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 - [U.S. Securities & Exchange Commission v. Breland](#) - District Court rules on a number of affirmative defenses raised by former city mayor in connection with an SEC action alleging that a series of revenue bonds had been approved by the state bond commission only as a result of false financial projections submitted to it by the mayor.
 - [UMB Bank, N.A. v. Eagle Crest Apartments, LLC](#) - Supreme Court of North Dakota holds that trial court appropriately pierced the corporate veil to find individual's numerous separate entities liable for deficiency judgment against construction LLC following foreclosure on apartment complex financed by municipal bonds.
 - And finally, [Monorail!](#) is brought to us this week by [City of Rocklin v. Legacy Family Adventures-Rocklin, LLC](#), in which a serial huckster approached the City of Rocklin with a proposal to build an adventure theme park to be financed by the City. The City performed some perfunctory due diligence and concluded that the huckster had, "misrepresented and concealed that his only adventure park projects were abject failures that were actively being investigated for child labor law violations." (Us too!) In the ensuing litigation, the court ruled - yes, as a matter of first impression - that a theme park is not an "artistic work." Who knew? We hereby remand the California Court of Appeal to [BonBon Land](#).

PUBLIC UTILITIES - CALIFORNIA

Southern California Gas Company v. Public Utilities Commission

Court of Appeal, Second District, Division 1, California - January 6, 2023 - Cal.Rptr.3d - 2023 WL 118496

Investor-owned natural gas utility petitioned for writ of mandate to directing Public Utilities Commission (PUC) to rescind its data requests, initiated by its Public Advocate's Office (PAO) division, seeking to discover whether utility's political activities were funded by utility's shareholders or ratepayers, on the ground that the requests infringed on utility's First Amendment associational rights.

The Court of Appeal held that:

- Utility was afforded procedural due process, but

- Data requests violated utility's First Amendment associational rights.

Investor-owned natural gas utility was afforded procedural due process with respect to data requests initiated by Public Advocate's Office (PAO), as a division of Public Utilities Commission (PUC), seeking to discover whether utility's political activities were funded by utility's shareholders or ratepayers, even though the dispute did not involve a formal proceeding in which PUC rules of practice and procedure and filing requirements would apply, where, at each step of process in utility's case, the PAO defended discrete discovery requests focused on the information needed to perform its statutory duties, and utility had an opportunity to challenge the PAO's motions, submit motions itself, and move for the full PUC to act on the requests.

Public Utilities Commission's (PUC) data requests, initiated by its Public Advocate's Office (PAO) division, seeking to discover whether political activities of investor-owned natural gas utility were funded by utility's shareholders or ratepayers were not narrowly tailored to serve a compelling governmental interest, and therefore the requests violated utility's First Amendment associational rights, where the requests, which were about all sources of funding for utility's lobbying activities, went beyond ratepayer expenditures, and insofar as the requests sought information about shareholder expenditures, they exceeded the PAO's mandate to obtain the lowest possible costs for ratepayers and its authority to compel disclosure of information necessary for that task.

ANTI-SLAPP STATUTE - CALIFORNIA

[City of Rocklin v. Legacy Family Adventures-Rocklin, LLC](#)

Court of Appeal, Third District, California - December 21, 2022 - Cal.Rptr.3d - 2022 WL 17827565 - 2022 Daily Journal D.A.R. 12,782

City brought action against theme park operator and its chief executive officer (CEO) for claims arising from joint undertaking to construct and operate theme park, including claims for fraud, negligent misrepresentation, and violation of Unfair Competition Law (UCL).

Defendants filed special motion to strike fraud, negligent misrepresentation, and UCL claims under anti-SLAPP (strategic lawsuit against public participation) statute. The Superior Court, sitting by assignment, denied anti-SLAPP motion and found motion was frivolous. Subsequently, the Superior Court, sitting by assignment, granted city's motion for statutory attorney fees and costs. Defendants appealed.

The Court of Appeal held that:

- Trial court was not bound to accept expert's legal conclusion that theme parks could constitute "artistic works" under anti-SLAPP statute;
- Portions of expert's report describing theme park contained case-specific hearsay;
- Operator and CEO failed to timely present evidence that reasonable attorneys could disagree on whether theme parks could constitute "artistic works";
- As a matter of apparent first impression, theme park was not "artistic work";
- Argument that theme park was "artistic work" was frivolous;
- Absence of published decision conclusively establishing frivolity of such argument did not preclude award of attorney fees as a matter of due process; and
- Adjudication of matter by three trial judges did not violate due process.

On theme park operator's anti-SLAPP motion to strike claims that city asserted against it, including

for fraud, arising from construction and operation of theme park, trial court, in determining whether challenged claims arose from activity protected by anti-SLAPP statute, was not bound to accept opinion of operator's expert that theme parks could qualify as "artistic works" for purposes of artistic work exception to commercial speech exemption from protection of anti-SLAPP statute; expert's opinion amounted to pure conclusion of law as to interpretation of anti-SLAPP statute, which was matter for judge, not expert, to decide.

Portions of design expert's opinion describing theme park, which theme park operator submitted in support of its anti-SLAPP motion to strike claims that city asserted arising out of joint undertaking to construct and operate theme park, relayed case-specific hearsay, and thus trial court was not required to consider such portions in determining whether artistic work exception to commercial speech exemption from protections of anti-SLAPP statute applied to claims; portions of opinion described case-specific characteristics of park as envisioned by operator's principal and related to expert via renderings.

General rule of non-consideration of evidence newly submitted with reply papers did not preclude theme park operator from submitting new evidence, namely that reasonable attorneys could disagree on whether theme parks could be deemed artistic works, in reply to city's response to operator's anti-SLAPP motion, in which city requested sanctions for frivolous motion practice, and thus trial court was not required to admit new evidence when operator filed it in opposition to city's subsequent noticed motion for attorney fees; city raised issue of frivolity of artistic-work argument under anti-SLAPP statute for first time in its response to anti-SLAPP motion, and trial court was to determine frivolity issue upon submission of operator's reply, tentative ruling, and oral argument.

Theme park was not "artistic work" within meaning of artistic work exception to commercial speech exemption in anti-SLAPP statute; theme park was not involved in activities similar to news or information gathering or dissemination and did not involve constitutionally protected artistic works, such that theme park was not like examples of "artistic works" provided by statute and did not fall within scope of activities discussed in statute's legislative history, and defining "artistic work" to include anything with artistic qualities would make artistic work exception so broad as to encompass almost all commercial speech.

Any reasonable attorney would agree that theme park was not "artistic work" within meaning of artistic work exception to commercial speech exemption in anti-SLAPP statute, and thus theme park operator's assertion of exception as basis for anti-SLAPP motion to strike city's fraud claims was frivolous, warranting award of statutory attorney fees to city, even though term "artistic work" was ambiguous; reasonable attorney, finding ambiguity, would have consulted legislative history and case law to find, consistent with statute's non-exhaustive list of excepted activities, that exception applied to conduct similar to news or information gathering or dissemination or conduct involving constitutionally protected artistic works, and theme park was not similar to such conduct.

Theme park operator forfeited its argument, on appeal from trial court's order awarding attorney fees to city as sanction for operator's frivolous anti-SLAPP motion to strike fraud claims, that trial court failed to follow procedural requirements of statute generally governing sanctions for frivolous litigation conduct and that strict compliance with such procedures was required, where operator failed to raise argument before trial court.

Issue of whether strict compliance with procedures set forth in statute governing sanctions for frivolous litigation conduct was necessary before trial court could award attorney fees to city as sanction for theme park operator's frivolous anti-SLAPP motion did not present matter of vital public policy, and, thus, Court of Appeal would not exercise its discretion to review argument after operator forfeited it by failing to present it to trial court.

Absence of published decision indicating, without a doubt, that theme park operator's argument that theme park qualified for artistic work exception to commercial speech exemption in anti-SLAPP statute was frivolous did not preclude trial court, under Due Process Clause, from awarding attorney fees to city as sanction for frivolous anti-SLAPP motion; published authority confirming that argument was devoid of merit was not necessary to support determination that argument was frivolous.

Issuance of tentative ruling on theme park operator's anti-SLAPP motion to strike city's fraud claims by first judge, followed by second judge's signing of order denying anti-SLAPP motion and finding it frivolous, and then by third judge's order granting city's motion for attorney fees based on frivolous anti-SLAPP motion, did not violate theme park operator's due process right to be heard; operator did not file motion to reconsider second judge's order finding frivolity, but, rather, sought to re-litigate issue of frivolity in opposing city's motion for specific fees, possibility that second judge might have reconsidered frivolity finding on his own motion did not deprive operator of due process, and involvement of multiple judges did not make third judge less capable of evaluating fees.

City was entitled to award of attorney fees incurred on theme park operator's appeal from trial court's order, which had awarded attorney fees to city based on operator's frivolous anti-SLAPP motion to strike city's fraud claims, where Court of Appeal affirmed trial court's finding that anti-SLAPP motion was frivolous, and provision of anti-SLAPP statute authorizing attorney fees as sanction for frivolous anti-SLAPP motions did not explicitly preclude recovery of appellate attorney fees.

EMINENT DOMAIN - GEORGIA

[Schroeder Holdings, LLC v. Gwinnett County](#)

Court of Appeals of Georgia - January 5, 2023 - S.E.2d - 2023 WL 109401

Landowner and others filed complaint and petition for writ of certiorari against county to recover damages and equitable relief after county denied rezoning application resulting in inverse condemnation and violation of substantive due process.

The Superior Court granted county's motion for summary judgment. Plaintiffs appealed.

The Court of Appeals held that:

- Denial of rezoning application was not quasi-judicial decision that could only be challenged by writ of certiorari;
- Just Compensation Provision of state constitution was waiver of sovereign immunity with respect to inverse condemnation claim; and
- Landowner failed to establish that county waived sovereign immunity barring substantive due process claim.

Just Compensation Provision of state constitution was waiver of sovereign immunity with respect to landowner's inverse condemnation claim seeking damages and equitable relief after county denied rezoning application; nothing indicated that county had invoked the power of eminent domain.

Landowner failed to establish that county waived sovereign immunity barring substantive due process claim arising out of denial of rezoning application, where landowner did not cite any constitutional or statutory authority that expressly or impliedly waived sovereign immunity for all zoning cases.

MUNICIPAL ORDINANCE - KANSAS

[City of Wichita v. Peterjohn](#)

Court of Appeals of Kansas - December 30, 2022 - P.3d - 2022 WL 18034659

Ordinance was proposed by a group of Wichita residents through the initiative process to prevent the sale, demolition, or redevelopment of performing arts center and former Wichita public library.

The proposed ordinance would require the City of Wichita to hold an election whenever it sought to destroy, replace, or adversely affect prominent buildings owned by the City that are historically important or architecturally significant.

After the residents filed their petition and proposed ordinance, the City sued, seeking a declaration that the ordinance concerned administrative matters that could not be raised via the initiative process.

The district court agreed and entered judgment in the City's favor. Residents appealed.

The Court of Appeals affirmed, holding that Kansas law had long recognized that residents may not use the initiative process to advance ordinances that are predominantly administrative in nature, and the ordinance proposed here fell into this category.

BONDS - LOUISIANA

[U. S. Securities & Exchange Commission v. Breland](#)

United States District Court, W.D. Louisiana, Monroe Division. December 6, 2022 Slip Copy 2022 WL 17840413

SEC brought an action against former city mayor alleging that he had submitted false projections to the Louisiana State Bond Commission which resulted in the approval of a series of revenue bonds.

Defendant asserted a series of affirmative defenses.

The District Court held that:

- Defendant's affirmative defense that the SEC had failed to state a claim or cause of action because the Louisiana State Bond Commissioner was neither a purchaser or seller of a security as required under the federal securities law was immaterial because the SEC alleged that the investors who purchased the bonds were advised that the Bond Commission had approved the bonds - approval that was obtained via alleged fraudulent misrepresentations.
- Defendant's affirmative defense that the SEC had failed to state a claim or cause of action because to the extent that any alleged misrepresentation or omission in fact exists, the holder of the security has not suffered any damages was inapplicable because damages are not an element of an SEC. claim.
- Defendant's affirmative defense that he "is a person with no experience or expertise in bond issuances or securities law. Plaintiff relied solely upon the advice and expertise of legal counsel and the advisor retained by the City of Sterlington in preparing the projections, offering the bonds, and the legality of using the bond proceeds for the purposes the proceeds were used for. This Offering was a private placement. There is no[] requirement that an offering memorandum be prepared or that the information which is the subject of the claim of Plaintiff be included in an

offering Memorandum. The purchasers of the securities were sophisticated parties and accredited investors.” would not be struck, as the SEC had not established that the defense was insufficient as a matter of law.

- Defendant’s affirmative defense that, “Plaintiff has failed to state a claim or cause of action because the disclosure of the actual expenditure of funds from the prior bond offerings by the City of Sterlington was not a material fact that would have in any way impacted purchasers’ decision to purchase the bonds. Purchaser was given the audits of each of these years disclosing these issues prior to the time the bonds were purchased by the Purchaser” would be struck as redundant.
- Defendant’s affirmative defense that “Plaintiff has failed to state a claim or cause of action because to the extent any misrepresentation exists as to the use of the funds, the proceeds from the bond issuance were always used for a[n] expenditure to operate the City of Sterlington, and no proceeds were misappropriated for any personal use by the Defendant” would not be struck, as neither side submitted case law to show whether the fact that Breland failed to misappropriate proceeds for personal use constitutes an affirmative defense.
- Defendant’s assertion that his criminal indictment in this matter merits a stay would be struck, as a request to stay or dismiss a matter is not an affirmative defense. Defendant could bring a separate motion for a stay.

BONDS - NORTH DAKOTA

[UMB Bank, N.A. v. Eagle Crest Apartments, LLC](#)

Supreme Court of North Dakota - January 5, 2023 - N.W.2d - 2023 WL 105209 - 2023 ND 4

Successor trustee for owners of bonds issued by city to finance construction of apartment complex brought action against construction limited liability company (LLC) and member for breach of contract and foreclosure, and, after apartment complex was sold at a sheriff’s sale, successor trustee amended its complaint multiple times to add claims for fraudulent transfers, deceit, and exemplary damages against individual with ownership interest in company which was the LLC’s sole member, and numerous entities associated with him.

Following a jury trial, the District Court entered judgment on jury verdict against defendants, jointly and severally, piercing the corporate veil. Defendants appealed.

The Supreme Court held that trial court appropriately pierced the corporate veil.

Trial court appropriately pierced the corporate veil to find individual’s numerous separate entities liable for deficiency judgment against construction limited liability company (LLC) following foreclosure on apartment complex financed by municipal bonds; testimony and evidence indicated that individual disregarded the entities’ corporate form and used them for personal purposes, jury found each defendant was the alter ego of both individual and the other defendants, and also found they fraudulently transferred roughly \$2.9 million to the detriment of investors and engaged in a conspiracy to commit deceit.

Defendants, including individual and his various companies, were on notice of successor trustee’s claim for a deficiency judgment following foreclosure on apartment complex built by construction limited liability company (LLC) with ties to individual and companies and were able to fully defend themselves, and thus were not unfairly surprised by deficiency judgment finding them jointly and severally liable as alter egos of the LLC, where complaint plainly stated it “seeks the entire amount of the deficiency judgment from all Defendants” under its alter ego veil piercing counts, and the issues concerning veil piercing were fully litigated at trial.

IMMUNITY - VERMONT

[Civetti v. Turner](#)

Supreme Court of Vermont - December 30, 2022 - A.3d - 2022 WL 17998536 - 2022 VT 64

Propane truck driver brought action against town and town road commissioner, seeking to recover damages for injuries allegedly sustained in rollover accident allegedly caused by noncompliant town street.

The Superior Court granted motion to dismiss for failure to state cause of action, and driver appealed. The Supreme Court reversed and remanded. On remand, the Superior Court entered summary judgment for town and commissioner on basis of qualified immunity. Driver appealed.

The Supreme Court held that:

- Commissioner's decision whether to widen the road surface of the street was discretionary, and
- Commissioner's decision was kind of town planning decision contemplated by discretionary-function exception to waiver of sovereign immunity under the Vermont Tort Claims Act (VTCA).

Town road commissioner's decision whether to widen road surface for street on which propane truck driver got into an accident after he lost control of his vehicle, causing it to roll over and come to rest on its roof, was discretionary, rather than type of ministerial act commanded by town's road and bridge standards, as required for town and commissioner to have qualified immunity from driver's negligence claims under discretionary-function exception to waiver of sovereign immunity in the Vermont Tort Claims Act (VTCA); widening roadways was an exercise of alteration and reconstruction of preexisting infrastructure, involving weighing of considerations such as cost, safety, environmental, and aesthetic factors.

Town commissioner's decision whether to alter street to increase its width was kind of town planning decision contemplated by discretionary-function exception to waiver of sovereign immunity under the Vermont Tort Claims Act (VTCA), as required for town and commissioner to have qualified immunity from driver's negligence claims, because decision necessarily implicated considerations steeped in public policy, such as safety, cost, necessity, traffic conditions, aesthetics, and environmental impact.

[The Biggest Issues to Watch in 2023.](#)

State coffers are overflowing, but inflation could put a pinch on spending plans and tax cuts. The labor market remains tight just when the demand for more teachers is skyrocketing. And then there are the ongoing culture wars. Welcome to 2023.

Regardless of any policy preferences lawmakers may have, they will face challenges in terms of achieving them in 2023 in two key ways — figuring out how much to pay and finding enough workers to implement their ideas.

Last year, state lawmakers were able to have their cake and eat it too, vigorously cutting taxes and substantially increasing spending, while still able to rack up record savings in their rainy-day funds. The good times are still around — most states are seeing surpluses — but there are reasons to be nervous. Inflation may have slowed a bit, but it's still eating into real revenue growth. And the

prospect of a struggling economy - what economist Mark Zandi is calling a “slowcession,” if not a full-blown recession — is also making some legislators wary.

Still, there’s a considerable appetite both for new spending and continued tax cuts. “No doubt, 2022 will go down in the record books as one of the most successful tax-cutting years in history,” says Jonathan Williams, chief economist at the conservative American Legislative Exchange Council. Given sizable surpluses, he expects to see more. As the year begins, there are promises of major cuts coming not only in the capitols of red states, including Iowa and Texas, but from Democratic governors in states such as Connecticut, Kansas and Wisconsin.

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governing.com

by Alan Greenblatt, Carl Smith, David Kidd, Jared Brey

Jan. 10, 2023

[Cities Are Headed for Fiscal Trouble Again, Especially if There’s a Recession.](#)

New York City’s lessons from the 1970s can help as Covid largess ends and tax receipts ebb.

Years of excess borrowing and slipshod accounting caught up with New York City in the 1970s. It would take tough choices, hard sacrifices, and a federal bailout to put the city on a sound fiscal path. To help the city emerge from its crisis, the state Legislature in May 1975 passed the Financial Emergency Act for the City of New York. The law subjects the city to increased oversight, requiring it to plan for financial shortfalls and adopt a balanced budget in accordance with generally accepted accounting principles, which require accounting for promised payments when liabilities are incurred and discourage one-time maneuvers to achieve balance.

Four months later, President Gerald Ford approved a \$2.3 billion revolving loan to help the city to pay its debts and begin its recovery. Since then—through economic booms, recessions and disasters, including 9/11 and superstorm Sandy—New York has never seen a replay of its brush with bankruptcy, and its budgeting remains as close to a model of fiscal responsibility as there is.

Despite this, no other major American state or local government has followed New York’s budgetary lead. While most state and local governments are flush with cash following an unprecedented \$5 trillion in federal Covid-19 relief spending, they are nonetheless facing an inevitable fiscal cliff, created by the one-two punch of a possible recession this year and the expiration of hundreds of billions of dollars in pandemic aid by 2026.

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The Wall Street Journal

By Richard Ravitch and William Glasgall

Jan. 11, 2023

S&P Outlook For U.S. Local Governments: Reserves And Agile Management Will Provide Stability In A Recession

Sector View: Stable

Our view reflects the local government sector's financial reserves and long history of effective responses to unexpected circumstances. Having federal stimulus money on hand prior to a recession—rather than after a long period of economic weakness—should also help operating stability for cities, counties, and school districts. We expect they will have time to respond to economic challenges before credit quality is threatened, underscoring our view of the stable nature of the sector. However, any LGs that aren't proactively managing high inflation and preparing for a weaker economy could be challenged to maintain balanced operations.

[Continue reading.](#)

[Free registration required.]

10 Jan, 2023

Analysis: State Anti-ESG Laws Could Cost Taxpayers Hundreds of Millions.

State-level efforts to penalize companies for use of environmental, social or governance (ESG) goals in investments could cost taxpayers over \$708 million, according to a [study](#) published by the nonprofit Sunrise Project.

ESG incorporates environmental and social factors into investment decisions along with traditional financial metrics. Conservative critics of the practice have argued it introduces a political agenda to what should be a purely financial decision.

Eighteen states have either proposed or passed legislation restricting the state from doing business with companies that practice ESG, and Kentucky Attorney General Daniel Cameron (R) has announced an investigation into the use of ESG in state pension funds. These bills are based on model legislation written by the American Legislative Exchange Council, a conservative nonprofit that creates draft bills for state legislatures.

In the study, researchers analyzed a Wharton School of Business paper on Texas's anti-ESG law, which linked the state law to \$532 million in higher interest payments on municipal bonds. Sunrise Project analysts extrapolated this to six other states — Florida, Kentucky, Louisiana, Missouri, Oklahoma and West Virginia — and estimated the same impacts would cost taxpayers a total of \$708 million over the past 12 months.

The range of potential additional costs varies state by state, according to the study.

Florida has both the widest range and highest ceiling, with a range of \$97 million to \$361 million. While Gov. Ron DeSantis (R) has proposed an anti-ESG rule for state pension funds and pulled \$2 billion in assets from BlackRock over its use of ESG, the state does not have a law that would specifically affect bond issuance.

“Setting aside the implications of politics interfering in financial decisions, there is the question of how removing major, proven financial companies from the marketplace will affect competition,” the authors wrote. “Restrictions on financial market participants, (and in this analysis we look at large investment banks), alter the outcomes of municipal bond market transactions and modify contractual engagements with state governments.”

THE HILL

BY ZACK BUDRYK - 01/13/23

[Municipal Debt Outlook for 2023.](#)

With 2022 in the rearview mirror, 2023 will likely see the continuation and effects of the policies and shifts initiated last year to combat things like historic inflation and the aftermath of COVID-19 pandemic.

Furthermore, 2023 will likely be a relatively tumultuous year for issuers, investors and the capital markets in general due to economic uncertainties, the Fed’s aggressive take on interest rates and political shifts ahead. With the rapid rate of interest rate hikes, many fixed income investors are sitting on hefty unrealized capital losses in their portfolio. For both issuers and investors, it’s paramount to gauge the Fed’s stance on the U.S. economy and whether we will see a downward shift in the short-term interest rates stimulating municipal debt issuances and helping investors with their unrealized losses.

In this article, we will take a closer look at what CY2023 has in store for the capital market and the U.S. economy in general.

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dividend.com

by Jayden Sangha

Jan 11, 2023

[Munis Positioned to Shine in 2023.](#)

Municipal bonds now offer yields not seen in more than a decade (aside from a spike at the onset of the pandemic). Investors need to pay attention to these higher income levels as they consider portfolio positioning for 2023. In addition to attractive yields, supportive market dynamics, resilient credit quality, and important tax benefits make munis a key asset class to own.

In the upcoming webcast, *Munis Positioned to Shine in 2023*, Michael Cohick, director of product management at VanEck; and Tamara Lowin, senior analyst, municipal bonds at VanEck, will outline opportunities in the municipal bond market and highlight strategies to help financial advisors diversify back into this fixed income category.

For example, the VanEck Vectors AMT-Free Intermediate Municipal Index ETF (CBOE: ITM) has

been a go-to option for many bond investors seeking munis exposure. ITM seeks to replicate the performance of the ICE Intermediate AMT-Free Broad National Municipal Index (MBNI), which is intended to track the overall performance of the U.S. dollar-denominated intermediate-term tax-exempt bond market.

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etftrends.com

January 11, 2023

[Cyberattack Turns Up the Heat on Common Security Problems.](#)

The ransomware attack that crippled a New York county again demonstrated the need for investment, regular updates and an enterprisewide approach to security.

A cyberattack on Suffolk County, New York, crippled county services and [resulted in](#) the leaking of personal information from hundreds of thousands of its residents late last year.

The hack, which has so far cost the county more than \$6 million in recovery expenses according to local reports, prompted Suffolk lawmakers to launch a [special legislative committee](#) to investigate its origins.

Among the departments affected was the Traffic and Parking Violation Agency. Its server was compromised by the attack and some residents' personal information may have been accessed by hackers, [county officials said](#). While systems were down, emergency responders and other services relied on pen and paper.

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Route Fifty

By Chris Teale,
Staff Reporter, GCN

JAN 10, 2023

[Green Municipal Bonds Could Take Off in 2023.](#)

Innovation is afoot in the municipal bonds market, and it comes courtesy of asset allocators' desire for more fixed income products with environmental, social, and governance (ESG) ties.

In fact, municipal bonds are ideal territory for the greenification of fixed income, underscoring the relevance of exchange traded funds such as the SPDR Nuveen Municipal Bond ESG ETF (MBNE). MBNE debuted last April and entered 2023 with \$35.11 million in assets under management — a decent tally when considering that 2022 was one of the worst years on record for the broader bond market.

However, municipal debt outperformed broader bond benchmarks last year, and that has some analysts bullish on what 2023 has in store for muni bonds, particularly high-quality fare such as what resides in MBNE. Add to that, the growth outlook for green municipal debt is intriguing.

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ETF TRENDS

by TOM LYDON

JANUARY 11, 2023

'Green Banks,' Poised for Billions in Climate Funds, Draw States' Attention.

In recent years, several states have created or helped to fund specialized banks that lend money to homeowners and businesses for energy-saving and climate projects. Now, states have billions more reasons to establish such institutions, known as green banks.

Congress last year approved a Greenhouse Gas Reduction Fund of \$27 billion, largely to pour money into green banks and similar financial institutions. Newly established green banks from Nevada to Illinois are readying for federal support that could supercharge their efforts, while bipartisan leaders in places such as New Mexico and Alaska are pushing to create their own state green banks.

“Everybody is interested in green banks now,” said Reed Hundt, CEO of the Coalition for Green Capital, a climate-focused nonprofit that has spearheaded such efforts across the country. “[The federal funding] is adding a lot of oomph. Nobody should get left out.”

Green banks provide financing to support climate-friendly projects, often focusing on energy savings and solar generation in residential and commercial buildings. Such projects have struggled to obtain capital from traditional financing institutions.

Like conventional banks, green banks provide loans that must be repaid, but they often offer long-term, low-interest loans that aren't available on the private market. Some use other tools to lower risk for private lenders or to finance projects in partnership with utilities.

Green banks can be public, quasi-public or nonprofit institutions. Several green banks have been established by state lawmakers, governors or agencies, often with some level of state funding. Many state-level green banks have focused much of their work in low- to moderate-income communities, which have the greatest need for energy upgrades and the least access to financing.

Many green banks use public funding to attract much greater amounts of private investment, using tools such as a loan loss reserve to lower risks (and therefore interest rates) for traditional lenders. Such banks use a wide variety of financial mechanisms to back an even wider variety of projects.

“Green banks principally are about taking a limited amount of public money and turning it into multiples of private investment,” said Bryan Garcia, president and CEO of the Connecticut Green Bank, which became the nation's first state-level green bank in 2011.

The Connecticut Green Bank has used \$322 million, primarily from a state ratepayer fund, to attract nearly \$2 billion in private investment. Its tools include a loan fund to promote residential solar

installations in low-income communities, a bond program to promote solar deployment and a credit enhancement reserve that allows local lenders to provide low-interest loans to homeowners for energy efficiency upgrades.

Energy Efficiency

Even as states work to include more clean energy in their supply, experts say efficiency programs to reduce energy demand are just as essential.

Most green banks have focused their efforts on helping homeowners and businesses reduce energy use by lending money to replace furnaces with heat pumps, install efficient air conditioners and upgrade insulation and windows. Many also support rooftop solar and battery storage projects.

“The majority of our work is basic equipment you need to make your house feel comfortable and save money on your energy bills,” said Mary Templeton, president and CEO of Michigan Saves, a nonprofit green bank that has received some state funding. “We really want to fill gaps in the marketplace and help residents and business owners pay for their loans with their energy savings.”

Green bank officials say many of their projects also help to lower energy costs for residents and businesses, while putting local contractors to work.

“There has long been a disconnect between the capital needs for energy projects in this country and the proper type of capital to match with that,” said John Harris, director of finance with the Missouri Green Bank.

The success of early green bank programs has prompted more states to follow suit in recent years.

“The most crucial thing we can be doing environmentally is figuring out how we can finance this transition,” said Colorado state Rep. Alex Valdez, a Democrat who sponsored legislation in 2021 that established the Colorado Clean Energy Fund.

The fund, created with an initial state investment of \$30 million, offers loan programs to help residents and businesses install clean energy and energy efficiency upgrades.

Federal Funds

Other states are considering green bank proposals, with the newfound federal funding adding urgency to the conversation.

“States are looking to hop on the train if they don’t have a green bank, because otherwise, that money doesn’t have a clear place to go in the state,” said Ava Gallo, climate and energy coordinator with the National Caucus of Environmental Legislators, a collaborative forum for state lawmakers.

Lawmakers in New Mexico are crafting green bank legislation at the urging of the Coalition of Sustainable Communities New Mexico, a group of local governments aligned to support climate policies.

“It’s critically important for us to stand up a vehicle now that can receive some of those federal funds,” said Beth Beloff, the group’s executive director. “It would be a huge lost opportunity [if the state failed to establish a green bank].”

Alaska Gov. Mike Dunleavy, a Republican, has pushed lawmakers to establish a green bank, and agency officials in South Carolina have explored the potential for a green bank in recent years.

Nevada lawmakers established a green bank in 2017, but didn't fund it until 2021, when the prospect of federal money emerged.

"It's pretty critical in Nevada to have this capacity right now with all of the federal funds that are becoming available," said Kirsten Stasio, CEO of the Nevada Clean Energy Fund. "It's a huge advantage."

The federal Greenhouse Gas Reduction Fund, created under the Inflation Reduction Act of 2022, includes \$20 billion to support financial and technical assistance for projects that cut emissions, with \$8 billion of that designated for low-income and disadvantaged communities.

That fund will serve as a national green bank and is expected to distribute funding to existing green banks throughout the country. Leaders of state green banks say they expect the U.S. Environmental Protection Agency to provide funding details next month.

"This is going to be completely game-changing and help us put our program on steroids," said Doug Coward, executive director of the Solar and Energy Loan Fund, a Florida-based nonprofit green bank known as SELF that operates in four states.

SELF has financed about \$31 million in projects, focusing on helping low-income homeowners replace inefficient air conditioners, water heaters, roofs and insulation. Such upgrades can help residents make their homes better candidates for solar projects.

Hundt, with the Coalition for Green Capital, said several other states have reached out to his group with growing interest.

More than 20 green banks currently operate throughout the country. Some are within state agencies, while others work at the city or county level. Nonprofit green banks sometimes receive state funding and policy backing, while others have no ties to their state government. The Coalition for Green Capital estimates that its members have provided about \$2 billion to finance clean energy projects while attracting another \$7 billion in private capital.

The initial outlay from the new federal fund, combined with the private capital it's likely to attract, could trigger as much as \$250 billion in climate investments by 2035, Hundt said.

Success Stories

Established green banks say their successes should prompt more states to follow suit.

"The clean energy projects pay for themselves," said Jeff Diehl, CEO and executive director of the Rhode Island Infrastructure Bank, which was established as a clean water program decades ago but has taken on energy and climate authorities in recent years. "The energy that's being created through renewable assets or money that is saved through energy efficiency upgrades pays for the financing."

The bank finances projects that include water infrastructure, transportation, clean energy, climate resiliency and brownfield remediation.

In Illinois, lawmakers passed legislation in 2021 to designate the Illinois Finance Authority as the state's climate bank, while Maryland lawmakers established a Climate Catalytic Capital Fund last year.

The Hawaii Green Infrastructure Authority, established in 2014, has helped residents install rooftop

solar panels, which has allowed them to shrink their utility bills even as energy costs have soared. It also has created a program to allow renters to pay for energy upgrades with a charge on their utility accounts.

“We try to leverage financing mechanisms that mitigate risk and invite private capital in,” said Gwen Yamamoto Lau, the bank’s executive director.

The Pew Charitable Trusts

By Alex Brown

January 9, 2023

[How Two Years of Federal Funds Are Being Used by States.](#)

CARES. ARPA. IIJA. These bills and more have put billions into the state and local government market. We break down the major federal funding packages and how they’re being put to use.

Since the pandemic began, the U.S. government has passed four laws that approve spending \$7.6 trillion in pandemic relief, infrastructure investment and economic stimulus.

When the U.S. Congress passed the Coronavirus Aid, Relief and Economic Security (CARES) Act in March 2020, it was the largest spending bill ever passed by the federal government, allocating \$2.2 trillion in economic stimulus money. In December of that year, Congress broke that recently set record with a consolidated appropriations package that totaled \$2.3 trillion, made up of \$1.4 trillion in routine funding and \$900 billion in economic stimulus. A few months later, in March 2021, Congress passed the American Rescue Plan Act (ARPA), which authorized \$1.9 trillion in stimulus. And in November 2021, they passed the \$1.2 trillion Infrastructure Investment and Jobs Act (IIJA).

To illustrate the scale of this spending, it is roughly equivalent to 30 percent of the gross domestic product (GDP) of the United States, a little bit over twice the GDP of India and equivalent to the combined GDP of the world’s 147 poorest countries, using the latest figures from the International Monetary Fund’s World Economic Outlook.

[Continue reading.](#)

governing.com

by Andrew Adams

Jan. 11, 2023

[Mass Teacher Exodus Weighs Down State, Local Jobs Recovery.](#)

- **Local education payrolls are down 3% since February 2020**
- **Teacher shortage may have serious ramifications for economy**

Overall, the US job market ended 2022 at a near record for growth but one area in particular underscores how some parts of the economy still lag far behind pre-pandemic levels.

