in Small Cap IPOs: FINRA, NASDAQ, and NYSE have recently observed that initial public offerings (IPOs) for certain small cap, exchange-listed issuers may be the subject of market manipulation schemes, similar to so-called "ramp and dump" schemes. FINRA has also observed significant unexplained price increases on the day of or shortly after the IPO of certain small cap issuers.

Sanctions Evasion: Since February 2022, OFAC has taken several significant sanctions actions related to the Russian financial services sector in response to Russia's actions in Ukraine. In response, on February 25, 2022, FINRA issued Regulatory Notice 22-06 (U.S. Imposes Sanctions on Russian Entities and Individuals) to provide firms with information about these actions, and to encourage firms to continue to monitor the OFAC website for relevant information.

ACATS Fraud: FINRA has observed an increased number of fraudulent transfers of customer accounts through ACATS in which a bad actor will use the stolen identity of a legitimate customer to open an online brokerage account.

Senior Investors: Senior investors can be vulnerable to fraud, theft, scams, and exploitation. When firms are assessing how they monitor customer account activity for red flags of financial crimes to which senior investors may be vulnerable, they should consider whether they maintain specialized senior investor-focused or other exception reporting or surveillance that is reasonably designed to detect and report suspicious activity related to financial crimes. Member firms should also consider whether their monitoring program incorporates red flags of elder financial exploitation.

II. Market Integrity

Each of this year's remaining new topics sits within the Report's Market Integrity category.

Fixed Income: The fair pricing obligations under FINRA Rule 2121 (Fair Prices and Commissions) apply to transactions in all securities — including fixed income securities — and MSRB Rule G-30 imposes similar obligations for transactions in municipal securities. In addition, FINRA Rule 2121 and MSRB Rule G-30 also include specific requirements for transactions in debt securities. These rules generally require a dealer that acts in a principal capacity in a debt security transaction with a customer, and who charges a markup or markdown to mark up or mark down the transaction from the prevailing market price (PMP).

Fractional Shares: FINRA's trade reporting rules generally require member firms to transmit last sale reports of transactions in equity securities to a FINRA trade reporting facility (TRF) or FINRA's over-the-counter trade reporting facility (ORF) as applicable. Although the TRF and the ORF do not currently support the entry of fractional share quantities, such trades are required to be reported subject to FINRA guidance.

Regulation SHO: Rules 203(b) (Short Sales) and 204 (Close-Out Requirement) of Regulation SHO provide exceptions for bona fide market making activity. Member firms must confirm and demonstrate that any transaction for which they rely on a Regulation SHO bona fide market making exception qualifies for the exception, consistent with Regulation SHO and guidance.

The Report also highlights several topics that FINRA has identified as ongoing key areas of risk to investors and the markets, including: (1) Regulation Best Interest and Form CRS; (2) best execution obligations and conflicts of interest; (3) the increasing prevalence and sophistication of cybersecurity attacks; and (4) securities trading via mobile applications. The Report also is of interest for what it does not include. Notably, although special purpose acquisition companies (SPACs) were considered a key topic for the 2021 Report — and have seen focused attention from other regulatory bodies, such as the SEC — they are not referenced in this year's issue at all.

The findings and best practices outlined in the Report can serve as a guide for member firms to identify possible deficiencies or gaps in their compliance programs and operations procedures that could result in the types of exam findings highlighted therein. FINRA member firms are encouraged to thoroughly review the Report. In particular, member firms should identify the findings, observations, and effective practices relevant to their business models. The Report also may serve as a road map to prepare for an examination. If concerns arise before an examination, member firms would be well served by including counsel familiar with these issues in their preparation for the examination.

If you have any questions regarding the 2023 Report, FINRA's Examination and Risk Management Program, your company's policies and procedures, or questions otherwise relating to the above alert, please contact any of the Troutman Pepper attorneys listed on this advisory.

Troutman Pepper – Jay A. Dubow, Ghillaine A. Reid, Casselle Smith and John S. West

January 24 2023

Fitch: California 2024 Budget Proposal Benefits from Prior Budgetary Actions

Fitch Ratings-New York/San Francisco-25 January 2023: California is well-positioned to address weaker revenue performance both in the current fiscal year 2023 and in the upcoming fiscal 2024, says Fitch Ratings.

California Governor Newsom's executive budget proposal for fiscal 2024 addresses lower than anticipated revenues by tapping resilience built into the fiscal 2023 and previous budgets without dipping into the rainy day fund (the budget stabilization account) or taking deep cuts to spending. The state now projects fiscal 2023 general fund revenues, prior to transfers, will be $12 billion (5.5%) lower than the June 2022 enacted budget estimate and down 5.6% yoy. General fund revenues are forecast to be essentially flat to fiscal 2023 at $209.7 billion in fiscal 2024, $23.7 billion (10.2%) lower than the June 2022 estimate, but still well above pre-pandemic levels.

The lower revenue forecast is driven largely by weakness in the personal income tax (PIT) that began to be evident at the start of fiscal 2023 in both withholding and estimated payments cash receipts. Lower withholding and capital gains are expected to be the main drivers of lower PIT revenues in the forecast. The PIT is highly sensitive to changes in the economy and the forecast reflects slower economic growth after the very rapid pace of growth immediately following the pandemic recession. The economic assumptions underlying the governor's budget proposal assume slightly stronger growth than does Fitch's economic outlook for the U.S., with the state assuming 0.9% real national GDP growth in 2023 versus Fitch's outlook of 0.2%. Fitch anticipates a mild recession beginning in 2Q23 while the governor's economic forecast anticipates slower economic growth, but no recession, leaving the state's revenue forecast susceptible to downside risk.

Balancing Actions

Prior enacted budgets enhanced financial resilience that will allow the state to address the current moderate slowdown. These budgets reduced budgetary and other debt, limited growth in on-going spending, applied non-recurring revenues to one-time spending including for capital investment rather than debt issuance, placed revenue triggers on new programs, and built reserves.

The bulk of the budget balancing actions proposed by the governor involve some form of spending reduction rather than revenue enhancement and are focused on funding delays, reductions and pullbacks, and trigger reductions that can be restored if the revenue picture improves. The budget also eliminates $3 billion that was available but not allocated in the fiscal 2023 budget to address potential inflation costs, withdraws a proposal to retire $1.7 billion in general obligation bonds using cash, shifts anticipated cash funding of capital projects to lease revenue bond issuance, and eliminates supplemental deposits to the budget stabilization account and other reserves.

The budget proposal continues programmatic spending that was funded in the fiscal 2023 budget, although in some cases funding is delayed or subject to trigger reductions. This includes initiatives in climate resilience, child care investments, transitional kindergarten, universal school meals, higher education investments and expanding health care access. The budget continues a multi-year investment in various state-wide infrastructure projects and housing development to address homelessness and affordability. The budget also maintains the accelerated paydown of state retirement liabilities as required by Proposition 2, with $1.9 billion in additional payments in fiscal 2024.

Fitch anticipates the details of the enacted budget will vary from the governor's plan, which will be updated in May to reflect any changes in the economy. If the economic situation deteriorates, the governor may propose additional program reductions as well as use of the budget stabilization fund, which is fully funded at $21.5 billion as of fiscal 2023 (10.2% of fiscal 2023 revenues). It is Fitch's expectation that the state will continue to make decisions that support a structurally balanced

budget and that it will take the steps necessary to align expenditures with revenues as the revenue outlook develops.

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Additional information is available on www.fitchratings.com

Fitch: CA Weather Events Underscore Climate Risks to Local Govts, Utilities

Fitch Ratings-Austin/San Francisco/New York-26 January 2023: Recent extreme weather events in California underscore the state's challenges in addressing storms, drought, wildfires and widely fluctuating temperatures, Fitch Ratings says. Mitigating climate risk is an important part of the state's current fiscal 2023 budget, which provided $54 billion over five years in climate-related spending that will help local governments, utilities and other entities reduce greenhouse gas emissions and build resilience to environmental risks. These funds will also supplement municipal governments' resources and help preserve general fund flexibility.

To date, state and federal disaster relief funds have largely mitigated the financial impact of weather-related events on Fitch-rated local governments. However, local government credit quality could be affected if there are reductions in state and federal disaster support, and local resources are insufficient to address adverse effects.

The state now projects fiscal 2023 general fund revenues, prior to transfers, will be $12 billion (5.5%) lower than the June 2022 enacted budget estimate with general fund revenues forecast to be essentially flat to fiscal 2023 at $209.7 billion in fiscal 2024, $24 billion (10.2%) lower than the June 2022 estimate. One of the balancing solutions proposed by Governor Newsom in his recently released FY 23-24 budget would reduce the five-year climate spending to approximately $48 billion.

The fiscal 2022 and 2023 budgets committed $649 million to combat extreme heat and $1.9 billion for community resilience investments over multiple years to promote climate resilience in low-income and underrepresented communities. These funds may help local communities and governments reduce general fund spending or debt financing to address weather and climate issues. While lower, the most recent budget plan maintains $444 million (68%) of extreme heat funding and $1.6 billion (85%) of community resilience funding.

Recent rainstorms that have destroyed property and left thousands without power, primarily along

California's coast and Sacramento valley, illustrate the impact that extreme weather events have on the state. Counties, cities and utilities that saw damage from the storms are expected to face significant clean up and rebuilding costs; however, affected entities are highly rated and have financial resources, including federal and state disaster aid, to address repairs. The Federal Emergency Management Agency (FEMA) is making federal disaster assistance available to supplement local and state resources, including funding, equipment and personnel. The state's fiscal 2021 and 2022 budgets committed a total of $1.3 billion for coastal resilience, which may be available to help these communities prepare for and mitigate future flood events.

The fiscal 2023 budget also funded programs that provided support to the electric grid during the September 2022 extreme heat event. The California Independent System Operator (ISO) declared an Energy Emergency Alert amid record breaking temperatures and energy usage across the state, asking residents and businesses to reduce their electricity use to avoid blackouts. Droughts reduced hydro generation, straining the ability of the energy grid to meet demand and thrusting reliance back on fossil fuels for energy generation. In turn, purchased power prices, already elevated from higher natural gas prices, spiked further due to scarcity, increasing costs for electric utilities.

Utilities with pass through fuel adjustment cost mechanisms in their rate structures that allow rates to be adjusted in response to mid-year power cost increases are better positioned to manage the financial burden of grid strain and recoup higher power costs. Conversely, increased costs may pressure the financial margins of utilities without automatic adjustment mechanisms if rate increases are not approved.

Chicago 'Social Bond' Issue Deemed a Success with Big and Small Investors.

The $160 million offering will fund neighborhood projects that include vacant-lot cleanups, affordable housing expansion and tree planting.

Chicago's first effort in years to market its municipal bonds to everyday buyers instead of financial institutions was a success, resulting in lower interest rates for the city and strong investor support for community projects, officials said Tuesday.

Last week, the city went to market with $160 million in what it called "social bonds" to fund sundry work, including construction of affordable housing, cleanup of vacant lots and the promised planting of 75,000 trees over five years.

The offering was structured to give first crack at the bonds to individual investors, especially Chicago residents. Municipal bonds typically are gobbled up by institutions.

As a result, 8% of the bond sales went to Chicago residents and 24% went to Illinois investors, said Jennie Huang Bennett, the city's chief financial officer. She said the city generally sees only about 0.3% of bond sales going directly to individuals.

The bonds had high overall demand, she said. The greater the demand, the lower the interest the city must pay.

Bennett said the yields on bonds not subject to federal tax ranged from 2.56% to 3.86%, depending on maturities that ranged from 2026 to 2044. Also issued were taxable bonds that produced yields of 4.408% to 5.293%, depending on maturities from 2026 to 2041.

While participation by individuals was emphasized, large investors also gravitated to the bonds. Bennett said the city saw substantial activity from investment funds focused on environmental, social and governance standards, known as ESG.

She said 11 ESG-focused investment funds acquired $88 million worth of bonds.

Bennett called the offering “a unique social bond which allowed Chicagoans to invest in historic investments in their own community.”

Bond sales to individuals were encouraged in the city’s marketing, as well as by a decision to reduce the minimum investment to $1,000 from the standard $5,000. Individuals were given a one-day head start in purchasing the bonds before they were made available to institutions.

In addition, 43 participating banks and brokerages cooperated on streamlined procedures for taking individual orders.

Jack Brofman, the city’s deputy chief financial officer, said the last time the city took a direct-to-t-e-people approach with a bond sale was in 2005-06.

Bennett said recent improvements in the city’s bond ratings by outside firms reduced the overall interest it must pay. Higher bond ratings give investors more assurance they will be paid. The bonds were issued by the Sales Tax Securitization Corp., which is connected to the city but doesn’t have its pension debt. It repays bondholders from sales taxes.

Other programs the social bonds will fund include the city’s purchase of electric vehicles for its fleet and grants to rehabilitate vacant buildings along neighborhood commercial streets.

The Chicago Sun-Times

By David Roeder

Jan 24, 2023

Connecticut AG Says P3 for New London Pier Redevelopment is Legal.

Connecticut’s attorney general has given the legal stamp of approval to a high profile public-private partnership that has come under fire for cost overruns.

After an investigation by a state watchdog commission into the contracts behind the Connecticut Port Authority’s flagship redevelopment of the State Pier in New London, Attorney General William Tong issued an opinion Tuesday saying the public-private-partnership behind the $255 million project is legal.

The Port Authority is redeveloping the State Pier as an base for offshore wind installations, a project that has received kudos from the Biden administration as part of its larger efforts to create an offshore wind infrastructure that would deploy 30 gigawatts of offshore wind by 2030, enough, the administration says, to power 10 million homes with clean energy.

The P3 arrangement the that port authority, investor-owned New England electric utility Eversource, and Danish renewable energy developer Orsted struck in late 2020 is supposed to turn the pier into a one-stop, state of the art hub for the production and shipping of windmill turbines.

But the Connecticut State Contracting Standards Board, which oversees state agency contracting and procurement policies, has raised questions about rising costs and delays.

The board and acting chair Robert Rinker say the port authority lacked the clear authority to enter into the P3 arrangement driving the pier's development.

The attorney general, in a response published Tuesday to a request by the contracting board, said otherwise.

"The Port Authority is a quasi-public agency and retains the authority to enter into all necessary, desirable, or incidental contracts and into partnerships with governmental or private entities," Tong wrote.

"Some of these partnerships might be characterized colloquially, in business documents and by the General Assembly as public-private partnerships since they are literally partnerships between government and private entities," he continued, further referring to the arrangement as a "special type of public private partnership."

It was not the result the 14-member contracting board had hoped for.

The board plans to draft an immediate response, Rinker said.

"Calling it a public-private-partnership has to fit in under a statutory construct," Rinker said, adding that the AG's ruling doesn't help tack down where it fits. "The legislature is going to have to take a look at this, because the bottom line is that this quasi-public agency spending hundreds of millions of dollars of taxpayers' dollars without oversight."

The contracting board says it is problematic that the State Pier deal was approved before the passage of a law in June 2021 banning the formation of new P3's for any agency but the state Department of Transportation without prior approval from the legislative.

"Now the General Assembly has some oversight by having legislative hearings on these partnerships," Rinker said. However, contracts for the CPA's "biggest procurement now and probably for a very long period of time" were inked in the latter half of 2020, a little under a year before the new law passed and avoided such scrutiny.

A spokesperson for the port authority said the Attorney General's opinion was "welcomed confirmation that the CPA's statutory authority to enter into public-private partnerships is clear and consistent with the CPA's position when this was first raised one year ago."

The traditional argument for P3s is that they benefit both governments and private partners by splitting the costs and risks of joint ventures. However, costs have skyrocketed at the New London Pier project and only the government has so far shouldered the burden, according to a report submitted to the state's General Assembly by the SCSB in February.

The original projected cost in 2020 was $93 million, and under the agreement, the private partners fronted $75 million to cover a majority of the price. Today costs stand at $255 million and the state has covered the entirety of the difference, to the ire of the contracting board.

The port authority's latest request for $20 million of state bond funds was approved by the State Bond Commission in May; more is expected to be needed to complete the project.

Port authority officials attributed the over two-fold increase to inflation, rising material costs, and

other unforeseen difficulties. While that's true, Rinker said the board's audit revealed the organization wasn't the best manager for such a large project.

"They didn't fully understand the scope of the project and it's a relatively small organization that doesn't do construction, involved in one of the more high scale, high-priced infrastructure projects," Rinker said.

Construction services within other agencies, like the state DOT, may have been more up to the task.

"Going from $93 million to $255 million, and maybe north of that, is a matter of public debate," Rinker said.

In his ruling, Tong left the door open for other avenues of investigation by the SCSB.

"This opinion does not speak to the legality, propriety, or ethics of any particular public-private partnership," he said. "We do not assume that any specific project or development characterized as a public-private partnership is or should be a partnership within the meaning of the General Statutes."

The SCSB investigation also looks at instances of self-dealing in the contracting of construction services.

The SCSB found that Omaha-based construction contractor Kiewit, awarded an $87 million contract to manage most of the pier's construction, had assigned at least five subcontracts to itself, which were then approved by the port authority.

"In terms of proper procurement everybody has to be on the same, level playing field," Rinker said. "There was a sense that some people had information that other people did not when they were putting their proposals or their bids."

While the state contracting board can't penalize or stop the project, it can make recommendations to legislators.

A bill introduced last week by Sen. Cathy Osten, D-Sprague, and Rep. Christine Conley, D-Groton, would prohibit construction managers on capital projects like Kiewit from subbing work to themselves or subsidiaries.

By Thomas Nocera

BY SOURCEMEDIA | MUNICIPAL | 01/27/23 01:45 PM EST

Alabama-Based Investment Bank Dominates Bond Industry within its Home State, Statistics Show.

The Frazer Lanier Company landed first in the number of Alabama bond deals, with 42 transactions totaling $1.172 billion, according industry data

MONTGOMERY , ALABAMA , US , January 26, 2023 /EINPresswire.com/ — In an industry dominated by firms from around the nation, a locally owned, Alabama-based investment bank is celebrating recent figures that place it first in the state for bond work in 2022.