State and city payrolls have only recovered 70% of the jobs lost during the pandemic in December, trailing the broader economic rebound. The slow crawl is largely due to one industry — education — making up more than half of the jobs lost. As K-12 teachers grapple with post-Covid burnout and low pay, there has been a mass exodus of educators, leaving school districts with mounting vacancies to fill.

“Some can’t find enough willing bodies to take the jobs,” Mikhail Foux, head of municipal strategy at Barclays Plc., said. “For this sector, these people are not coming back.”

[Continue reading.](#)

The Wall Street Journal

By Carrington York

January 12, 2023

Fitch: Investment Value Declines Erode Not-for-Profit Hospitals’ Liquidity

Fitch Ratings-Austin/New York-10 January 2023: Not-for-profit hospitals’ financial reserves have declined from 2021 peaks as a result of investment losses and increased liquidity demands to cover rising expenses, Fitch Ratings says. Not-for-profit hospitals generally have strong liquidity relative to debt repayment obligations and business risk, but recent unrestricted liquidity erosion is expected to bring balance sheet metrics more in line with pre-pandemic historical averages. Lower liquidity and lower operating margins could begin to have a negative effect on hospitals’ credit profiles. As part of its rating analysis, Fitch assesses the size and allocation of a hospital’s combined cash and investment portfolio to determine how cyclical market changes affect liquidity.

Equity markets appreciated meaningfully in 2021, pushing liquidity to all-time highs, with the median days’ cash on hand reaching 260 days. Cash and investment portfolios have provided a significant rating cushion and helped hospitals weather significant operational challenges in 2022. This cushion has diminished with lower portfolio values as a result of market declines, causing key liquidity metrics to soften relative to an especially strong 2021.

Operating margins have compressed over the past year due to cost inflation, particularly staffing, and weaker liquidity will mean operations may have even less flexibility to address higher expenses. While cashflow generation may mitigate portfolio declines and bolster key leverage metrics, the expectation of continued expense pressures in 2023 may constrain cashflow generation. Health systems with comparatively weaker balance sheets for the rating category are more likely to face negative rating pressure in the current environment.

Higher-rated credits generally have stronger balance sheets, with cash to adjusted debt of 249.1% for ‘AA’ category credits, versus 102.3% for ‘BBB’ category credits (based on our 2021 medians). Higher-rated credits also tend to be larger, scaled systems with competitive positioning that mitigates balance sheet compression if investment performance weakens. While not as common, smaller organizations may have large financial cushion indicative of high-investment-grade ratings that may afford more flexibility to withstand higher asset volatility in investment portfolios.

While alternative investments can be part of a wider investment strategy, non-fixed-income asset classes have increased as a percentage of highly rated issuer portfolios over the past few years in the search for yield. An aggressive portfolio allocation is likely to result in more balance sheet volatility in a stressed economic environment.

Fitch conducts a sensitivity analysis on a hospital's investment portfolio using our portfolio analysis model (PAM) to assess changes in portfolio value, and therefore liquidity, through a typical economic cycle. Because our ratings reflect normal cyclical valuation changes, plausible market declines on their own should generally not affect ratings. The estimated portfolio value changes are considered in our analysis of an issuer's balance sheet to determine financial resiliency to market declines. Sustained declines beyond our expectations could result in negative rating action for credits with already weak liquidity.

PAM assesses the expected return and volatility of an issuer's portfolio by asset class, according to issuer specific return estimates in a base case and stress case, based on historic market return assumptions, and the percent of an issuer's holdings for those asset categories. The model then combines the results with operational scenarios and capital spending estimates, to generate an estimate of overall portfolio value over the course of five years.

Over the past few years, median investment income has been generally around 2% of revenue, measured as operating revenue and non-operating gains, for all Fitch-rated NFP hospitals. Overall, median investment income as a percent of total revenue and of EBITDA is generally higher for higher-rated entities due to larger balance sheets and investment portfolios. Conversely, median investment income as a percent of net income goes up as we move down the rating scale, as net income from operations is generally weaker at lower ratings.

For more information, please attend Fitch's 2023 Outlook - Not For Profit Hospitals discussion. Registration information can be found at events.fitchratings.com/2023outlooknotforprofithospitals

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[Take Advantage of the CDFA Community Facilities Technical Assistance Program.](#)

The CDFA Community Facilities Technical Assistance Program brings together CDFA's knowledge of

development finance programs, along with the strategic support from private sector partners, to create a transferrable toolkit of finance programs and other resources capable of leveraging community facilities infrastructure in rural communities throughout the nation. This program includes resources accessible to every rural community, including a Rural Finance Resource Center, Rural Finance Newsletter, and Rural Finance Toolkit, along with targeted technical assistance support to six rural communities.

CDFA has worked with the USDA to develop an innovative technical assistance approach to support rural communities that have recently experienced a natural disaster. The goal of this program is to help rural communities utilize the USDA's Community Facilities Program along with identifying other potential development finance tools to aid in the rebuild and recovery after a natural disaster.

Key program elements include:

Community Technical Assistance

CDFA will provide technical assistance to communities from a dedicated team of two-three development finance experts. The selected communities will receive one on-site visit to discuss how the USDA Community Facilities Program can be used, a roadmap outlining recommendations and potential next steps, and ongoing support to apply for the USDA's Community Facilities Program. Eligible communities must have a population of no more than 20,000 and have a Major Disaster Declaration from the Federal Emergency Management Agency (FEMA) for hurricanes or wildfires in 2018 or floods or tornadoes in 2019. CDFA maintains a list of eligible states and counties for this program, and rural communities are encouraged to contact CDFA to determine eligibility.

[Apply for Technical Assistance](#)

Rural Finance Toolkit

The Rural Finance Toolkit is a printable guide that provides rural communities with an easy-to-use, best practices resource on development finance tools.

Rural Development Finance Resource Center

The Rural Development Finance Resource Center is a searchable online tool available on the CDFA website to learn about rural development finance programs at the federal, state, and local levels, as well as resources and best practices from communities.

[View Rural Development Finance Resource Center](#)

Rural Finance Newsletter

The Rural Finance Newsletter is a periodic newsletter covering the latest headlines, developments, best practices and case studies related to development finance initiatives in rural communities.

[View Rural Finance Newsletter](#)

Rural Development Finance Webinar Series

The CDFA Rural Development Finance Webinar Series is a three-part series providing information and best practices about financing tools and programs specifically targeted for rural communities. View the webinar recordings below:

- [Financing Disaster Resiliency in Rural Communities](#)
 - [Assembling Capital for Rural Development](#)
 - [Best Practices for Rural Development Finance Agencies](#)
-

Fitch: U.S. Gateway Airports to Benefit from Lifting of China Travel Restrictions

Fitch Ratings-Austin/New York-12 January 2023: The lifting of China's Covid-19 travel restrictions will boost international air travel, accelerating air traffic recovery and buttressing revenues at select U.S. major-hub international gateway airports such as Los Angeles, San Francisco and New York that have established operations across Asian markets, Fitch Ratings says.

In a sharp policy reversal, China announced at the end of December that it was eliminating almost all international travel restrictions and quarantine requirements put in place to contain Covid-19 outbreaks. China's reopening in January follows similar relaxing of travel restrictions in other Asian countries in late 2022 and essentially ends the last Covid-related restriction on a major global travel market. Before the pandemic, China travel typically represented just a low to mid-single-digit percent of gateway airports' respective total passenger levels. Still, the growth potential is strong given the building economic ties and leisure-oriented demand.

China's underlying travel demand is diverse, and the reopening underway is expected to benefit both business and leisure travel. This combined demand should be a growth catalyst to large hub airports with sizable business and international travel segments and whose air traffic recovery has previously lagged domestic-focused, regional airports reliant on leisure travel. Increased China travel will add to airports' operating revenue base through greater gate and landing fee revenue and concession spending, solidifying international gateway airports' finances and supporting credit at current rating levels. International airlines usually pay considerably higher fees to airports than domestic airlines.

Full China air traffic recovery to the U.S. will likely take one to two years before the resumption of normal organic growth, consistent with recovery timeframes for other global regions when travel restrictions eased following Covid-19 lockdowns. In most cases, international markets that reopened in early 2021 have nearly recovered to pre-pandemic levels heading into 2023. News reports indicate that the Civil Aviation Administration of China would like passenger traffic to grow to 75% of pre-pandemic levels this year.

Prior to the pandemic, the trend in Asia travel growth was positive, with the leading U.S. gateway airports gaining Asian destinations and flight frequencies. U.S. domestic and foreign-flag operators increased scheduled services. Specific to China, U.S. gateway airports typically supported service from three to five Chinese-based carriers, with operations on a daily or several times per week basis.

China, along with other Asian countries such as Japan, South Korea and Taiwan, are key sources of international traffic for several U.S. international gateway airports, particularly Los Angeles International (LAX; AA/AA-/Stable), San Francisco International (SFO; A+/Stable), and John F. Kennedy's (JFK) privately operated international terminals, which have the largest share of Asia traffic of all U.S. airports.

For SFO, one of the largest North American gateways to Asia, international traffic is traditionally around 25% of its total traffic, of which Asia is 40%. Asia-region traffic at SFO had only recovered to 22% of 2019 levels in FY22 (ending June 30), but is expected to roughly triple in FY23. In FY19, Hong Kong, China accounted for 3.7% of SFO's international origination and destination passenger bookings, second only to the greater London region airports with 5.5%.

Based on TSA screenings, overall air traffic in the U.S. recovered to 90% of 2019 levels for calendar year 2022. We have a neutral sector outlook on U.S. airports for 2023 based on our expectation of mild volume growth, with full recovery to 2019 levels expected by 2024.

For more information, please attend Fitch's 2023 Outlook - US Transportation discussion. Registration information can be found at events.fitchratings.com/2023outlookustransportation.

[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 U.S. Transportation Infrastructure 2023 Activity Estimates Show Air Travel Likely To Fully Recover, With Transit Ridership Still Lagging.](#)

Key Takeaways

- Although we expect U.S. air travel, as measured by passengers, will return to pre-pandemic levels in 2023, evolving remote or hybrid work practices and other factors will continue to drag on the recovery in public transit ridership compared with other U.S. not-for-profit transportation infrastructure asset classes.
- Our updated activity estimates reflect the effects of expected recessionary pressures in 2023.
- Our baseline activity estimates show public transit recapturing about 70% of pre-pandemic activity by the end of 2023 and only about 85% by the end of 2026; and U.S. systemwide enplanements returning to near pre-pandemic levels in 2023.
- Our downside activity estimates show public transit ridership returning to only 80% of pre-pandemic levels by the end of 2026, and U.S. systemwide enplanements still returning to near pre-pandemic levels in 2023.

[Continue reading.](#)

9 Jan, 2023

[S&P Outlook For U.S. Not-For-Profit Transportation Infrastructure: COVID In The Rearview Mirror, Yet Transit Stuck In Second Gear](#)

Sector View: Stable Except For Mass Transit, Which Is Negative

Our view of business conditions and credit quality across the U.S. not-for-profit transportation infrastructure sector in 2023 is stable for airports (and related special facilities), toll roads, ports, parking and all federal grant-secured credits. We have revised our sector view for mass transit to negative from stable to reflect financial pressures facing operators with a historical reliance on fare

revenues, and other headwinds.

[Continue reading.](#)

11 Jan, 2023

How Better Payment Systems Can Improve Public Transportation.

SUMMARY

America's payment system is transforming as methods of transacting digitally grow. Digital transactions offer the opportunity to move money faster, cheaper, and more conveniently for customers and businesses. Digital transactions can also unlock new methods for businesses to operate; the online economy is only possible because of online payments.

Our current payment system has solved one set of challenges to unlock the new economy, but the system causes significant problems for others. The current system has a cost structure that is expensive for digital micro-payments, which are small dollar payments. Furthermore, digital payments require accessing digital currency which is easy for the wealthy but can be expensive for those with less income. Finally, digital payment acceptance is fragmented, cumbersome, and slow, creating delays.

These problems form a perfect storm when it comes to transit agencies. Public transit has a large share of low-dollar, high-volume payments. Transit agencies face unique challenges in adapting their fare payment systems to best meet the needs of riders while simultaneously solving concerns regarding user ease, speed, interoperability, and costs. Public transit is generally funded by a combination of user fees and subsidies by multiple levels of government. Federal, state, and local governments have all embraced public transit to serve multiple goals of providing basic mobility, supporting equity, catalyzing economic growth, and creating a more sustainable transportation system. The federal government's recent infrastructure legislation is a historic investment in transit that provides transit agencies a unique opportunity to improve payment collection systems. To achieve this, payment systems have to become more efficient and effective for low-dollar, high-volume transactions, a key characteristic of transit fare payments.

Enhancing payment efficiency for low-dollar, high-volume payments offers benefits beyond public transit as America's infrastructure and mobility methods rapidly evolve. Electric vehicle charging, e-bikes, scooters, tolls, and even traditional parking meters have moved into digital payments, which, similar to transit, often result in low-dollar, high-volume transactions. Transportation technology is rapidly evolving in a direction that involves greater use of micro-payments which exposes many problems in America's payment system.

A payment is comprised of two parts: the transfer of money and the information necessary to conduct that transfer (e.g., who is paying whom, how much, from where, and when). While the information necessary for a payment often goes through non-bank firms, the settlement of money is currently bank-centric with most funds flowing through financial institutions. Non-bank companies, including technology firms providing card systems, messaging firms providing information services, and processing firms, have played critical roles in managing the flow of information and the methods in which payments are transacted, although increasingly, they are also participating in the flow of funds.

[Download the full paper.](#)

The Brookings Institution

by Aaron Klein

January 9, 2023

[Housing Programs Nationwide See Big Infusion of Earmark Cash.](#)

The largest increase for housing and community development in the latest federal spending bill came from earmarks, where lawmakers direct funding to specific projects in their states.

People have been moving away from parts of Columbus, Mississippi, in recent years, leaving behind empty houses with sheets of plywood covering doors and windows.

The city's mayor, Keith Gaskin, said in an email that about 2,300 homes—or nearly a fifth of the homes in the city—are now sitting vacant, creating what he described as urban blight that's increasing crime and reducing property values for people who have stayed behind. "Our declining population has slowly changed the appearance of our community," he said.

Meanwhile, nearly 1,000 miles to the northeast, the Riverside neighborhood in Wilmington, Delaware, is dealing with similar struggles that, according to community activists there, reflect systemic racism and the nation's legacy of discriminatory housing policy.

[Continue reading.](#)

Route Fifty

by Kery Murakami

JAN 10, 2023

[EPA Unveils \\$100 Million in Environmental Justice Grants.](#)

The Environmental Protection Agency announcement is part of a larger effort by the Biden administration to fight climate change and curb environmental harm in long-neglected communities.

The U.S. Environmental Protection Agency invited states, cities, community organizations and tribal nations Tuesday to apply for \$100 million in federal grants to advance environmental justice initiatives.

The funds, provided under last year's landmark climate package, will be administered across two programs and represent "the largest investment for environmental justice grants ever offered" by the agency, EPA Administrator Michael Regan said in a call with reporters.

The funding advances the Biden administration's Justice40 initiative, which aims to direct 40% of overall benefits from certain federal investments toward long-neglected communities that often bear the brunt of the health and environmental fallout from industry and climate change.

[Continue reading.](#)

Route Fifty

by Molly Bolan

JAN 10, 2023

[Major Hurricane Ian: How Good Is Your Climate Risk Model? - Moody's](#)

As the need to understand climate risk grows ever more urgent, asset managers, lenders, corporates, and businesses all need to be confident that their climate risk models can capture the complexity of climate and weather events - in order to satisfy their regulators, boards, and shareholders.

[Moody's Climate on Demand](#) has led the way in the provision of climate risk analytics, and during 2023 this innovative solution will deliver new risk metrics that capture the financial impacts of climate risk by integrating the expertise of Moody's RMS market-leading climate risk modeling capabilities.

But how can users distinguish what makes a good climate risk model versus an inadequate one? Let's take the case study of Hurricane Ian in 2022 to examine how well a climate risk model can reflect the reality and complexity of climate and weather events both now and in the future.

Major Hurricane Ian was an extremely large and devastating "all perils" Category 4 hurricane that struck Florida in September 2022 and will be ranked as one of the costliest hurricanes to ever affect the U.S.

Its size and intensity brought significant damage to Florida's manufacturing, agriculture, tourism, and distribution sectors. Transportation continues to be affected months after as infrastructure is repaired, and the cost of property repairs will be one of the highest ever - and not all will be covered by insurance.

To accurately model the impact of extreme weather events such as Hurricane Ian and how they will change in the future requires a tried-and-tested, sophisticated and multi-dimensional approach.

Only Moody's RMS delivers forward-looking climate risk models which combine best-in-class catastrophe models from the (re)insurance industry together with climate model outputs and the latest peer-reviewed scientific consensus. This helps capture the full range of possible events and their impacts that can occur now and in the future.

Impact of Hurricane Ian

Ian was the latest in a series of hurricanes that rapidly intensify immediately before landfall, bringing extensive rain and flooding across Florida on top of severe wind and storm surge damage in the landfall area; all trends which are expected to continue due to climate change.

Storms such as Ian in 2022, Ida in 2021, Harvey and Irma in 2017, Sandy in 2012, Ike in 2008, and Katrina in 2005 show the importance of utilizing climate risk models which account for all drivers of impact across multiple hazards.

The models can then establish the impact of these hazards on different asset types, and incorporate the current background of economic stress and inflation, the amplifying effects of extensive infrastructure damage on business interruption and downtime, together with the compounding effect on the overall loss from the many assets and businesses all being affected at the same time across the state.

Moody's RMS models account for all these factors due to our physical climate risk modeling framework which has led the way in assessing the financial impacts of physical climate risk for the past 30 years in the (re)insurance industry.

These models are now being embraced by other sectors, which recognize that understanding the impact of events such as Ian requires the use of sophisticated risk models which capture the complexity of weather events and how climate change will affect them in the future.

By climate conditioning our catastrophe models and re-simulating the hazard to account for future climate impacts, for example, sea level rise, ocean waves, and coastal flooding, our climate risk models bring the best of both worlds to the industry.

While Ian made landfall in a similar area as Hurricane Charley in 2004, the storm was more than double Charley's size with four times the destructive potential^[1], making Ian's impacts significantly more material and demonstrating the impossibility of predicting future damage from past storms.

Moody's RMS models account for the full range of possible hurricanes that can strike the U.S. in terms of location and strength, and how climate change may affect these factors in the future. In addition, our impact scores and financial loss metrics account for all aspects of hazard, such as the impacts of tornadoes, rainfall ingress through damaged roofs, and wind-blown debris as well as the major driving factors of wind, storm surge, and flooding.

As well as catastrophic damage to properties, Ian caused destruction to large amounts of infrastructure such as roads, bridges, and power networks. More than 2.6 million people were without power across Florida following the storm's landfall.

The considerable infrastructure damage, particularly in the hardest-impacted areas like Fort Myers and Cape Coral, will slow down the recovery and increase repair costs and losses, especially for islands disconnected from the mainland due to bridges and piers being washed out, such as Sanibel Island. The full recovery could take a few years in these areas, and some businesses and residents may never return, as witnessed after Hurricane Katrina hit New Orleans in 2005.

On top of such a destructive hurricane, the impact of recent inflationary trends will further increase losses. Shortages of materials, qualified contractors, and insurance claims adjusters in Florida add to the near-record inflationary trends being experienced in both the domestic and global economy.

The level and extent of disruption to water, sewage, and electricity supplies, extensive infrastructure damage, and delayed repairs due to residents unable to return to the area, all start to drive long-term consequences.

A loss of income for businesses and increased costs for residents who have to move elsewhere for weeks and months, means they are unable to start the process of repair and recovery. RMS modeling accounts for the various ways in which these costs and losses escalate within a major

catastrophe through economic demand surge and super-catastrophe compounding effects.

The repair and recovery from Ian will take many months, and for some, years. However, what is clear is that without a deep understanding of all the drivers of impact and loss, you may be underestimating the risk of such events in the future.

Moody's

by Claire Souch

January 09, 2023

[Bond Markets Flash Warning About Environmental Catastrophes.](#)

Investors in the \$35 billion catastrophe bond market are demanding the highest premiums in years to cover issuers against disasters, as weather events become more extreme while interest rates rise.

Margins on new issuances of catastrophe bonds covering US wind events are now at the highest since 2019, at 5.3%, according to a report from reinsurance broker Gallagher Re. For other risks the premiums offered are at the highest since at least 2017.

The rise in margins comes after disasters including Hurricane Ian — the costliest storm for insurers since Katrina — saddled catastrophe bond holders with losses last year. An index by reinsurer Swiss Re AG which tracks the total return of such bonds, also known as cat bonds, tumbled 10% after the hurricane struck, causing devastation along the coastline of Florida.

And unfortunately for cat bonds, the hurricane, along with other natural disasters, happened during a year when global central banks hiked interest rates aggressively to combat soaring inflation. That means that safe corporate bonds now offer a yield of 5% globally, and come without complex risks like flooding and volcanoes to consider.

“Extreme weather events have led to high insured losses in 2022, underpinning a risk on the rise and unfolding on every continent,” Martin Bertogg, head of catastrophe perils at Swiss Re, wrote in a recent report. “When Hurricane Andrew struck 30 years ago, a \$20 billion loss event had never occurred before - now there have been seven such hurricanes in just the past six years.”

Catastrophe bonds are issued to backstop risks that could include anything from natural disasters to lapses in the judgment of Credit Suisse Group AG's risk managers. The instruments generally have short maturity dates and promise returns to investors outside of the insurance industry by taking on the risk that their principal could be wiped out by a severe event. The value of such bonds outstanding last month was around \$35 billion, according to Gallagher's report.

Rising interest rates might also affect issuance in the cat bond market this year, according to DBRS Morningstar.

“In an environment of higher interest rates, the cat bond market is going to have a tough time,” said Marcos Alvarez, head of insurance at DBRS Morningstar. At least \$10 billion worth of cat bonds have been issued each year since 2017, but that number will probably fall this year, according to Alvarez. Some deals failed to materialize last year, with issuers turning to traditional reinsurance instead, he said.

Natural catastrophes caused at least \$115 billion of insured losses in 2022, well above the average over the last ten years and including an estimated insured loss of up to \$65 billion from Hurricane Ian alone, according to Swiss Re's report. That adds to a longer-term trend of an estimated 5% to 7% annual increase in insured losses over the past decade, the reinsurer said.

The increasing threat of losses from disasters make issuing new cat bonds all the more important for the insurance industry, but it might be difficult to find enough investors.

The Cat bond pipeline is "quite strong" into 2023, Gallagher said in its report. However, demand constraints "may make it difficult for some of the deals to succeed."

Bloomberg Markets

by Lucca de Paoli and Tasos Vossos

Tue, January 10, 2023

[Reinsurers Defend Against Rising Tide of Natural Catastrophe Losses, for Now.](#)

Severe weather events are happening more often. Recently in the US, atmospheric river storms have been battering Northern California with heavy precipitation, major flooding, fierce winds and mudslides. These followed December's deadly winter storm Elliott, whose heavy snowfall, powerful winds and extreme cold temperatures caused estimated insured losses of approximately \$5.4 billion according to risk modeler Karen Clark and Co.

Climate change, which has led to increased frequency and severity of weather-related natural catastrophes, also poses a significant risk to insurers and reinsurers. Global insured natural catastrophe losses have averaged about \$100 billion over the past five years. Reinsurers in particular are feeling the heat as they accumulate losses from primary companies. To counter this, many are raising prices, limiting coverage and even exiting some markets to improve returns.

Economic losses from natural catastrophes rise across the globe

Cumulative natural catastrophes that caused \$1 billion or greater in damages

[Continue reading.](#)

SPECIAL REPORT BY MOODY'S INVESTORS SERVICE

Jan. 10, 2023

[Market Losses Deal Heavy Dent to State and Local Pensions.](#)

Last year saw unfunded liabilities for the nation's largest public retirement plans climb by roughly a half-trillion dollars.

The market turmoil of 2022 was tough on public pension plans. Following record investment gains in

2021, most top state and local retirement systems saw nearly half of those earnings wiped away, according to the New York-based nonprofit Equable Institute.

The group's year-end [report on the state of pensions in 2022](#) found that the average funded ratio for state and large municipal plans declined from 83.9% in 2021 to 77.3% in 2022, based on available data through Dec. 31.

The market forced the funds' unfunded liabilities to climb to \$1.45 trillion last year, a roughly half-trillion dollar increase from 2021 in the gap between assets and what's owed to retirees in the years ahead.

[Continue reading.](#)

Route Fifty

By Elizabeth Daigneau,
Managing Editor, Route Fifty

JAN 12, 2023

[A Small City's Descent Into Bankruptcy.](#)

“By far the worst that we have encountered,” is how one person involved in resolving the fiscal mess described it. This first article in a three-part series, looks at how the troubled city's situation resembles another municipal bankruptcy about a decade ago.

Welcome back to the Route Fifty Public Finance Update! I'm Liz Farmer and this week's newsletter will be the first in a three-part series about Chester, Pennsylvania, a small city outside Philadelphia that filed for bankruptcy late last year. We'll start off by looking at how the situation in Chester compares to another Chapter 9 bankruptcy that took place about a decade ago. But first, here's the backstory.

Chester is an old city with a long history of manufacturing due to its location along the Delaware River. In fact, a marker in the city along the river commemorates the site where William Penn first landed in 1682. Its former courthouse was built in 1724 and is the longest continuously-used public building in the country. In the late 1800s, textile mills gave way to factories and by the mid-20th century, more than 66,000 people lived in Chester. During World War II, the shipyard along the Delaware River was home to 28 ship bays and employed 36,000—greater than the entire population of the city today.

[Continue reading.](#)

Route Fifty

by Liz Farmer

Jan 10, 2023

[Average Funded Status of Local, State Retirement Systems Declined 6% in 2022.](#)

Coming off a strong 2021, the economy was hit hard last year, making it difficult for administrators to effectively manage retirement system and pension fund assets. The average funded status for the top state and local retirement systems dropped by a little more than 6 percent in 2022, according to a research brief from the nonprofit Equable Institute, "[The State of Pensions 2022: Year End Update.](#)"

"Fortunately, the investment losses in 2022 didn't wipe out all the funded status gains from 2021. Unfortunately, the sharp losses this year have exposed—yet again—the lack of resilience plaguing many public pension plans," the report reads. "Once all public pension plans release their 2022 data, we estimate that the combined funded status for the top state and local retirement systems will be 77.3%."

Driven by poor investment returns, the pension funding shortfall increased nationally to \$1.4 trillion during 2022 after dipping below \$1 trillion in 2021. A pension's funded ratio reflects its financial health. Pension plans with a funded ratio above at least 80% are considered healthy.

[Continue reading.](#)

americancityandcounty.com

Written by Andy Castillo

9th January 2023

[The Case for More Federal Oversight of State and Local Budgets.](#)

An influential good government group is calling for tighter standards and is out with new recommendations for how Congress and regulators can begin taking action.

Hundreds of billions of dollars for pandemic recovery, infrastructure projects, economic development and climate programs that Congress and President Biden have approved for states, cities and counties during the past two years has drawn a great deal of attention.

But even before the Covid-era spending boom, the federal government was directing more than a \$1 trillion annually in grants and tax incentives toward states and localities, as a new report from the nonprofit Volcker Alliance points out. Despite that degree of financial aid, the authors of the report argue that Congress and presidential administrations have "demanded surprisingly little in continuing, high-level oversight" of state and local budgeting and borrowing.

The report goes on to make a case for why it's time for lawmakers and regulators to tighten up standards around state and local government finance, and it offers recommendations for how they can go about it.

[Continue reading.](#)

Route Fifty

By Bill Lucia

JAN 9, 2023

[Tax Credit and Grant Opportunities in the Inflation Reduction Act.](#)

On Aug. 16, 2022, President Joe Biden signed the \$750 billion Inflation Reduction Act (IRA) into law. Originally introduced as the Build Back Better Act in September of 2021, this cornerstone of the Biden legislative agenda was whittled down due to disagreements within the Democratic caucus. As recently as early July of last year, any deal was considered dead in the water. However, on July 27, 2022, a surprise deal was announced that involved numerous tax provisions, including \$370 billion in energy security and climate investments, as well as \$300 billion of tax increases set aside for deficit reduction.

While full guidance of all of the bill's provisions has not yet been released, now is the time for interested industry members to engage in the possible benefits, many of which will come in the form of tax credits.

Of the nearly \$370 billion in climate-related incentives in the bill, \$270 billion will be delivered to eligible entities through tax subsidies. Already, the Internal Revenue Service (IRS) has begun accepting comments on how to implement these provisions and has received a higher than normal number of submissions (to read more about some of these requests for comment, please see Brownstein's analysis [here](#)). This underscores how heavily the federal government will rely on industry and stakeholder feedback to carry out these new tax provisions, as many of the details that will inform how the clean energy credits should work are outside of the agency's usual scope and require industry-level knowledge.

[Continue reading.](#)

Brownstein Hyatt Farber Schreck LLP - Harold Hancock, William J. McGrath and Grace F. Saunders

January 10 2023

TAX - TEXAS

[Hegar v. Sirius XM Radio, Inc.](#)

Court of Appeals of Texas, Austin - November 10, 2022 - S.W.3d - 2022 WL 16858017

Taxpayer, a provider of subscription-based satellite radio programming, filed action against Comptroller of Public Accounts to recover state franchise taxes paid under protest.

Following a bench trial, the District Court signed judgment in favor of taxpayer. Comptroller appealed and taxpayer cross-appealed, and the Austin Court of Appeals reversed and rendered. Taxpayer petitioned for review, and the Supreme Court Phrase "fair value," as used in former Comptroller's rule providing that if services are performed both inside and outside Texas, then such receipts are Texas receipts on the basis of the fair value of the services that are rendered in Texas, means monetary worth of services at issue, based on objectively reasonable assessment. reversed

and remanded.

On remand, the Court of Appeals held that:

- Phrase “fair value,” as used in former Comptroller’s rule means monetary worth of services at issue, based on objectively reasonable assessment;
- Former Comptroller’s rule does not, as a matter of law, prohibit taxpayers from relying on cost-of-performance data to apportion its receipts for services performed in Texas; and
- Expert testimony was legally sufficient to support the trial court’s judgment.

Phrase “fair value,” as used in former Comptroller’s rule providing that if services are performed both inside and outside Texas, then such receipts are Texas receipts on the basis of the fair value of the services that are rendered in Texas, means monetary worth of services at issue, based on objectively reasonable assessment.

Former Comptroller’s rule providing that if services are performed both inside and outside Texas, then such receipts are Texas receipts on the basis of the fair value of the services that are rendered in Texas does not, as a matter of law, prohibit taxpayers from relying on cost-of-performance data to apportion its receipts for services performed in Texas.

Expert testimony as to comparative cost of performance and opinion of the fair value of services performed in Texas by taxpayer, a provider of subscription-based satellite radio programming, relative to its services performed everywhere was probative evidence as to apportionment of taxpayer’s business, and thus was legally sufficient to support the trial court’s judgment for taxpayer, in action against Comptroller of Public Accounts to recover state franchise taxes paid under protest, where Comptroller did not object to the admission of the expert testimony at trial, and because challenge would require an evaluation of the foundational data and underlying methodology that expert relied on to draw his opinions, the Comptroller could not bring challenge on appeal.

TAX - VIRGINIA

[County of Isle of Wight v. International Paper Company](#)

Supreme Court of Virginia - December 29, 2022 - S.E.2d - 2022 WL 17982130

Corporate taxpayer, which had successfully obtained tax refund judgment for prior tax years, filed application for correction of new county machinery and tools tax assessment, claiming assessment was non-uniform, invalid, and illegal.

The Isle of Wight Circuit Court granted county’s motion to strike at conclusion of taxpayer’s evidence during bench trial. Taxpayer appealed. The Supreme Court affirmed in part, reversed in part, and remanded. On remand, the Circuit Court found tax scheme unconstitutional and ordered full refund. County appealed.

The Supreme Court held that:

- Higher tax rate in conjunction with tax relief program resulted in unconstitutional non-uniform taxation;
- Invalidating tax relief program while preserving higher tax rate was not appropriate remedy; and
- Constitutional provision requiring all property to be taxed did not render judgment invalid.

County's higher machinery and tools tax rate in conjunction with county's machinery and tools tax relief program were integrated and interwoven in manner resulting in unconstitutional non-uniform taxation; rate was increased for one year for purpose of closing budget gap caused by issuance of refunds for machinery and tools tax paid in prior tax years, tax relief program was available during same one year period to ensure no taxpayer experienced net machinery and tools tax increase that was greater than amount of machinery and tools tax refund taxpayer had received for prior tax years, and interaction of tax rate and relief program resulted in disparate tax rates for taxpayers.

Invalidating county's machinery and tools tax relief program while preserving county's higher machinery and tools tax rate was not appropriate remedy for unconstitutional non-uniform taxation; higher tax rate and relief program were enacted together to serve complementary purpose and operated in tandem with one another, and manifest intent of county board of supervisors was not simply to enact higher tax rate for purpose of closing budget gap caused by issuance of refunds for machinery and tools tax paid in prior tax years, but to impose higher rate of taxation which would then be mitigated through relief program.

County procedurally defaulted any argument that proper remedy for unconstitutional non-uniform taxation resulting from interaction of county's higher machinery and tools tax rate and machinery and tools tax relief program was that taxpayer should pay tax rate that applied prior to increase in tax rate, even though county invoked such possibly remedy at oral argument if trial court did not sever relief program from tax rate, where county did not advance such argument at trial, county did not articulate any good cause to consider defaulted argument, and county did not invoke ends of justice as reason to consider defaulted argument.

Constitutional provision requiring all property to be taxed did not render invalid circuit court judgment that resulted in taxpayer paying no machinery and tools tax for one year as remedy for unconstitutional non-uniform taxation due to interaction of county's higher machinery and tools tax rate and machinery and tools tax relief program; requirement that all property should be taxed presupposed lawful regime of taxation, and county had at its disposal alternative arguments for recovery of some machinery and tools tax if relief program was not severed from higher tax rate, but county did not advance such alternative arguments at trial.