The Frazer Lanier Company, Inc. landed first in the number of Alabama bond deals, with 42 transactions totaling $1.172 billion, according to available industry data from Thomson Reuters. Transaction totals include Frazer Lanier's role as both senior manager and co-manager.

Continue reading.

Beacon Communications

January 26, 2023

Minnesota Bill to Expand Municipal Investment Authority Advances.

Bill would allow limited investment with the State Board of Investment or index mutual funds.

The House State and Local Government Finance and Policy Committee on Jan. 24 will consider HF 159 (Rep. Mike Freiberg, DFL-Golden Valley). The bill would extend investment options available to cities with credit ratings of at least AA by a national rating organization (e.g., Moody's, S&P, and Fitch) to include certain long-term equity investments like index mutual funds and available investments with the Minnesota State Board of Investment.

Background on the bill

In 2017, the Legislature authorized local governments with populations over 100,000 and those with ratings of AAA to invest up to 15% of certain reserves, including unassigned cash, cash equivalents, deposits, and investment in these additional equity options.

The bill would extend the expanded 2017 authorization to AA-rated jurisdictions and also allow local government insurance pools that provide property insurance and workers' compensation insurance to many local governments, including the League of Minnesota Cities Insurance Trust, to invest in the same type of investments that the state of Minnesota invests in through the State Board of Investment.

Long-term investment options needed for local government

Currently, cities and counties under Chapter 118A have a limited number of investment options such as U.S. Treasuries, highly rated U.S. Government Agencies, highly rated state and local municipal bonds, and certificates of deposit (CDs) from banks that are FDIC-insured.

These investments work well for short-term investments of a few months to a few years for purposes such as cash to pay operating expenses between the time a local government receives property tax payments.

However, these fixed income bonds and CDs do not work as well for long-term investments; for example, when a city is setting aside long-term capital funds to pay for replacing a water treatment plant or for local government insurance pools that are paying workers' compensation benefits to an injured employee over 15 or more years.

League of Minnesota Cities

January 23, 2023

State of Wisconsin: Fitch New Issue Report

Revenue Framework: ‘aa’: Wisconsin’s sound revenue framework relies on broad-based taxes that generally reflect economic performance and which Fitch Ratings anticipates will continue to grow in line with long-term expectations for inflation. Wisconsin has an unlimited legal ability to independently raise revenues. Expenditure Framework: ‘aaa’: Fitch anticipates Wisconsin will continue to effectively manage a natural pace of spending growth expected to be slightly above annual revenue growth, reflecting the primary drivers of Medicaid and education. The state benefits from low fixed carrying costs and has demonstrated ample ability to cut spending if needed. Long-Term Liability Burden: ‘aaa’: Long-term liabilities are low and below the U.S. state median. The state benefits from strong pension funding and a benefit structure that shares the risk of investment underperformance with beneficiaries. Operating Performance: ‘aa’: State fiscal performance in recent biennia has improved, with less reliance on one-time resources, stronger liquidity and reserves boosted from historically modest levels relative to the state’s operating budget. The state maintains considerable flexibility through careful spending management.

ACCESS REPORT

Wed 25 Jan, 2023

Dallas, Texas: Fitch New Issue Report

Key Rating Drivers Revenue Defensibility: ‘aa’; Very Strong Rate Flexibility; Expansive Service Area: The system’s revenue defensibility is supported by DWU’s extensive service area that includes the city and much of the neighboring suburban communities on a wholesale basis. The city anchors the large and diverse Dallas-Fort Worth regional economy. Rate increases have been regular and measured, yet rates remain low relative to other large utilities both within and outside of the state. The assessment is further supported by the monopolistic nature of DWU’s revenues and its legal independent authority to raise rates. Operating Risk: ‘aa’; Very Low Operating Cost Burden: DWU’s operating risk assessment reflects its very low operating cost burden and favorable life cycle ratio. DWU continues to invest in system maintenance to address aged facilities while also investing in additional water resources in partnership with TRWD. Financial Profile: ‘aa’; High Leverage Driven by High Capital Investment and Pipeline Partnership Project: The system’s leverage remains somewhat elevated due to inclining debt and reduced FADS. Based on planned debt issuances over the next few years, which include obligations associated with the final phase of the IPL, leverage is expected to remain around 9.0x. The liquidity cushion and coverage of full obligations (COFO) are sound and considered neutral to the assessment.

ACCESS REPORT

Fri 27 Jan, 2023

Municipal Securities Regulation and Enforcement: 2022 Year in Review and Look Ahead: Ballard Spahr

As is widely known, the new issue market slowed down in 2022 due to a variety of factors, including rising interest rates, reduced institutional demand resulting from municipal bond fund outflows, inflation and recession fears, international tensions, and overall market volatility.

View the Ballard Spahr publication.

by M. Norman Goldberger, John Grugan, Teri Guarnaccia, Ernesto Lanza, Kimberly Magrini, William Rhodes, Tesia Stanley

January 25, 2023

Ballard Spahr LLP

What is in Store for Municipal Bonds in 2023?

Municipal bonds are a staple of many investment portfolios, especially for investors in higher tax brackets. The tax-exempt nature of muni bonds helps boost after-tax returns while providing a high level of safety. But like the rest of the financial markets, muni bonds saw a historic drop in 2022, thanks to rising inflation and interest rates.

Let's take a look at how the municipal bond market performed last year and what's in store for 2023 and beyond.

Continue reading.

dividend.com

by Justin Kuepper

Jan 25, 2023

Empty Office Buildings May Sap San Francisco City Tax Revenues.

Bond investors may be underestimating the financial challenges facing San Francisco, the wealthy West Coast tech citadel, in a work-from-home world.

Why it matters: The persistence of remote work in San Francisco shows how the COVID-driven restructuring of the American office can have broad and unexpected implications throughout the economy — even in the normally sleepy market for U.S. municipal bonds.

Driving the news: Vacancy rates in San Francisco's office sector soared to a record high 27% percent at the end of last year — and the city's downtown area has had the worst pandemic recovery in the country, according to the San Francisco Chronicle.

Continue reading.

Axios Markets

by Matt Phillips

Jan 24, 2023

Vanguard Expects Muni Bond Renaissance Due to Higher Yields.

According to Vanguard, investors that allocated part of their portfolios to low-yielding municipal bonds at the beginning of last year should now be looking forward to the prospect of higher income, thanks to a rapid rise in rates. In a fixed-income report for the first quarter, the fund firm wrote, "Following a year with $119 billion of outflows from municipal funds and ETFs, we expect the tide to turn. For high-income taxable investors, we are expecting a municipal bond renaissance." According to the report, muni bonds only offered yields of around 1% at the start of 2022, compared to yields that now exceed 3% before adjusting for tax benefits. Tax-equivalent yields are at 6% or even "meaningfully higher for residents in high-tax states who invest in corresponding state funds." Vanguard said that this makes munis a "great value compared with other fixed income sectors and potentially even equities—especially with the odds of a recession increasing." According to the Vanguard report, muni bonds also remain strong from a credit perspective, with attractive spreads over comparable U.S. Treasurys and corporate debt. In fact, municipal balance sheets are stronger now than they've been in two decades, leaving states well-prepared to navigate an economic slowdown.

nasdaq.com

Written by dkorth@finsum.com (FINSUM) for FINSUM

January 24, 2023

Bloomberg to Pay $5 Million for Misleading Disclosures About Its Valuation Methodologies for Fixed Income Securities.

Washington D.C., Jan. 23, 2023 — The Securities and Exchange Commission today announced settled charges against Bloomberg Finance L.P. (Bloomberg) for misleading disclosures relating to its paid subscription service, BVAL, which provides daily price valuations for fixed-income securities to financial services entities.

The SEC's order finds that from at least 2016 through October 2022, Bloomberg failed to disclose to its BVAL customers that the valuations for certain fixed-income securities could be based on a single data input, such as a broker quote, which did not adhere to methodologies it had previously disclosed. The order finds that Bloomberg was aware that its customers, including mutual funds, may utilize BVAL prices to determine fund asset valuations, including for valuing fund investments in government, supranational, agency, and corporate bonds, municipal bonds and securitized products, and that BVAL prices, therefore, can have an impact on the price at which securities are offered or traded.

"Bloomberg has assumed a critical role as a pricing service to participants in the fixed-income markets and it is incumbent on Bloomberg, as well as on other pricing services, to provide accurate information to their customers about their valuation processes," said Osman Nawaz, Chief of the

Division of Enforcement's Complex Financial Instruments Unit. "This matter underscores that we will hold service providers, such as Bloomberg, accountable for misrepresentations that impact investors."

The SEC's order finds that Bloomberg violated section 17(a)(2) of the Securities Act. Without admitting or denying the findings, Bloomberg agreed to cease and desist from future violations and to pay a $5 million penalty. The SEC's order notes that Bloomberg voluntarily engaged in remedial efforts to make improvements to its BVAL line of business.

The SEC's investigation was conducted by Gregory Smolar of the Complex Financial Instruments Unit and Emily Rothblatt of the Chicago Regional Office under the supervision of Natalie Brunson, Ana Petrovic, and Osman Nawaz of the Complex Financial Instruments Unit, with assistance from trial counsel Robert Gordon and Howard Kaplan of the Enforcement Division's office of Investigative and Market Analytics.

CDFA Food Systems Finance Webinar Series: Bonds & Food Systems

Tuesday, February 28, 2023 | 2:00 PM – 3:30 PM Eastern

Food system businesses need access to capital at an affordable price, while investors expect a return on their investments. Few financing tools meet both of these needs as well as bonds, a longstanding staple of public development finance that offers flexible, low-cost capital for the borrower and tax-free returns for the investor. During this installment of the CDFA Food Systems Finance Webinar Series, we take a deeper look at a method of financing that has been building infrastructure, industry, and agriculture for over a century and explore its applications within the food system.

Moderator:
Angela Blatt, Director, Research & Technical Assistance, Council of Development Finance Agencies

Speaker:
Rodney Wendt, Executive Director, Washington Economic Development Finance Authority

Click here to register.

An Iowa Town's $60 Million Plan to Span the Broadband Gap.

In a bid to boost digital access, West Des Moines is building its own fiber-optic conduit network — and committing Google to provide citywide service.

Ben McAlister, principal engineer for West Des Moines, Iowa, shows off a small hunk of flexible plastic tubing roughly three inches in diameter, filled with narrower tubes that look like thick colored straws.

It's a section of fiber-optic conduit — the small, multilane tunnel through which internet cables run, and a critical piece of the town's developing digital infrastructure. Nearly 1,000 miles of conduit like this is being laid in West Des Moines, bringing lightning-fast internet to every home and business, thanks to a $60 million municipal bond and a novel public-private partnership

The municipality, a suburb of Des Moines with a small, historic downtown and about 67,000 residents, is like many communities in less-populous parts of the US in that residents rely largely on outdated internet infrastructure. Most West Des Moines residents get their internet either through coaxial cable originally intended for cable television or through copper lines initially laid for telephone service, known as DSL internet. DSL typically boasts maximum speeds of around 30 megabits per second download speed, which is barely faster than the federal government's minimum speed required to be considered broadband (25 Mbps). Cable internet is better, but both are far slower than fiber — the gold standard in internet access, wherein data is encoded as light signals and sent across hair-thin glass threads.

Continue reading.

Bloomberg CityLab

By Katie Thornton

January 27, 2023

Pharrell Williams-Backed Surf Park to Tap $121 Million of Bonds.

- **It's one part of a $330 million development in Virginia Beach**
- **The city to help fund with $140 million of its own dollars**

Clap along for Grammy-winning singer and producer Pharrell Williams, whose long-awaited effort to build a surf park in his hometown of Virginia Beach, Virginia, will mark one of the biggest high-yield deals so far this year.

In a two-part transaction split between the Virginia Small Business Financing Authority and the Atlantic Park Community Development Authority, the issuers plan to sell a combined $121 million of unrated revenue bonds on behalf of private developer Venture Realty Group.

Proceeds from the sale will help fund a 4-acre surf park dubbed The Wave. It's the pièce de résistance of a gargantuan $330 million development project, Atlantic Park, which is the largest public-private partnership in the city's history, according to bond documents.

Continue reading.

Bloomberg Markets

By Allison Nicole Smith

January 27, 2023

Governmental Accounting for Non-Accountants: GFOA Webinar

February 15, 2023 | 1 p.m.-3 p.m. ET

Details:

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

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

Learning Objectives:

Those completing this seminar will be able to:

- Recognize the role of accounting and financial reporting in the governmental environment.
- Identify the "players" (financial statement users, preparers, auditors)
- Name the "rules of the game" (generally accepted accounting principles – GAAP)
- Identify what fund accounting is and how it works (fund categories and fund types)
- Discern what different funds measure and when they measure it (measurement focus and basis of accounting)
- Recognize the important elements of government-wide financial statements and their relationship to fund financial statements (how does the information differ and why?)
- Ascertain where to look for additional information to help understand the financial statements and how to use that information (annual comprehensive financial report)

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

REGISTER

MSRB Discusses Regulatory Initiatives to Improve Municipal Market Transparency at Quarterly Board Meeting.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) met on January 25-26, 2023 for its second quarterly Board of Directors meeting of Fiscal Year 2023, where it discussed regulatory initiatives to improve municipal market transparency. The Board also discussed other initiatives to advance the four pillars of the self-regulatory organization's long-term strategic plan.

Market Regulation

"The MSRB continues to focus on regulatory initiatives to make meaningful improvements in the transparency in our market throughout the lifecycle of a bond transaction," said MSRB Chair Meredith Hathorn. "The Board's discussions are deeply informed by dialogue with market stakeholders and data analysis."

The Board discussed the various perspectives raised by market participants in response to the MSRB's request for comment on its proposed amendments to MSRB Rule G-14 to shorten the timeframe for trades to be reported. The Board intends to continue stakeholder outreach and data analysis to inform potential next steps in coordination with fellow regulators.

The Board also discussed the forthcoming publication of a previously authorized request for comment on proposed amendments to MSRB Rule G-47, which would codify certain interpretive

guidance and specify certain additional information that may be material and require time-of-trade disclosures to customers. This request for comment also seeks stakeholder input on proposed amendments to Rule D-15, defining the term "sophisticated municipal market professional."

In support of regulatory coordination and communication, the Board regularly meets with fellow regulators. At this meeting, the Board met with Securities and Exchange Commission Chair Gary Gensler and Financial Industry Regulatory Authority (FINRA) President and CEO Robert Cook.

Market Transparency and Technology

The Board received an update on the ongoing systems modernization effort, including work to modernize the Electronic Municipal Market Access (EMMA®) website and related market transparency systems. To help keep stakeholders informed of upcoming and longer-term EMMA enhancements, the MSRB publishes a forward roadmap of its transparency and technology initiatives on its website.

Market Structure and Data

The Board discussed market structure topics, including a potential pre-trade data collection initiative for the municipal securities market in coordination with fellow regulators. The Board also discussed the recently enacted Financial Data Transparency Act and its potential impact on the municipal securities market.

Public Trust

At each meeting, the Board conducts essential oversight of MSRB governance, finances and operations to uphold the public's trust. The Board received an update from its Nominating Committee on efforts to seek a diverse pool of applicants to join the Board in FY 2024, with a particular focus on soliciting applicants with compliance, technology and data proficiency, and applicants from all regions of the United States. Interested candidates must submit their applications by February 6, 2023.

In addition to prioritizing diversity and inclusion in the composition of the Board itself, the MSRB seeks to broaden its accessibility and engagement with diverse market participants so that all perspectives, concerns and expertise are heard. The Board received an update on the final roundtable in a series of roundtable discussions with minority-, women- and veteran-owned firms that the MSRB hosted in collaboration with FINRA to identify opportunities to foster greater diversity, equity and inclusion in the municipal securities market.

"Through these roundtables, the MSRB and FINRA have gained greater insight into the particular business models, challenges and pain points of diverse firms operating in the municipal market," said MSRB CEO Mark Kim. "We are very grateful for the industry's engagement to date, and we look forward to continuing to broaden and deepen our touchpoints with stakeholders."

Date: January 27, 2023

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

- BDA Submits Letter on MSRB Rule G-32 Changes.
- SEC Looks to Finalize Proposed Cyber Rules, Issue New NPRM.
- The Securities and Exchange Commission New Year's Resolution? Market Restructuring for All! – Baker Mckenzie
- Proposed Regulation Best Execution: SEC Considers Market Structure Shakeup: Morgan, Lewis
- More and Better Uses Ahead for Governments' Financial Data.
- Are Local Governments Leaving Billions on the Table?
- Texas AG Says Citi 'Discriminates' Against Gun Industry, Halting Muni Business.
- *Oklahoma Turnpike Authority v. Olsen* – In bond validation proceedings, dissenting Justices of the Oklahoma Supreme Court argue that the court's exclusive jurisdiction over bond validations should have encompassed objector's action alleging violation of the state's Open Meetings Act brought by objectors in the District Court.
- And finally, Sternly Worded Letter To The Editor? is brought to us this week by *R.O.A. General Inc. v. Salt Lake City Corporation*, in which one can positively feel the the scorn, resignation, and disgust emanating from the court in the otherwise deadpan first sentence of its opinion, which reads, "This appeal is the latest skirmish in a long-running dispute over a billboard." This long-running dispute began almost A DECADE AGO [emphasis added] and shows no sign of concluding within our lifetimes. Perhaps the fight is so bitter because the stakes are so low. If only there was some way to communicate to the litigants that it's time to CUT THIS SHIT OUT [emphasis added]]. Perhaps some type of large, public display? Any ideas? We got nothin'.