[MSRB 2022 Municipal Bond Market in Review.](#)

Detailed analysis of the municipal market detailing significantly higher interest rates, record outflows from tax-exempt mutual funds and a record number of trades.

[View the MSRB report.](#)

Publication date: 01/12/2023

[MSRB Publishes 2022 Annual Report and Audited Financial Statements.](#)

Washington, DC - The Municipal Securities Rulemaking Board (MSRB) today published its annual report for the 2022 fiscal year. The report highlights progress on the goals outlined in the [MSRB's four-year Strategic Plan](#), which was developed with extensive public input.

“Our mission to protect investors and issuers in this market has never been more important as financial markets continue to evolve at an ever-increasing pace,” said MSRB Chair Meredith Hathorn and MSRB CEO Mark Kim in their letter to stakeholders. Commenting on the MSRB’s Congressional mandate to establish rules that ensure a transparent, efficient and fair market, Hathorn and Kim added: “Strong markets function best when regulations keep pace with evolving market practices and technologies.”

The report demonstrates how the MSRB works to uphold the public’s trust in the \$4 trillion municipal securities market and give America the confidence to invest in its communities.

Progress on the MSRB’s four Strategic Plan goals:

Market Regulation: The MSRB worked closely with fellow financial regulators to undertake a comprehensive examination of fixed income market structure looking at post-trade, time of trade and pre-trade transparency, starting with the issuance of a [request for comment](#) on proposed amendments to post-trade reporting requirements. In addition, as part of the organization’s ongoing retrospective rule review, the MSRB furthered its multi-year initiative to review the MSRB’s entire library of interpretive guidance and update, codify or retire guidance, as appropriate.

Market Transparency: The MSRB continued to work on enhancing its Electronic Municipal Market Access (EMMA®) website to facilitate regulatory compliance and make EMMA easier to use, and completely redesigned the MSRB.org website to improve navigation and make information easier to find.

Market Data: As the central repository of data for the municipal securities market, the MSRB leveraged its investment in cloud computing and data analytics to enhance the quality, accessibility, security and value of this data for market participants. This included the launch of EMMA Labs, the MSRB’s innovation sandbox, where municipal market participants can collaborate to test and provide feedback on prototypes of new tools for their potential release on EMMA.

Public Trust: Recognizing that the MSRB’s duty to uphold the public trust in the municipal securities market and in the MSRB as the market’s self-regulatory organization requires a commitment to fiscal transparency and accountability, the MSRB instituted a [new fee-setting process](#) that better manages the organizations reserves and ensures the MSRB has sufficient revenues to fund its operations as it delivers on its multi-year strategic plan. The MSRB also took important steps to advance its diversity, equity and inclusion action plan by co-hosting with the Financial Industry Regulatory Authority a series of roundtable discussions with women-, minority- and veteran-owned businesses on key issues impacting these firms in the municipal securities market.

The annual report includes audited annual financial statements for the fiscal year that ended September 30, 2022, which help ensure transparency around how the organization manages its resources and financial reserves.

[Read the report.](#)

Date: January 13, 2023

Contact: Leah Szarek, Chief External Relations Officer
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[For Closed-End Fund Investors, Paper Losses Turn Real.](#)

Municipal-bond funds have been especially hard-hit amid market slump

Investors in closed-end funds are feeling a painful consequence of the historic market slump: cuts to their monthly payouts.

A Pacific Investment Management Co. California municipal-bond fund slashed dividends by 45% this month, while a Nuveen LLC stock fund endured a 7% cut. Eaton Vance Management in November cut distributions across six stock funds by as much as 24%. Six BlackRock muni funds endured at least two payout cuts last year, with dividends falling by as much as 38% in total.

The falling payouts are yet another way that investors are getting squeezed as Federal Reserve efforts to control inflation enter a second year. Many closed-end funds try to amp up returns by investing borrowed money. That risk generally paid off over the past decade, but has backfired in the face of rising rates and ensuing stock and bond losses.

[Continue reading.](#)

The Wall Street Journal

By Heather Gillers

Jan. 12, 2023

[Sky-High Muni Trading Seen Cooling as Fed's Rate Path Eyed.](#)

- **Trading volume hit highest since 2008 on rate hikes, outflows**
- **Barclays, Parametric and Neuberger Berman expect lower volume**

Municipal bond market analysts expect trading volume in the market to ease in 2023 after more than \$3.5 trillion in securities traded hands last year — the biggest surge since the global financial crisis — spurred on by rate hikes and persistent mutual fund outflows.

Average daily trading volume jumped by more than 50% to \$14 billion in 2022 compared with volumes a year earlier, according to Municipal Securities Rulemaking Board data analyzed by Bloomberg.

Meanwhile, daily trading volume in the secondary market surpassed \$20 billion par seven times last year, a level never breached in 2021, according to MSR data. The Federal Reserve's interest rate hikes also brought volatility to the muni market, said Kimberly Olsan, senior vice president of municipal bond trading at FHN.

[Continue reading.](#)

Bloomberg Markets

By Shruti Singh

January 11, 2023

[S&P Second Party Opinion: Connecticut Housing Finance Authority's Sustainability Framework](#)

CHFA's sustainability objectives are guided by its 2020 Strategic Plan, which identifies its key policy priorities, including the expansion of safe and energy-efficient housing choices for low- to moderate-income households across the state of Connecticut and the empowerment of these households to build wealth and security through first-time homeownership.

[Download.](#)

[NASBO Spring Meeting.](#)

April 26-28, 2023 | San Diego, California

This meeting focuses on budget strategies and state fiscal conditions and will allow attendees the opportunity to network with colleagues from across the country. Session topics will include:

- Economic Outlook
- State Workforce Initiatives
- Disaster Funding/Recovery
- Stress Testing State Budgets

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

[Colorado's DOT Goes from Building Roads to Building Homes.](#)

In an effort to attract and retain workers, the department is taking on the role of developer to provide affordable housing. It is just one way the public sector is working to fill vacancies.

In Colorado's ski towns, the snow is really only fun on the slopes. That's where the people who plow the roads come in. They keep these communities safe and mobile. But sky-high home prices are keeping them from residing in the very mountain towns they serve, and it's fueling a shortage of road maintenance operators.

To fix it, the Colorado Department of Transportation (CDOT) is taking on the role of developer and building homes for its employees.

It's no secret the public sector nationwide is struggling to fill vacant positions. As of November, there were 881,000 job openings in state and local government. As agencies attempt to attract and retain workers, they're getting creative. While not all may be going so far as to build housing, they are looking beyond compensation to fill vacancies.

[Continue reading.](#)

Route Fifty

by Molly Bolan

JAN 13, 2023

[Dallas Independent School District, Texas: Fitch New Issue Report](#)

The 'AA+' Issuer Default Rating (IDR) and ULT and maintenance tax note bond ratings reflect Dallas Independent School District's (Dallas ISD, or the district) highest level of financial resilience, solid expenditure flexibility, a sound revenue framework led by solid growth prospects and a moderate liability burden. Fitch Ratings believes, over the long term, business activity should produce economic, population and tax base gains consistent with historical performance.

[ACCESS REPORT](#)

10 Jan, 2023

[Fitch to Upgrade NYC Muni Water & Sewer Series 2010CC Rating to 'F1+'](#)

Fitch Ratings-New York/Chicago-12 January 2023: On the effective date of Jan. 19, 2023, Fitch Ratings will upgrade to 'F1+' from 'F1' the short-term rating assigned to the \$200,000,000 New York City Municipal Water Finance Authority Water and Sewer System Second General Resolution Revenue Bonds, Adjustable Rate Fiscal 2010 Series CC. The rating action is in connection with the substitution of the liquidity support currently provided by Barclays Bank plc (Barclays, A/F1/Stable), in the form of a standby bond purchase agreement (SBPA), with a substitute SBPA to be provided by State Street Bank and Trust Company (State Street, AA/F1+/Stable).

KEY RATING DRIVERS

On the effective date, the short-term rating will be based on the liquidity support provided by State Street in the form of a substitute SBPA.

The substitute SBPA provides for the payment of the principal component of purchase price plus an amount equal to 35 days of interest calculated at a maximum rate of 9%, based on a year of 365 days for tendered bonds during the daily, weekly or two-day rate mode in the event that the proceeds of a remarketing of the bonds are insufficient to pay the purchase price following an optional or mandatory tender. The substitute SBPA will expire on Jan. 19, 2028, the stated expiration date, unless such date is extended; upon conversion to a mode other than a daily, weekly or two-day rate mode; or upon the occurrence of certain other events of default which result in a mandatory tender or other termination events related to the credit of the issuer which result in an automatic and immediate termination. The remarketing agent for the bonds is TD Securities.

The current long-term 'AA+', Stable Outlook rating continues to be based on the underlying rating assigned to the bonds. For more information on the long-term rating, see the press release "Fitch Rates New York City Muni Water Fin Auth's Water and Sewer Revs 'AA+'; Outlook Stable", dated

Dec. 8, 2022, available on Fitch's website at www.fitchratings.com.

RATING SENSITIVITIES

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

-The short-term rating assigned to the bonds is in the highest rating category and cannot be upgraded.

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

-The short-term rating assigned to the bonds will be adjusted downward in conjunction with the short-term rating of the bank providing the SBPA and in some cases the long-term rating of the issuer.

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Additional information is available on www.fitchratings.com

[California Infrastructure and Economic Bank \(Clean Water and Drinking Water State Revolving Fund Bonds\): Fitch New Issue Report](#)

Fitch Ratings' cash flow modeling demonstrates that the California State Water Resources Control Board's (SWRCB) revolving fund programs (collectively, the program) can continue to pay bond debt service even with loan defaults in excess of Fitch's 'AAA' liability rating stress hurdle, as produced using Fitch's Portfolio Stress Model (PSM).

[ACCESS REPORT](#)

12 Jan, 2023

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

Key Rating Drivers Programs Surpass Fitch Ratings' 'AAA' Rating Threshold: Fitch's cash flow modeling demonstrates that the CWSRF and DWSRF programs (collectively, the program) can continue to pay bond debt service, even with hypothetical loan defaults in excess of Fitch's 'AAA' liability rating stress hurdle, as produced using Fitch's Portfolio Stress Model (PSM). Above Average Pool Diversity: The aggregate CWSRF and DWSRF pool consists of 338 obligors, with the top 10 participants representing approximately 48% of the total portfolio (versus Fitch's 'AAA' median of 57%). Single-borrower concentration is also relatively low. Thus, overall, the pool is more diverse and less concentrated than comparable municipal finance pool programs rated by Fitch. Sound Pool Credit Quality: Approximately 72% of the aggregate programs' portfolio consists of obligors exhibiting investment grade (IG) credit quality, in line with the 'AAA' median (73%) of other municipal programs. Obligor security is very strong as all are secured by either a combination of general fund and utility revenue pledges or utility system revenue pledges. Effective Management: KDFA's loan underwriting and administration have proven effective as its revolving funds have never experienced a loan payment default.

[ACCESS REPORT](#)

13 Jan, 2023

[Should I Invest in Municipal Bonds During Rate Hikes?](#)

Municipal bonds, or "munis," are popular investments for a few reasons. Most notably, as a government bond, they can be the closest thing to a safe asset that the market offers. And, investors typically pay no federal taxes on the income that these bonds generate, creating an effective boost to their otherwise relatively low rate of return. Ordinarily, this can be a very stable section of the market. But during Federal Reserve interest rate hikes, bond payments can rise and prices fall. This can result in higher yields and lower returns overall, although municipal bonds don't always follow this rule. Here's how it works.

How Bond Yields and Returns Work

All bonds, whether government or corporate, are debt instruments that have three essential elements: par value, market price and coupon rate.

[Continue reading.](#)

yahoo.com

by Eric Reed

January 12, 2023

[MacKay Municipal Managers Announces Top Five Municipal Market Insights](#)

For 2023.

PRINCETON, N.J. and LOS ANGELES, Jan. 12, 2023 /PRNewswire/ — MacKay Municipal Managers™, the municipal bond team of MacKay Shields LLC, today published its top five insights for the municipal bond market in 2023.

John Loffredo and Robert DiMella, co-Heads of MacKay Municipal Managers, said on the insights: “We are optimistic about the 2023 municipal market. We believe that preparation will help seize opportunities with higher accruals setting the pace. Disciplined portfolio management sets the stage for 2023 as higher tax free income streams, once again, provide a strong foundation from which relative value decisions can enhance performance”.

MacKay Municipal Managers – Top Five Municipal Market Insights for 2023

Tax-Exempt Accrual Plays a Key Role in Total Return. Income has regained its prominence in municipal bond total return. Municipal investors can now realize much higher income accruals due to 2022’s sharp rise in rates. Top income tax bracket investors, and especially those living in high income tax states, should find the higher tax-exempt income levels attractive on a taxable equivalent basis versus other asset classes. Raising accrual rates tends to reward investors who reinvest their dividends through the compounding effect of buying more shares at relatively lower average prices. We believe higher income levels can also better stabilize returns compared to the last several years, when low coupons and yields offered little cushion against price declines. Additionally, we believe investors who remained in passive strategies have missed this opportunity while hoping the market would recover. Raising accrual rates required actively replacing low book yield positions with much lower priced, higher yielding bonds, trades typically known as tax swaps. We believe investors can benefit from current market accrual rates in 2023 and beyond.

Overweight General Obligation and Essential Service Bonds. We believe essential investment grade sectors, such as General Obligation bonds and Water & Sewer bonds, will regain favor with investors in 2023. We expect greater demand for traditional municipal bonds such as bonds backed by the taxing power of general obligation issuers or secured by the revenues of essential service providers like public water and sewer authorities. We anticipate continued investor uncertainty over the path of inflation, the Federal Reserve’s policy decisions, and the potential for a recession will be the reason why investors find comfort in the core municipal sectors. In addition, investors should favor shifting to higher quality sectors that now pay higher accrual rates. We believe core sectors of the municipal market outperform in 2023.

In a Bifurcated High Yield Municipal Market, Liquidity Drives Performance. We believe a disciplined pursuit of liquidity will be rewarded in the 2023 high yield municipal market. In 2022, the massive wave of high yield fund redemptions resulted in an equally sized selloff of bonds as funds sought liquidity. High yield municipal funds primarily sold their more widely held and better quality positions to meet those redemptions resulting in those more liquid bonds underperforming relative to holdings that did not trade throughout the year. In anticipation of a healthier market in 2023, we believe those underperforming bonds now provide the opportunity to outperform as investment discipline re-emerges. In our opinion, discipline in the high yield municipal market goes beyond credit research to include an understanding of liquidity, tradability, and the investor base. We expect inflows will return to the high yield municipal market and issuance will be light. As a result, we believe the more liquid part of the high yield municipal market outperforms in 2023.

Fund Flows Drive Recovery in Long Municipal Bond Prices. We believe exposure to longer-term bonds drives return in 2023. Municipal mutual funds and Exchange Traded Funds are the natural buyer of the long end of the municipal curve. We expect a return to positive mutual fund

flows results in the outperformance of longer-term bonds. Additionally, mutual funds will likely seek to increase their distribution yields, causing them to extend the maturity and duration profile of purchases. As a result, bond structures with long durations and discount prices enhance return potential relative to shorter duration, premium structures. Finally, the municipal to Treasury yield ratio curve remains steep, indicating that the longer end of the municipal market offers better value opportunities. Long municipal bonds with ratios in the mid 90% range are cheap on a relative basis. We believe portfolios with exposure to longer maturities outperform.

Thinking Outside the Box - Using Short Taxable Municipals to Enhance After-Tax

Performance. We believe shorter-term taxable municipal bonds provide better after-tax value than comparable maturity tax-exempt bonds. Investing in shorter term municipal bonds, a tactic used to add liquidity and/or manage duration in a portfolio, becomes more difficult when such bonds are overpriced. Shorter-term tax-exempt bonds have risen in price beyond fair value primarily due to passive investor demand. In 2023, we expect demand for shorter-term tax-exempt bonds to continue unabated and we do not expect that new issuance sufficiently offsets that demand. As a result, we believe shorter-term tax-free municipal to Treasury yield ratios remain rich through the year. Comparable maturity taxable municipal yields, however, offer better value on an after-tax basis. The taxable municipal market's continuing expansion, in both size and breadth, has brought a new dimension to relative value trading in the municipal market. We believe investors should favor shorter-term taxable municipal bonds because they provide competitive after-tax yields, attractive spreads to Treasuries and the same high credit quality of the tax-exempt municipal asset class.

About MacKay Shields LLC

MacKay Shields LLC (together with its subsidiaries, "MacKay")*, a New York Life Investments Company, is a global asset management firm with \$126 billion in assets under management as of September 30, 2022. MacKay manages fixed income and equity strategies for high-net worth individuals and institutional clients through separately managed accounts and collective investment vehicles including private funds, UCITS, ETFs, closed end funds and mutual funds. MacKay maintains offices in New York City, Princeton, Los Angeles, London and Dublin. For more information, please visit www.mackayshields.com or follow us on Twitter or LinkedIn.

[Why Income Investors Should Revisit Municipal Bond ETFs.](#)

Investors should consider the opportunities in the municipal bond market and turn to related exchange traded fund strategies to diversify back into this fixed income category.

In the recent webcast, *Munis Positioned to Shine in 2023*, Michael Cohick, director of product management at VanEck; and Tamara Lowin, senior analyst, municipal bonds at VanEck, pointed out that municipal bonds now offer yields not seen in more than a decade, aside from a spike at the onset of the pandemic. Investors need to pay attention to these higher income levels as they consider portfolio positioning for 2023. In addition to attractive yields, supportive market dynamics, resilient credit quality, and important tax benefits make munis a key asset class to own.

The strategists argued that a difficult year in 2022 has resulted in the highest muni yields in over a decade and these highs may present a good buying opportunity for a variety of investors. Historically, municipals have experienced a strong recovery in years following large drawdowns, so this bond segment may be poised to shine in 2023.

The inverted yield curve could also point to better returns in 2023. In 2000 when the U.S. yield curve or 2-10 year slope was -49 basis points, the following year broad municipal bond market returned about 4.5%. More recently in 2019 when the year curve slope was -5 basis points, the following year's return for the broad muni market was 5.0%.

Meanwhile, yields in the munis market are much more attractive and are above their 10-year averages, with investment-grade munis showing a 3.5% yield and high-yield munis putting out a 5.9% yield.

Fundamentals could also support the muni outlook after a severely muted supply and massive fund outflows. On the demand side, we just saw \$111 billion pulled out of mutual funds, ETFs, and money market funds belonging to the Municipal Bond Morningstar US Category Group in 2022. On the supply side, new issuance over 2022 was down 25% year-over-year and fell below the long-term average.

While the economy may be slowing, default risk remains low in the munis segment. Specifically, we only saw 52 municipal bond defaults in 2022 and the VanEck strategists projected that we are not likely to see a substantial increase in 2023 either. Many municipalities are flush with cash, with only Nevada seeing below 0% tax revenues generated over the rolling four quarters. Tax revenues in most states even outperformed pre-pandemic levels.

To cover the full spectrum of risk/reward opportunities in the munis space, VanEck offers a suite of municipal bond-related ETFs. For example, the VanEck Vectors Short Muni ETF (SMB), the VanEck Vectors AMT-Free Intermediate Municipal Index ETF (CBOE: ITM), and the VanEck Vectors Long Muni ETF (MLN) can help investors focus on varying points across the yield curve.

The VanEck High Yield Muni ETF (HYD) and the VanEck Short High Yield Muni ETF (SHYD) offer targeted plays on credit quality to focus on high-yield debt.

The VanEck HIP Sustainable Muni ETF (SMI), which debuted as the first exchange traded fund dedicated to green municipal bonds, seeks current income generally exempt from federal income tax by investing in investment-grade municipal debt securities that have been issued to fund operations or projects that support or advance sustainable development, as well as promote positive social and environmental outcomes.

The VanEck Vectors Municipal Allocation ETF (Cboe: MAAX) can provide maximum long-term after-tax return consisting of capital appreciation and income generally exempt from federal income tax. In pursuing long-term total return, the fund seeks to reduce duration and/or credit risk during appropriate times by allocating primarily to VanEck municipal exchange traded products that invest in tax-exempt bonds.

Lastly, the VanEck Vectors CEF Municipal Income ETF (XMPT) seeks to replicate the performance of the S-Network Municipal Bond Closed-End Fund Index (CEFMXTR), which is intended to track the overall performance of the U.S.-listed closed-end funds that invest in U.S. dollar-denominated tax-exempt market.

ETF TRENDS

by MAX CHEN

JANUARY 12, 2023

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- [2023 Reminder to Issuers and Borrowers of LIBOR-Based Tax-Exempt Bonds: Now is the Time to Protect the Tax-Exempt Status of Bonds in Anticipation of Upcoming Discontinuation of LIBOR - Foster Garvey](#)
 - [New Standards Coming By 2027 for Reporting Information to EMMA: Kutak Rock](#)
 - [White Paper: Structured Data is Coming to the Municipal Securities Market - Now What? - Ballard Spahr](#)
 - [The Public Finance Outlook for 2023: Prepare to Slog](#)
 - [S&P Outlook For U.S. States: Rainy Day Funds Will Support Credit In A Shallow Recession](#)
 - [Kentucky Is Latest State to Blacklist Financial Institutions Over ESG Policies: Cadwalader](#)
 - [BlackRock, Citigroup Among Firms Named Fossil-Fuel Boycotters by Kentucky](#)
 - [GFOA Accounting Academy: An Intensive Introduction](#)
 - [In re BVM The Bridges LLC](#) - Bankruptcy Court confirms validity of tax deed issued to successful tax sale bidder after bond trustee fails to pay real estate taxes on property funded with industrial revenue bonds. **Ed. Note:** This one constitutes such an inexplicable disaster that we're not even sure that it's of any use as a cautionary tale, teachable moment, or similar cliché. Do with it what you will.
 - And finally, Exploding Babies is brought to us this week by [Doe v. Greenville City Schools](#), in which parents/students were understandably miffed when a bottle of alcohol exploded in chem lab and nary a fire extinguisher was to be found. We shudder to think of what type of prophylactic (ha!) measures will be put in place once they start working on those test tube babies...

WATER DISTRICTS - CALIFORNIA

[California-American Water Company v. Marina Coast Water District](#)

Court of Appeal, First District, Division 2, California - December 28, 2022 - Cal.Rptr.3d - 2022 WL 17973690

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.

Genuine issue of material fact as to whether public water district waived investor-owned water utility's compliance with Government Claims Act's claims presentation requirement precluded

summary judgment on that basis in utility's negligence action against water district.

Genuine issue of material fact as to whether public water district's attorney had apparent authority to waive district's right to statutory notice of claim precluded summary judgment in investor-owned water utility's negligence action against water district on ground that utility for failure to comply with Government Claims Act's claims presentation requirement.

Trial court's grant of public water district's motion for summary adjudication in investor-owned water utility's negligence action on ground that dispute resolution provision in parties' water purchase agreement did not relieve utility of its obligation to comply with Government Claims Act's claims presentation requirement on ground that agreement "was declared void" in prior action failed to comply with trial court's obligation to state its reasons for any determination made in summary judgment order; trial court had recognized in subsequent ruling that its earlier decision was wrong, and failed to address utility's argument that agreement's ab initio status did not retroactively render dispute resolution procedure in that agreement inapplicable.

Genuine issue of material fact as to when public water district became aware that its general manager's negligent supervision of county water resources agency's board member that district had hired to facilitate approval of regional desalinization project caused agency harm precluded summary judgment on limitations grounds in agency's negligence action against district predicated on subsequent voiding of parties' water purchase agreement as result of board member's illegal conflict of interest.

TERM LIMITS - COLORADO

[Kulmann v. Salazar](#)

Supreme Court of Colorado - December 19, 2022 - P.3d - 2022 WL 17748017 - 2022 CO 58

City resident brought action against city and mayor seeking a declaration as to whether the offices of mayor and of ward councilmember were separate and distinct offices for purposes of constitutional term limits for elected government officials.

The District Court granted summary judgment for resident in part. Resident, city, and mayor appealed, and appeals were consolidated. Thereafter, city and mayor petitioned for writ of certiorari, which was granted.

The Supreme Court held that:

- Phrase "in office" in constitutional term limit provision referred to a specific office and not to an institution or governing body, and
- Offices of mayor and of ward councilmember were separate and distinct offices for purposes of constitutional term limits.

Phrase "in office," in state constitutional provision stating that no nonjudicial elected official of any city shall serve more than two consecutive terms in office, referred to a specific office held by a nonjudicial elected official, and not to an institution or governing body.

Under plain and unambiguous terms of city charter and code, the offices of mayor and of ward councilmember were separate and distinct offices for purposes of term limitations under state constitutional provision stating that no nonjudicial elected official of any city shall serve more than two consecutive terms in office; charter and code made clear that the mayor could exercise various

powers unilaterally without involvement or consent of ward councilmembers, no such powers or responsibilities were delegated to any individual councilmember, and charter and code provisions addressed mayor and councilmembers separately with the disjunctive “or” in provisions outlining limits and requirements that applied to both offices.

BANKRUPTCY - FLORIDA

In re BVM The Bridges LLC

United States Bankruptcy Court, M.D. Florida - December 16, 2022 - Slip Copy - 2022 WL 17730743

Plaintiff, Pallardy LLC (“Pallardy”), was the successful bidder at a prepetition tax deed sale of a parcel of property located in Hillsborough County, Florida (“Parcel 10”). BVM The Bridges LLC (“Debtor”) is the former owner of Parcel 10; the Debtor operates an assisted living facility constructed on Parcel 10 and two adjacent parcels of property. CPIF Lending LLC (“CPIF”) holds a mortgage on Parcel 10 and the two adjacent parcels.

The Debtor’s acquisition of Parcels 10, 30, and 70 was funded through industrial revenue bonds. CPIF holds 100% of the bonds, and U.S. Bank is the bond trustee. As bond trustee, U.S. Bank is the named mortgagee on the mortgage encumbering Parcels 10, 30, and 70 (the “Mortgage”).

U.S. Bank escrowed money to pay the insurance and property taxes for Parcels 10, 30, and 70. In 2017, the Debtor paid the property taxes with funds that were held in escrow by U.S. Bank. But, for reasons that are unclear, neither the Debtor nor U.S. Bank paid the 2018 real estate taxes for Parcels 10, 30, and 70 before they became delinquent on April 1, 2019.

On September 23, 2021, the Clerk of Court conducted a public tax deed auction. Pallardy was the successful bidder. And on September 24, 2021, the Clerk of Court issued a tax deed to Pallardy (the “Tax Deed”).

Pallardy subsequently filed a state court lawsuit against the Debtor and CPIF to quiet title to Parcel 10, and CPIF counterclaimed for a declaration that Pallardy’s tax deed was invalid. After the Debtor filed for Chapter 11 bankruptcy, Pallardy removed its quiet title action to the Bankruptcy Court.

In its summary judgment motion, Pallardy asked the Court to confirm the validity of its tax deed and to quiet title to Parcel 10 in Pallardy as a matter of law. CPIF and the Debtor opposed Pallardy’s summary judgment motion, and in their own summary judgment motions, asked the Court to invalidate Pallardy’s tax deed as a matter of law.

The Bankruptcy Court held that:

- The Tax Collector and Clerk of Court strictly complied with Chapter 197’s notice provisions;
- The Clerk of Court properly mailed the Tax Deed Warning Notice to the Debtor;
- The Clerk of Court properly mailed the Tax Deed Warning Notice to U.S. Bank;
- The notice given by the Clerk of Court satisfied constitutional due process requirements;
- The Clerk of Court took additional reasonable steps to ensure notice;
- The Debtor had actual notice of the tax deed sale;
- U.S. Bank had actual notice of the tax deed sale;
- The Bankruptcy Court did not have the equitable power to invalidate the Tax Deed. “In essence, what CPIF asks is for this Court to create a new equitable ground for challenging a tax deed: the usage of Parcel 10 as an assisted living facility. But although the bankruptcy court is a court of

equity with broad remedial powers, its powers are not “unlimited.” And CPIF has not cited any legal authority for the proposition that a bankruptcy court—or any court for that matter—may use its equitable powers to invalidate a tax deed; and

- Even if the Bankruptcy Court had authority to invalidate the Tax Deed based on the use of Parcel 10, the equities did not warrant invalidating the Tax Deed.

The Court concluded that Pallardy met his burden on summary judgment to show that there was no genuine issue as to any material fact and that it was entitled to judgment as a matter of law, and that the Debtor and CPIF failed to meet their burdens.

EMINENT DOMAIN - KENTUCKY

[City of Cold Spring v. Campbell County Board of Education](#)

Court of Appeals of Kentucky - December 16, 2022 - Not Reported in S.W. Rptr. - 2022 WL 17724455

“This case involves the proper exercise of the power of eminent domain. At issue is whether a school board possesses the right to invoke that power in order to acquire real property owned by a city.”

Appellant, the City of Cold Spring (the City), appealed the interlocutory order of the Circuit Court that concluded that the Campbell County Board of Education (the Board of Education or the Board) was entitled to exercise the power of eminent domain to acquire real property.

The Court of Appeals reversed, finding no express — or necessarily implied — statutory authority permitting a Board of Education to condemn property owned by the City.

The Court ruled that the right of eminent domain granted to a school board under the relevant state statutes applied only to the acquisition of private property.

PUBLIC RECORDS - NORTH CAROLINA

[Matter of Custodial Law Enforcement Recording Sought by City of Greensboro](#)

Supreme Court of North Carolina - December 16, 2022 - 881 S.E.2d 96 - 2022-NCSC-125

City petitioned for release of police body camera videos depicting incident in which police misconduct was alleged.

The Superior Court issued order placing restrictions on city council members’ use and discussion of the videos, and denied city’s subsequent motion to modify the restrictions. City appealed. the Court of Appeals affirmed. City’s petition for discretionary review was accepted.

The Supreme Court held that trial court abused its discretion by denying city’s motion without explanation.

By denying city’s motion to modify restrictions on city council’s use and discussion of police-worn body camera videos of incident involving alleged misconduct by the police without evidence in the

record supporting finding restrictions were not a substantial impediment to city council members in discharging their duties, trial court abused its discretion, thus warranting remand for new hearing on the motion; even though nearly every party sought transparency through release of the videos, the trial court denied the city's motion without providing any analysis, explanation, or conclusions of law.

IMMUNITY - OHIO

[Doe v. Greenville City Schools](#)

Supreme Court of Ohio - December 28, 2022 - N.E.3d - 2022 WL 17970377 - 2022-Ohi-4618

High-school students and their parents brought negligence action against school and school officials, alleging that injuries the students sustained when alcohol caught fire in a science classroom were caused by negligent supervision and by the failure to provide a fire extinguisher or other safety equipment in the classroom.

The Court of Common Pleas denied defendants' motion to dismiss based on their alleged immunity under the Political Subdivision Tort Liability Act, and the Second District Court of Appeals, noting a split between appellate districts over application of the statutory exception to immunity for claims based on a "physical defect" in a building. Defendants appealed, and the Supreme Court accepted jurisdiction of the question whether absence of a device or piece of safety equipment that was not a fixture could constitute a "physical defect" supporting an exception to immunity.

The Supreme Court held that absence of a fire extinguisher or other safety equipment in science classroom could be a "physical defect" supporting an exception to statutory immunity under the Political Subdivision Tort Liability Act.

Students' allegations of the absence of a fire extinguisher or other safety equipment in high-school science classroom were sufficient to allege a "physical defect" within or on the grounds of the school building that could support an exception to statutory immunity in students' action against school district and officials alleging that injuries they sustained when alcohol caught fire in a classroom were caused by negligent supervision of the science teacher and the lack of a fire extinguisher or other safety equipment.

The absence of safety equipment within or on the grounds of a building used in the performance of a governmental function can be a "physical defect" such that an exception to immunity could exist under the Political Subdivision Tort Liability Act.

IMMUNITY - TEXAS

[Gulf Coast Center v. Curry](#)

Supreme Court of Texas - December 30, 2022 - S.W.3d - 2022 WL 17998210

Pedestrian, who while crossing a street was hit by a bus driven by employee of local government agency that provided public transportation to its facilities, brought action against the agency.

Following jury trial, the District Court entered judgment on jury's finding that agency was negligent and awarded \$216,000 in damages. After the denial of its motion to reform the judgment, agency

appealed. The Houston Court of Appeals affirmed. Agency petitioned for review

The Supreme Court held that agency was a community center and, therefore, a unit of local government subject to \$100,000 cap on damages under the Tort Claims Act.

Agency that provided mental health services was a community center under Health and Safety Code and, therefore, it was a unit of local government subject to \$100,000 cap on damages under the Tort Claims Act, for purposes of claim brought against the agency by pedestrian who, while crossing a street, was hit by a bus driven by an agency employee, which was used to provide public transportation to assist agency's patients in getting to its facilities.

SIGNAGE - WISCONSIN

[Adams Outdoor Advertising Limited Partnership v. City of Madison, Wisconsin](#) United States Court of Appeals, Seventh Circuit - January 4, 2023 - F.4th - 2023 WL 33962

Outdoor advertising company brought action alleging that city's sign-control ordinance violated First Amendment.

The United States District Court for the Western District of Wisconsin entered summary judgment in city's favor, and company appealed.

The Court of Appeals held that:

- Claim preclusion barred company's claim that city's sign-control ordinance violated First Amendment;
- Company's claim did not fall within scope of exception to claim preclusion for declaratory judgments;
- Ordinance was subject to intermediate scrutiny under First Amendment; and
- City's digital-sign prohibition did not violate First Amendment.

City's digital-sign prohibition was reasonably related to its stated interests in promoting traffic safety and preserving visual aesthetics, and thus did not violate outdoor advertising company's First Amendment rights; billboards by their very nature could be perceived as esthetic harm, and presence of overhead signs and banners was bound to cause some drivers to slow down in order to read sign before passing it.

[The Public Finance Outlook for 2023: Prepare to Slog](#)

Disinflation and economic deceleration will dominate state and local budgets and investments. Cash is king, at least for a while. Payroll costs will outrace revenues. It's going to be a year for muddling through.

Last year's [New Year's column](#) capsulized the outlook for public finance for 2022 in one word: inflation. For 2023, it's almost the reverse, as disinflation — a slowing in the rise of prices — will be the backstory. But it will be a sticky and murky disinflation. With 12-month CPI measures still running hot, workers are not going to sit still for 2 percent pay increases, as much as the Federal Reserve might aspire to that number as its long-term inflation target.

Meanwhile, state and local government budget squeezes are coming, as softer revenues are expected from income, sales and property taxes. A soft landing for the economy is possible, but there is still a credible risk of worse. By spring, the global economy and business environment will feel like a muddy, mucky Ukrainian battlefield: prepare to slog.

Although it's now highly probable that the Federal Reserve will soon be able to escalate its overnight Fed funds interest rate to levels higher than the latest core inflation rates, that is just the first salvo in the central bank's battle to tame the multi-headed inflation hydra. As long as workers expect to see 5 percent pay raises this year, the overnight interest rate needs to hover at that level or above. Whether that pinches pocketbooks enough to auger a soft landing or pushes the U.S. economy into a recession, nobody truly knows. The two most important and encouraging mile markers that I'm now watching are the M2 money supply, which has gone flatline for six months now, and the private sector's unit labor cost increases, which declined to 2.4 percent in the third quarter. Now, that's genuine disinflation, which tells me we're on the right and cautious path.

[Continue reading.](#)

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Jan. 3, 2023 • Girard Miller

[**S&P Outlook For U.S. States: Rainy Day Funds Will Support Credit In A Shallow Recession**](#)

Sector View: Stable

The shallow recession forecast for the first half does not equate to a hurricane for states' finances. Although certain revenue and expenditure assumptions may get dampened, states' generally strong reserves will function as a credit-stabilizing umbrella.

[Continue reading.](#) [Free registration required.]

5 Jan, 2023

[**Fitch Ratings' 2023 Outlook: Public Finance Stable Amid Weakening Macro Environment**](#)

Fitch Ratings-New York-05 January 2023: Fitch Ratings has assigned a deteriorating asset performance outlook for 2023 to the majority of public finance (PF) sectors, reflecting a negative trend in core credit drivers for these sectors relative to 2022. Worsening macroeconomic conditions will weaken tax and other revenues, while inflation that leads to higher operating expenses, including labor costs, and higher rates affecting borrowing costs will also pressure budgets. Despite the deteriorating macro environment, most Rating Outlooks across our PF portfolio are Stable given broad budget and revenue raising flexibility, strong reserves, and/or government support.

Downside risks, including deeper and prolonged recessionary conditions with higher inflation and policy rates, a sharp and sustained housing downturn, shifts in government policies or geopolitical

risks could weaken financial cushions and credit quality.

The vast majority of U.S. state and local government Rating Outlooks are Stable, reflecting broad and diverse revenue bases, control over revenues and spending, moderate long-term liabilities and sound financial cushions. State and local governments built robust reserves over the past few years, strengthening their resilience.

Fitch-rated Canadian provinces have Stable Rating Outlooks and are entering 2023 with significant fiscal momentum. Most provinces benefit from robust and diverse economies and have broad discretion to respond to changing fiscal circumstances. Debt burdens increased less than anticipated through the pandemic, and liquidity is solid.

Slowing economic growth and rising inflation are negative for EMEA government-related entities' (GRE) standalone credit profiles; however, GRE ratings are mostly driven by government support, which undergirds GREs' ability to withstand stress and meet debt-servicing obligations. About half of EMEA local and regional government (LRG) issuers are capped by or equalized with the respective sovereign international default rating (IDR). About 70% of Fitch's LRG portfolio are on Stable Outlook, and with more than a quarter on Negative Outlook.

Fitch's sector outlook for Latin American LRGs is neutral due to our expectation that trends in key rating drivers will largely remain unchanged. In the region, 71.1% of LRG IDRs are either linked or equalized to the corresponding sovereign rating.

In APAC, all Rating Outlooks across both Australian and New Zealand LRG portfolios are Stable, reflecting the resilience of LRGs to the fiscal pressures and balance sheet capacity to absorb further economic shocks. Chinese policy remains supportive of local-government financing vehicles (LGFVs) in light of their economic development role. The Rating Outlook on the majority of our China LGFV ratings is Stable, with the exception of four LGFVs with a Negative Outlook, which largely reflects the relevant LRG Rating Outlook.

Fitch's deteriorating sector outlooks for US water and sewer, public power and higher education sectors indicate our expectations that economic and business conditions will create a more challenging operating environment in 2023 relative to 2022. Higher costs and slower economic growth are expected to contribute to softening operating performance, which could lead to a weakening in credit quality across these entities absent efforts to reduce or recover operating costs and increase rates to preserve margins. Despite these pressures, Rating Outlooks across our rated portfolio of higher education and water and sewer and public power utilities are predominantly Stable, as most credits manage operational and capital spending to preserve some budgetary flexibility and have headroom to absorb higher costs.

The U.S. not-for-profit healthcare sector's core credit drivers will remain under pressure in 2023. Inflation, especially labor costs, is compressing margins, with investment losses compounding fiscal pressures, although record levels of cash accumulated through much of 2021 provide a buffer. We anticipate that downgrades and Negative Outlooks will outpace upgrades and Positive Outlooks in 2023, although the vast majority of Rating Outlooks are currently Stable.

[**NASBO Fiscal Survey of States - Fall 2022**](#)

With data gathered from all 50 state budget offices, this semi-annual report provides a narrative analysis of the fiscal condition of the states and data summaries of state general fund revenues,

expenditures, and balances. The spring edition details governors' proposed budgets; the fall edition details enacted budgets.

Overview - Fall 2022

Enacted budgets for fiscal 2023 provide for general fund spending of **\$1.16 trillion**, a 6.7 percent increase over fiscal 2022. This follows fiscal 2022, when states recorded spending growth of **18.3 percent**, the highest annual increase in spending recorded in the Fiscal Survey of States since its inception in 1979. Adjusted for inflation, general fund spending in fiscal 2022 increased **9.6 percent**.

Other key highlights from the report:

- General fund revenue grew **14.5 percent** year-over-year to total **\$1.17 trillion** in fiscal 2022, following a **16.6 percent** increase in fiscal 2021.
- **49 states** reported fiscal 2022 general fund revenue collections exceeded enacted budget forecasts, with collections in the aggregate exceeding original projections by **20.5 percent**.
- Revenue projections in fiscal 2023 enacted budgets are **3.1 percent** below preliminary actual collections for fiscal 2022, but more recent revenue data suggest that revenue will continue to grow in fiscal 2023, with **33 states** reporting collections exceeding budget forecasts.
- States enacted net tax cuts in fiscal 2022 totaling **\$16.2 billion** for all state funds and **\$15.5 billion** for general funds (**1.4 percent** as a share of forecasted general fund revenue).
- Rainy day fund balances continued to grow in fiscal 2022 after increasing 58 percent in fiscal 2021, and the median balance as a share of general fund spending is projected to be **11.9 percent** in fiscal 2023.
- Total balances have seen tremendous growth recently, roughly tripling in size over the past two years after revenues far exceeded enacted budget forecasts in fiscal 2021 and fiscal 2022. At the end of fiscal 2022, they totaled **\$343 billion**.

[Continue reading.](#)

[Kentucky Is Latest State to Blacklist Financial Institutions Over ESG Policies: Cadwalader](#)

To ring in the new year, Kentucky's Treasurer, Allison Ball, [announced](#) a list of eleven financial institutions that she claims are engaged in "energy company boycotts." According to Ball, the list "was crafted after careful review of publicly available statements and commitments made by the companies." The list includes Blackrock, BNP Paribas, Citigroup, HSBC and JPMorgan Chase, among others. Kentucky [enacted a law](#) in July 2022 requiring the treasurer to prepare and maintain such a list. The new law defines an energy company boycott as:

without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company: 1. Engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or 2. Does business with a company described in subparagraph 1. of this paragraph;

KRS 41.42. A financial institution has ninety days from receiving notice of its inclusion on the list to

“cease engaging in energy company boycotts in order to avoid becoming subject to divestment by state government entities.”

For many of the impacted financial institutions, this situation is, unfortunately, not their first rodeo, and they previously have responded by objecting to characterizations of their relationship with the oil and gas industry. In September, for instance, Blackrock [published a letter](#) in response to an August 4 letter from 19 Republican state attorneys general, critical of Blackrock’s ESG positions. Blackrock observed, among other things, that:

- Blackrock’s participation in “various ESG-related initiatives” is “entirely consistent with our fiduciary obligations.”
- “We believe investors and companies that take a forward-looking position with respect to climate risk and its implications for the energy transition will generate better long-term financial outcomes.”
- “Climate risk and the economic opportunities from the energy transition have become a top concern for many of our clients.”
- “As the recent historic floods across the country as well as the droughts and wildfires throughout the West and around the world this past year have shown, climate change is testing the resilience of many industries and businesses.”
- “As prudent risk managers and stewards of our clients’ assets, it is imperative that we seek to understand and assess how these risks and opportunities will impact the companies in which we invest on our clients’ behalf.”
- “BlackRock does not boycott energy companies or any other sector or industry. As we have noted previously, BlackRock, on behalf of our clients, is among the largest investors in public energy companies, and has hundreds of billions of dollars invested in these companies globally, with approximately \$170 billion invested in US companies.”

Taking The Temperature: Kentucky is not alone in seeking to financially punish banks deemed insufficiently supportive of the energy industry. West Virginia and Texas have similar laws, and numerous other states, including Arizona, Florida, Louisiana, Missouri, South Carolina, and Utah, have announced that they may or will divest from banks or cease other financial activities with financial services firms (such as underwriting municipal securities) that are engaging in “energy boycotts.” Pressure also has been exerted by the [Minority Staff of the U.S. Senate Banking Committee](#), [Republican members of the House Judiciary Committee](#), and the [Ranking Member of the Senate Banking Committee](#). But as we have [articulated](#), investment managers have fiduciary duties to clients that they likely would breach if they ignored a material issue, including climate change.

We also question how state treasurers are arriving at a conclusion that a financial institution is engaged in an energy boycott, which is vaguely defined in the applicable state laws, especially given the basis for the decision as to any particular institution is not publicly articulated in a meaningful way. Ball’s press release, for instance, states that her conclusions were based on a “thorough review of publicly available statements, commitments, and/or an institution’s failure to respond to inquiry.” The West Virginia Treasurer’s press release stated that “each financial institution placed on the Restricted Financial Institution List today has published written environmental or social policies categorically limiting commercial relations with energy companies engaged in certain coal mining, extraction or utilization activities, rather than considering the financial or risk profile for each company,” and “these policies explicitly limit commercial engagement with an entire energy sector based on subjective environmental and social policies.” The absence of a publicized rationale for placing a particular institution on a boycott list

implies that these decisions are largely subjective, and poorly supported, and it leaves financial institutions without insight into how their conduct could potentially impact their ability to keep or win state business.

Cadwalader Wickersham & Taft LLP - Jason M. Halper

January 6 2023

[S&P 'AAA' Rated U.S. School Districts: Current List](#)

[View the list.](#)

5 Jan, 2023

[S&P 'AAA' Rated U.S. Municipalities: Current List](#)

[View the list.](#)

5 Jan, 2023

[S&P 'AAA' Rated U.S. Counties: Current List](#)

[View the list.](#)

5 Jan, 2023

[A 'Bootcamp' to Help Smaller Cities Win Infrastructure Grants.](#)

Small and midsize localities tend to lack the dedicated grant-writing teams and expertise that bigger towns use to score federal dollars. A new-and free-initiative aims to get them onto more equal footing competing for the funding.

Smaller-sized cities are often at a disadvantage competing for federal grants, lacking the staff, in-house knowhow and other resources that their larger peers can depend on when going after the money.

But now, with billions of dollars of the grants available to local governments in the 2021 infrastructure law, the National League of Cities, with support of philanthropic backers, is trying to change that dynamic and give smaller cities a better shot at winning federal dollars. The group is running a series grant application "bootcamps" for 30 different infrastructure law programs. The new initiative, open to cities with fewer than 150,000 residents, kicked off late last year, with a second round about to get underway later this month.

Robert Blaine, director of the Institute for Youth, Education and Families at NLC, explained that the League decided to launch the project because of the vast amount of grant dollars in the \$1.2 trillion public works law, and concerns that smaller cities would miss out on the money. Many observers describe the law as a historic chance for cities to score funding that can help with projects in areas ranging from flood protection, to electric vehicle chargers, to street safety.

[Continue reading.](#)

ROUTE FIFTY

by BILL LUCIA

JANUARY 8, 2023

[Fitch Ratings Updates U.S. HFA General Obligation Rating Criteria.](#)

Fitch Ratings-New York/San Francisco-05 January 2023: Fitch Ratings has published an updated criteria report titled 'U.S. Housing Finance Agencies General Obligation Rating Criteria.' The report replaces the existing criteria of the same name dated Jan. 13, 2021.

Minor editorial revisions were made to the criteria. There have been no material changes to Fitch's underlying methodology, and no rating actions are expected as a result of the application of the updated criteria.

The criteria report is available at '[www.fitchratings.com/criteria/us-public-finance.](http://www.fitchratings.com/criteria/us-public-finance)'

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[BlackRock, Citigroup Among Firms Named Fossil-Fuel Boycotters by Kentucky.](#)

- **BlackRock, Citigroup, and JPMorgan among the companies listed**

• **Move is the latest step in the GOP fight against ESG investing**

BlackRock Inc., Citigroup Inc., and JPMorgan Chase & Co are among 11 financial institutions that are facing pushback from Kentucky after being deemed hostile to the fossil fuel industry.

Kentucky Treasurer Allison Ball put the firms on a “Restricted Financial Institutions” list compiled in accordance with state law, saying they’re engaged in “energy company boycotts.”

The legislation, which resembles actions taken by Republican-led states including West Virginia and Texas, will require state entities to divest from the blacklisted firms, with certain exceptions.

“When companies boycott fossil fuels, they intentionally choke off the lifeblood of capital to Kentucky’s signature industries,” Ball said in a press release on Tuesday.

The move is the latest in the GOP fight against what Republicans perceive to be liberal-leaning financial practices. The strategy known as environmental, social and governance investing has drawn intense scrutiny as critics say it’s part of a broader Democratic effort to prioritize climate change and other societal issues to the detriment of the fossil-fuel industry.

Ball said in an interview that the law won’t prevent banks on the list from underwriting most municipal debt in Kentucky. That has emerged as a major concern in Texas, one of the country’s largest markets for such sales. She said the Kentucky legislation is a “different situation” than the Texas law.

Ball also said it was too early to estimate how much money may be at risk of divestment.

JPMorgan and Citigroup were among the top financiers of the fossil fuel industry in 2021, according to a report by groups including the Sierra Club and Rainforest Action Network.

“The fact is that we are among the largest financiers of the U.S. traditional and renewable energy industries, including in Kentucky, where we serve some of its largest energy companies and utilities,” said Trish Wexler, a spokesperson for JPMorgan, in an emailed statement. “We believe our business practices are in line with Kentucky law, and we are hopeful a deeper look at these facts would lead to reconsideration.”

BlackRock said the company’s “only agenda” is to deliver the best financial results for its clients.

“On behalf of our clients, we have invested approximately \$276 billion in energy companies globally,” Christopher Van Es, spokesperson for BlackRock, said in an emailed statement. “BlackRock does not boycott energy companies and will continue to be investors across the energy sector.”

Mark Costiglio, a spokesperson for Citigroup, declined to comment.

Kentucky governmental entities have 30 days to notify both the Treasurer’s office and companies of any holdings. Named institutions have 90 days from that point to “cease engaging” in boycotts to avoid divestment, according to a notice on the Treasurer’s website. Listed firms will have an opportunity to “clarify” whether they boycott energy companies.

Governmental entities are required to sell, redeem, divest or withdraw all publicly traded securities of companies that continue boycotts within a year, though the law makes some exceptions like if divestment would result in a loss.

The full list of firms is below:

BlackRock, Inc.
BNP Paribas SA
Citigroup Inc.
Climate First Bank
Danske Bank A/S
HSBC PLC
JPMorgan Chase & Co.
Nordea Bank ABP
Schroders PLC
Svenska Handelsbanken AB
Swedbank AB

Bloomberg Politics

By Nic Querolo

January 3, 2023

— *With assistance by Silla Brush*

[Expert Panel Highlights Best Practices for Successful P3 Approaches: Nossaman](#)

On December 1, 2022, Nossaman partner Simon Santiago moderated a panel at the 2022 P3 Government Conference held in Arlington, Virginia, titled, “Best Practices for Successful P3 Procurements: Identify the Appropriate P3 Process for Your P3 Approach.” The panelists, comprised of Jack Callahan (Partner and Construction Industry Practice Leader, CohnReznick); Michael Kerrigan (Principal, Delgany Advisory); and Brandey McDonald (Project Director, Infrastructure Asset Management, Fengate), offered a variety of perspectives from the lens of legal, technical and equity provider perspectives.

The panel examined the key issues that public agencies must consider when structuring a P3 process, starting with project planning, transitioning into procurement activities, and then implementing and administering the P3 project. Below are key takeaways from the panel discussion:

Upfront Planning

- In order to identify project goals and objectives, it is necessary to have candid and transparent conversations amongst all stakeholders. Clear communication is crucial to properly define the project scope, achieve the project objectives, and effectively collaborate. Failing to effectively communicate at the outset can result in setbacks later down the line.
- A diligent analysis of the anticipated project risks will help public agencies assess the viability of a P3 project. As an owner, due diligence is critical for gaining market support for a P3 project, including by providing investigatory information on key technical risks and taking proactive measures to mitigate risks prior to initiating a procurement.

Structuring a Procurement Process

- Establishing a procurement process that recognizes the time and effort required for proposers to submit a proposal can help maximize participation. When developing the procurement documents, public owners should ask for information that is most relevant to assessing the capability of a proposer and avoid onerous submittal requirements. Also, owners should offer a stipend that takes into account the level of effort required to submit a proposal.
- The procurement documents and evaluation criteria should be structured to promote and reward innovation. There should be flexibility in design, construction, operation and maintenance scope and standards.

Project Implementation

- Public agencies should employ oversight and monitoring measures that properly balances the public's need for accountability and the private sector's need to control and manage its own resources.
- It is essential for the public and private sector to work collaboratively to ensure that contractual obligations are being met and that performance is reported accurately.

Throughout the session, the panelists stressed the importance of retaining and consulting with experienced advisors early on and at every stage of the P3 process.

In conclusion, as a driving point, the panelists wanted audience members to remember that a successful approach to a P3 procurement is not a one-size-fits-all approach. The panelists emphasized that if you have overseen one successful P3 project, that you've only seen *just one*. Every project is distinct; thus, it is important to recall best practices when identifying the appropriate P3 process for every new project.

By Adeyemi Ojudun on 12.29.2022

Nossaman LLP

[Fitch U.S. Public Finance & Infrastructure 2022 Rating Action Summary.](#)

U.S. Public Finance & Infrastructure Weekly Rating Actions Report - December 26 to December 30, 2022

[ACCESS REPORT](#)

Tue 03 Jan, 2023

[2023 Reminder to Issuers and Borrowers of LIBOR-Based Tax-Exempt Bonds: Now is the Time to Protect the Tax-Exempt Status of Bonds in Anticipation of Upcoming Discontinuation of LIBOR - Foster Garvey](#)

As we welcome 2023, and the final six months of certain London Interbank Offering Rates ("LIBOR"), issuers and borrowers of LIBOR-based tax-exempt bonds should evaluate whether changes to their financing documents are necessary to implement a replacement rate, while avoiding changes that could negatively affect the tax-exempt status of those bonds.

As many are aware, the Intercontinental (ICE) Benchmark Administrator plans to cease publishing the overnight, one-month, three-month, six-month and twelve-month U.S.-dollar LIBOR after June 30, 2023. As a result, existing debt instruments that use LIBOR as the reference rate for determining their interest rates may need to be modified.

In general, modification of a tax-exempt municipal bond may be treated as a significant modification that constitutes a “reissuance,” and a reissuance could call into question whether interest on the modified bond continues to qualify for tax exemption. The Treasury Department and Internal Revenue Service (“IRS”) have adopted a new regulation (Treas. Reg. §1.1001-6) designed to support an orderly transition of LIBOR-based instruments to new reference rates. If a modification of a LIBOR-based instrument made between March 7, 2022 and June 30, 2024, is structured to qualify as a “covered modification” under Treas. Reg. §1.1001-6, the modification will not result in a reissuance. Issuers and borrowers should consult with bond counsel before finalizing changes to the terms of a tax-exempt financing instrument.

Treasury Regulation Facilitates Transition From LIBOR

LIBOR as Reference Rate Discontinued After June 30, 2023. The Intercontinental (ICE) Benchmark Administrator, as administrator of the London Interbank Offering Rate (“LIBOR”), has announced that its publication of overnight, one-month, three-month, six-month and twelve-month U.S.-dollar LIBOR will cease following June 30, 2023. As a result, various types of existing debt instruments, including loan contracts and municipal bonds, that contain provisions requiring the use of LIBOR as the reference rate for determining the interest rate on the debt instrument may need to be modified.

These modifications may raise federal tax issues. For example, the modification of a loan contract may be treated as a taxable exchange of property for other property differing materially in kind or extent for purposes of §1001-1(a) that gives rise to gain or loss, and the modification of a tax-exempt municipal bond may be treated as a significant modification that constitutes a “reissuance” under §1.1001-3 that would raise a question whether the interest on the modified bond continues to qualify for tax exemption.

For such a modification to transition from LIBOR to be treated as a “covered modification” (described below) that will not result in a taxable exchange or “reissuance” of the debt instrument, the modification must be made not later than one year after the discontinuance of LIBOR, i.e., by June 30, 2024.

Treasury Regulation §1.1001-6 Facilitates “Covered Modifications” Made to Transition From LIBOR. In an effort to minimize potential market disruption and facilitate an orderly transition from LIBOR to other reference rates, the Treasury Department and Internal Revenue Service (“IRS”) adopted Treas. Reg. §1.1001-6. The basic purpose of §1.1001-6 is to facilitate modifications to contracts that are made to transition from LIBOR to new reference rates, while preserving the same business and economic terms.

Treas. Reg. §1.1001-6 applies to a modification of the terms of a contract that occurs on or after March 7, 2022. In general, the operative rules of §1.1001-6 provide that certain “covered modifications” of a contract made to transition from LIBOR to a “qualified rate” will not result in a taxable exchange of property under §1.1001-1(a) or a reissuance of a debt instrument under §1.1001-3. A “covered modification” is a modification made to transition from a discontinued interbank offered rate such as LIBOR to a “qualified rate” and to make “associated modifications,” if any, of technical, administrative, or operational terms of the contract reasonably necessary to implement the covered modification. The operative rules also permit certain “qualified one-time

payments” to be made to compensate a party for all or part of the basis difference between the discontinued interbank offering rate and the interest rate benchmark used for the new qualified rate.

“Modification” of Contract Broadly Defined. For the purposes of §1.1001-6, a “modification” of a contract, including a debt instrument such as a tax-exempt municipal bond, is defined broadly to include any modification of the terms of the contract, regardless of the form of the modification. For example, a modification could include an exchange of one contract for another, an amendment to an existing contract, or a modification accomplished indirectly through one or more transactions with third parties, regardless of whether the modification is evidenced by an express agreement, conduct of the parties, or otherwise. Therefore, when considering modifications to a tax-exempt bond to transition from LIBOR to another reference rate, the issuer of a tax-exempt bond should evaluate, in advance of any agreement with the bondholder and in consultation with bond counsel, whether the modification would be treated as a “covered modification” under §1.1001-6.

“Qualified Rates.” The question whether a modification of a debt instrument will be treated as a covered modification depends on whether the new reference rate is a “qualified rate.” Under §1.1001-6(h)(3)(ii), a qualified rate is any of the following rates having a benchmark that is reasonably expected to measure contemporaneous variations in the cost of newly borrowed funds:

(A) A “qualified floating rate” as defined in §1.1275-5(b), but without the requirement that any fixed multiple applied to the qualified floating rate must be greater than .65 but not more than 1.35. Such a qualified rate includes “SOFR,” which is the Secured Overnight Floating Rate developed by the Alternative Reference Rates Committee (“ARRC”) and published each business day on the website of the Federal Reserve Bank of New York (the “New York Fed”);

(B) An alternative, substitute or successor rate selected, endorsed or recommended by the central bank, reserve bank or monetary authority as a replacement for LIBOR in that governmental jurisdiction;

(C) A rate selected, endorsed or recommended by ARRC as a replacement for LIBOR, so long as the New York Fed is then an ex officio member of ARRC—e., SOFR, as noted above, as well as CME Group’s forward-looking one-month, three-month, six-month and twelve-month Term SOFR Reference Rates (“Term SOFR”) recommended by ARRC on July 29, 2021, and also published each business day on the website of the New York Fed;

(D) A rate determined by reference to one of the rates described in (A), (B) or (C) above by adding or subtracting a specified number of basis points to or from the rate or by multiplying the rate by a specified number; and

(E) A rate identified for purposes of §1.1001-6 by the IRS and published in the Internal Revenue Bulletin.

“Waterfall” of “Fallback Rates” May Be Qualified Rate. A single qualified rate also may be comprised of one or more “fallback” rates. A “fallback” rate is a rate, such as 30-day Term SOFR, which the parties to a contract agree will become operative following the discontinuance of LIBOR. For example, a “waterfall” or series of “fallback” rates specified in a contract may constitute a qualified rate, but only if each individual fallback rate in the waterfall separately meets the requirements of a qualified rate. If it is not possible to determine at the time that a modification is being tested as a covered modification whether a fallback rate will satisfy the requirement that it must be reasonably expected to measure contemporaneous variations in the cost of newly borrowed funds, then that fallback rate, and any waterfall of fallback rates that includes that fallback rate, will

not be treated as a qualified rate. If, however, the likelihood that any value will ever be determined under the contract by reference to a particular fallback rate that would not be a qualified rate is “remote,” then it is treated as a qualified rate.

Depending on the manner in which a fallback rate becomes operative, it may need to be tested as a covered modification both at the time the debt instrument is modified and at the time the fallback rate becomes effective. For example, if the fallback rate becomes effective by operation of the terms of the debt instrument or as the result of the exercise of a unilateral option by the holder of the debt instrument, the fallback rate would not need to be retested as an additional modification, whereas a fallback rate that becomes effective only by mutual agreement of the parties would need to be retested as an additional modification. In addition, a fallback rate may need to be retested at the time it becomes effective in order to confirm that it continues to be a qualified rate.

“Noncovered Modifications.” Certain modifications of contracts are excluded from being treated as “covered modifications.” These noncovered modifications are viewed as being beyond the scope of facilitating the transition from LIBOR to another qualified rate while preserving the same business and economic terms of the unmodified contract. Under §1.1001-6(j), each of the following modifications that change the amount or timing of cash flows under the contract is a noncovered modification:

1. The modification is intended to induce one or more parties to perform any act necessary to consent to the replacement of LIBOR with a qualified rate, make associated modifications, if any, and make a qualified one-time payment, if any—for example, an agreement by the issuer of a debt instrument to add an additional 10 basis points to the basis adjustment spread to induce the holder to consent to the LIBOR replacement modification;
2. The modification is intended to compensate one or more parties for a modification other than one that replaces LIBOR with a qualified rate, makes associated modifications, if any, and provides a qualified one-time payment, if any—for example, an agreement by the issuer of a debt instrument to add 30 basis points to the interest rate to compensate the holder for agreeing to modify a customary financial covenant for the issuer’s benefit;
3. The modification is a concession to a party experiencing financial difficulty or a concession obtained by one party to account for a deterioration in the credit of the other party—for example, an agreement by the holder of a debt instrument to reduce the interest rate by 50 basis points to assist an issuer that is experiencing financial difficulties;
4. The modification is intended to compensate one or more parties for changes in rights or obligations that are not derived from the contract being modified—for example, an agreement by the issuer to add 30 basis points to the interest rate on one debt instrument in order to induce the holder to agree to modify customary financial covenants made by the issuer in a different debt instrument that is also held by the holder; and
5. The modification is identified in future guidance by the IRS as having a principal purpose of achieving a result that is unreasonable in light of the purpose of §1.1001-6.

The federal tax consequences of each of the foregoing types of “noncovered modifications,” if made, would need to be analyzed separately from any covered modification under the general rule for a taxable exchange of property under §1.1001-1(a) and the rule for a significant modification of a debt instrument under §1.1001-3.

No Adverse Effect Opinions. In a situation where the issuer and holder of a debt instrument that consists of a tax-exempt bond are considering an agreement to modify the bond in order to transition from LIBOR to a new reference rate such as SOFR, the financing documents for the bond may require, or the holder of the bond may request, that the issuer provide an opinion of bond counsel to the effect that the modification of the bond will not adversely affect the tax-exempt status of interest

on the bond (a “no adverse effect opinion”). In order to provide a no adverse effect opinion, bond counsel would need to conclude that the modification is a covered modification made to transition from a discontinued interbank offering rate, such as LIBOR, to a qualified rate. In order to reach that legal conclusion, bond counsel may require that the issuer and holder of the bond provide certifications to the effect that no facts and circumstances exist that would show that the proposed modification is a noncovered modification of the type described above.

Alternative Analysis of Noncovered Modifications. Even if all or part of the modification is determined to be a noncovered modification, bond counsel could conclude that the noncovered modification is not a significant modification of the terms of the bond that would cause the bond to be treated as “reissued” under the general rule set forth in §1.1001-3. Further, even in the event that the noncovered modification of the bond would cause it to be treated as “reissued,” bond counsel nonetheless may be able to provide a no adverse effect opinion if the issuer takes the steps needed to qualify the reissued bond as a newly issued tax-exempt current refunding bond used to refund the prior bond. Depending on whether the reissued bond is a tax-exempt governmental bond or a tax-exempt private activity bond, these steps could include, for example, testing whether the reissued bond remains eligible to be treated as a governmental bond or a qualified 501(c)(3) bond under the applicable private activity bond regulations, filing a new Form 8038-G or Form 8038 Information Return for the reissued bond, holding a TEFRA hearing and obtaining a public approval for the issuance of the reissued bond, and obtaining volume cap for the reissued bond.

The issuer also would need to comply with the arbitrage rebate requirement, if otherwise applicable, with respect to the prior bond deemed to be currently refunded and retired by the reissued bond. The date on which the prior bond is treated as retired would be the final computation date for any rebate amount due with respect to gross proceeds of the prior bond. Any such rebate amount would be payable to the United States with Form 8038-T filed with the IRS not later than 60 days after that final computation date.

Certain Economic or Financial Considerations. An issuer that modifies a tax-exempt bond to transition from LIBOR to SOFR, for example, may wish to consider whether certain other adjustments should be made to SOFR as the new qualified rate on the bond, regardless of the tenor of the SOFR rate. For example, because SOFR is a taxable rate, it may be appropriate that the applicable SOFR rate on a tax-exempt bond held by a corporation be multiplied by 79% (0.79) to take account of the federal corporate tax rate of 21% that would otherwise apply to interest received on the bond if it were taxable. Also, because SOFR rates reflect essentially risk-free interest rates, whereas LIBOR was not considered a risk-free rate, there is an understanding that SOFR rates, regardless of the tenor, may be lower than what otherwise would be a LIBOR rate.

by Allison Schwartzman & William Tonkin

January 5, 2023

Foster Garvey PC

[**A Federal Court Ruling Imperils the Charter-School Movement.**](#)

The Fourth Circuit holds our school is a ‘state actor,’ even though the law makes its independence clear.

A ruling in a federal court case could spell trouble for the charter-school movement. The case began

in 2015 when the American Civil Liberties Union, representing three female students, sued our school.

The plaintiffs in *Peltier v. Charter Day School, Inc.* allege that our uniform policy—which requires girls to wear jumpers, skirts or “skorts” (skirtlike shorts) on most days—violates the girls’ rights under the 14th Amendment’s Equal Protection Clause. After a mixed decision in federal district court, the Fourth U.S. Circuit Court of Appeals ruled in June for the plaintiffs.

By a 10-6 vote, the full court held that CDS is a “state actor,” constitutionally indistinguishable from government-run public schools. That is counter to North Carolina law. CDS is a private nonprofit corporation—a legal requirement for operating a charter school under the state’s Charter School Act. That law specifically empowered charters to set their own rules about comportment, curriculum, appropriate dress and other matters.

[Continue reading.](#)

The Wall Street Journal

By Baker A. Mitchell and Robert P. Spencer

Jan. 3, 2023

[And Just Like That, America Becomes More Rural.](#)

Census update of a century-old definition highlights the arbitrary nature of urban-rural distinction

With so much attention on the U.S.’s urban-rural divide, you might soon hear that the rural population in 2020 was much larger than in 2010.

That isn’t because people moved en masse to the country during the pandemic. It’s because the U.S. Census Bureau is updating its definition of an urban area, from one with 2,500 people to one with 5,000. That reclassified 4.2 million people, living in 1,140 areas of the U.S., from urban to rural.

This has real-world consequences: Access to many federal and state programs is based on whether an area is defined as rural or urban.

[Continue reading.](#)

The Wall Street Journal

By Josh Zumbrun

Jan. 6, 2023

[Making Room for Housing near Transit: Zoning's Promise and Barriers](#)

An Examination of Policy and Outcomes in the Puget Sound

Nestled between the Cascades and the Olympic Mountains, blessed with moderate weather, and home to a strong job market, the Puget Sound is one of the most attractive metropolitan areas in the United States. These conditions have encouraged growth: among the country's 50 largest cities, Seattle grew faster than all but Fort Worth and Austin from 2010 to 2020. This momentum, however, has had negative consequences. Affordability has declined, and the region does not have adequate housing to meet demand, reducing its ability to attract residents or retain its existing population.

WHY THIS MATTERS

Recent approval of major taxpayer-supported transit investments will expand access to mobility for residents in communities throughout the Puget Sound region, as \$54 billion in planned expenditures will add dozens of new light rail and bus rapid transit stations between 2023 and 2044. These projects will speed commutes for residents and workers, offering them affordable, environmentally sustainable travel options.