DEVELOPMENT FEES - ARIZONA

Southern Arizona Home Builders Association v. Town of Marana

Supreme Court of Arizona - January 17, 2023 - P.3d - 2023 WL 193607

Home builders association brought action for declaratory judgment against town, alleging that town violated statute governing municipal-development fees by assigning entire cost of upgraded and expanded wastewater treatment facilities to future homeowners through development impact fees.

On cross-motions by parties, the Superior Court granted summary judgment for town. Association appealed. The Court of Appeals affirmed. The Supreme Court granted review.

The Supreme Court held that town violated development-fee statute by assigning entire cost of upgraded and expanded wastewater treatment facilities to future homeowners.

Town violated statute governing apportionment of "development fees to offset costs to the municipality associated with providing necessary public services" by making future development bear 100% of cost of town's acquisition of wastewater reclamation facility (WRF) from county, by making future development bear nearly all cost of upgrading, modernizing, and improving facility, and by failing to determine what could or could not be included in development fees or to make any proportionate allocation of costs between existing and future development, where acquisition and improvement of water facilities benefited both new and existing developments, and thus statute required proportional allocation of costs between existing and future residents.

FALSE CLAIMS ACT - CALIFORNIA

Cordoba Corporation v. City of Industry

Court of Appeal, Second District, Division 8, California - January 3, 2023 - Cal.Rptr.3d - 2023 WL 21762 - 2023 Daily Journal D.A.R. 98

City brought action against civil engineering consultant and solar energy developer alleging fraud under False Claims Act, along with other claims, after uncovering allegedly fraudulent billings, and consultant filed cross-complaint for breach of contract, breach of implied covenant of good faith and fair dealing, and declaratory relief.

The Superior Court granted city's motion to strike cross-complaint under anti-SLAPP statute. Consultant appealed.

The Court of Appeal held that:

- Consultant's cross-claims arose from city's protected petitioning activity;
- 30-day notice provision about fee disputes in consulting contract did not preclude city from asserting fraud claims;
- Consultant failed to state a claim for breach of implied covenant of good faith and fair dealing; and
- An actual present controversy did not exist for declaratory relief about requirements of previously-terminated contracts.

Civil engineering consultant's cross-claim against city for breach of contract, alleging that city's years-delayed allegations of fraudulent billings relating to solar development project violated consulting contract, arose from city's protected petitioning activity of lawsuit suit against consultant and developer, for purposes of city's anti-SLAPP motion; consultant's breach of contract claim plainly arose from city's lawsuit.

City's investigations of suspicious claims on public funds, as a precursor to filing fraud and contract-based suit against solar energy developer and civil engineering consultant, were protected by anti-SLAPP statute as communications in preparation of litigation, for purposes of city's anti-SLAPP motion concerning consultant's cross-claim against city for breach of implied covenant of good faith and fair dealing, in which consultant alleged that city created an unsustainable contractual relationship forcing consultant to resign and thereby be deprived of the benefits of its consulting contracts with city.

City council's considering firing its city manager, which allegedly contributed to volatile situation with city's civil engineering consultant, was protected by anti-SLAPP statute as communications undertaken in connection with a legislative proceeding, for purposes of city's anti-SLAPP motion that it filed in response to consultant's cross-claim against city for breach of implied covenant of good faith and fair dealing, in city's action asserting fraud and contract-based claims against consultant and solar energy developer arising from city's discovery of allegedly fraudulent billings for solar energy project.

Civil engineering consultant's cross-claim against city for declaratory relief, asking court to declare that consultant was not responsible for approving developer's allegedly fraudulent invoices for solar energy development on city land, arose from city's protected petitioning activity of its lawsuit against consultant and developer for fraud and contract-based claims, for purposes of city's anti-SLAPP motion, where consultant had no present or future duties under its consulting contracts, which it chose to terminate, and the only use of a declaration would have been to undermine city's legal claims.

The 30-day notice provision in civil engineering consultant's contract with city, providing that city

was to give written notice to consultant of dispute with fees within 30 days of receipt of invoice, did not preclude city from asserting fraud claims under False Claims Act more than 30 days after receipt of invoices, after uncovering allegedly fraudulent billing; on its face, the provision addressed payment of invoices, not legal action, interpreting provision to require city to discover and to file a lawsuit for fraud under Act within 30 days would have been unreasonable, and the intentional fraud that city alleged under Act was not an error contemplated by the notice provision and likely to have been discovered by routine perusal of invoices.

Civil engineering consultant failed to state a claim against city for breach of implied covenant of good faith and fair dealing arising from consultant's terminating its consulting contracts with city in midst of city's disputes with solar energy developer and city's investigations of suspicious billings relating to solar energy project, where consultant complained that city deprived it of the benefits of its contracts with city, but consultant did not say what benefit it unfairly lost.

No actual controversy existed concerning present rights and duties under civil engineering consulting contracts with city, and therefore consultant could not obtain a declaratory relief that the contracts did not require it to approve solar energy developer's invoices to city, which asserted fraud and contract-based claims against consultant and developer arising from city's uncovering allegedly fraudulent billing for the solar energy project; the only immediate controversy in city's action concerned past acts or duties under contracts that consultant previously terminated, and consultant merely sought a declaration that it was innocent of the alleged fraud.

EMINENT DOMAIN - FLORIDA

Jamieson v. Town of Fort Myers Beach, Florida

District Court of Appeal of Florida, Second District - December 29, 2022 - So.3d - 2022 WL 17982952

Landowner brought action against town alleging inverse condemnation, partial inverse condemnation, and violation of the Bert J. Harris, Jr., Private Property Rights Protection Act.

The Circuit Court granted the town's motion for summary judgment. Landowner appealed. The District Court of Appeal reversed and remanded. On remand, the Circuit Court granted town summary judgment. Landowner appealed.

The District Court of Appeal held that:

- Landowner's claim for inverse condemnation against town was ripe for review, and
- Remand was required to allow the trial court to address town's claim that landowner's Bert Harris Act claim was time-barred.

Landowner's claim for inverse condemnation against town was ripe for review; landowner argued that the town's categorization of his property as wetlands precluded him from using his property in any economic manner, and thus he was entitled to compensation for the loss, landowner had previously challenged the wetlands designation, sought a comprehensive plan amendment, and sought a variance, and letter from town attorney offered to settle landowner's Bert Harris Private Property Rights Protection Act claims, by removing the wetlands designation to three lots, if landowner gave up his development rights to the remaining 37 lots.

Remand was required to allow the trial court to address town's claim that landowner's Bert Harris Act claim was time-barred, in action for inverse condemnation and a violation of the Bert Harris

Private Property Rights Protection Act, where town raised the issue in its motion for summary judgment, and the trial court failed to address the issue in its order granting the town's motion.

EMINENT DOMAIN - LOUISIANA

Southland Engine Company, Inc. v. State through Department of Transportation and Development

Court of Appeal of Louisiana, Third Circuit - December 21, 2022 - So.3d - 2022 WL 17825562 - 2022-205 (La.App. 3 Cir. 12/21/22)

Property owners and business operating on property brought action against Department of Transportation and Development (DOTD), asserting claims of negligence and inverse condemnation arising from decrease in business allegedly caused by construction project.

The District Court granted summary judgment in favor of DOTD. Landowners and business appealed.

The Court of Appeal held that:

- Any damage suffered by property owners and business was not peculiar to them and thus could not support inverse condemnation claim, but
- Genuine issues of material fact as to whether design-build contractor hired by DOTD to deliver project design and construction for highway reconfiguration acted negligently in staging project and caused unreasonable delay in construction process, as well as whether DOTD was liable for any such negligent delay, precluded summary judgment on general negligence claim.

Any damage suffered by property owner and by power-equipment business operating on property was not peculiar to them, and thus such damage could not support inverse condemnation claim arising out of construction project which resulted in altered access to property from adjacent highway, allegedly causing difficulty and confusion for customers of business attempting to access property, even though owner and business alleged that their customers in particular had difficulty accessing premises because they were frequently driving large trucks or pulling trailers; same complaints regarding access difficulty were made by principals of the four other businesses affected by project, and one of those businesses also alleged damage based on customers driving large trucks or pulling trailers.

Genuine issues of material fact as to whether design-build contractor hired by Department of Transportation and Development (DOTD) to deliver project design and construction for highway reconfiguration acted negligently in staging project and caused unreasonable delay in construction process, as well as whether DOTD was liable for any such negligent delay, precluded summary judgment on adjacent property owner and business's general negligence action against DOTD.

ZONING & PLANNING - NEW HAMPSHIRE

Appeal of Town of Amherst

Supreme Court of New Hampshire - January 18, 2023 - A.3d - 2023 WL 224671

Town appealed from orders of the housing appeals board (HAB) vacating the denial by town's planning board of applicants' subdivision and site plan approval plan for condominium project

containing both age-restricted and unrestricted units.

The Supreme Court held that:

- HAB reasonably determined that town planning board's articulated ground of "age" as basis for denial of subdivision/site plan application was itself unreasonable, and
- HAB reasonably determined that board's articulated ground of "rural aesthetic" as basis for denial of subdivision/site plan application was itself unreasonable.