These new transit investments could set the stage for more housing options in the region, but much of the land near stations is now zoned to limit housing construction or housing density. About one third of station-adjacent land is zoned for only single-family homes; almost 50 percent requires at least one parking spot per unit. Both zoning restrictions add to housing costs, making new construction more difficult and new homes more expensive. And zoning allowances for new housing are not proportionate to real estate demand, with many of the region's most popular jurisdictions subject to stringent land-use regulations.

[Continue reading.](#)

The Urban Institute

by Yonah Freemark, Lydia Lo, Olivia Fiol, Gabe Samuels, Andrew Trueblood

January 5, 2023

Pimco Cuts Payouts as Much as 45% on Muni Closed-End Fund Shares.

- **Asset manager cuts monthly payouts on 9 muni closed-end funds**
- **Distribution cuts range from 20% to 45% as leverage costs soar**

Pacific Investment Management Co. cut monthly payouts on nine municipal bond closed-end funds by as much as 45% after a sharp jump in short-term rates increased borrowing costs.

The money manager cut the distributions on the \$199 million Pimco California Municipal Income Fund to 3.6 cents per share from 6.5 cents per share, according to a statement Tuesday. Short term-borrowing costs on the fund surged as high as 8.25% in December. The fund trades at a 29% premium to its net asset value while the yield on the closed-end fund's portfolio is about 4%, according to data compiled by Bloomberg.

Shares of the California fund fell as much as 15% to \$12.97 in Wednesday trading, the biggest intraday drop since 2008.

The Newport Beach, California-based asset manager also cut distributions on two other California funds, three New York funds and three national funds. Agnes Crane, a Pimco spokeswoman, declined

to comment.

Dividend cuts by closed-end funds can punish fund shares, particularly if they trade at a premium. Muni closed-end funds borrow in the floating-rate tax-exempt market to finance the purchases of higher-yielding long-term bonds, seeking to profit from the difference. However, with the cost of leverage surging, that spread has disappeared or turned negative, which have led to distribution cuts.

Closed-end funds raise a fixed amount of money from shareholders in a public offering, unlike mutual funds, which continually sell and redeem shares. Closed-end funds are traded on stock exchanges and can trade at premiums or discounts to their net asset value.

Invesco Ltd, BlackRock Inc., Nuveen LLC and Eaton Vance Corp. all cut distributions on their muni closed-end funds last year.

In contrast to most muni-closed end funds, Pimco uses preferred shares for leverage. Yields on the shares, set by weekly auctions rather than by dealers, are even higher than variable-rate bonds.

Weekly benchmark yields in the variable-rate tax-exempt bond market surged to 3.8% last month as dealers sought to offload inventory amid heavy outflows from tax-exempt money market funds. Yields have since fallen to 3.66%.

Yields on preferred shares for Pimco's muni closed-end funds currently range from 5.82% to 6.05%, according to data compiled by Bloomberg.

Leveraged municipal-bond closed-end funds, which purchase long-duration bonds, were crushed in 2022 as rising inflation sparked a rise in yields and a drop in prices. VanEck's CEF Muni Income ETF, which seeks to track the performance of a muni-bond closed-end fund index lost 24% in 2022, compared with 8.5% for the broader muni market.

Bloomberg Markets

By Martin Z Braun

January 4, 2023

[Pennsylvania Commonwealth Court Finds Local Stormwater Charge Constitutes A Tax.](#)

In a case which will have major implications throughout Pennsylvania, on January 4, 2023, the Pennsylvania Commonwealth Court ruled that the school system defendants, which are immune from taxation, were not required to pay the Borough of West Chester's stormwater charge because "the Stormwater Charge constitutes a local tax". *Borough of West Chester v. Pa. State System of Higher Education and West Chester University of Pa. of the State System of Higher Education*, No. 260 M.D. 2018 (Pa. Cmwlth. Jan. 4, 2023). The Court held that the stormwater charge constituted a tax and not a fee or special assessment because the charge provided benefits enjoyed by the general public, rather than individualized services provided to particular customers.

The Borough of West Chester (the "Borough") operates a small municipal separate storm sewer system ("MS4"). The Borough imposes a charge (the "Stormwater Charge") on owners of developed

properties within the Borough that are benefitted by the MS4. The Borough then deposits these charges into a stormwater management fund for maintenance and improvement of stormwater projects as well as pollution remediation measures. The Pennsylvania State System of Higher Education and West Chester University of Pennsylvania (the "Schools") were assessed charges of about \$132,000 annually which they refused to pay, arguing the Stormwater Charge constituted a tax and the Schools were immune from taxation. The Borough argued the Stormwater Charge constitutes a fee for service rather than a tax and filed a declaratory judgment petition in the Commonwealth Court. The Schools then filed a motion for summary relief.

The Court discussed the differences between a tax and a fee for service, holding that while a tax is imposed on many or all citizens, is contributed to a general fund, and is spent for the benefit of the entire community, a fee is paid to a public agency for bestowing a benefit not shared by general members of the community and is paid voluntarily. Additionally, the Court held "a charge is a tax rather than a fee for service if it is not reasonably proportional to the value or benefit received in return for its payments."

The Court held the Stormwater Charge was a tax, not a fee. The Court noted that the Borough Counsel Code expressly stated that "a comprehensive program of stormwater management is fundamental to the public health, safety, and general welfare of the residents of the Borough." The Court further noted that a Borough witness had testified that managing stormwater provides a general benefit to the community, and owners of both developed and undeveloped properties receive the same benefits from the projects funded by the Stormwater Charge. The Court found that the Borough had failed to "point to any evidence that [the Schools] receive discrete benefits through payment of the Stormwater Charge."

Additionally, the Schools argued that they did not benefit from the MS4 system because they had their own stormwater system in place, while the Borough argued that even though the Schools had their own stormwater system, they would incur expenses in the absence of the MS4 system and therefore benefitted from it. While the Borough argued there is a direct relationship between the amount of impervious surface area and the extent of stormwater related issues for a property, the Court found that there was no way to measure the Schools' purported use of the Stormwater System. The Court further agreed with the Schools that "the impervious surface area of a property does not correlate to the level of benefit accorded the owner of that property." The Court cited extensively to *DeKalb County, Georgia v. U.S.*, 108 Fed. Cl. 681 (Fed. Cl. 2013), in which a federal court found that a county ordinance that also imposed a charge based on impervious surface area of developed properties qualified as a tax. The Court cited *DeKalb* for its holding that a stormwater charge provides benefits enjoyed by the general public as opposed to individualized services provided to particular customers, as the benefit of the collection and diverting of stormwater runoff "is shared with nearly every other member of the community. In short, flood control is a public benefit, and charges to pay for that benefit are typically viewed as taxes." The Court further agreed with *DeKalb* that "[w]hile user fees are generally based on the quantum of services that are provided, the assessments in this case are not necessarily based on the benefits provided to each owner of the developed property [because] they are based not on the benefits derived by the payor, but [on] the anticipated burden that its property imposes on the stormwater system. However, the burden imposed on the system by the runoff from the property, and the benefits conferred upon that property by the system are not the same thing."

Finally, the Court held the Stormwater Charge is not a fee because it is not paid "by choice." Despite the existence of an appeals process through which owners could apply for credits, the Borough could not show it entered into "voluntary, contractual relationship[s]" with property owners subject to Stormwater Charge assessments.

The Court went on to similarly hold that the Stormwater Charge was not an assessment because the Stormwater Charge was not “subsidizing a particular project of limited duration.” Rather, because the work funded by the Stormwater Charge yields a common benefit shared by Borough residents generally rather than benefit individual properties, the Stormwater Charge constituted a general tax. Accordingly, the Court granted the Schools’ motion for summary relief.

This holding will have widespread implications. Similar stormwater charges will be vulnerable to challenges on multiple grounds, including whether the customer has been provided with a particular and/or proportional value in return for payment and if not, whether the authority imposing the charges has the necessary authority to levy taxes. While this decision will likely be appealed, in the meantime it will have substantial implications across Pennsylvania.

Manko Gold Katcher & Fox - Danielle N. Bagwell

January 5 2023

[State Tax Changes Taking Effect January 1, 2023.](#)

Most state tax changes take effect at the beginning of the calendar year (January 1) or at the beginning of the fiscal year (July 1 for most states).

On January 1, 2023, thirty-eight states have noteworthy tax changes taking effect. Most of these changes represent net tax reductions, the result of an unprecedented wave of rate reductions and other tax cuts in the past two years as states respond to burgeoning revenues, greater tax competition in an era of enhanced mobility, and the impact of high inflation on residents.

[Continue reading.](#)

The Tax Foundation

December 22, 2022

[2023 State Business Tax Climate Index.](#)

Executive Summary

The Tax Foundation’s *State Business Tax Climate Index* enables business leaders, government policymakers, and taxpayers to gauge how their states’ tax systems compare. While there are many ways to show how much is collected in taxes by state governments, the Index is designed to show how well states structure their tax systems and provides a road map for improvement.

[View the Index.](#)

Tax Foundation

October 25, 2022

TAX - MICHIGAN

[Wells Fargo Rail Corp v. Department of Treasury](#)

Court of Appeals of Michigan - December 1, 2022 - N.W.2d - 2022 WL 17365205

Taxpayer, which owned and leased railcars, brought action against State, Department of Treasury, and State Tax Commission for failing to apply tax credit for maintenance and improvement of railcars, alleging that credit would have resulted in a \$0 tax liability, but that Department did not consider taxpayer's request for credit because taxpayer submitted request by mail instead of using online form, resulting in tax bill for \$172,249.72.

Defendants moved for summary disposition, arguing that the Court of Claims lacked subject-matter jurisdiction and that, instead, the Michigan Tax Tribunal (MTT) had exclusive and original jurisdiction. The Court of Claims granted motion. Taxpayer appealed.

The Court of Appeals held that:

- Tax Tribunal Act (TTA), which granted MTT exclusive jurisdiction over property-tax issues, implicitly repealed statute giving Court of Claims subject-matter jurisdiction over property-tax protests; and
- Taxpayer's purported request for equitable relief did not divest MTT of subject-matter jurisdiction; but
- Taxpayer's timely-filed complaint in the Court of Claims and timely-filed appeal equitably tolled 35-day limitations period for taxpayer to file complaint in MTT.

Tax Tribunal Act (TTA), which granted Michigan Tax Tribunal (MTT) exclusive jurisdiction over property-tax issues, implicitly repealed provision of Public Utility Tax Act (PUTA) allowing taxpayer to pay tax under protest and then sue State in the Court of Claims within 30 days for amount protested; acts irreconcilably conflicted with respect to their jurisdictional provisions, TTA was more enacted more recently than PUTA, and provisions of TTA indicated that Legislature intended to legislate entire field of tax disputes, giving MTT original and exclusive jurisdiction over such disputes.

Taxpayer's request for order requiring State, Department of Treasury, and State Tax Commission to apply tax credit for maintenance and improvement of taxpayer's railcars and issue corrected tax bill, conduct taxpayer contended was equitable in nature, did not divest Michigan Tax Tribunal (MTT) of subject-matter jurisdiction under Tax Tribunal Act (TTA); taxpayer's requested relief did not require equitable authority, and even if it did, MTT still had authority to issue orders and directives related to taxpayer's requested relief that could be enforced elsewhere.

Taxpayer's timely-filed complaint in the Court of Claims, which complaint challenged Department of Treasury's failure to apply tax credit for maintenance and improvement of taxpayer's railcars and sought refund of partial payment made under protest, and timely-filed appeal equitably tolled 35-day limitations period for taxpayer to file complaint in Michigan Tax Tribunal (MTT), which was correct forum; at time of tax dispute, there were two ostensibly valid statutes, one placing jurisdiction in the Court of Claims and other placing jurisdiction in MTT, taxpayer reasonably relied on first statute to timely file its case with the Court of Claims, and parties had no way of knowing that the Court of Claims and Court of Appeals would conclude that first statute was implicitly repealed.

[What Are Baby Bonds, And How Do They work?](#)

- A “baby bond” is a bond with a face value that falls below \$1,000 — typically \$25 or \$50.
- Anyone can invest in baby bonds as long as they meet the associated minimum requirement.
- Baby bonds are unsecured, meaning you aren’t guaranteed payment in the event of a default.

[Continue reading.](#)

businessinsider.com

by Rickie Houston

Jan 5, 2023, 1:49 PM

[New Standards Coming By 2027 for Reporting Information to EMMA: Kutak Rock](#)

On December 23, 2022, President Biden signed into law the Financial Data Transparency Act of 2022 (Act). The Act requires the Securities and Exchange Commission (SEC) to develop and implement new standards for municipal issuers and obligors to use when reporting financial and operating information on the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access website (EMMA). Specifically, the Act provides that the SEC’s new standards will require municipal issuers and obligors to submit information on EMMA in a machine-readable, structured format. The new standards are expected to be similar to the reporting standards currently used by publicly traded companies when making disclosures on the SEC’s Electronic Data Gathering, Analysis and Retrieval system (EDGAR).

Notably, neither the Act nor the standards to be proposed and implemented by the SEC will change the substance of what municipal issuers and obligors are required to report on EMMA; only the format in which the information is uploaded to EMMA will be affected.

The new reporting standards will require that financial and operating data submitted by municipal issuers and obligors be both structured and open. Currently, many issuers and obligors submit their financial and operating information to EMMA in PDF or HTML formats, which can be considered unstructured formats. While these formats have the benefit of being easily readable to humans, they are not conducive to data analysis on a large scale—the type of analysis often carried out by regulatory entities. In contrast, *structured* data uses identifier codes to classify financial data, allowing for aggregation and comparison among reporting entities.

The new reporting standards are expected to become effective in approximately four years or by the start of 2027. The SEC will be required to consult with market participants (including municipal issuers) in formulating the new standards. Over the next 18 months the SEC will be required to issue proposed rules regarding the new reporting standards, which will then be subject to public comments. The public comment period will allow interested parties, including municipal issuers and obligors, to submit feedback to the SEC regarding the proposed rules. After the SEC finalizes the new rules (expected within two years), municipal issuers and obligors will have two years to bring their financial reporting into compliance with such rules (the new rules are expected to be effective at the start of 2027).

Municipal issuers and obligors and other municipal market participants should be aware of the Act and consider reviewing the SEC's proposed rules when such rules are made available to the public. Municipal issuers and obligors are encouraged to participate in the public comment process to ensure the SEC is made aware of undue burdens or unintended consequences, and whether exceptions or accommodations should be incorporated into the rules. Issuers and obligors should consider the format in which they have routinely submitted data to EMMA and confer with their technology personnel on the feasibility of transitioning to a structured and open data format. If preferred, issuers and obligors may want to confer with third-party technology consultants to determine whether and to what extent technology upgrades will be required to comply with the new standards.

Kutak Rock will continue to monitor the implementation of the Act and update our clients on its progress through the SEC. If you have any questions about the new reporting standards, or how they may impact your organization, please contact your Kutak Rock attorney or a member of the firm's [Public Finance Practice Group](#).

Client Alert | January 4, 2023

Kutak Rock LLP

[Machine-Readable Financial Reporting Is Less Scary Than You Think: Bond Buyer](#)

Despite opposition from various municipal bond market experts and interest groups, Congress has now instructed the Securities and Exchange Commission to develop machine-readable standards for EMMA filings.

As implementation of the Financial Data Transparency Act (FDTA) begins, it is important to clear up some misunderstandings about this legislation.

Opponents of FDFTA expressed concern that a single template would be imposed on a wide range of municipal issuers around the country. If true, this would be a very serious issue because the financial statements of cities differ greatly from those produced by school districts, water districts, road districts, etc.

There is also substantial variation across states, including some that have not implemented Governmental Accounting Standards Board standards for local government financial reporting.

But this concern is easily addressed during implementation.

First, there is no hard and fast requirement that all entities must use a single reporting taxonomy (i.e., a dictionary of financial statement concepts). There could be one or more specialized taxonomies for New Jersey cities, Washington state school districts and other non-GASB compliant issuers.

More importantly, a taxonomy does not straitjacket issuers into a fixed set of concepts.

General purpose governments and special districts use overlapping categories of revenues and expenditures. But there is no limit to the number of categories that can be included in an eXtensible Business Reporting Language (XBRL) taxonomy and no requirement to use all the categories

provided.

When my colleagues at XBRL US partnered with University of Michigan's Center for Local, State and Urban Policy (CLOSUP) to develop an XBRL taxonomy for Michigan local governments, we reviewed a large number of Annual Comprehensive Financial Reports (ACFRs) to determine which financial statement captions appeared most frequently.

We included all of these in the taxonomy. Also, we provided a mechanism for financial statement filers to include concepts that were not specifically listed in the taxonomy.

Filers can use a feature of XBRL to add custom line items they need to report that are not explicitly included in the taxonomy. An entity-specific line item can be created that rolls up into assets or revenues, for example. Issuers can report what they need, and data can still be compared across issuers at the asset or revenue level.

The CLOSUP project was XBRL US's fourth version of an ACFR taxonomy in four years, which brings me to another point about the opposition critique of FDTA.

Contrary to critics' assertions, two years is plenty of time to develop machine-readable reporting standards. In fact, if the SEC chooses to base its taxonomy on XBRL US's work products, the development time could be significantly shorter.

Another contention was that the compliance costs would be very high: perhaps \$1.5 billion over two years as public agencies replace accounting systems and/or hire expensive consultants. But neither of these options is necessary.

The XBRL community includes firms that offer document production solutions, which can take the form of Software-as-a-Service (SaaS) web sites, desktop software, or Excel add-ins, as well as companies that can prepare an XBRL version of a financial statement from the filer's PDF.

Open-source tools, which are free to use, are also available.

During the runup to implementation, the community will be updating their products to support ACFRs and other municipal market disclosure.

Open data standards foster competition among tool and service providers which keeps costs low and encourages innovation. Reporting packages and applications in use today by government entities can be adapted to work with the open standard, minimizing potential disruption to issuers.

Municipal market participants who want to learn more about machine-readable disclosure are welcome to join a free webinar hosted by XBRL US and University of Michigan CLOSUP on Jan. 24.

Even if concerns over implementation time and cost are overblown, some industry observers still question the need for machine-readable municipal disclosure. After all, market participants have been investing in bonds based on paper disclosures, PDFs, or perhaps not even consulting disclosures at all, so why bother?

But since research shows that certain financial ratios are associated with heightened default probabilities, ignoring the data in municipal disclosures is a recipe for making suboptimal investment decisions.

The inability to quickly access free fundamental issuer data sets the municipal bond market apart from the U.S. corporate securities markets and is one reason why our market is so inefficient.

Corporate securities investors can quickly find issuer data on SEC EDGAR or one of a dozen free web sites.

Machine-readable disclosures will lead to the commoditization of municipal finance fundamentals because it will become extremely inexpensive to create municipal databases from XBRL filings. While data commoditization may be an adverse development for today's data vendors, it is a prerequisite for an efficient municipal securities market, which will benefit issuers and investors alike.

By Marc Joffe

BY SOURCEMEDIA | MUNICIPAL | 01/04/23 09:13 AM EST

[BondLink Honored with GovTech 100 Award for Fifth Consecutive Year.](#)

Industry-leading investor transparency platform recognized by foremost government technology awards program in 2023

BOSTON, MA / ACCESSWIRE / January 5, 2023 / BondLink, the cloud-based investor transparency and debt management platform for the \$4 trillion municipal bond market, has been honored by Government Technology as a GovTech 100 company for 2023. BondLink earned the recognition for its technologies that help governments, schools, public utilities and non-profits connect directly into the capital markets to more efficiently access capital to fund public infrastructure projects.

This is the fifth consecutive year that BondLink has been recognized as one of the top technology companies serving governments across the country. The GovTech 100 list highlights the top companies delivering innovative solutions to support state and local governments across the United States.

"Governments do some of the most important work in this country, and we're proud of the solutions we can provide to further their mission when it comes to building new roads and bridges and schools," said Colin MacNaught, CEO and co-founder of BondLink. "As one of the only fintech companies in the municipal bond market, we're incredibly proud to be part of the GovTech 100 again, as it reflects the impact we're having on an essential market in this country."

BondLink's rapid adoption by issuers and investors in 2022 was joined with many other notable successes. The company increased its team size by nearly 50% and opened its new Boston headquarters to provide a collaborative space for the team to work and meet in person. It launched two new resources: a fully automated debt management database and a personalized ESG and green bond solution. BondLink also announced its partnership with InspereX in May 2022, which provides thousands of independent registered investment advisors (RIAs) access to the financial data and reports that municipal bond issuers share via BondLink directly within the leading fixed-income platform, BondNav®.

"This year we have seen an exponential increase in gov tech market activity - from new companies starting up to help government tackle complex challenges, to existing companies joining forces for scale through consolidations, gov tech as an industry is clearly showing its recession-proof characteristics," said Dustin Haisler, Chief Innovation and Strategy Officer for Government Technology. "Each of the GovTech 100 companies demonstrates the energy of our market across all gov tech segments."

The latest GovTech 100 class will be featured in the January/February 2023 issue of Government Technology magazine. To view the full 2023 GovTech 100 list, please visit www.govtech.com/100. To learn more about BondLink, please visit www.BondLink.com and request a demo today.

About BondLink

BondLink, a cloud-based investor transparency and debt management platform for the municipal bond market, helps issuers engage more bond investors through transparency and actionable insights. Founded by CEO Colin MacNaught, who spent seven years issuing nearly \$25 billion in bonds on behalf of the Commonwealth of Massachusetts, and CTO Carl Query, BondLink went live in 2016. BondLink clients issued more than \$50 billion in bonds in 2021. BondLink provides its issuer clients with tools to manage their capital financing programs more efficiently while providing investors with the interim financial reports and data they need to close information gaps and make informed decisions through a single platform. The company is backed by top investors within the municipal bond market, including Intercontinental Exchange and Franklin Templeton. For more information, visit www.bondlink.com, and connect on LinkedIn and Twitter.

[White Paper: Structured Data is Coming to the Municipal Securities Market-Now What? - Ballard Spahr](#)

The Financial Data Transparency Act of 2022 (FDTA), enacted by Congress as Title LVIII of the National Defense Authorization Act for Fiscal Year 2023, was signed into law by President Biden on December 23, 2022. The FDTA is likely to usher in significant changes in how information is prepared, disseminated, and consumed by municipal securities market participants.

Please see [Publication below](#) for more information.

by Teri Guarnaccia, Ernesto Lanza, Kimberly Magrini

January 6, 2023

Ballard Spahr LLP

[High-Quality Munis Could Be High-Quality Idea in 2023.](#)

The Bloomberg US Aggregate Bond Index is coming off its worst annual performance since inception in 1976, and municipal bonds of various credit qualities were caught up in that mess. Blame the Federal Reserve's seven interest rate hikes.

Still, the widely observed ICE AMT-Free US National Municipal Index was significantly less worse than the "Agg" last year, indicating that municipal bonds could deliver for risk-averse income investors this year. That could be good news for the related exchange traded funds, including the VanEck Intermediate Muni ETF (ITM).

ITM, which follows the ICE Intermediate AMT-Free Broad National Municipal Index, also outperformed the Agg last year. With a lineup that's more than 90% investment-grade, the VanEck ETF could be poised for even better things in 2022.

[Continue reading.](#)

etftrends.com

by Tom Lydon

January 6, 2023

[Rockwall County, Texas: Fitch New Issue Report](#)

Revenue Framework: 'aaa': General fund revenues should continue a strong growth trajectory over the medium term based on the expectation of additional population and economic expansion. The county's independent legal ability to increase operating revenues remains strong despite recent legislative changes that restrict annual property tax rate increases. Expenditure Framework: 'aa': Fitch expects growth-related spending demands to generally track projected strong revenue gains. The county has demonstrated a willingness to curtail spending during times of economic decline due to its ability to adjust its labor and operating costs. Carrying costs are expected to rise with upcoming debt issuances but are a moderate burden related to total expenses. Long-Term Liability Burden: 'aa': The long-term liability burden as a percentage of local personal income is moderate and driven primarily by overlapping debt. Fitch believes the combined liability total will likely climb due to expected additional borrowings by both the county and other area governments but will be offset by further expansion of the resource base. Operating Performance: 'aaa': Solid expenditure flexibility, abundant revenue-raising authority and modest revenue volatility, in conjunction with a historically strong reserve cushion, should enable the county to maintain a high level of financial resilience through a typical economic cycle.

[ACCESS REPORT](#)

Tue 03 Jan, 2023

[Municipal Electric Authority of Georgia \(MEAG\): Fitch New Issue Report](#)

The ratings primarily reflect the credit quality of the Municipal Electric Authority of Georgia (MEAG) Power Project participants and two PPA off-takers that are unconditionally obligated to purchase the Vogtle Units 3 and 4 output, coupled with asymmetric risks related to nuclear construction and start-up operations uncertainty. The ratings further reflect higher leverage and higher retail rates expected to occur for certain participants resulting from construction costs related to MEAG Power's 22.7% overall ownership of Vogtle Units 3 and 4. The Project P Outlook is Negative, reflecting the underlying credit quality of PowerSouth as the off-taker for the first 20 years of project operation. The Outlook on the Project J and Project M Bonds is Stable.

[ACCESS REPORT](#)

Tue 03 Jan, 2023

Fitch Ratings to Affirm ST Rating of LADWP Power System VRDBs Series 2001 B-1 to B-3 and B-5 to B-8.

Fitch Ratings-New York-04 January 2023: On the effective date of Jan. 12, 2023, Fitch Ratings will affirm the 'F1' short-term (ST) rating assigned to the \$322,800,000 Department of Water and Power of the City of Los Angeles (LADWP) power system variable rate demand revenue bonds (VRDBs), 2001 series B consisting of:

- \$55,900,000 Subseries B-1;
- \$59,200,000 Subseries B-2;
- \$59,200,000 Subseries B-3;
- \$42,500,000 subseries B-5;
- \$45,200,000 subseries B-6;
- \$45,200,000 subseries B-7;
- \$15,600,000 subseries B-8.

The rating action will be in connection with (i) the consolidation of the liquidity support currently provided by Barclays Bank PLC (A+/F1/Stable) in the form two separate Standby Bond Purchase Agreements (SBPAs) supporting the Subseries B-1 and B-3 Bonds and the Subseries B-5 to Subseries B-8 Bonds, respectively, into a single SBPA and (ii) the substitution of the liquidity support for the Subseries B-2 Bonds currently provided by Bank of the West (A/F1/Rating Watch Positive), with the above referenced Barclays SBPA and (iii) mandatory tender of the bonds.

KEY RATING DRIVERS

On the effective date, the short-term 'F1' rating for each subseries will be based on the liquidity support provided by Barclays Bank PLC, in the form of a single SBPA.

The substitute SBPA will provide for the payment of the principal component of purchase price plus an amount equal to 34 days of interest calculated at a maximum rate of 12%, based on year of 365 days for tendered bonds during the daily and weekly rate modes in the event that the proceeds of a remarketing of the bonds are insufficient to pay the purchase price following an optional or mandatory tender. The substitute SBPA will expire on Jan. 21, 2027, the stated expiration date, unless such date is extended, upon conversion to an interest rate mode other than a daily or weekly rate mode; or upon the occurrence of certain other events of default that result in a mandatory tender, or other termination events related to the credit of the bond obligor that result in an automatic and immediate termination.

The current long-term 'AA-/Stable' rating will continue to be based on the long-term rating assigned to LADWP's Power System. For more information on the long-term rating, see the press release dated Oct. 14, 2022, available on Fitch's website at www.fitchratings.com.

RATING SENSITIVITIES

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

- The short-term rating assigned to the bonds will be adjusted upward in conjunction with the short-term rating of the bank providing the SBPA and, in some cases, the long-term rating of issuer

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

- The short-term rating assigned to the bonds will be adjusted downward in conjunction with the short-term rating of the bank providing the SBPA and, in some cases, the long-term rating of the

issuer.

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Additional information is available on www.fitchratings.com

[San Angelo, Texas: Fitch New Issue Report](#)

The 'AA+' Issuer Default Rating (IDR), and GO and CO ratings reflect the city of San Angelo's favorable revenue framework, strong reserve position and low liability burden. Additionally, the city's strong budgeting practices and substantial revenue-raising capacity provide flexibility in the event of economic downturns. Economic Resource Base: San Angelo is the seat of Tom Green County and has an estimated population of 100,000, encompassing 59 square miles in west-central Texas. Population growth has been modest but steady in recent years.

[ACCESS REPORT](#)

Thu 05 Jan, 2023

[Sand Creek Metropolitan District, Colorado: Fitch New Issue Report](#)

Dedicated Tax Key Rating Drivers Strong Revenue Growth Prospects: Fitch expects the district's revenue growth to moderate as the district approaches maturity but remain above U.S. GDP given its favorable location along a major transportation corridor within the expanding economic base of the Denver MSA. Ample Cushion/Resilience: Fitch assesses the district's resilience to economic declines to be high given the ample debt service cushion under the mill limit, modest expected

revenue volatility and limited future debt plans. High Taxpayer and Sector Concentration: The rating reflects an asymmetric economic risk consideration that reflects the district's high taxpayer concentration that is dominated by commercial properties. Dedicated Tax Credit Profile Fitch expects pledged revenues to grow at a slower rate but still remain above U.S. GDP as the district approaches full build-out. The mature district is approximately 88% developed and benefits from a favorable location along Interstate 70 near DIA in the city and county of Denver and the city of Aurora. Due to numerous tax policy changes, Fitch uses AV as a proxy for the district's revenues. After posting steady gains to its tax base since its inception, the district's AV declined moderately by a cumulative 10.8% in 2011-2012, fueled by rising vacancy rates and exacerbated by the delay or cancellation of planned projects. AV stabilized in 2013 and subsequently grew by a strong 10-year CAGR of 8% through 2022.

[ACCESS REPORT](#)

Fri 06 Jan, 2023

[Birdville Independent School District, Texas: Fitch New Issue Report](#)

The 'AA+' IDR reflects the district's historically strong operating performance and solid flexibility to manage downturns and moderate economic cycles. With the issuance of newly authorized debt, carrying costs and long-term liabilities are expected to remain moderate. Due to the maturity of the district, enrollment is expected to follow a flat to modestly negative trajectory. Economic Resource Base: The district is located in Tarrant County, north of Fort Worth and near the Dallas-Fort Worth International Airport. Its 42-square mile service area is largely built out and includes the cities of North Richland Hills, Haltom City, Richland Hills, and Watauga, as well as a portion of the city of Hurst. Key Rating Drivers Revenue Framework: 'a': Fitch believes the district's revenue growth prospects are solid and will exceed inflation over the long term. Recent increases in state per pupil funding have also supported revenue gains. The district's independent legal ability to raise revenues is limited by state law. Expenditure Framework: 'aa': The natural pace of spending growth should remain marginally above that of revenue growth. Solid expenditure flexibility is a result of moderate carrying costs that benefit from primary state funding of retiree benefit costs and the district's ability to adjust its labor costs, if needed. Long-Term Liability Burden: 'aa': The long-term liability burden is moderate, reflecting strong state support for retiree benefits and an affordable amount of outstanding district debt.

[ACCESS REPORT](#)

Mon 09 Jan, 2023

[GFOA Accounting Academy: An Intensive Introduction](#)

In-Person Training

February 27 - March 2 2023 | 8:30 a.m.-4:30 p.m. PT

**Hyatt Regency Newport Beach 1107 Jamboree Road
Newport Beach, California**

Details:

Accountants and auditors new to the public sector must immediately face the daunting challenge of familiarizing themselves with the highly specialized rules, guidelines, and practices applicable to state and local governments. This intensive four-day workshop, intended for those who already possess at least a basic knowledge of private-sector accounting, combines lecture, discussion, and exercises to help newcomers make this difficult, but essential, transition.

Who Will Benefit: Accountants and auditors new to the public sector

Learning Objectives:

Those who successfully complete this seminar should obtain a solid understanding of each of the following:

- Generally accepted accounting principles (GAAP) for state and local governments
- The unique environmental factors that have led to specialized accounting and financial reporting for state and local governments
- Fund accounting
- Measurement focus and basis of accounting
- How to categorize and measure transactions and events
- Government-wide financial reporting
- Component units
- Budgetary reporting
- Elements of an annual comprehensive financial report

Member Price: \$1197.00

Non-member Price: \$1633.50

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

[P3 Financing Approaches for Broadband Infrastructure: CDEFA // BNY Mellon Webcast](#)

Tuesday, February 21, 2023 | 2:00 PM - 3:00 PM

Rural and low-income communities continue to face challenges financing broadband despite increased investment nationwide to address the connectivity gap. Public-private partnership (P3) structures are becoming more common as an approach that enables broadband expansion in the places that need it most. During this installment of the CDEFA // BNY Mellon Webcast Series, experts will highlight the resources available for financing broadband, discuss navigating the use of P3 for broadband, and share first-hand knowledge of their successes utilizing P3 financing for broadband projects.

[Click here](#) to register.

[Join CDEFA and BNY Mellon on January 17 for Forecasting the Bond Market.](#)

Tuesday, January 17, 2023 | 2:00 PM - 3:00 PM

Pandemic recovery, new federal legislation, and increased interest rates have touched all parts of the national economy, including the U.S. municipal bond market. As we enter into 2023, experts will reflect on recent changes in the bond market to forecast the challenges and opportunities ahead. During this installment of the CDFA // BNY Mellon Development Finance Webcast Series, panelists will discuss bond market trends to help investors and communities make informed decisions in the year to come.

[Click here](#) to register.

[Hilltop Adds 12 Investment Bankers to Public Finance Group.](#)

Hilltop Securities Inc. has added a dozen investment bankers to build out its public finance group, bringing on a team from Prager & Co., a boutique underwriter dealing primarily in higher education transactions.

The team led by Fred Prager, includes David Hertz. Both join Hilltop as senior managing directors in New York according to a statement released late Tuesday.

The Dallas-based Hilltop was the 18th ranked manager of long-term municipal debt in 2022, having underwritten \$4.2 billion of such securities, according to data compiled by Bloomberg.

“We are excited to welcome such an accomplished team of municipal finance professionals whose deep experience serving higher education institutions and other public entities is expected to enhance our public finance efforts across the country,” said Brad Wings, Hilltop’s president and chief executive officer, in a statement.

Bloomberg Markets

By Danielle Moran

January 4, 2023

[Designation Information Regarding Mandatory Participation in MSRB Business Continuity and Disaster Recovery Testing.](#)

[View the MSRB Informational Notice.](#)

Notice 2023-01 - Informational Notice

Publication date: 01/05/2023

- [SEC Proposes Comprehensive Best Execution Framework for Broker-Dealers: Sidley](#)
- [The Financial Data Transparency Act: Orrick](#)
- [Comment Deadline Set for MSRB Proposal to Extend Electronic Registration Filing Deadline.](#)
- [Republicans Ramp Up Anti-ESG Campaign for 2023.](#)

- [The Hidden Marketplace: A Municipal Bond “Broker’s Broker” Exchange](#)
- [Your State is Getting Rich Off the Inflation That is Making You Poorer.](#)
- [Crypto in the Public Capital Markets: Opportunities and Challenges – Katten Muchin Rosenman](#)
- [Bankrupt Pennsylvania City Pushes to Sell Water System to Raise Cash.](#)
- And finally, When Daughter Fought Daughter is brought to us this week by [United Daughters of the Confederacy v. City of Winston-Salem](#), in which the standard-issue contretemps erupted over the city’s plan to remove a monument commemorating, uh, the late unpleasantness. The United Daughters of the Confederacy sought to enjoin the removal of the monument and the court noted that the organization was, “formerly known as the Daughters of the Confederacy.” Hmm.... Did a conflict arise between the two organizations? Did this conflict harden into a schism? Was that schism deemed irreparable? Were snippy comments exchanged? We look forward to the monuments commemorating the brave struggle of the overmatched, ultimately doomed Daughters of the Confederacy in their struggle against the merciless, overwhelming force of the perfidious United Daughters of the Confederacy.

MUNICIPAL CORPORATIONS - COLORADO

[Brown v. Walker Commercial, Inc.](#)

Supreme Court of Colorado - December 19, 2022 - P.3d - 2022 WL 17748065 - 2022 CO 57

Developer filed complaint for judicial review of final decision of city’s water director to levy a storm drain development fee against developer’s property.

The District Court dismissed complaint as untimely, and issued orders denying developer’s motion for extension of time. Developer appealed. The Court of Appeals reversed and remanded. Director’s petition for certiorari review was granted.

The Supreme Court held that:

- As a matter of first impression, 28-day filing deadline for complaints seeking judicial review of final action of a government body or official is a strict jurisdictional limitation on actions, and is not subject to equitable tolling or broader equitable considerations like excusable neglect, and
- Because developer’s complaint was untimely filed, developer could not amend its complaint to join additional claims seeking declaratory relief.

Twenty-eight-day filing deadline for complaints seeking judicial review of final action of government body or official is a strict jurisdictional limitation on actions, and so it is not subject to equitable tolling, let alone broader equitable considerations like excusable neglect.

Because developer’s claim seeking judicial review of city water director’s decision to levy fee against developer’s property was untimely filed, in that it was filed 30 days after director’s decision, developer could not amend its complaint to join additional claims seeking declaratory relief; rule required that developer file his complaint not later than 28 days after director’s final decision.

IMMUNITY - GEORGIA

[Johnson v. 3M Company](#)

United States Court of Appeals, Eleventh Circuit - December 21, 2022 - F.4th - 2022 WL 17828942

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, 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.

Under Georgia law, the purported "nuisance exception" to sovereign immunity is not an exception at all but instead a doctrine that is used to evaluate whether municipal liability may be imposed in a given case.

EMINENT DOMAIN - LOUISIANA

[Saloom v. Department of Transportation and Development](#)

Supreme Court of Louisiana - December 9, 2022 - So.3d - 2022 WL 17546623 - 2022-00596 (La. 12/1/22)

Landowners who inherited property from father brought inverse condemnation action against State pertaining to portion of property that father conveyed to State for highway project at a time when

father owned an undivided one-half interest in property and landowners owned other one-half interest via inheritance from mother.

The District Court granted partial summary judgment for landowners. State appealed. The Court of Appeal reversed. Landowners applied for writ of certiorari, which was granted.

The Supreme Court held that doctrine of estoppel by deed did not bar inverse condemnation claims.

Doctrine of estoppel by deed did not apply to bar inverse condemnation claims against State by landowners who inherited an undivided one-half interest in property from their mother before their father, who owned the other one-half interest, conveyed a portion of property to State with “all lawful warranties” for highway project, after which landowners inherited father’s one-half interest, where dispute involved central issues of State’s obligation to pay just compensation, landowners’ right to assert ownership, and available remedies for breach of warranty against eviction, those matters were addressed by State Constitution and numerous statutes, and State was fully aware of landowners’ ownership interests for many years and chose not to pursue its legal remedies against its seller.

MONUMENTS - NORTH CAROLINA

[United Daughters of the Confederacy v. City of Winston-Salem by and through Joines](#)

Supreme Court of North Carolina - December 16, 2022 - S.E.2d - 2022 WL 17725422 - 2022-NCSC-143

Local chapter of women’s heritage association brought declaratory judgment action against city and county to determine rights with respect to Confederate statue that association’s predecessor organization had assertedly helped fund a century earlier, which was located on private property which was former site of county courthouse and which city planned to remove.

The Superior Court dismissed for lack of subject matter jurisdiction and failure to state a claim. Local chapter appealed. The Court of Appeals affirmed with one judge dissenting. Local chapter appealed.

The Supreme Court held that:

- Plan to remove and relocate statue was not a legal or factual injury that could support local chapter’s standing;
- Local chapter lacked taxpayer standing;
- Even if statute setting out limitations on removal of certain monuments on public property created implied private right of action, local chapter was not within class of plaintiffs who could bring such an action;
- Erection of statue on county courthouse property did not render statue a fixture that would be part of county’s real property;
- County’s conveyance of courthouse property to third party while reserving easements for purpose of maintaining monuments and plaques on the property did not result in the real property beneath statue being excluded from the conveyance;
- Statue was not unclaimed “property” that could escheat to state; and
- Federal statute precluding destruction of veterans’ memorials does not provide a private cause of action for enforcement of statute.

ZONING & PLANNING - MISSOURI

[BG Olive & Graeser, LLC v. City of Creve Coeur](#)

Supreme Court of Missouri, en banc - December 20, 2022 - S.W.3d - 2022 WL 17823591

Landowners filed petition for judicial review of city's decision to deny conditional use permit to proposed purchaser for construction of convenience store and service station on subject property.

Following trial, the Circuit Court entered judgment for landowners and issued writ of mandamus requiring city to issue permit. City appealed.

On transfer from the Court of Appeals, the Supreme Court held that circuit court improperly overrode city's discretion.

Circuit court improperly overrode city's discretion when it entered judgment for landowners and issued writ of mandamus requiring city to issue permit, in proceeding on landowners' petition for judicial review of city's decision to deny conditional use permit to proposed purchaser for construction of convenience store and service station, despite circuit court's finding that there was evidence presented supporting finding that requirements under one subsection of city zoning code governing issuance of such permit had been met; there was no limitation that conditional use permit must issue as matter of law when evidence supported only single subsection of code, and code reserved full authority to city to deny any request for conditional use.

POLITICAL SUBDIVISIONS - MISSOURI

[City of Harrisonville v. Board of Trustees of Mo Petroleum Storage Tank Insurance Fund](#)

Supreme Court of Missouri, en banc - December 20, 2022 - S.W.3d - 2022 WL 17823590

City brought action in Circuit Court against petroleum storage tank insurance fund. On remand of appeal of judgment against fund, city substituted fund's board of trustees as defendant and asserted cause of action for fraud arising from fund's failure to reimburse costs of remediation of petroleum leak in a city easement, and thereafter, the case was transferred.

The Circuit Court entered judgment against board and awarded \$8 million in punitive damages to city, and denied board's motion to vacate, correct, alter, or amend the judgment. Board and city cross-appealed.

The Supreme Court held that:

- Board was a state agency entitled to sovereign immunity;
- Board did not waive or abandon sovereign immunity by failing to raise it prior to circuit court's entry of final judgment against fund; and
- Law of the case doctrine did not apply to bar board from asserting sovereign immunity.

Board of trustees of petroleum storage tank insurance fund was a state agency entitled to sovereign immunity from city's fraud claim arising from fund's failure to reimburse cost of installing petroleum-resistant pipe and fittings in an easement as remediation for leaking underground storage tanks from adjacent gas station, where board was designated as a "type III agency" by statute, implemented as a constitutional amendment reorganizing executive department of state

government, and was vested thereunder with authority to appoint an executive director and other employees as needed, “who shall be state employees,” and board participated in state’s annual budget process and was given rulemaking authority that was subject to same rulemaking procedures as other state entities.

Substitution of board of trustees of petroleum storage tank insurance fund as defendant, in place of the fund in city’s fraud action arising from fund’s failure to reimburse costs of installing petroleum-resistant pipe and fittings in an easement as remediation for leaking underground storage tanks from adjacent gas station was not simply a misnomer, and thus, board did not waive or abandon its sovereign immunity by failing to assert it prior to circuit court’s entry of final judgment against fund, because it was not clear that board was the correct party before the substitution, given that board and fund were separate and distinct entities, and as such, board was not party to the litigation until it was substituted on remand.

Circuit court’s finding on city’s motion in limine that petroleum storage tank insurance fund was not an agent of the state, in city’s action arising from fund’s failure to reimburse costs of remediation of petroleum leaking into city easement, did not decide issue of fund’s board of trustees’ sovereign immunity to final judgment, and thus, law of the case doctrine did not apply to bar board from asserting sovereign immunity as defense after it was substituted for the fund on remand, because board was not a party at time of the ruling.

IMMUNITY - NORTH CAROLINA

[Cedarbrook Residential Center, Inc. v. North Carolina Department of Health and Human Services](#)

Supreme Court of North Carolina - December 16, 2022 - S.E.2d - 2022 WL 17726478 - 2022-NCSC-120

Department of Health and Human Services appealed decision of Industrial Commission denying its motion to dismiss adult care home’s claims under State Tort Claims Act (STCA) alleging that Department employees were negligent in inspecting and exercising regulatory authority over home.

The Court of Appeals affirmed. Department appealed.

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

- Sovereign immunity barred home’s claims of negligent regulation; overruling *Nanny’s Corner Day Care Center, Inc. v. North Carolina Department of Health and Human Services*, 264 N.C. App. 71, 825 S.E.2d 34;
- Department did not owe home a legal duty of care sufficient to support a claim of negligent regulation; and
- Duty of care component of a negligence claim is distinct from affirmative defense of the public duty doctrine.

Sovereign immunity barred adult care home from asserting claims under State Tort Claims Act (STCA) that Department of Health and Human Services employees were negligent in inspecting and exercising regulatory authority over home; claims rested entirely upon discretionary actions that were taken in pursuit of Department’s statutory authority to regulate adult care homes, plain language of STCA precluded a finding that a state agency like Department was liable to a private party for what amounted to negligent regulation, and Administrative Procedure Act provided process

by which regulated entities could challenge the lawfulness of and seek redress from allegedly unlawful regulatory actions; overruling *Nanny's Corner Day Care Center, Inc. v. North Carolina Department of Health and Human Services*, 264 N.C. App. 71, 825 S.E.2d 34.

Department of Health and Human Services did not owe adult care home a legal duty of care necessary to support claim that Department was negligent in inspecting and exercising regulatory authority over home; relevant duty of care ran to persons whom Department's regulatory actions were intended to protect rather than to home as the entity being regulated, tort law principles were ill-suited to identification of proper scope of regulatory activity, the exercise of regulatory authority by state agencies like Department generally required a level of expertise and exercise of some amount of discretion that was difficult to evaluate using a reasonable person standard, and General Assembly created a system for specific purpose of resolving disputes over validity of regulatory actions by state agencies.

While the public duty doctrine protects a state agency from liability based upon a failure to carry out a statutorily-created duty that is designed to protect the public at large rather than a specific individual, and operates to prevent a plaintiff from establishing duty as an element of a negligence claim, the mere fact that the doctrine does not apply with respect to a particular set of facts does not, without more, determine whether the duty of care necessary to support the assertion of a negligence claim against the state agency under the State Tort Claims Act (STCA) exists in the first place.

PUBLIC UTILITIES - OHIO

[Matter of Establishing the Solar Generation Fund Rider](#)

Supreme Court of Ohio - December 7, 2022 - N.E.3d - 2022 WL 17478659 - 2022-Ohio-4348

Manufacturers' advocacy group sought judicial review of an order of the Public Utilities Commission authorizing a solar-generation-fund rider with a fixed annual revenue requirement of \$20 million.

The Supreme Court held that:

- Statute governing collection of amounts for solar-generation fund established a fixed annual revenue requirement of \$20 million;
- Commission did not violate statute governing its written opinions in contested cases;
- Group failed to show reversible error with respect to Commission's establishment of rider on per-account basis;
- Group failed to show reversible error with respect to Commission's extension of \$242 monthly rate cap to all nonresidential customers eligible to become self-assessing purchasers for excise tax purposes;
- Remand was required for clarification as to order's treatment of commercial activity tax; and
- Group's contention that Commission erred in failing to require refund language in tariffs to rider was moot.

Statute requiring electric-distribution utilities to charge customers an aggregate amount for solar-generation fund established a fixed annual revenue requirement of \$20 million, rather than an amount up to \$20 million conditioned on generation output of solar resources, and thus Public Utilities Commission properly established an annual revenue requirement of \$20 million for solar-generation-fund rider; statute did not use language such as "up to" to qualify the revenue requirement.

Public Utilities Commission did not violate statute governing its written opinions in contested cases by failing to provide citations to the record in support of its order establishing a fixed annual revenue requirement of \$20 million for solar-generation-fund rider, since statute requiring electric-distribution utilities to charge customers an aggregate amount for solar-generation fund established the revenue requirement.

Manufacturers' advocacy group failed to satisfy its burden of demonstrating reversible error with respect to Public Utilities Commission's establishment of solar-generation-fund rider on a per-account basis, rather than per-customer, where group did not offer argument against definition of "customer" used in electric-service regulations and upon which Commission based its determination.

Manufacturers' advocacy group failed to satisfy its burden of demonstrating reversible error with respect to Public Utilities Commission's extension of \$242 monthly rate cap on solar-generation-fund rider to all nonresidential customers that were eligible to become self-assessing purchasers for excise tax purposes, rather than merely industrial customers eligible to become such purchasers, where group did not challenge, or even mention, Commission's reliance on a particular sentence concerning the \$242 cap in statute governing collection of funds for solar-generation fund, and group made no attempt to show how its members suffered harm or prejudice.

Remand was required for clarification with respect to treatment of commercial activity tax (CAT) in Public Utilities Commission's order establishing a solar-generation-fund rider, where order could be read to mean that no CAT amounts were to be included in the rider, but order could also be read as holding that CAT could be included in rider.

Manufacturers' advocacy group's contention that Public Utilities Commission erred in failing to require refund language in tariffs to solar-generation-fund rider was moot, since all Ohio electric-distribution utilities included language in their rider tariffs to effectuate the required refund and reconciliation process.

REAL PROPERTY CONVEYANCE - OHIO

[Ohio Public Works Commission v. Barnesville](#)

Supreme Court of Ohio - December 22, 2022 - N.E.3d - 2022 WL 17835696 - 2022-Ohi-4603

Ohio Public Works Commission (OPWC) brought action against village, lessee of oil and gas rights, and lessee's assignee, seeking injunction, declaratory judgment, and damages, and alleging that village violated use and development and alienation deed restrictions imposed in connection with grants from environmental conservation fund for village's purchase of two properties as "open space" reservoir and wetlands projects by leasing oil and gas rights without obtaining OPWC's consent.

The Court of Common Pleas denied OPWC's motion for judgment on the pleadings, granted assignee's motion for judgment on the pleadings, and granted village and lessee's motions for summary judgment. OPWC appealed. The Court of Appeals, 2020 WL 4596891, affirmed in part, reversed in part, and remanded. Assignee, lessee, and village sought further review.

The Supreme Court held that:

- Public policy did not preclude alienation deed restrictions;
- OPWC could pursue equitable relief as means to enforce restrictions; and

- Village violated use and development restrictions.

Public policy generally favoring alienability of real property did not preclude alienation deed restrictions imposed in connection with grants from environmental conservation fund for village's purchase of two properties as "open space" reservoir and wetlands projects; no rule, statute, or other authority supported a complete ban on transfer restrictions, disputed restrictions were sufficiently supported by public-policy purpose regarding environment and related conservation authorized by the Ohio Constitution, and restrictions were contracted for by the parties for that specific public purpose.

Ohio Public Works Commission (OPWC) could pursue equitable relief as means to enforce alienation deed restrictions imposed in connection with grants from environmental conservation fund for village's purchase of two properties as "open space" reservoir and wetlands projects; nothing in statute requiring director of OPWC to establish policies related to real property subject to an application for grant limited OPWC's remedies exclusively to liquidated damages.

Village violated use and development deed restrictions imposed in connection with grants from environmental conservation fund for village's purchase of two properties as "open space" reservoir and wetlands projects by leasing oil and gas rights without obtaining consent of the Ohio Public Works Commission (OPWC); by obtaining oil and gas rights, lessee's assignee also obtained right to use the surface of the property to gain access to oil and gas below, which was in direct contradiction to use and development restrictions that plainly prohibited any use of property that did not involve "open space with trails" and "passive recreational appurtenances," and it was of no consequence that assignee had yet to disturb property in any way.

[SEC Proposes Comprehensive Best Execution Framework for Broker-Dealers: Sidley](#)

On December 14, 2022, the U.S. Securities and Exchange Commission (SEC) proposed rules that would establish SEC best execution rules and impose related obligations on firms subject to the standard (the Proposal).¹ The Proposal would generally require brokers, dealers, government securities brokers, government securities dealers, and municipal securities dealers (collectively, broker-dealers) to have detailed policies and procedures addressing how they achieve best execution for their customer orders, with heightened obligations for broker-dealers subject to certain conflicts of interest.²

Specifically, the SEC is proposing three rules — Proposed Rules 1100, 1101, and 1102 under the Securities Exchange Act of 1934, as amended (Exchange Act) — to implement its best execution framework for broker-dealers. The Proposal is broad in scope and would apply to customer transactions in all securities.³

The comment deadline is March 31, 2023, or 60 days after publication of the Proposal in the *Federal Register*, whichever is later. The Proposal was made concurrently with three other SEC proposals that are interrelated and could significantly change practices related to securities order handling and execution.⁴ The proposals collectively appear to advance the SEC's view that better prices for investors may result through encouraging competition among trading venues and increasing trading through certain exchanges or alternative trading systems (ATSs) that disseminate quotations rather than over-the-counter (OTC) market makers.⁵ The Proposal is unique among the four proposals in that it would apply to all securities transactions (e.g., equities, fixed income, private securities,

digital assets), while the other three proposals apply only to national market system (NMS) stock.

Key Takeaways

If the Proposal is adopted, broker-dealers would need to undergo a thorough compliance review of their practices for handling customer orders to determine whether they have policies and procedures sufficiently detailed to satisfy the specified criteria. While broker-dealers may already have policies and procedures designed to comply with the Financial Industry Regulatory Authority, Inc. (FINRA) Rule 5310 and the Municipal Securities Rulemaking Board (MSRB) Rule G-18, many aspects of the Proposal extend beyond FINRA and MSRB requirements, such as provisions for conflicted transactions (as described in more detail below). Broker-dealers would also need to have an established process to conduct the required execution quality reviews and comparisons.

Broker-dealers, particularly those that engage in conflicted transactions, may also have to consider changes to their business models or current practices if necessary to satisfy the new obligations under the Proposal. For example, broker-dealers may need to incur the expense of incorporating access to additional markets into the broker-dealer's order handling practices. The SEC claims the policies- and procedures-based nature of the Proposal would provide broker-dealers "flexibility to exercise [their] expertise and judgment when executing customer orders";⁶ however, the prescriptive criteria established by the Proposal would effectively require broker-dealers to assess and potentially modify existing practices to satisfy the policies and procedures they would be required to adopt.⁷

The Proposal would provide an alternative compliance mechanism for introducing brokers that meet certain conditions (as described in more detail below). Broker-dealers that seek to qualify as introducing brokers may similarly need to modify their business practices to satisfy the qualifying criteria under the Proposal, such as by no longer accepting payment for order flow. Even if a broker-dealer meets the introducing broker criteria, such broker-dealer would have to develop a process by which it can compare the execution quality of its executing brokers to other executing brokers.

In many ways, the Proposal would extend beyond the current FINRA and MSRB best execution rules. Key examples include that the Proposal

- explicitly requires a more detailed assessment of specified factors relevant to a best execution analysis to be included in a broker-dealer's policies and procedures
- imposes additional policies and procedures obligations and documentation requirements for conflicted transactions
- applies its execution quality review requirements to a broader range of broker-dealers
- requires a comparative analysis as part of its execution quality reviews (which is consistent with FINRA but broader than the MSRB)
- provides a narrower exception for introducing brokers with more strict qualification requirements

The SEC states that the Proposal would not alter broker-dealers' existing obligations to comply with the FINRA and MSRB Rules and that broker-dealers should comply with any additional or more specific requirements in each rule, as applicable. Nevertheless, it remains unclear whether FINRA or the MSRB would amend their best execution rules if the Proposal is adopted.

Overall, many questions remain about whether the proposal is necessary and how, if at all, it may be reasonably justified to address regulatory gaps. Much of what the SEC proposes, excepting its not-so-subtle attempt to eliminate payment for order flow practices, is not new and would be consistent with the guidance, examination, and enforcement activity conducted by FINRA in this area.⁸

Background

The duty of best execution, which predates the federal securities laws, generally requires that a broker-dealer execute a customer's trades at the most favorable terms reasonably available under the circumstances. Today, FINRA has a rule detailing the best execution obligations of its member broker-dealers and has, through enforcement actions and regulatory notices, issued guidance to its members on those obligations.⁹ The MSRB has a comparable best execution rule applicable to municipal securities dealers for transactions in municipal securities.¹⁰ However, there is currently no SEC rule or standard governing best execution for broker-dealers' customer orders.

According to the SEC, the impetus for the Proposal is its belief that the existing regulatory framework can be made more effective. The SEC is concerned that current best execution policies and procedures may vary and alleges that customers would benefit from "consistently robust best execution practices" with "heightened attention" by broker-dealers that have certain order handling conflicts of interest.¹¹ The SEC also states that the Proposal would enable it to exercise additional enforcement capabilities.

Regulation Best Execution

Best Execution Standard

The Proposal would establish a best execution standard for broker-dealers, requiring a broker-dealer to use reasonable diligence to ascertain the best market for a security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions (referred to as the "most favorable price").¹²

Policies and Procedures

The Proposal would require broker-dealers to establish, maintain, and enforce written policies and procedures addressing how the broker-dealer will comply with the best execution standard and make routing or execution decisions for customer orders, including by

- obtaining and assessing reasonably accessible price, volume, and execution quality information concerning markets trading the relevant securities
- identifying markets reasonably likely to provide the most favorable prices
- incorporating those markets into the broker-dealer's order handling practices and ensuring it can efficiently access each of them
- assessing reasonably accessible and timely information with respect to displayed prices, price improvement opportunities, and order exposure opportunities
- assessing customer order attributes and securities trading characteristics
- balancing the likelihood of obtaining better prices in assessing additional markets with the risk that a delay in executing a customer order could result in a worse price

Conflicted Transactions

A broker-dealer transacting with a retail customer¹³ that engages in a principal trade or routes to or from an affiliate or provides or receives payment for order flow¹⁴ (each a "conflicted transaction") would be subject to additional obligations under the Proposal. In particular, these broker-dealers' best execution policies and procedures must address how the broker-dealer will obtain and assess additional information and evaluate a broader range of markets beyond what is required for nonconflicted transactions. In addition, these broker-dealers would have to document the details of any payment for order flow arrangement and their compliance with the best execution standard for

conflicted transactions, including their efforts to enforce their policies and procedures and the basis and information relied on for their determination that the conflicted transaction was consistent with the best execution standard.

Other than a questionable requirement for the broker-dealer to assess and consider immaterial market centers, the Proposal is largely consistent with current FINRA guidance and application. Moreover, the SEC admits that compliance with this aspect of the Proposal would be more expensive than what is received through payment for order flow so that a significant number of broker-dealers would elect to stop receiving payment for order flow.¹⁵

Regular Review of Execution Quality

The Proposal would require broker-dealers to, at least quarterly, review the execution quality of their customer transactions, compare such execution quality with the execution quality that might have been obtained from other markets, and revise their best execution policies and procedures and order handling practices accordingly.¹⁶

Introducing Brokers

The Proposal would provide an alternative compliance mechanism for a broker-dealer that routes its customer orders to another broker-dealer for execution and meets certain conditions¹⁷ (referred to as an “introducing broker”). Rather than comply with the policies and procedures and execution quality review requirements described above, an introducing broker would need to have policies and procedures that require it to regularly review the execution quality obtained from its executing broker, compare such execution quality with what it might have obtained from other executing brokers, and revise its order handling practices accordingly. This aspect of the Proposal regarding introducing brokers takes aim at the use of payment for order flow. Many introducing brokers route order flow to wholesalers that pay for order flow and execute orders in a principal capacity. Such arrangements may effectively be eliminated by the Proposal.

Annual Report

The Proposal would require broker-dealers (including introducing brokers) to, at least annually, conduct a review of their best execution policies and procedures and order handling practices and prepare a written report presented to the broker-dealer’s board of directors.

1 Exchange Act Release No. 96496 (December 14, 2022), <https://www.sec.gov/rules/proposed/2022/34-96496.pdf>.

2 While the proposed rules apply to broker-dealers, investment advisers should pay close attention to the Proposal.

The SEC was careful to note in the Proposal that investment advisers have a similar duty to seek best execution of a client’s transactions where the adviser has responsibility to select broker-dealers to execute client trades. See Proposal at 11 n.11.

3 The SEC specifically emphasized that the Proposal would also apply to any digital asset that is a security. Proposal at 37 (referring to a “digital asset” as “an asset that is issued and/or transferred using distributed ledger or blockchain technology ..., including, but not limited to, so-called ‘virtual currencies,’ ‘coins,’ and ‘tokens’ ”).

4 See Sidley updates: [SEC Proposes Rule to Enhance Competition for Certain Individual Investor](#)

[Orders; SEC Proposed Amendments to Modernize Disclosure of Order Execution Information; and SEC Proposes Rules Related to Minimum Pricing Increments, Access Fee Caps, and Transparency of Better Priced Orders.](#)

5 See Chair Gary Gensler, Competition and the Two SECs, address before the SIFMA Annual Meeting (October 24, 2022), <https://www.sec.gov/news/speech/gensler-sifma-speech-102422>.

6 Proposal at 9.

7 For example, because broker-dealers engaging in conflicted transactions would be required to have policies and procedures that address how the broker-dealer will obtain and assess additional information and evaluate a broader range of markets beyond those identified as material potential liquidity sources, they may ultimately need to seek additional market information or connect to new trading venues.

8 “The release is thinner when it comes to assessing how the rule alone, or in combination with the other rules on today’s dockets, will change markets and affect investors.” Commissioner Hester M. Peirce, Is This the Best Execution We Can Get? (December 14, 2022), <https://www.sec.gov/news/statement/peirce-best-execution-20221214>.

9 See FINRA Rule 5310. See also, for example, FINRA Regulatory Notice 15-46, Best Execution: Guidance on Best Execution Obligations in Equity, Options, and Fixed Income Markets (November 2015), https://www.finra.org/sites/default/files/notice_doc_file_ref/Notice_Regulatory_15-46.pdf.

10 See MSRB Rule G-18. See also MSRB Implementation Guidance on MSRB Rule G-18, on Best Execution (last updated February 7, 2019), <https://msrb.org/Implementation-Guidance-MSRB-Rule-G-18-Best-Execution>.

11 Proposal at 7.

12 The Proposal sets forth certain exemptions for a broker-dealer where (i) another broker-dealer is executing a customer order against the broker-dealer’s quote, (ii) an institutional customer exercising independent judgment executes an order against the broker-dealer’s quote, or (iii) the broker-dealer receives an unsolicited instruction from a customer to route its order to a particular market. This is consistent with existing FINRA guidance and application. The Proposal would not include an exemption for transactions with a “Sophisticated Municipal Market Professional” that is currently in place under MSRB Rules. See MSRB Rules G-48(e) and D-15.

13 A “transaction for or with a retail customer” would be defined as “any transaction for or with the account of a natural person or held in legal form on behalf of a natural person or group of related family members.” Proposed Rule 1101(b)(4)(i).

14 See 17 CFR 240.10b-10(d)(8) (defining “payment for order flow”).

15 See Proposal at 344-45, 357-58.

16 The SEC states that while comparable to existing FINRA and MSRB requirements this review obligation would apply to more broker-dealers than FINRA Rule 5310 and be more frequent than under MSRB Rule G-18. See Proposal at 134-37.

17 These conditions include that the broker-dealer (i) does not carry customer accounts or hold customer funds or securities, (ii) has entered into an arrangement with an unaffiliated broker-dealer

to handle and execute all of its customer orders on an agency basis, and (iii) has not accepted any payment for order flow from the executing broker. Proposed Rule 1101(d)(1)-(3).

Sidley Austin LLP - Andrew P. Blake, James Brigagliano, W. Hardy Callcott, Kevin J. Campion, John I. Sakhleh, Lara C. Thyagarajan, Michael D. Wolk and Timothy B. Nagy

December 29, 2022

Municipal Securities Disclosure Will Be Subject To New Data Standards.

The Financial Data Transparency Act of 2022 (the "Act"), which was included as part of the National Defense Authorization Act, was signed into law on December 23, 2022. The Act requires that various federal regulatory agencies jointly issue proposed rules within eighteen (18) months, which establish data standards for financial disclosure. Final rules must then be enacted no later than two (2) years from passage of the Act after public comment is received.

Within two (2) years after promulgation of these final rules, the Securities and Exchange Commission (the "SEC") must then issue compatible rules that apply to information submitted to the Municipal Securities Rulemaking Board by issuers and obligors of municipal securities. With this two-step process for promulgation of rules, the final rules that will govern disclosure for municipal securities may not become effective for four (4) years.

The Act requires that the SEC consult with market participants in establishing these data standards. The SEC "may scale those data standards in order to reduce any unjustified burden on smaller regulated entities." The Act also mandates that the SEC "seek to minimize disruptive changes to the persons affected by those rules."

The Act sets forth certain requirements for the data standards adopted by the SEC such that the rules must, to the extent practicable:

1. render data fully searchable and machine-readable;
2. enable high quality data through schemas, with accompanying metadata documented in machine-readable taxonomy or ontology models, which clearly define the semantic meaning of the data;
3. ensure that a data element or data asset be consistently identified in associated machine-readable metadata;
4. be nonproprietary or made available under an open license;
5. incorporate standards developed and maintained by voluntary consensus standards bodies; and
6. use, be consistent with, and implement applicable accounting and reporting principles.

It is anticipated that the rules will adopt a structured data format similar to extendable business reporting language (XBRL), which is currently required by the SEC for private companies.

The new data standards will likely increase the costs of municipal disclosure for issuers and obligors who may need outside services or software to ensure compliance. A full assessment of any additional costs and burdens will not be possible until the rules, and any exceptions, are promulgated and finalized by the SEC, though the Act makes clear that some new mandates will be imposed in the coming years.

Partridge Snow & Hahn LLP

by Eugene Bernardo II, David DiSegna

December 30, 2022

[Real-Time Data on What Muni Bond Investors Think of Your City.](#)

A new data tool offers a window into how investors are responding to changes affecting the financial outlook of individual governments, including trends like the rise of remote work.

Welcome back to Route Fifty's Public Finance Update! I'm Liz Farmer and this week, we're looking at a new way to gather data on how municipal bond market investors view changes in government finances.

While the muni market is still viewed as a sort of black hole by onlookers due to slow or inconsistent financial disclosure practices compared with the corporate world, the last decade or so has seen a lot of progress when it comes to analyzing bond issuance data. In particular, the Municipal Securities Rulemaking Board's EMMA database has made issuance information much more accessible. MSRB is now even experimenting with a data analytics component.

Still, getting comprehensive information about the secondary market—how muni bonds are traded—has required a lot of individual legwork. But now thanks to a new dashboard developed by the University of Chicago's Center for Municipal Finance, our window into what investors are doing and thinking just became a lot clearer. It's similar to the S&P CoreLogic Case-Shiller Home Price Index, but for muni bonds. In the same way that real estate agents, buyers and sellers use the home price index to inform their decisions, market participants can use the Center for Municipal Finance [Muni Index](#) to get a more contextualized picture of the fiscal health of cities, counties and school districts. The Index goes up when investors are willing to pay higher prices for an issuer's bonds, and vice versa.

[Continue reading.](#)

Route Fifty

By Liz Farmer | DEC 20, 2022

[Brokerage Firm Settles Charges for Violations of Muni "Private Placement" Requirements.](#)

A brokerage firm [settled](#) SEC charges for failing to comply with the disclosure requirements under Exchange Act Rule 15c2-12 ("Municipal securities disclosure") when acting as an underwriter in connection with multiple limited offerings of municipal securities.

According to the Order, the SEC found that the firm offered municipal securities in reliance on the limited offering exemption under Rule 15c2-12. The exemption would have permitted the firm to make the offerings without Rule 15c2-12's "continuing disclosure undertaking." The SEC said that to

qualify under the limited offering exemption, a firm is required to limit the distribution to (i) no more than 35 persons, (ii) persons who hold the requisite financial experience and knowledge and (iii) persons who are not purchasing for multiple accounts or intending to distribute. The SEC found that for 36 limited offerings, the broker-dealer sold these securities without first forming a reasonable belief that these requirements were met.