Housing appeals board (HAB) reasonably determined that town planning board's articulated ground of "age" as basis for denial of subdivision/site plan application for condominium project containing both age-restricted and unrestricted units was itself unreasonable; applicants had previously been granted conditional use permit (CUP) for project that included "elderly" component, compliance with applicable federal and state statutes could be addressed by condominium documents, town counsel's review and approval of proposed condominium documents was customary practice and ordinarily condition of site/subdivision approval, and board's failure to follow this customary practice and, instead, to deny application based on its own concerns about legal compliance was unreasonable.

Housing appeals board (HAB) reasonably determined that town planning board's articulated ground of "rural aesthetic" as basis for denial of subdivision/site plan application for condominium project containing both age-restricted and unrestricted units was itself unreasonable; applicants had previously been granted conditional use permit (CUP) for project, and it was unreasonable to deny project based on non-compliance with "rural aesthetic" because the applicable factors related to rural character or aesthetic were already considered in granting the CUP, and in denying the application, board did not focus on the elements of rural character, but, rather, focused on density.

BOND VALIDATION - OKLAHOMA

Oklahoma Turnpike Authority v. Olsen

Supreme Court of Oklahoma - December 6, 2022 - 521 P.3d 806 (Mem) - 2022 OK 98

The Supreme Court of Oklahoma authorized the Oklahoma Turnpike Authority (OTA) to issue bonds for turnpike repair and expansion.

Real Parties in Interest filed an action in the Cleveland County District Court claiming that the OTA violated the Oklahoma Open Meeting Act in seeking approval of the bonds.

OTA's Application to Assume Original Jurisdiction for Writ of Prohibition was denied as moot by the Supreme Court.

Two Justices dissented, arguing that the legal issue brought in this original proceeding was whether the Cleveland County District Court had the authority to determine the Real Parties in Interest's claims or whether the claims were within the exclusive jurisdiction of the Oklahoma Supreme Court.

> "For over 70 years, this Court construed the Legislature's grant of jurisdiction as giving the Court ***sole*** authority to determine ***all*** questions of sufficiency of the law to authorize bonds and construct turnpikes. The Court must consider the validity of the bonds, the constitutionality of the bonds, and the OTA's authority to construct and operate turnpikes. The Real Parties in Interest's claims directly impact these determinations

that are within the exclusive jurisdiction of this Court as the relief sought in the district court is to prevent the OTA from using the bonds to construct the turnpike extensions."

"The OTA invoked the Court's exclusive jurisdiction under § 1718 when it filed its application with this Court to validate the bonds for the turnpike expansion. And that exclusive jurisdiction makes any determination by this Court binding upon the lower court. To hold otherwise might present a conflict of jurisdictions, where this Court approves the bonds and the OTA's ability to proceed with its proposed turnpikes and the judgment by the district court bars the OTA from exercising the authority this Court authorized. Even a potential conflict of jurisdiction between the two courts should be avoided. This Court should have assumed original jurisdiction to prevent such a conflict."

"This Court gained exclusive jurisdiction to consider the questions raised by the Real Parties in Interest in the Cleveland County District Court when the OTA filed its application to validate the proposed bonds. The Real Parties in Interest's claims concern the sufficiency of the law to authorize the OTA to construct the turnpike expansion even though the claim arises under the Open Meetings Act. I would have therefore granted the writ of prohibition and ordered the Cleveland County District Court to transfer the Real Parties in Interest's petition to this Court to be treated as a protest in the pending bond validation case."

SERVICE DISTRICTS - TEXAS

Walker County ESD No. 3 v. City of Huntsville

Court of Appeals of Texas, Waco - December 7, 2022 - S.W.3d - 2022 WL 17488327

City brought action against county emergency services district (ESD), along with its officers and commissioners, for committing ultra vires acts, alleging that new territory approved to be annexed by ESD included territory within the City's extraterritorial jurisdiction (ETJ), however, city never consented to its ETJ being annexed.

The District Court denied ESD's plea to the jurisdiction. ESD filed interlocutory appeal.

The Court of Appeals held that:

- City's claim was not an election contest;
- Statute stating that an ESD may sue and be sued was not waiver of governmental immunity;
- Differing procedures under statute governing expansion of ESD territory and statute governing the creation of an ESD would not lead to absurd result; and
- City did not allege ultra vires actions.

City's claim seeking a declaration that election in which voter's approved annexation of new territory by county emergency services district (ESD) was void because ESD did not have the authority to order the election without obtaining the city's consent was not an "election contest," in city's action against ESD, along with its officers and commissioners, for committing alleged ultra vires acts, where city's claim was premised on allegation that the election was void on the ground that the city did not consent to the annexation of municipal territory.

Statute stating that an emergency services district (ESD) may sue and be sued was unclear and ambiguous, and thus did not amount to waiver of governmental immunity as to county ESD, in city's action against ESD, along with its officers and commissioners, for committing alleged ultra vires acts, alleging that new territory approved to be annexed by ESD included territory within the City's extraterritorial jurisdiction (ETJ), but district was required to obtain the city's consent before territory in the city's ETJ could be annexed, which it did not.

Statute governing expansion of emergency service district's (ESD) territory does not require an ESD to make a request to, or to obtain consent from, a municipality before annexing territory in a municipality's limits or extraterritorial jurisdiction (ETJ)

Statute governing the creation of an emergency services district (ESD) is the only provision that requires an ESD to make a request to a municipality and consent by a municipality but not the only provision that gives an ESD the authority to include within its territory a municipality's limits or extraterritorial jurisdiction (ETJ).

Differing procedures under statute governing expansion of emergency service district's (ESD) territory, which did not require municipal consent to annex territory in a municipality's limits or extraterritorial jurisdiction (ETJ), and statute governing the creation of an emergency services district (ESD), which did require municipal consent to annex territory in a municipality's limits or ETJ, would not lead to absurd result; it was presumed that municipal consent requirement was excluded for a reason, regardless of if that made the most policy sense.

City's allegations that individuals behind creation of county emergency services district (ESD) always intended to include within ESD's boundaries territory in city's extraterritorial jurisdiction (ETJ), but sought to evade statutory requirement of obtaining city's consent by waiting until ESD was created to annex territory, did not allege ultra vires actions, in action against ESD and its officers and commissioners; action could be nothing other than an expansion of ESD's territory, which did not require city's consent, there were no facts alleging that a specific officer or commissioner drafted language in petition for expansion, and it was not a violation of chapter of Health and Safety Code governing ESDs for officer or commissioner to participate in drafting or preparing a petition.

EMINENT DOMAIN - UTAH

R.O.A. General Inc. v. Salt Lake City Corporation

Court of Appeals of Utah - December 15, 2022 - P.3d - 2022 WL 17684993 - 2022 UT App 141

Following denial of relocation request for demolished billboard billboard owner brought action for inverse condemnation, arguing that denial of relocation request required just compensation.

The Third District Court denied city's motion for summary judgment, and, following stipulation to value of billboard, entered judgment for billboard owner as to compensation. City appealed.

The Court of Appeals held that:

- Doctrine of issue preclusion did not apply;
- Doctrine of stare decisis did not apply;

- Billboard owner did not establish equitable estoppel as a matter of law; and
- Billboard owner did not establish judicial estoppel as a matter of law.

Prior litigation regarding city's denial of billboard owner's relocation request did not resolve whether that denial required compensation, and thus doctrine of issue preclusion did not apply in billboard owner's subsequent inverse condemnation action against city; while court stated in prior litigation that statute "expressly permits the City to deny such requests, so long as it pays just compensation," the court did not address whether the billboard at issue in fact qualified for compensation under the statute nor did it address factual scenarios at issue in the inverse condemnation action, including whether a denied relocation request required compensation where two applicants sought to locate billboards in essentially the same location or where the billboard owner destroyed its billboard before filing its permit request.

Prior litigation regarding city's denial of billboard owner's relocation request did not, under doctrine of stare decisis, resolve issue in subsequent inverse condemnation proceeding of whether that denial required compensation; court in prior litigation did not decide whether a relocation applicant is entitled to compensation where two applicants sought to place billboards in essentially the same location, or is entitled to compensation where the billboard owner destroyed its billboard before filing its permit request.

Billboard owner failed to establish as a matter of law that city was equitably estopped from arguing new reasons that demolished billboard did not qualify for statutory compensation absent showing by billboard owner that it took reasonable action or inaction based on city's prior assertion that demolished billboard qualified for compensation under statute; billboard owner claimed it would have taken the opportunity to bank its billboard credits or would have changed litigation strategies, but did not provide record citations to affidavits or other evidence that might establish those claims.

Billboard owner failed to establish as a matter of law that it relied to its detriment on any assertion city took in prior action that demolished billboard qualified for statutory compensation, and thus city was not judicially estopped from arguing new reasons in billboard owner's inverse condemnation action as to why demolished billboard did not qualify for compensation.

Court of Appeals would decline to affirm trial court's conclusion on summary judgment, that city was estopped from relying on new reasons to reject billboard owner's relocation application in an effort to avoid paying just compensation. on alternative ground of claim preclusion, where billboard owner did not cite or engage with the transactional test applied by Utah courts to the question of claim preclusion, nor did billboard owner support its assertion that city should have raised defenses to a claim for compensation where billboard did not seek compensation in previous tribunals.