The SEC determined that the firm violated Exchange Act Rule 15c2-12, Exchange Act Section 15B(c)(1) (“Municipal securities”) and MSRB Rule G-27 (“Supervision”). To settle the charges, the firm agreed to (i) cease and desist, (ii) a censure, (iii) a civil monetary penalty of \$100,000 and (iv) disgorgement of \$81,362 with an additional \$16,961 in prejudgment interest.

Fried Frank Harris Shriver & Jacobson LLP

December 23 2022

[The Financial Data Transparency Act: Orrick](#)

The Financial Data Transparency Act of 2022 (Act) will change the way issuers and obligors of municipal securities report required disclosure information on the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access website (EMMA). In short, the Act requires the Securities and Exchange Commission (SEC)[1] to create organizational standards for information reported by issuers and obligors on EMMA. The goal of the Act is to provide users with an easier way to view, access, and explore the contextual information of the underlying data.

Here’s what you need to know:

What Happened?

The Act was passed into law on December 23, 2022. The Act directs certain regulatory agencies (including the SEC) to jointly issue proposed rules for public comment that establish new data reporting standards within 18 months of enactment of the Act. These new SEC rules will impact entities that post on EMMA. Proponents of the Act believe it will make the information collected and made publicly available by regulatory agencies easier to access, analyze and compare by requiring data to be posted in a machine-readable format, similar to the requirements for the information posted to the Electronic Data Gathering, Analysis and Retrieval system (EDGAR) by publicly traded companies, mutual funds and other regulated entities. The Act only changes how information is submitted; it does not contain any new disclosure requirements.

What Will the Law Change for Affected Issuers and Obligors?

The Act will require that information posted on EMMA be structured so that it is fully searchable and consistently identifiable by machine-readable technologies through the use of identifier codes or tags (i.e., structured data). Structured data allows the reader to access more granular information about the data presented, such as the accounting codifications and guidance associated with the information.[2] Additionally, the Act requires information to be made available in an open data format that allows for digital access and bulk downloads with no restrictions.

It is anticipated that the SEC will require data collection in a structured format such as the extendible business reporting language (or XBRL) format, with each piece of data being tagged/barcoded to enable simpler comparisons between sets of data. XBRL is an open standard,

commercially available software language that is nonproprietary and royalty free. Benefits of XBRL are that it can identify what is and is not reported and any data quality errors.[3] XBRL can also compare results across data sets and generate time series charting and benchmarking.[4] The SEC first implemented structured data requirements in 2009, and currently, both the SEC and the Federal Energy Regulatory Commission require information reported by their regulated entities to be in the Inline XBRL format, which allows readers to download information directly into spreadsheets for comparison and analysis purposes.

To implement the structured data standard, the SEC must develop taxonomies or classifications to create standard tags for the reporting of information. Each reporting entity must translate data from its accounting system into a format consistent with the classifications developed by the SEC. Once the initial translation is complete, if an entity's financial statements include unique line items, it may create an "extension" to a standard tag to modify the nomenclature so that it corresponds to its existing unique line items.[5] For example, if an entity refers to "net revenues" as "operating revenues," it may extend the "net revenues" tag to refer instead to "operating revenues." [6] Although extensions provide entity-specific information that may facilitate meaningful analysis, extensions diminish the comparability of data across entities, which is one of the main purposes of structured data.

Who Does the Law Most Affect?

The Act, once implemented after the rules are finalized, may significantly alter the way issuers and obligors format the information posted to EMMA. Specifically, the translation of financial information into a format consistent with the classifications developed by the SEC may be different from the format currently required by the Government Accounting Standards Board (GASB), Financial Accounting Standards Board (FASB) and Generally Accounting Standards Board (GAAP). The National League of Cities[7] and the Government Finance Officers Association[8] (GFOA) recently raised concerns about the new reporting requirements, including cost concerns and concerns that information unique to a specific type of issuer such as a state, city, public utility provider or hospital will be lost in the standardization of information.

Inherent with the new standards will be the increased costs of preparing, reviewing and validating that the information presented in the new form is an accurate representation of the underlying data. The GFOA predicted that the transition to standardized reporting categories will be costly, and the "unfunded mandate [will] require extensive staff time along with the need for consulting resources and potentially risky updates to governmental financial systems." [9] In 2017, the CFA Institute conducted a study of companies required to report in a structured data format and found that although implementation of structured data was initially costly, over time larger companies reduced the number of outsourcing services used to create their XBRL filings as they became more confident in preparing and reviewing their reports in-house.[10] However, smaller companies found the costs of the structured data reporting requirement as a consistent burden given their limited resources.[11]

To minimize the burden of implementation of the structured data standards, the Act directs the SEC to consult with market participants, scale the data standards in order to reduce any unjustified burden on smaller entities and minimize disruptive changes to the affected entities. These requirements were added to the final version of the Act to address concerns from municipal market participants about the increased costs of implementing the structured data format, including increased capital costs for the purchase of software, increased operating expenses for entities that contract with a third-party vendor to perform data tagging services and increased personnel costs for the preparation and review of the data. In the municipal securities market, the Act applies only to issuers and obligors that are required to file continuing disclosure reports on EMMA. As such, it

remains to be seen whether the increased costs associated with implementing the new rules will create a barrier to entry in the municipal market for smaller governmental issuers and nonprofit organizations who may choose to avoid the new requirements by opting for private placement offerings that are exempt from such continuing disclosure obligations.

What Happens Next?

The SEC will work with the other regulating entities named in the Act to draft rules for public comment within the next 18 months. The Act does not mandate a specific time period for public comments to be received and reviewed by the regulated entities. Once the public comment period ends and the final rules are issued, issuers and obligors that are required to post on EMMA will have two years before they must comply. This means that the earliest possible date for when affected entities will need to transform their EMMA filings is over 3 ½ years away (and likely much longer given that time will be needed for public comments and the release of the final rules). It remains to be seen what consequences might apply to municipal issuers and obligors that fail to report in the new machine-readable, structured data format when required, although it is expected that the new rules will likely explain the effect of non-compliance with the reporting requirements. In the corporate world, for public companies already subject to structured data requirements, non-compliance means the subject company is non-compliant with statutory reporting requirements and is deemed to not have adequate public information available for purposes of Rule 144 of the Securities Act of 1933.

Affected entities should get involved in the design of the data standards by participating in the public comment process with the SEC. To minimize implementation costs, aligning the new standards with current reporting requirements under GASB, FASB or GAAP is crucial. Additionally, as the national data standards are promulgated, local issuers should contact state agencies to work towards synchronizing any state reporting requirements with the new national reporting requirements. Issuers and obligors of municipal securities may also consider earmarking resources to implement the requirements of the Act as the implementation date approaches.

[1] The Act as first passed by the House of Representative originally provided for the MSRB to set and implement the new rules. However, municipal bond issuers expressed their concerns about expanding the MSRB's current authority over state and local governments as bond issuers in contravention of the Tower Amendment. Under the Act as passed, the SEC, which is subject to congressional oversight, will design and implement the new rules for the municipal market.

[2] Caroline A. Crenshaw, Commissioner, U.S. Sec. and Exch. Comm'n, *The Lessons of Structured Data*, November 10, 2021, located at <https://www.sec.gov/news/speech/crenshaw-lessons-structured-data-111021>.

[3] *Id.*

[4] *Id.*

[5] U.S. Sec. and Exch. Comm'n, *Interactive Data for Financial Reporting*, <https://www.sec.gov/corpfin/infosmallbussecginteractivedata-secg> (last visited Dec. 16, 2022).

[6] *Id.*

[7] Michael Gleeson, *Proposed Legislation Includes Costly Unfunded Mandates for Local Governments*, National League of Cities, <https://www.nlc.org/article/2022/12/15/what-you-need->

to-know-about-the-financial-data-transparency-act/, (last updated Dec. 15, 2022).

[8] New Financial Reporting Requirements for Governments Proposed in U.S. Senate: A Costly and Burdensome Unfunded Mandate, Government Finance Officers Association, <https://www.gfoa.org/new-financial-reporting-requirements-proposed> (last visited Dec. 19, 2022).

[9] Id.

[10] Mohini Singh, ACA, The Cost of Structured Data: Myth vs. Reality, CFA Institute, <https://us.aicpa.org/content/dam/aicpa>

</interestareas/frc/accountingfinancialreporting/xbri/downloadabledocuments/cfa-institute-the-cost-of-structured-data.pdf>, (last visited Dec. 16, 2022).

by James Hernandez, Jenna Magan, Donna McIntosh, Hoang Vu

December 27, 2022

Orrick, Herrington & Sutcliffe LLP

[SEC Charges PNC in Latest Limited Offering Disclosure Action.](#)

PNC Capital Markets (PNC) has been added to the newly-formed list of underwriters who failed to meet the exemption requirements in connection with 36 limited offerings in violation of Securities and Exchange Commission Rule 15c2-12 and Municipal Securities Rulemaking Board Rule G-27 on supervision.

Without admitting or denying the findings, PNC agreed to be censured and pay disgorgement of \$81,362, prejudgment interest of \$16,961 as well as a civil money penalty of \$100,000. The administrative action comes just over three months after the SEC filed litigation against Oppenheimer & Co., in addition to three separate administrative settlements against BNY Mellon Capital Markets, TD Securities and Jefferies for failing to comply with municipal bond offering disclosure requirements in connection with limited offerings.

Those actions were the first time the Commission had ever charged underwriters in such fashion, and the swift follow-up suggests this has been an area of focus for the SEC's public finance enforcement team. All underwriters charged for failing to comply with the limited offering exemption allegedly violated SEC Rule 15c2-12, which generally requires underwriters to obtain disclosure documents from issuers and to reasonably determine that the issuer is able to provide certain information on a continuing basis to the MSRB.

But the rule contains an exemption from those requirements for municipal securities issuances in denominations of \$100,000 or more sold to no more than 35 persons if the underwriter reasonably believes the purchaser is capable of evaluating the merits of the investment as well as if the purchaser is not doing so for more than one account with a view to distribute.

"From at least March 2018 through November 2021, PNC acted as sole underwriter for at least 36 offerings of municipal securities where it sought to rely on the exemption provided in Exchange Act

15c2-12(d)(1)(i), but where the offerings did not actually satisfy the exemption's requirements," the complaint said. "PNC did not provide investors in these securities with copies of any preliminary official statement or final official statement for the securities, or determine that a continuing disclosure undertaking has been entered into by the issuer, or an obligated person, as required by Exchange Act Rule 15c2-12(b)."

With these 36 limited offerings, PNC sold the bonds to broker-dealers and/or investment advisors with separately managed accounts and when the sale occurred, PNC did not have a reasonable belief that the broker-dealers and investment advisors were purchasing the bonds for investments as required under Exchange Act Rule 15c2-12(d)(1)(i).

PNC did not inquire further as to whether the brokers were purchasing the securities for more than one account or for distribution and failed to ascertain for whom the bonds were purchased.

"PNC was therefore unable to form a reasonable belief that the broker-dealers and investment advisors were purchasing the securities for investors who possessed the necessary knowledge and experience to evaluate the investments," the complaint said. "As a result, these 36 limited offerings did not qualify for the exemption under Exchange Act Rule 15c2-12(d)(1)(i)."

The SEC also found that the firm failed to consistently follow or enforce its own policies, which required that each municipal primary offering be evaluated to determine whether it was exempt from the rule, and maintain documentation and evidence that the exemption was met. The failure to do so was a violation of the MSRB's supervisory rule, which requires that firms "adopt, maintain, and enforce" procedures "reasonably designed" to ensure compliance with all applicable laws and rules, the SEC found.

PNC did not immediately respond to a request for comment.

By Connor Hussey

BY SOURCEMEDIA | MUNICIPAL | 12/22/22 09:43 AM EST

[A Big-Picture Year in Public Finance.](#)

Inflation punished Wall Street and Main Street, and public financiers who ignored it squandered billions. Congress passed two bills important to states and localities. And pensions took a hit, but taxpayers won't feel that pain for years.

As the year comes to a close, it's my tradition to look back at the biggest stories in public finance and hold them up against [my forecast for the year](#). Sprinkling in some impactful surprises from Capitol Hill, it was a memorable year for state and local governments on several levels, both sweet and sour:

Inflation's eruption: Although global pandemic-generated supply chain interruptions and Russia's invasion of Ukraine certainly didn't help, the seeds of America's inflation problem date back to 2021's injection of fiscal and monetary stimulus to counter the COVID-19 shutdowns. The U.S. money supply surged, as my 2022 New Year's column pointed out, and too much cheap money sloshed around the economy, chasing too little stuff including housing. Inflation rates unseen in 40 years erupted, and that caused bond and stock market reactions, unprecedented public-sector cash management blunders, pension fund headaches and public employee compensation issues.

[Continue reading.](#)

governing.com

by Girard Miller

Dec. 20, 2022

[Republicans Ramp Up Anti-ESG Campaign for 2023.](#)

But while rising GOP leaders tout efforts to derail sustainable investing, pushback from pension officials and banking associations is growing.

The investing strategy known as ESG is under attack, and virtually no one expects the backlash to die down.

More than a dozen Republican state attorneys general have blasted ESG financial practices, while Republicans in Congress plan to increase their scrutiny of what they call “woke capitalism.” One of their main complaints is that environmental, social and governance investing is part of a broader Democratic effort to prioritize climate change and other societal issues to the detriment of the fossil-fuel industry.

The political assault by the right is backed by some of the party’s biggest names, including former Vice President Mike Pence and the governors of Florida and Texas, Ron DeSantis and Greg Abbott. Pence and DeSantis are widely seen as potential 2024 presidential candidates. Wealthy GOP supporters such as Peter Thiel, as well as billionaire Elon Musk, also have criticized ESG. And there’s a long list of right-wing activists such as Leonard Leo who have spoken out against BlackRock Inc. and other Wall Street giants they claim are catering to a Democratic agenda.

[Continue reading.](#)

Bloomberg Green

By Saijel Kishan and Danielle Moran

December 29, 2022

[The Hidden Marketplace: A Municipal Bond "Broker's Broker" Exchange](#)

While it is common to hear about daily fluctuations in the various market exchanges, such as NASDAQ or DOW, few investors are aware of a fluid exchange taking place daily between fixed-income broker-dealer trading desks and their competitors. This exchange is an over-the-counter marketplace where bond dealers come together via the “broker’s broker platform” to buy and sell securities with one another.

The broker’s broker (BB) is an intermediary/negotiator for buyers and sellers of municipal (muni) bonds in the secondary marketplace. Like a real estate broker, the BB does not own any securities but acts as an agent, representing buyers and sellers of muni bonds. These agents help facilitate the

trading flow in the \$4 trillion municipal bond market.

This platform consists of firms that compete for bonds and clients, and the BB acts as a facilitator between the firms so dealers can buy what they do not have or sell what they do not want. The parties involved in the trades remain anonymous, but each must be a registered broker-dealer to participate.

So, why should your financial advisor's Broker Dealer use a BB? And how does using a BB affect the individual investor?

To answer these questions, you must understand that the buying and selling of municipal bonds is done in an over-the-counter marketplace. In the past, players would wait for the morning delivery of a publication called "The Blue List." This publication listed municipal offerings by state and included the selling firm's name. Because anonymity is a valuable negotiating tool, a dealer would enlist a BB to entertain a bid for the bond of their liking. Thus, the negotiating began, and if all parties agreed, a trade occurred. Neither buyer nor seller knew who was on the other side of the transaction, and the BB worked with each firm to facilitate the transaction.

These firms across the U.S. would interact with the BB by phone numerous times a day, trading bonds. Today, dealers work with more sophisticated electronic trading platforms called electronic communication networks (ECNs). These systems allow dealers to advertise offerings, execute trades, and buy and sell on the auction platform — all without ever picking up the phone. This method has added greater visibility to muni products advertised in the marketplace while saving valuable time.

An attempt has been made to move municipal trading to a more generic valuing system, but that hasn't proven easy because of the unique differences among municipalities and their financial circumstances. Nevertheless, the electronic trading network (ETN) has come a long way and offers a considerable efficiency level.

The advantage of having your financial advisor's Broker Dealer firm work through a BB can be beneficial in multiple ways. First, if your financial advisor (FA) is looking for a specific type of bond for you and does not have it in inventory, they must go into the marketplace to source it. In this instance, enlisting a BB to find that specific bond is advantageous to the dealer. Dealers always seek to give their clients as close to what they request as possible, and the BB can show you bonds that might fit your clients' requirements.

This situation can also work in reverse. If a client has a bond their FA firm would not usually purchase, this dealer can go to a BB and get a bid for these bonds from another dealer who traffics in that type of paper. In these cases, the dealer satisfies the investment objectives. Using a BB can also assure you that when you sell bonds, the price you are quoted represents what the marketplace pays that day, not just the in-house bid from your FA.

When selling your securities, the BB provides auction-like services by asking marketplace participants to bid on your bonds. This format assures the seller that their bonds are shown to dealers all over the U.S. If the price is right, a trade ensues. An attractive block of bonds can receive upwards of 10 bids, which would save you from calling more than 10 firms yourself to ask for a value on your securities. BBs provide an assurance that the bid price you receive is not just representative of your FA firm's price level but that of the entire marketplace on that day.

Dealers who actively participate in daily bond auctions have an opportunity to bring value to their clients by purchasing bonds on the "bid side" of the market instead of the "offering side." This method is beneficial to the individual investor because it ensures the best execution — and higher

returns.

As with all investing, knowledge is power. Knowing more about the functioning of the muni marketplace is not only advantageous but essential to achieving your investment objectives. Discussing these issues with your fixed-income advisor is always time well spent.

At The DRL Group, we specialize in helping high-net-worth investors maximize their tax-free returns by proactively maintaining their custom bond portfolios through all market conditions. For more information on how we can help, please visit us at [Yield-Day.com](https://www.Yield-Day.com) or contact one of our specialists at 281-398-8600.

municipalbonds.com

by David Loesch

Dec 22, 2022

The information provided here is not investment, tax or financial advice. You should consult with a licensed professional for advice concerning your specific situation.

[Comment Deadline Set for MSRB Proposal to Extend Electronic Registration Filing Deadline.](#)

The MSRB proposed a rule change to extend the time period to January 31 to annually affirm the information on Form A-12, the MSRB's consolidated electronic registration form. The operative date for the [proposed rule](#) is January 1, 2023. The MSRB will accept comments on the proposal until January 12, 2023. The Notice was [published](#) in the Federal Register.

The rule change applies to brokers, dealers and municipal securities dealers and municipal advisors.

As [previously covered](#), the proposal would also remove the requirement for firms to provide a separate notice to regulators in Form A-12 prior to engaging in municipal securities or municipal advisory activities. Instead, each firm would be required to provide (i) its principal regulator (which will be a banking agency for banks that are registered as muni dealers) and (ii) contact information for the firm's contact at that regulator. The primary regulatory contact at a municipal advisor firm would also be required to register as a municipal advisor principal after passing the Series 54 Municipal Advisor Principal Qualification Examination.

Fried Frank Harris Shriver & Jacobson LLP

December 22 2022

[Your State is Getting Rich Off the Inflation That is Making You Poorer.](#)

State governments emerging from the coronavirus pandemic built historic cash surpluses as inflation in prices and wages drove up sales and income tax collections.

Now many states are reaping another reward: banking millions of dollars off those surpluses as the

Federal Reserve fights inflation with higher interest rates.

“We’re catching both ends of it,” said Missouri Treasurer Scott Fitzpatrick, a Republican.

First, “we received a lot of extra money,” he said. “Now, nominally, we’re benefiting from the increase in interest rates from the Fed.”

[Continue reading.](#)

BY DAVID A. LIEB AND THE ASSOCIATED PRESS

December 27, 2022 at 11:13 AM PST

[Crypto in the Public Capital Markets: Opportunities and Challenges - Katten Muchin Rosenman](#)

On October 20, Mark Wood, co-head of Katten’s National Capital Markets practice, alongside representatives from investment bank H.C. Wainwright & Co., LLC and leading publicly traded Bitcoin miner Bitfarms Ltd., discussed the status of cryptocurrencies and capital raising by crypto-focused market participants as part of Katten’s 2022 “[Crypto with Katten](#)” annual symposium (you can view the agenda for the symposium [here](#)). Below are highlights from the presentation.

Crypto in the US Public Capital Markets

A wide variety of companies in the crypto space have “gone public” in recent years — listing their common stock for trading on a securities exchange in the United States — including cryptocurrency mining companies, e-commerce and crypto- payment platforms, cryptocurrency exchanges and other financial services companies focusing on the evolving crypto ecosystem. Significantly, many overseas crypto businesses have also chosen to tap the United States capital markets for equity financing or chosen to list their stock on United States stock exchanges, including many of the largest crypto miners by market cap.

From Record Highs to Challenging Markets

Publicly listed crypto companies experienced record growth through the end of 2021, with the market cap of publicly traded crypto miners alone exceeding \$16.5 billion by the end of the year. Indeed, during 2021, the stock of many crypto-oriented listed companies appreciated at a faster rate than even the price of Bitcoin itself during the same time period. However, prices of “crypto” stocks have fallen alongside the general market in 2022, with the three largest publicly traded Bitcoin mining companies losing more than \$4.5 billion in market cap, spurred on by the collapse of cryptocurrency prices generally in addition to the rising costs of electricity and general economic and inflationary pressures. Year to date, the price of Bitcoin has fallen approximately 65 percent, with many leading Bitcoin mining companies experiencing percentage market cap declines of 74-90 percent over the same time period.

[Continue reading.](#)

by Michael Tremeski, Mark Wood

December 26, 2022

[Orrick: School Bond Election Timeline for 2024 Election](#)

For school districts and community college districts considering 2024 bond elections, remember that the March 2024 primary election is fast approaching! Even if you are planning for November 2024, it's never too early to get your professional team in place. When engaged early, your Orrick bond counsel can advise on the ballot language to help optimize the polling process.

[Click here for a printable version of the 2024 timelines.](#)

December.20.2022

TAX - ALABAMA

[Gulf Shores City Board of Education v. Mackey](#)

Supreme Court of Alabama - December 22, 2022 - So.3d - 2022 WL 17843037

City board of education and individual taxpayer in city school district brought action against the Superintendent of the Alabama State Board of Education, county revenue commissioner, and county commissioners, all in their official capacities, for mandamus relief requiring that "local tax" proceeds from special county privilege license tax paralleling the state sales tax be apportioned to include city board of education as a recipient and/or for a judgment declaring that the corresponding local-tax act was unconstitutional.

After county board of education and community college were allowed to intervene and after county district attorney and presiding judge of county juvenile court were joined as defendants, plaintiffs filed an amended complaint, and the Circuit Court dismissed plaintiffs' claims. Plaintiffs appealed.

The Supreme Court held that:

- Portion of taxes that were generated under the local-tax act and that were earmarked for the county board of education were not required or authorized by statute to be allocated to the city board of education;
- City board of education failed to demonstrate the likelihood that its alleged injury would be remedied by a declaration that the local act violated the Alabama Constitution's prohibition on a local act being enacted in a case covered by a general law;
- Individual taxpayer's "equality of taxation" challenge to constitutionality of local act presented a justiciable controversy; but
- The local act did not violate the constitutional principle of equality of taxation.

Portion of taxes that were generated under a local-tax act authorizing a special county privilege license tax paralleling the state sales tax and that were earmarked for the county board of education were not required or authorized by statute to be allocated to a particular city board of education.

"Local tax" proceeds from special county privilege license tax paralleling the state sales tax were not collected for the purpose of participation in a certain state fund for public education, and thus statute governing disbursement of taxes collected for the purpose of participation in that fund could

not be a basis to mandate that the “local tax” proceeds be apportioned to particular city board of education; the most recent amendment to the underlying local-tax act did not provide that the taxes were to be collected for such a purpose.

City board of education failed to demonstrate the likelihood that its alleged injury of not having received an appropriation of taxes generated by a local-tax act that authorized a special county privilege license tax paralleling the state sales tax would be redressed by a favorable decision on its claim that the act, which earmarked a portion of the taxes generated to the county board of education, violated the Alabama Constitution’s prohibition on a local act being enacted in a case covered by a general law, and thus city board of education lacked standing to maintain the constitutionality challenge; if the act were declared unconstitutional, there would no longer be any tax proceeds generated under it, and despite argument that the act could be declared unconstitutional only insofar as it allocated proceeds for public education, that would be require the courts to rewrite the act, which the courts were prohibited from doing.

City school district resident’s claim that local-tax act that provided for a special county privilege license tax paralleling the state sales tax, that earmarked a portion of the taxes generated to the county board of education, but that did not earmark a portion to a city board of education was unconstitutional since it imposed upon her and other district residents a tax whose proceeds were used completely outside the district presented a justiciable controversy, as required for resident to have standing to maintain constitutional challenge.

Local-tax act that provided for a special county privilege license tax paralleling the state sales tax, that earmarked a portion of the taxes generated to the county board of education, but that did not earmark a portion to a city board of education did not violate constitutional “equality of taxation” principle that prohibited the levying special taxes on citizens of a definite locality while expending the tax proceeds in some other locality; the tax also earmarked tax proceeds for the county juvenile court, the county district attorney’s office, a community college, and the county general fund, which were entities that provided services on a countywide basis.

TAX - KENTUCKY

[Century Aluminum of Kentucky, GP v. Department of Revenue](#)

Court of Appeals of Kentucky - December 15, 2022 - S.W.3d - 2022 WL 17726276

Department of Revenue petitioned for review after Claims Commission determined that items purchased by taxpayer, an aluminum manufacturer, were exempt from sales and use tax.

The Circuit Court determined items were introduced to maintain, restore, mend, or repair machinery, and thus were subject to tax, and the Court of Appeals affirmed such determination. Taxpayer sought discretionary review, which was granted.

The Supreme Court held that substantial evidence supported Claims Commission’s determination that items purchased by taxpayer constituted supplies exempt from sales and use tax.

Substantial evidence supported Claims Commission’s determination that items purchased by taxpayer, an aluminum manufacturer, were tangible personal property consumed within manufacturing process and had useful life of less than one year, and thus constituted supplies exempt from sales and use tax; taxpayer’s technical manager testified that anode stubs typically lasted less than year, and were valued at scrap price of steel when used up, that Inductotherm lining

typically lasted around a month and had no value after it was used up and very little value for scrap, that welding wire lasted entire life cycle of stub and then its value after used up was scrap steel, that industrial gases lasted entire time weld was intact and then had zero value, and that thermocouples and tube assemblies lasted about a week, and had no value after being used up.

[Taxpayers are Paying Billions for the Renovations and Construction of NFL Stadiums. Here's How.](#)

In 2022, the Tennessee Titans of the NFL unveiled their plans for a new stadium in the heart of Nashville. The 1.7 million-square-foot stadium can house 60,000 screaming football fans and is estimated to cost \$2.1 billion.

The public would fund more than half of the stadium through a one-time contribution from the state of \$500 million and \$760 million through revenue bonds issued by Nashville's Metropolitan Sports Authority.

Since 2000, public funds diverted to helping build professional sports stadiums and arenas have cost taxpayers \$4.3 billion. While the NFL and team owners contend that building stadiums will provide economic growth for a city, economists and urban planners think otherwise.

[Continue reading.](#)

CNBC.com

THU, DEC 22 2022 8:00 AM EST

[Why Most Suburbs Saw a Massive Boost in Sales Tax Revenue.](#)

With the effects of the COVID-19 pandemic still fresh in their minds, Arlington Heights Finance Director Tom Kuehne and the rest of the village's budget team are used to playing it safe with revenue estimates.

"We always try to be really conservative with our revenue projections, especially right now, because we really can't be sure what's going to happen in the future," Kuehne said. "And we saw that uncertainty with sales taxes."

Illinois Department of Revenue records show Arlington Heights saw sales tax revenues climb 30% in one fiscal year. From July 2021 to June 2022, Arlington Heights received \$5.7 million more in sales taxes than it did during those same 12 months a year prior.

[Continue reading.](#)

dailyherald.com

by Jake Griffin

1/1/2023

[After Muni-Bond 'Bloodbath,' Expectations for 2023 Are Muted.](#)

Buy-and-hold investing gains appeal as interest rates rise

State and local government bonds are on track to post their worst yearly performance since 1981, a deep slump for an investment prized for safety and stability.

"This year was a bloodbath," said Nicholos Venditti, a municipal bond fund portfolio manager with Allspring Global Investments. "It was a bloodbath in munis the same way it was across all asset classes."

Munis lost 8.5% through Dec. 29, according to Bloomberg index data, driving the total value of the market below \$4 trillion for the first time since 2014, as the Federal Reserve pushed interest rates higher to fight inflation.

[Continue reading.](#)

The Wall Street Journal

By Heather Gillers

Dec. 30, 2022

[Deer Valley Unified School District No. 97, Arizona: Fitch New Issue Report](#)

The Positive Outlook reflects Deer Valley Unified School District No. 97's (Deer Valley USD, or the district) recent trend of positive general operating performance and a strengthening reserve cushion, enabled by sound budget management in a period of economic recovery. Persistence of this trend along with the current strong level of financial resilience beyond the use of existing one-time federal stimulus funds and despite potential post-pandemic average daily membership (ADM) volatility could support an upgrade. The 'AA-' Issuer Default Rating (IDR) and 'AA+' ULT bond rating are based on the district's sound operating performance, supported by its solid expenditure flexibility and healthy reserve levels maintained relative to Fitch Ratings' expectations of revenue sensitivity through economic cycles. The ratings also incorporate the district's low long-term liability burden, slow revenue growth prospects, and the lack of independent ability to increase revenues.

[ACCESS REPORT](#)

20 Dec, 2022

[Fitch Withdraws Ratings on Chicago, IL GO Bonds Ser 2022C.](#)

Fitch Ratings - New York - 20 Dec 2022: Fitch Ratings has withdrawn the ratings on the following bonds as they did not sell:

-Chicago (IL) (Chicago Recovery Plan - Social Bonds) general obligation bonds (taxable) series

2022C. Previous rating: 'BBB'/Positive Outlook.

For other ratings on outstanding debt of this entity, see Fitch's website at www.fitchratings.com.

Fitch has withdrawn the ratings as the forthcoming debt issue carrying an expected rating is no longer expected to proceed as previously envisaged.

[Supporting Texas, U.S. Investment with Conduit Bond Financing.](#)

As manufacturing looks at opportunities for investment in the U.S., Texas is an attractive location with access to a well-educated work force, existing infrastructure to support manufacturing investment, access to global markets and a global reputation as the best state for business.

Gulf Coast Authority (GCA) can support investment opportunities through conduit bond financing.

GCA has long provided bond financing options for industrial projects in Texas. Through its Gulf Coast Industrial Development Authority (GCIDA), GCA now has the unique ability among Texas providers to offer nationwide bond conduit financing. This capability was accomplished through the passage of HB 2390, sponsored by Texas State Representative Dennis Paul and Senator Larry Taylor, in the last Texas Legislative session.

"GCA is proud to be the first entity in Texas that can offer nationwide conduit bond financing," explained Liz Fazio Hale, GCA GM/CEO. "With investment and growth in the state, GCA has seen an increase in inquiries about leveraging Private Activity Bonds (PABs) to fund projects."

[Continue reading.](#)

[Orrick Advises on US\\$2.4 Billion PennDOT Pathways Major Bridge P3 Program.](#)

Orrick advised Bridging Pennsylvania Developer I, a consortium comprised of Macquarie Capital and Shikun & Binui USA, as borrowers counsel for the first phase of the PennDOT Pathways Major Bridge Public Private Partnership ("P3") project that will replace six bridges in critical need of repair across the Commonwealth—I-81 Susquehanna, I-80 Nescopeck Creek, I-78 Lenhartsville, I-80 Lehigh River, I-80 Canoe Creek and I-80 North Fork—out of the nine bridges included in the program. The Major Bridge P3 initiative was designed to address the state's growing backlog of major bridge replacement and rehabilitation needs.

The first phase of the project will consist of the design, build, financing and maintenance of the six bridges and related roadway and supporting infrastructure delivered under an availability-based P3 structure that will conclude between September 2027 and June 2028. The financing includes approximately \$202 million in equity and approximately \$1.8 billion in private activity bonds. The project will support Pennsylvania's interstate transportation system and local job market, with the vast majority of the work being delivered by local Pennsylvania suppliers and contractors. By taking a P3 approach, it will enable the stakeholders to accelerate the repair and construction of the six bridge projects more efficiently than any other alternative procurement process.

The project is the first transportation-related P3 to close utilizing a pre-development agreement (PDA) structure. The PDA enabled the team to work collaboratively with PennDOT to identify the key risks, work on permits, and led to significant progress on the project's design, providing certainty around schedule and costs.

The project was led by Young Lee and included Matthew Neuringer, Susan Long, Ian Busche, Jesse Brown, Richard Chirls, Chas Cardall, Eileen Heitzler, Sue Cowell, Helen Pennock, Marlowe Mitchell, Joe Lawlor, Eric Newman, Thomas Kidera and John Ansboro.

December.27.2022

[Orrick Advises MTA on Historic Subway Station Accessibility P3.](#)

Orrick's Infrastructure team advised the Metropolitan Transportation Authority (MTA) on its historic US\$965.2 million subway station accessibility P3 to upgrade 12 New York City stations under standards that are compliant with the American Disabilities Act. The project includes installation of 21 new elevators, path-of-travel improvements and associated state of good repair work to 14 existing elevators to make stations accessible. The work is part of the MTA's current Capital Program, now pegged at \$56 billion with more than \$5 billion dedicated to making stations accessible with elevators and ramps as part of the MTA's larger commitment to make the New York City subway system accessible by 2055. **This is the first project in MTA's history to be awarded using the P3 model.**

The Orrick team led the MTA in a complex public procurement throughout the two stage procurement process, completing the second stage of the procurement from issuance of the request for proposal in June 2022 to commercial close on December 28, 2022. Halmar International LLC will serve as the design, construction and maintenance contractor, and will engage Otis Elevator Co. as the elevator supplier and maintainer. ASTM North America will be the equity member. The contract has a 15-year maintenance period, which commences at substantial completion of the project, and has two additional five-year option periods. The contract is structured as an availability payments P3 with ongoing payments to the developer for capital and maintenance throughout the term of the contract.

Our team was led by Vincent Casey and included Victoria Boyne, Matt Neuringer, Kevin Roche, Marlowe Mitchell, Rebecca Lemish, John Grant, Robbie Newell, Crissi Berger, Sara Forden and Joshua Bonney.

December.30.2022

[Bankrupt Pennsylvania City Pushes to Sell Water System to Raise Cash.](#)

Mediation talks started this week, with officials in Chester, Pennsylvania, pushing for privatization, while the water authority and some residents are against the sale.

Chester, Pennsylvania, a city near Philadelphia propelled into bankruptcy last month after decades of financial stress, is now roiled by a fight over whether to privatize one of its biggest assets: its water authority.

The Chester Water Authority has long served the city's residents and those in neighboring municipalities. And in the eyes of Chester city council members and its state-appointed receiver, selling the \$410 million asset to bidder Aqua Pennsylvania could help dig the city out of its financial hole. But some residents worry that a private company would increase their rates, and the authority itself is also against such a move.

The potential sale has been tied up in Pennsylvania state courts. All of that litigation was put on hold when the city filed for Chapter 9 in November. In a court hearing this month, the federal judge overseeing the bankruptcy appointed US Bankruptcy judge Mary Walrath to mediate talks that include privatizing the water authority. That court-ordered mediation began Wednesday, according to Frank Catania, solicitor of the authority.

[Continue reading.](#)

Bloomberg CityLab

By Hadriana Lowenkron

December 22, 2022 at 8:21 AM PST

[Chicago's Shaky Pension Funds Face New Hit From Looming Downturn.](#)

- **City has advanced \$500 million to the funds since September**
- **Pensions could take bigger hit as economists warn of recession**

As 2022 unfolded, Chicago's long-troubled pension funds faced a new shortfall: A delay in property tax receipts left the system without enough money to pay the city's retirees.

Pension managers contended with the difficult decision of whether to sell off pension assets to raise cash quickly. Instead, they got an advance from Mayor Lori Lightfoot's administration to plug the gap. In the end, Chicago funneled in at least \$512 million that was earmarked for payments later in the year and early 2023.

The payout was the largest advance ever in one year in Chicago, a sign of just how fragile the pension system is, especially at a time when markets are headed for their worst annual return since 2008. Looking ahead, the third-most populous US city's pensions could take an even deeper hit in 2023 if the market rout continues to erode returns and the looming recession economists are warning of hurts Chicago's revenue.

[Continue reading.](#)

Bloomberg CityLab

By Shruti Singh

December 27, 2022

[Bonding Time DC Update - A Discussion with GFOA on the 2023 Legislative Outlook for Municipal Bonds](#)

The BDA's most recent episode of Bonding Time features a discussion with Emily Brock of the Government Finance Officers Association.

The podcast was led by Brett Bolton of the BDA and covers:

- Current Status of the Omnibus budget and potential impacts to direct-pay bonds
- Amended Version of the Financial Data Transparency Act and its Impact on Issuers
- The Potential for Tax Legislation in the Lame Duck Session of Congress
- 2023 Legislative Outlook

[Listen to podcast.](#)

Bond Dealers of America

December 21, 2022

[Vanguard to Launch New Bond ETF.](#)

Vanguard says it will roll out a new fixed income ETF in the first quarter of 2023.

The Vanguard Short-Term Tax-Exempt Bond ETF (VTES), a municipal bond index ETF, is set to have an estimated expense ratio of 0.07%. It will mainly invest in short-term municipal bonds and will track the S&P 0-7 Year AMT-Free Muni Bond Index.

Stephen McFee, a portfolio manager in Vanguard Fixed Income Group who joined the firm in 2005, will manage the new fund. Among the municipal bond funds he currently manages is the Vanguard Tax-Exempt Bond Index Fund.

[Continue reading.](#)

ThinkAdvisor

By Janet Levaux

Dec 22, 2022

[Like Closed-End Muni Funds? Early January Could Be a Great Time for Buying.](#)

Constant readers might have discerned certain peculiar predilections in this space, among them an unusual fondness for an odd corner of the investment world: closed-end funds.

They are treated with varying degrees of disdain or a simple lack of interest among most investors, who tend to be drawn to more conventional pooled investments, such as mutual funds or their trendier offspring, exchange-traded funds. The wallflower status of closed-ends results in their

chronic mispricing, which sets them apart from other, usually efficiently priced, instruments.

Richard Thaler, who won the Nobel Prize in economics for his study of behavioral economics, has observed that individual investors' irrationality results in closed-end funds selling at discounts or premiums to their underlying net asset values. Depressed attitudes result in wide discounts as individual investors—who hold the lion's share of the asset class—dump them.

[Continue reading.](#)

Barron's

By Randall W. Forsyth

Dec. 30, 2022

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- **Ed. Note:** We'll be off 12/27. Double Dose O' Drivel 1/3/23!
 - [GASB Proposes Guidance To Assist Stakeholders With Application Of Its Pronouncements.](#)
 - [New GFOA Federal Funds Training Scheduled for January.](#)
 - [MSRB Amends Rule A-12, on Registration, and Provides Accompanying Form A-12 Changes.](#)
 - [MSRB Proposes Extending Filing Deadlines.](#)
 - [New State and Local Government Financial Reporting Requirements Headed to Biden's Desk.](#)
 - [S&P: As Threats Rise, U.S. Public Finance Entities Take On Mounting Challenges To Secure The Digital Front Line](#)
 - [Startup Uses Blockchain for Muni-Bond Deals in an Industry First.](#)
 - [How a Trick 62% Coupon Helped Sell a Wisconsin School Bond Deal.](#)
 - [Jackson v. Mayor of Detroit](#) - Court of Appeals holds that the preclusive doctrine prevented citizens from challenging bond issuances after the fact.
 - And finally, Further Adventures In *Pro Se* Plaintiffness is brought to us this week by the above-referenced [Jackson v. Detroit](#), in which some dude and his buddies challenged Detroit's issuance of some, uh, long-ago-issued, uh, issuances. As per *pro se* standards, there were indeed some hiccups. As the three-judge panel noted - through clearly gritted *en banc* teeth - "Plaintiffs challenge the '2020 Prop N bond,' which was supposedly issued in February 2021. But plaintiffs did not identify this bond in their complaint, nor is there any evidence showing that such bond existed." The ever-elusive phantom bond issuance strikes again.

EMPLOYMENT - ILLINOIS

[Barwin v. Village of Oak Park](#)

United States Court of Appeals, Seventh Circuit - November 22, 2022 - F.4th - 2022 WL 17100477

Former village manager brought diversity action against village, alleging village breached employment contract's duty of good faith and fair dealing through conduct that led to former manager's resignation.

The United States District Court for the Northern District of Illinois dismissed in part and subsequently granted summary judgment to village. Former manager appealed.

The Court of Appeals held that:

- Under Illinois law, even if village sought to procure former manager's resignation in order to prevent his pension from vesting, this was not a breach of employment contract's implied duty of good faith and fair dealing, and
- Genuine issue of material fact as to whether village had practice of allowing senior village employees to purchase out-of-state pension credits precluded summary judgment on former manager's claim under Illinois law that village's effective refusal of former manager's request to purchase such credits, when he resigned prior to reaching vesting threshold for pension rights, breached duty of good faith and fair dealing implied into employment contract.

Under Illinois law, even if village sought to procure at-will village manager's resignation in order to prevent manager's pension from vesting, this was not a breach of manager's employment contract's implied duty of good faith and fair dealing, in case involving contract which provided for manager's pension rights to vest after eight years; if contract were interpreted to provide for a minimum employment term of eight years, manager would not have been an at-will employee, manager's resignation occurred two and a half years prior to pension vesting, and manager's pension contributions during employment were not rendered worthless by failure of pension rights to vest, since manager had right to request refund of contributions.

Genuine issue of material fact as to whether village had a practice of allowing senior village employees to purchase out-of-state pension credits precluded summary judgment on former village manager's claim under Illinois law that village's effective refusal of former manager's request to purchase such credits, when he resigned prior to reaching vesting threshold for pension rights, breached duty of good faith and fair dealing implied into employment contract which granted manager benefits that "are enjoyed" by other senior employees "by practice."

PUBLIC UTILITIES - MAINE

[Black v. Bureau of Parks and Lands](#)

Supreme Judicial Court of Maine - November 29, 2022 - A.3d - 2022 WL 17257088 - 2022 ME 58

State legislators, citizens, and environmental advocacy organization brought action against Bureau of Parks and Lands, and power companies challenging Bureau's lease of public reserved land to companies for construction of a high-capacity transmission line.

The Superior Court granted plaintiffs' request for declaratory judgment and reversed Bureau's decision to lease the public reserved land. Bureau and power companies appealed, and plaintiffs cross appealed. Plaintiffs moved to dismiss pending appeals as moot in light of voter initiative.

The Supreme Judicial Court held that:

- Citizens had standing to bring suit;
- Environmental advocacy organization had associational standing;
- Voter initiative retroactively imposing two-thirds majority legislative approval for lease of public lands violated Contracts Clause as to Bureau's lease to power companies;
- Under law in effect at time, Bureau was not required to conduct any public administrative process prior to granting lease; and
- Bureau's lease did not substantially alter use of public reserved lands at issue, and thus Bureau

acted within its constitutional and statutory authority in granting lease.

ZONING & PLANNING - MARYLAND

Matter of Homick

Court of Special Appeals of Maryland - December 1, 2022 - A.3d - 2022 WL 17347897

Protesters petitioned for review of decision of city board of appeals approving developer's application for special exception to build new and retrofit existing buildings to create restaurant, four dwelling-unit apartments, and commercial office space, but which denied developer's request for parking variances.

The Circuit Court affirmed decision granting approval of special exception and denying request for parking variances, and remanded for board to clarify incongruity between decisions. On remand, board approved application based on amended site development plan (SDP) to comply with parking restrictions in light of denial of parking variances. Protesters again sought review, and Circuit Court affirmed. Protesters appealed.

The Court of Special Appeals held that:

- Court of Special Appeals had jurisdiction over appeal;
- Board's consideration on remand of developer's amended SDP did not impermissibly exceed scope of circuit court's remand order;
- Approval of application based on amended SDP was not inconsistent with remand order;
- Substantial evidence supported board's approval on remand of application for special exception; and
- Board's approval of application on remand was not arbitrary and capricious.

Court of Special Appeals had jurisdiction over appeal from circuit court's final judgment on judicial review of city board of appeals' grant of developer's request for special exception to build new and to retrofit existing buildings to create restaurant, four dwelling-unit apartments, and commercial office space, under statute authorizing appeal from judgment of circuit court to Court of Special Appeals when litigation involved zoning dispute.

City board of appeals' consideration on remand of developer's amended site development plan, which reduced seating capacity of proposed new restaurant in order to comply with zoning requirements for parking, did not impermissibly exceed scope of circuit court's remand "for further clarification" as to how board could grant developer's original request for special exception to construct restaurant and to retrofit existing buildings to create dwelling apartments and commercial office space, despite having denied request for variances from parking requirements; circuit court found that substantial evidence supported board's findings in support of its decisions granting zoning district boundary adjustment and denying parking variances, such that those issues could not be relitigated on remand, and order did not prohibit board from considering new facts not considered when application was first evaluated, in order to remain consistent with circuit court's order.

City board of appeals' approval of application for special exception to build and retrofit existing buildings to create restaurant, four dwelling-unit apartments, and commercial office space, based on amended site development plan (SDP) that reduced restaurant seating capacity in order to comply with parking restrictions in light of board's denial of request for parking variances, was not inconsistent with circuit court's order in which it found that board had not adequately explained how

it could grant application while denying request for parking variances and remanding to board “for further clarification consistent with this ruling,” despite protesters’ assertion that remand order was law of case; board did not reject law of case, as it was able to point to modifications to SDP, including zoning district boundary adjustment that was previously affirmed, reduced seating capacity for restaurant, and conditions and restrictions imposed on approved special exception, all of which addressed circuit court’s original concern about incongruity between approval of application despite denial of request for parking variances.

Substantial evidence supported city board of appeals’ approval on remand of developer’s amended application for special exception to build new and retrofit existing buildings to create restaurant, four dwelling-unit apartments, and commercial office space, which reduced proposed seating capacity of restaurant to comply with parking restrictions, following denial of request for parking variances; restaurants in zoning district had to provide parking spaces for 30% of its patronage capacity, additional ten spaces had to be on site for apartments and commercial office space plans, developer’s amended site development plan (SDP) enhanced bufferyards and reduced onsite parking spaces needed and established parking management plan, and number of parking spaces provided, used in accordance with parking management plan, provided sufficient parking for all proposed users, in compliance with city code parking restrictions, without need for parking variances.

City board of appeals’ approval on remand of developer’s application for special exception to build new and retrofit existing buildings to create restaurant, four dwelling-unit apartments, and commercial office space, based on amended site development plan (SDP) that reduced seating capacity of restaurant and parking management plan in order to comply with code parking restrictions in light of denial of request for parking variances, was not arbitrary and capricious, despite protesters’ assertion that board did not comply with requirement of one-year wait period for resubmission of application after initial denial, where board approved original application, subject to conditions, circuit court affirmed approval and denial of parking variances but remanded for board to clarify incongruity between grant of application and denial of parking variances, and amended application addressed circuit court’s concerns and complied with parking restrictions.

BONDS - MICHIGAN

[Jackson v. Mayor of Detroit](#)

Court of Appeals of Michigan - September 29, 2022 - Not Reported in N.W. Rptr. - 2022 WL 4586567

Citizen plaintiff led a group of concerned Detroit residents in sounding the alarm about the city’s issuance of bonds without proper notification and authorization. Specifically, the plaintiffs contended that Detroit issued bonds beyond the city’s borrowing limit and kept residents uninformed about the city’s bonding efforts.

The trial court, on summary disposition, carefully considered the plaintiffs’ arguments and concluded that all of the defendants (the Mayor of Detroit, the Detroit City Council Members, and Detroit Chief Financial Officer John Naglick (collectively Detroit)) were entitled to prevail because the bonds were issued before plaintiffs filed suit.

Plaintiffs appealed.

The Court of Appeals hold that:

- Under the preclusive doctrine discussed in *Bigger v Pontiac*, 390 Mich 1; 210 NW2d 1 (1973), and *Sessa v Macomb Co*, 220 Mich App 279; 559 NW2d 70 (1996), the issuance of bonds stops challenges in their tracks because no meaningful remedy can be provided without harming bondholders. Thus, the court was bound to apply that preclusive doctrine to end the lawsuit; and
- Detroit did not issue bonds in excess of the debt limit imposed by MCL 117.4a(2).

EMINENT DOMAIN - OHIO

[State Ex Rel. Ohio History Connection v. Moundbuilders Country Club Company](#)

Supreme Court of Ohio - December 7, 2022 - N.E.3d - 2022 WL 17479895 - 2022-Ohio-4345

State-funded lessor of land containing prehistoric earthworks petitioned to appropriate a leasehold estate for creation of public park, and lessee counterclaimed for breach of lease/contract.

The Court of Common Pleas entered a decision and order granting lessor's petition to appropriate, and dismissing lessee's counterclaims. Lessee appealed. The Court of Appeals affirmed. Lessee sought discretionary review.

The Supreme Court held that:

- Objective standard governed question whether lessor provided written good-faith offer to purchase lessee's interest;
- Lessor complied with requirement that it provide written good-faith offer; and
- Lessee failed to rebut presumption that creation of public park constituted public use and that taking was necessary for such use.

Whether state-funded lessor of land containing prehistoric earthworks complied with requirement that it provide lessee a written good-faith offer to purchase lessee's interest before commencing appropriation action was governed by objective standard, inquiring whether lessor acted reasonably under the circumstances in addition to considering whether it acted honestly, which was consistent with dictionary definitions of "good faith" and "bad faith."

State-funded lessor of land containing prehistoric earthworks complied with requirement that it provide a written good-faith offer before commencing appropriation action by hiring two real-estate appraisal companies and submitting to lessee a written offer to purchase lessee's interest for amount not less than the highest quoted value, even though offer was based on misunderstanding on part of lessor's executive director with regard to what quoted value actually represented; it was not objectively unreasonable to obtain two appraisals, lessee made no claim that either appraiser was unqualified or untruthful, and no complex legal issue would have been reasonably apparent to director, since attorney ordered appraisals, and appraisers were told to provide value of leasehold interest.

Lessee of land containing prehistoric earthworks failed to rebut presumption that state-funded lessor's planned creation of public park constituted a public use and that taking of lessee's interest was necessary for such use; lessee's contention that government would not adequately preserve the site and that government merely wanted site to acquire international recognition called for

speculation and artificially narrowed lessor's purpose, and decision to create public park on land at issue did not arbitrarily single out a parcel for different, less favorable treatment than neighboring ones, but instead park would help preserve and ensure perpetual public access to one of the most significant landmarks in Ohio.

PUBLIC UTILITIES - VERMONT

[Otter Creek Solar LLC v. Vermont Agency of Natural Resources](#)

Supreme Court of Vermont - December 2, 2022 - A.3d - 2022 WL 17366190 - 2022 VT 60

Developer of solar electric generation facility and the owner of the project site filed complaint for declaratory and injunctive relief against the Vermont Agency of Natural Resources (ANR), seeking ruling that two guidance documents and a plant-classification system created by ANR were unlawful and therefore could not be relied upon by ANR or the Public Utilities Commission (PUC) in determining whether to issue a certificate of public good for a proposed electric generation facility.

The Superior Court granted ANR's motion to dismiss for failure to state a claim. Developer and owner appealed.

The Supreme Court held that:

- One-year statute of limitations under Vermont Administrative Procedure Act (VAPA) applied to the action, even if plaintiffs were also challenging ANR's entire "rare" plant regulatory scheme outside of endangered-species law, and
- Specific and limited procedure provided in VAPA for challenging agency rules through declaratory-judgment action applied notwithstanding plaintiffs' assertion of a general common-law right to enjoin unlawful state action that adversely impacted them.

One-year statute of limitations under Vermont Administrative Procedure Act (VAPA) for declaratory-judgment actions challenging agency rules applied to declaratory-judgment action brought by developer of solar electric generation facility and owner of project site against Agency of Natural Resources (ANR), challenging validity of ANR's alleged de facto rules consisting of two guidance documents and a plant-classification system that were used in determining whether to issue certificate of public good for proposed facility, even if developer and owner were also challenging ANR's entire "rare" plant regulatory scheme outside of endangered-species law; VAPA provision allowing court to "fashion appropriate relief" did not allow a challenge to agency policy more than a year after it was issued.

Specific and limited procedure provided in Vermont Administrative Procedure Act (VAPA) for challenging agency rules through declaratory-judgment action, including VAPA's one-year limitation period for such actions, governed declaratory-judgment action brought by developer of solar electric generation facility and owner of project site against Agency of Natural Resources (ANR) challenging validity of alleged de facto rules created by ANR, notwithstanding developer and owner's contention that they had general common-law right to enjoin unlawful state action that adversely impacted them; declaratory-judgment vehicle could not be used to frustrate specific procedure provided by legislative for challenging administrative rule.

[GASB Proposes Guidance To Assist Stakeholders With Application Of Its Pronouncements.](#)

Norwalk, CT, November 15, 2022 — The Governmental Accounting Standards Board today issued proposed implementation guidance in the form of questions and answers intended to clarify, explain, or elaborate on certain GASB pronouncements.

The [Exposure Draft, Implementation Guidance Update—2023](#), contains proposed new questions and answers that address application of GASB standards on leases, subscription-based information technology arrangements, and accounting changes. The proposal also includes amendments to previously issued implementation guidance on leases.

The GASB periodically issues new and updated guidance to assist state and local governments in applying generally accepted accounting principles (GAAP) to specific facts and circumstances that they encounter. The GASB develops the guidance based on:

- Application issues raised during due process on GASB pronouncements,
- Application issues identified during the first stage of the GASB's post-implementation reviews of the leases standards,
- Questions it receives throughout the year, and
- Topics identified by members of the Governmental Accounting Standards Advisory Council and other stakeholders.

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 January 20, 2023. Comments may either be submitted in writing or through an [electronic input form](#).

More information about commenting on the Exposure Draft can be found in the front of the document, which is available on the GASB website, www.gasb.org.

[MSRB Amends Rule A-12, on Registration, and Provides Accompanying Form A-12 Changes.](#)

[View the MSRB notice.](#)

12/13/2022

[MSRB Proposes Extending Filing Deadlines.](#)

The MSRB [proposed](#) extending the deadline for muni brokers, dealers, municipal securities dealers and municipal advisors to annually affirm the information on Form A-12, the MSRB's consolidated electronic registration form (see [MSRB Rule A-12](#).)

The proposal would extend the deadline to affirm Form A-12 information from 17 business days after January 1 to January 31. The proposal would also remove the requirement for firms to provide a separate notice to regulators in Form A-12 prior to engaging in municipal securities or municipal

advisory activities. Instead, each firm will be required to provide (i) its principal regulator (which will be a banking agency for banks that are registered as muni dealers) and (ii) contact information for the firm's contact at that regulator. The primary regulatory contact at a municipal advisor firm would also be required to register as a municipal advisor principal after passing the Series 54 Municipal Advisor Principal Qualification Examination.

The MSRB filed the rule change for immediate effectiveness, and it will go into effect beginning on January 1, 2023.

December 14 2022

Fried Frank Harris Shriver & Jacobson LLP

[New State and Local Government Financial Reporting Requirements Headed to Biden's Desk.](#)

State and local advocates opposed the provisions, which were attached to a massive defense bill and call for financial data to be standardized, searchable and machine-readable.

The U.S. Senate on Thursday sent legislation to President Biden's desk that includes new financial reporting requirements for states and local governments that critics say will be difficult and expensive for them to comply with.

Government organizations, including the National League of Cities, the U.S. Conference of Mayors, the National Association of Counties and the Government Finance Officers Association, told Senate leaders in a letter that it would cost governments and charities "well over \$1.5 billion" to meet the new standards, including a requirement for financial data to be in a standardized, machine-readable and searchable format.

Despite those concerns, the provisions were embedded into an \$858 billion defense bill the Senate passed in on an 83-11 vote. The House passed the National Defense Authorization Act last week, meaning it now just needs Biden's signature to become law.

[Continue reading.](#)

Route Fifty

By Kery Murakami

DECEMBER 15, 2022

[NASBO 2022 Fall Fiscal Survey of States.](#)

Overview - Fall 2022

Enacted budgets for fiscal 2023 provide for general fund spending of **\$1.16 trillion**, a 6.7 percent increase over fiscal 2022. This follows fiscal 2022, when states recorded spending growth of **18.3**

percent, the highest annual increase in spending recorded in the Fiscal Survey of States since its inception in 1979. Adjusted for inflation, general fund spending in fiscal 2022 increased **9.6 percent**.

Other key highlights from the report:

- General fund revenue grew **14.5 percent** year-over-year to total **\$1.17 trillion** in fiscal 2022, following a **16.6 percent** increase in fiscal 2021.
- **49 states** reported fiscal 2022 general fund revenue collections exceeded enacted budget forecasts, with collections in the aggregate exceeding original projections by **20.5 percent**.
- Revenue projections in fiscal 2023 enacted budgets are **3.1 percent** below preliminary actual collections for fiscal 2022, but more recent revenue data suggest that revenue will continue to grow in fiscal 2023, with **33 states** reporting collections exceeding budget forecasts.
- States enacted net tax cuts in fiscal 2022 totaling **\$16.2 billion** for all state funds and **\$15.5 billion** for general funds (**1.4 percent** as a share of forecasted general fund revenue).
- Rainy day fund balances continued to grow in fiscal 2022 after increasing 58 percent in fiscal 2021, and the median balance as a share of general fund spending is projected to be **11.9 percent** in fiscal 2023.
- Total balances have seen tremendous growth recently, roughly tripling in size over the past two years after revenues far exceeded enacted budget forecasts in fiscal 2021 and fiscal 2022. At the end of fiscal 2022, they totaled **\$343 billion**.

[View the full report.](#)

[The Outlook for State Budgets Heading into 2023.](#)

Many states are on solid footing and expect to enjoy surpluses. But a couple are staring down sizable budget gaps.

With a few major exceptions, state officials expect their budgets to be in strong positions for the coming year. The robust projections come even as worries linger about the health of the nation's economy overall.

"The economy has proved much more resilient than anybody expected," said Shelby Kerns, the executive director of the National Association of State Budget Officers.

Governors and lawmakers have been cautious in spending new revenue, given recent disruptions in the economy. They've watched warily to see how the pandemic, supply chain disruptions, record-setting inflation and increased borrowing costs would affect state budgets, she said.

[Continue reading.](#)

ROUTE FIFTY

by DANIEL C. VOCK

DECEMBER 16, 2022

[S&P: As Threats Rise, U.S. Public Finance Entities Take On Mounting Challenges To Secure The Digital Front Line](#)

Key Takeaways

- S&P Global Ratings continues to see an increasing number of attacks on U.S. public finance entities, to where cyber is now a daily part of risk management and operations for most issuers.
- Cyber risk has moved beyond a specialized aspect to a near-ubiquitous priority that is integral to risk-management frameworks, but adoption of baseline cyber-security standards and frameworks still varies across public finance entities.
- Evolving credit risks include the changing nature of threats, rising cyber-insurance costs, third-party vendor exposure, and regulatory uncertainty. We think issuers will need to adapt to maintain credit quality.
- USPF issuers that exhibit inadequate cyber-risk management and oversight that is ineffective in mitigating risk is incorporated into our credit rating analysis, and it could result in a negative rating action.

[Continue reading.](#)

13 Dec, 2022

[Startup Uses Blockchain for Muni-Bond Deals in an Industry First.](#)

- **Three issuers in NY sold bonds through Alphaledger's platform**
- **Deals mark latest step in push to modernize a stodgy market**

A startup is modernizing the stodgy world of municipal bonds by using blockchain to originate deals. The company said it is a first in the \$4 trillion market.

[Alphaledger](#) recently acted as the underwriter for three debt sales in New York, documenting the deals on its platform based on blockchain, the technology used for verifying and recording transactions that's at the heart of Bitcoin. More municipal sales are in the works, company leadership said.

Until now, the Poulsbo, Washington-based company, founded in 2019, had used its [platform](#) mainly for direct lending to cities and localities. But that corner of the market is far smaller than its latest endeavor. Banks held \$209 billion of direct loans to municipalities as of the third quarter, a fraction of the public-debt market, according to Municipal Market Analytics.

[Continue reading.](#)

Bloomberg Markets

By Nic Querolo

December 16, 2022

How a Trick 62% Coupon Helped Sell a Wisconsin School Bond Deal.

- **Wisconsin school district deal features coupons of 4% and 62%**
- **Pair of Texas deals in 2021 carried coupons of 25% and 30%**

“Trick” coupons made another visit to the municipal bond market this week, as a Minneapolis underwriter employed a 62% coupon to win a \$9.5 million school bond issue.

Bankers have used the phrase “trick” since at least the 1970s to describe unusually high coupons that aren’t what they seem. In this case, the 62% coupon doesn’t yield 62%. It yields 3.25%.

The Denmark School District has an enrollment of 1,601, and is located 15 miles southeast of Green Bay, Wisconsin. The district took bids on \$9.5 million of general obligation bonds for a construction project on Monday morning, and stipulated that the bonds should mature in 2023, 2040, 2041 and 2042.

The winning bid was submitted by Northland Securities Group LLC and carried coupons of 62% in 2023 and 4% in 2040, 2041 and 2042, which produced a True Interest Cost of 4.229796%.

To repeat, the buyer doesn’t get a tax-exempt yield of 62%. These bonds, due on March 1, 2023, were priced at a premium - 110.1 — to yield 3.25%, or about 90 basis points over the benchmark AAA yield.

Such unnatural and jarringly-high coupons were used back in the 1970s, and have made sporadic appearances since then. Their most recent use, before Monday’s sale, seems to have been last November and December, when two underwriters used a mixture of 25% and 30% coupons in order to satisfy a customer’s demand for deep-discount late maturity bonds in Texas.

You don’t see coupons like this every day. They’re rare enough that when they do appear, I for one can’t look away, and always think, now how does this work?

I’ve seen 50% coupons used before, but 62s are a first for me. Underwriter Northland Securities didn’t respond to requests for comment. The firm is the nation’s 34th largest underwriter of long-term municipal bonds, according to Bloomberg LEAG data, having worked on 186 deals totaling \$870.7 million so far this year.

The financial adviser probably would have helped to evaluate the bids when they were opened on Monday, but Robert W. Baird & Co. of Milwaukee didn’t respond to numerous requests for comment.

I bet the school district must have been surprised by the presence of the 62% coupon and wondered what its representatives thought, but they didn’t respond to called and emailed requests for comment, either.

Maybe the bond counsel might have had an opinion on this? Senior manager of communications Scott W. Bussen of Quarles & Brady LLP in Milwaukee answered my email, but declined to comment.

Which leaves me to use history as a guide.

Bid structures — like the one used in Texas last year — can be used to accommodate a customer’s preference, so maybe a buyer wanted some or all of those 4% coupons in 2040, 2041 and 2042. The 2040 and 2041 were priced at a slight premium, the 2042 at par. All are callable at par in 2031. The

“trick” coupon is then crafted, so you get 62s priced at 110.109 to yield 3.25%.

And no, the 62% won't mean that the issuer pays some astronomical sum come their March 1 maturity, because they're not paying a full year's interest, but two months and a couple of days' interest. On March 1, the Denmark School District pays \$2,239,170, and the 62s of '23 are history.

Bloomberg Markets

By Joseph Mysak Jr

December 15, 2022

— *With assistance by Danielle Moran*

(Joe Mysak is a municipal market columnist who writes for Bloomberg. His opinions do not necessarily reflect those of Bloomberg LP and its owner, and his observations are not intended as investment advice.)

[GFOA 2022 Awards for Excellence Winners Announced.](#)

With a commitment to forward progress and outstanding financial management, the seven winners of GFOA's 2022 Awards for Excellence are lighting the way for others.

[VIEW WINNERS](#)

[Fitch: Staff Shortages Improving for U.S. NFP Hospitals](#)

Fitch Ratings-New York/Austin-13 December 2022: U.S. NFP hospitals are still reeling from staff shortages, though this past month is showing incremental signs of improvement, according to Fitch Ratings in its labor dashboard for the sector.

Hospital and ambulatory healthcare services payrolls increased by 11,000 (+0.21%) and 23,300 (+0.28%), respectively, from October to November and job openings for the healthcare and social assistance sector declined by 86,000 to 8.7% in October 2022 from 9.1% in September, according to preliminary data released by the Bureau of Labor Statistics. Despite these improvements, the number of quits in the healthcare and social assistance sector remains elevated. “The high quits rate indicates that healthcare and social assistance workers have a high willingness and ability to leave their current jobs and highlights the pressure on health systems to provide increased wages and improved working conditions to employees,” said Richard Park, Director at Fitch Ratings.

A major near-term risk to labor costs is the current ‘tridemic’ related to the spread of flu, RSV and COVID-19 that has created capacity issues, especially for pediatric beds across the country. A continual increase in inpatient capacity and staff call outs for sickness could temporarily increase the need for contract labor and erode some of the agency staffing cost improvements that health systems have made over the past few months.

Fitch's latest ‘Hospitals and Healthcare Systems Labor Dashboard: December 2022’ is available at ‘www.fitchratings.com’.

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[Payroll Growth Uneven; Hourly Earnings Climb for U.S. Life Plan Communities - Fitch](#)

Fitch Ratings-New York/Austin-13 December 2022: Payrolls for U.S. life plan communities (LPCs) and assisted living (AL) facilities are showing payroll growth divergence, according to Fitch Ratings in its latest monthly labor dashboard for the sector.

LPC payrolls grew by 3,200 (+0.71%) in October 2022 and nursing facility payrolls grew by 2,800 (+0.20%) in November 2022. Conversely, AL facility payrolls declined by 500 (-0.50%) in October 2022, according to preliminary data released by the U.S. Bureau of Labor Statistics (BLS). Even with the material payroll growth in 2022, LPC, AL facility and nursing facility payrolls remain 11.15%, 1.43% and 13.59% below February 2020 levels, respectively.

“LPCs with a significant skilled nursing component, which tend to be lower rated, may experience additional pressure given their exposure to governmental payors limits their ability to raise rates,” said Director Richard Park. “Most of Fitch’s rated LPCs have been able to pass on these higher costs through rate and fee increases, which have been well above the typical 3% to 5% increase in 2022 and 2023.”

As of Nov. 20, 2022, 18.1% and 18.7% of nursing facilities reported shortages of nurses and aides, respectively. These figures are well below the January 2022 peak (28.3% and 29.9% of nursing facilities reported shortages of nurses and aides, respectively).

Fitch’s latest “Life Plan Communities Labor Dashboard: December 2022” is available at ‘www.fitchratings.com’

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[Fitch: CDFI Ratings Reflect Strong Asset Quality and Solid Financial Profiles](#)

Fitch Ratings-Chicago/New York/San Francisco-14 December 2022: The demand for affordable housing and community development lending is stronger than ever, with housing affordability at its weakest level in decades, according to Fitch Ratings. Given the worsening macroeconomic environment forecast for 2023, demand for the affordable housing and community development loans offered by community development financial institutions (CDFIs) is expected to rise. At the same time, rising unemployment and declining incomes could potentially lead to higher delinquency and default rates among CDFIs' borrowers.

In Fitch's view, however, CDFIs are well positioned to face these headwinds, given the strong asset quality of their loan portfolios, their solid financial profiles, and the effective oversight provided by their underwriting and servicing teams. It is these factors that support the high to medium investment-grade ratings currently assigned to CDFIs.

Fitch's existing ratings on CDFIs are currently in the 'A' and 'AA' categories and are assigned in accordance with Fitch's Public Sector, Revenue-Supported Entities Rating Criteria. The approach to assigning CDFI ratings under the Revenue-Supported Entities Criteria is in many ways similar to, yet distinct from, the approach to rating U.S. housing finance agencies under Fitch's U.S. Housing Finance Agency General Obligation Rating Criteria. By utilizing the Revenue-Supported Entities Criteria, Fitch acknowledges the similarities between CDFIs and other entities that provide essential public or social services, including social housing providers, public housing authorities, social service providers and charitable institutions. At the same time, the Revenue-