Court of Appeals would decline to reach the merits of city's arguments that billboard owner was not entitled to statutory compensation for demolished billboard because two companies requested relocation permits for the same location and owner did not have an existing billboard to relocate when it submitted its relocation request, but rather, following reversal of summary judgment for billboard owner, would remand for district court to consider the merits of the arguments.

EMINENT DOMAIN - VERMONT

Nesti v. Vermont Agency of Transportation

Supreme Court of Vermont - January 6, 2023 - A.3d - 2023 WL 125249 - 2023 VT 1

Landowner brought action against Vermont Agency of Transportation, seeking damages and injunctive relief and alleging claims for takings, trespass, private nuisance, ejectment, and removal of lateral support arising out of reconstruction of road which allegedly caused stormwater runoff to form a ravine on landowner's property.

The Superior Court dismissed ejectment and lateral support claims for failure to state a claim, and the Court granted summary judgment for Agency. Landowner appealed.

The Supreme Court held that:

- Takings claim was subject to six-year statute of limitations for civil actions;
- Six-year statute of limitations for civil actions applied to landowner's trespass claim;
- Six-year statute of limitations for civil actions applied to landowner's private nuisance claim; and
- Even assuming continuing tort doctrine applied to trespass and nuisance claims, Agency did not commit any tort within six-year limitations period after reconstruction of road.

Six-year statute of limitations for civil actions, rather than 15-year statute of limitations for bringing actions to recover lands, applied to landowner's trespass claim against Vermont Agency of Transportation arising out of road reconstruction which allegedly caused stormwater runoff to form a ravine on landowner's property.

Six-year statute of limitations for civil actions, rather than 15-year statute of limitations for bringing actions to recover lands, applied to landowner's private nuisance claim against Vermont Agency of Transportation arising out of road reconstruction which allegedly caused stormwater runoff to form a ravine on landowner's property.

Vermont Agency of Transportation did not commit any tort within six-year limitations period after reconstruction of road, and thus, even assuming continuing tort doctrine, it would not apply to save landowner's trespass and nuisance claims against Agency arising out of road reconstruction which allegedly caused stormwater runoff to form a ravine on landowner's property.

LIABILITY - WASHINGTON

Norg v. City of Seattle

Supreme Court of Washington, En Banc - January 12, 2023 - P.3d - 2023 WL 164077

Caller who had placed 911 call seeking emergency medical assistance for her husband, as well as husband, brought action against city, alleging that delayed response by city's fire department aggravated caller and husband's injuries.

The Superior Court granted partial summary judgment in favor of caller and husband and struck city's affirmative defense of public duty doctrine. On interlocutory review, the Court of Appeals affirmed. Review was granted.

The Supreme Court held that caller and husband's action was one based on alleged breach of city's common law duty to use reasonable care, rather than on breach of a statute or ordinance, and thus the public duty doctrine did not preclude imposition of liability on city.

Action against city by caller who placed 911 call and by caller's husband, for whom caller had sought medical assistance, was one based on alleged breach of city's common law duty to use reasonable care, rather than on breach of a statute or ordinance, and thus the public duty doctrine did not

preclude imposition of liability on city, even though there was statutory basis for city to provide 911 services, where caller and husband did not claim that city failed to operate a 911 service or violated any implicit promise under 911 statute to promptly dispatch medical aid but rather that city undertook to render emergency assistance but then did so negligently by going to the wrong address even though caller had provided correct address.

Are Local Governments Leaving Billions on the Table?

By undervaluing publicly owned assets, jurisdictions are missing out on enormous opportunities to help citizens and their communities. A newly launched incubator could change how public assets can be leveraged.

Serving as mayor of Salt Lake County from 2013 to 2019, Ben McAdams faced a familiar dilemma. He knew what residents needed and felt duty-bound to provide it. But the funds he had weren't equal to his ambition.

"I was always surprised at how hard it was to find revenue to invest in things that were empirically substantiated to be important to our community," says McAdams. "One of my passions was early childhood education — we had budget of $1.3 billion a year, yet we couldn't find $500,000 to invest in an early childhood education program."

McAdams discovered a way forward after meeting Swedish investment adviser Dag Detter and reading his book, *The Public Wealth of Cities*. It has been the norm for governments to greatly undervalue public assets, Detter says; moreover, unlike the private sector, they fail to manage them in ways that unlock their potential to serve the public good.

Continue reading.

governing.com

Jan. 17, 2023 • Carl Smith

Analysis Calls for Federal Oversight of State, Local Budgeting and Borrowing.

With COVID-19 funding approaching its expiration date and pandemic-related revenue streams beginning to taper off, a paper published by The Volcker Alliance's Richard Ravitch Public Finance Institute calls on federal regulators and Congress to push for a "higher level of transparency in state and local borrowing" and budgeting, with more oversight.

"For too long, the federal government has maintained an indifferent posture on oversight of or uniformity in state and local budgeting and borrowing practices despite doling out over a trillion dollars a year in aid," said William Glasgall, senior director of public finance at the Volcker Alliance. The paper, "Sustainable State and Local Budgeting and Borrowing: The Critical Federal Role," examines why oversight of budgeting and borrowing is so limited and outlines steps that can be taken by federal officials to create more accountability.

"Now is the time for Congress and regulators to step in and implement sound, sustainable budgeting

and borrowing practices nationwide," Glasgall said.

Each year, Congress provides about $1 trillion in grants, tax exemptions, and tax credits to state and local governments. Additionally, the municipal bond market—a debt security issued by local, county and state governments to raise money for capital expenditures like highways—is worth $4 trillion.

Even before the pandemic unleashed historic federal investment, "Congress and the executive branch have demanded surprisingly little in continuing, high-level oversight of states and local budgeting and borrowing," the report notes.

This costs taxpayers and the nation's economy "tens of billions of dollars," reads the report, which was written by experienced municipal finance experts Matt Fabian, a partner at Municipal Market Analytics and Lisa Washburn, the organization's managing director and the chief credit officer.

To reduce that cost, responsible oversight of local and state budgeting and borrowing would help federal regulators prevent fiscal crises before they happen.

"Tightening oversight of state and local budgeting and borrowing are the cornerstones of the Volcker Alliance's Richard Ravitch Public Finance Initiative," the analysis says, noting that Ravitch, the former lieutenant governor of New York State, "was a transformational actor in the federal bailout of New York City after its near bankruptcy in 1975. He was also a key player in the resolution of fiscal crises that led to bankruptcies in Detroit in 2013 and Puerto Rico four years later."

Both crises were caused by the governments' excessive borrowing while they maintained the fiction of balanced budgets, the report says. "To this day, many governments continue to declare their annual or biennial budgets in balance—often in accordance with state statutes or constitutions—even though they have run up over $2.7 trillion in unfunded obligations for public worker pension and retirement health care costs, and another $1 trillion in deferred maintenance on roads, bridges, and other infrastructure."

Researchers lay out a number of recommendations federal officials can enact. First, state and local governments should be incentivized to switch from a cash or modified cash basis method of producing an annual budget to generally accepted accounting principals (GAAP), which among other things discourage one-time maneuvers like borrowing to balance budgets, for budgets and annual comprehensive financial reports (ACFRs).

"These two accounting methods often produce divergent results because of differences in the way they recognize revenue and expenses. While a balanced state budget may suggest adequate, real-time fiscal health, it may not reflect accrued additional liabilities that pose substantial risks to future fiscal health," the report says.

Among other recommendations, the analysis notes that federal lawmakers should take a more active role overseeing the municipal securities market. The paper also outlines a six-point agenda for discussion and action regarding budgeting and borrowing.

americancityandcounty.com

Written by Andy Castillo

17th January 2023

Mayors Fret Over Possibility of ARPA Clawbacks.

Detroit's mayor urged others to speed up putting American Rescue Plan Act funds to use and to take special care that spending adheres to federal rules. He's not the only one raising concerns.

With House Republicans demanding major cuts in federal spending in return for raising the nation's debt limit, Detroit Mayor Mike Duggan warned other mayors on Wednesday to spend all of their American Rescue Plan Act funding sooner rather than later in case Congress tries to claw it back later this year.

"I would say to you that if you can responsibly speed up the obligations, I would say you do want to consider doing it," Duggan said. He also urged mayors to have independent auditors, in addition to city compliance staff, examine and attest that ARPA funds are being spent properly, in ways that adhere to the law and Treasury Department guidelines.

"None of us wants to get our projects named in a congressional hearing in the next year or two," he said. Duggan added: "I hope eight months from now, 10 months from now, 60 months from now, we're not in a big fight to hang on to the obligated money."

Continue reading.

Route Fifty

by Keri Murakami

JAN 18, 2023

S&P U.S. Higher Education Rating Actions, Fourth-Quarter 2022.

View the S&P rating actions.

17 Jan, 2023

S&P Outlook For U.S. Municipal Utilities: Stable, Though Risks Are Rising

Sector View: Stable

Although cost pressures are mounting, cash reserves have grown, and rate-setting flexibility is strong. But there are some pockets of credit pressure, especially for utilities with substantial deferred maintenance or limited economic underpinnings.

Continue reading.

12 Jan, 2023

S&P Outlook For U.S. Public Power And Electric Cooperatives: Essentiality And Strategic Planning Temper Challenges

Sector View: Stable

We expect a continuation of rating stability among public power and electric cooperative utilities. Our opinion reflects expectations of sound financial performance given the essentiality of electric service, coupled with the sector's record of credit-supportive ratemaking decisions and access to capital and liquidity. We will continue to assess management strategies for facing numerous risks and challenges, including inflation, recession, supply chain hurdles, increasingly stringent emissions regulations, climate change, and grid security.

Continue reading.

17 Jan, 2023

S&P Outlook For Global Not-For-Profit Higher Education: Credit Quality Continues To Diverge

U.S. Sector View: Stable But Bifurcated

Our view of the sector in the U.S. is mixed. While institutions with strong demand, sound resources, and excellent reputations will likely maintain or strengthen their positions, we expect that less selective, regional institutions will struggle amid growing competition, higher expenses, and operating margin pressure that could weaken credit quality. Institutions at the lower end of the rating scale and those with limited enrollment or financial flexibility will face credit stress in 2023.

Continue reading.

18 Jan, 2023

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

S&P Global Ratings affirmed 20 ratings without revising the outlooks, took five rating actions, and revised six outlooks without changing the ratings in the U.S. not-for-profit health care sector in December 2022. There was one new sale in December, for which the outstanding rating was affirmed with no outlook revision. The 11 rating and outlook actions consist of the following:

- Four downgrades on three hospitals and one health system, including one that was also placed on CreditWatch with developing implications. One of the four downgrades was within the speculative-grade categories and one other downgrade went to speculative-grade from 'BBB-';
- One upgrade on a health system within the speculative-grade category; and
- Six unfavorable outlook revisions on three hospitals, two health systems, and one long-term care provider (all six from stable to negative).

The table below summarizes S&P Global Ratings' monthly bond rating actions for U.S. not-for-profit

health care providers in December. 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 negative outlook on the sector related to staffing and inflationary pressures, economic conditions, and investment market volatility.

Continue reading.

18 Jan, 2023

S&P Outlook For U.S. Public Finance Housing: Economic Winds Won't Blow The House Down

Sector View: Stable

Housing entities enter the year with healthy balance sheets and liquidity sufficient to sustain activities through the shallow recession we forecast. Nonetheless, market headwinds may dampen both single-family and multifamily loan production, delay development, and pressure properties with thin operating margins.

Continue reading.

19 Jan, 2023

Why Some Executives Wish E.S.G. 'Just Goes Away'

The environmental, social and corporate governance investment trend is booming, but it has also become a big distraction for business leaders.

At a cocktail party this week in Davos, one executive told DealBook something he — and most of the attendees at the World Economic Forum — would most likely never say in public: "I hope E.S.G. just goes away."

The executive, whose company is involved in the carbon industry, clarified that he still believes that it is vital to focus on climate, but that environmental, social and corporate governance — as the business approach is formally known — has become too broad and distracting. He's just one of many executives who have talked to DealBook about coming to terms with how politically charged E.S.G. has become, and about how to deal with it.

Have executives overpromised on E.S.G.? Fixating on lofty goals, without delivering on actions, has made business leaders vulnerable to a backlash, executives said. As evidence, some point to BlackRock's Larry Fink, one of the earliest and most vocal proponents of E.S.G., saying he's trying to "change the narrative" after taking fire from the right, and despite the fact that the asset manager still has investments tied to fossil fuels. The elevated messaging, and the pushback to it, has also obscured what supporters of the movement say are the real financial considerations of E.S.G., like what climate change means for a real estate business.

Continue reading.

The New York Times

DealBook

Jan 19, 2023

BDA Submits Letter on MSRB Rule G-32 Changes.

BDA today provided comments to the MSRB on its proposal to amend MSRB Rule G-32 related to information reporting for municipal new issues. BDA generally supports the proposal.

The MSRB has proposed to amend Rule G-32 to streamline the submission of new issue data on Form G-32. Under the proposal, underwriters would be required to submit certain information by the end of the first trading day for new issues and the remainder of the information by the closing date. The proposal would not amend the scope of type of information underwriters must report. It would streamline timing only.

We told the MSRB that "BDA generally supports the amendments in the Notice. We believe these changes would provide additional compliance flexibility for underwriters without threatening investor or issuer protections." We also asked the MSRB to formally acknowledge that underwriters could of they choose continue to make G-32 information submissions according to the standards in the current rule and still be in compliance with the proposed amendments.

Thanks to all who contributed to this project. Our comment letter is available here. Please call or write with any questions.

Bond Dealers of America

January 17, 2023

Texas AG Says Citi 'Discriminates' Against Gun Industry, Halting Muni Business.

- **Texas AG rules that bank 'discriminates' against gun industry**
- **Citigroup disputes finding and maintains bank is in compliance**

Citigroup Inc. is once again facing an ouster from the booming Texas municipal-bond market after the state's Attorney General Ken Paxton's office determined the bank "discriminates" against the firearms industry.

The ruling indicates that the New York-based bank runs afoul of a Republican-backed law passed nearly two years ago that bars most government contracts with companies that engage in anti-gun business practices. The decision appears to halt the bank's ability to underwrite most municipal-bond offerings in the state.

It's a whipsaw moment for Citigroup. The bank had temporarily halted its work in the Texas muni

market after the law went into effect in September 2021 but had revived that business two months later, saying it complies with the law. Paxton's ruling ends a months-long probe into Citi's corporate policy.

Continue reading.

Bloomberg Markets

By Danielle Moran

January 19, 2023

SEC Looks to Finalize Proposed Cyber Rules, Issue New NPRM.

The U.S. Securities and Exchange Commission (SEC) appears to have big plans for cybersecurity regulation in 2023.

The SEC's rulemaking agenda, which was recently published by the Office of Management and Budget's Office of Information and Regulatory Affairs, includes finalizing two sets of cybersecurity rules proposed last year and issuing a new notice of proposed rulemaking (NPRM) on cybersecurity risk disclosures and cybersecurity measures. The new NPRM will include requirements for SEC-regulated public companies, broker-dealers, funds, investment advisors, self-regulatory organizations (SROs), and others.

The SEC has been one of the most active federal agencies in the cybersecurity space over the last several years. The Commission proposed new cybersecurity regulations for registered investment advisors (RIAs) and funds in February 2022 (see our blog post here) and new cyber disclosure, governance and risk management rules for public companies in March 2022 (see our blog post here). According to the recently published rulemaking agenda, final action on both of these proposed rules is expected in April 2023 (see here and here). If these rules are finalized:

- RIAs and funds will need to adopt cybersecurity policies and procedures, conduct documented risk assessments, implement access controls, monitor and remediate vulnerabilities, and detect, respond to, and report cybersecurity incidents. Covered RIAs and funds will be required to report cybersecurity incidents with 36 hours.
- Public companies will be required to include in mandatory disclosures information about the board of directors' oversight of cybersecurity risk, individual board members' cybersecurity expertise, and the role of management in addressing cybersecurity risk, among other aspects of companies' cybersecurity risk management programs. Public companies will be required to report material cybersecurity incidents within four business days.

According to the recently published rulemaking agenda, the SEC also intends to release a new NPRM to "address registrant cybersecurity risk and related disclosures, amendments to Regulation S-P and Regulation SCI, and other enhancements related to the cybersecurity and resiliency of certain Commission registrants." While the description of this NPRM indicates that its subject matter may overlap with the existing proposed rules, it is clear that the new NPRM will tread some new ground such as in amending Regulations S-P and SCI.

Regulation S-P, which was promulgated under section 504 of the Gramm-Leach-Bliley Act (GLBA), contains numerous data privacy and security-related requires for registered broker-dealers, funds,

and investment advisers. Section 30(a) of Regulation S-P, commonly known as the Safeguards Rule, requires registered broker-dealers and investment advisers to "adopt written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information." The SEC may intend to follow the example of the Federal Trade Commission (FTC), which recently amended its own Safeguards Rule for non-bank financial institutions by adding numerous specific cybersecurity requirements, including risk assessments, continuous monitoring, encryption and multifactor authentication (we discussed the FTC's amendments to its Safeguards Rule in a prior blog post and webinar). The SEC's February 2022 RIA and funds cybersecurity proposal acknowledged that Regulation S-P (which applies to RIAs and funds) also addresses cybersecurity but did not seek to amend that rule.

Regulation Systems Compliance and Integrity, or Regulation SCI, applies to computer systems that support key securities market functions and covers SROs—including stock and options exchanges, registered clearing agencies, the Financial Industry Regulatory Authority (FINRA), and the Municipal Securities Rulemaking Board (MSRB)—and other "SCI Entities," including certain alternative trading systems, disseminators of consolidated market data, and certain exempt clearing agencies.

Davis Wright Tremaine LLP – Michael T. Borgia and Alexander Sisto

January 19 2023
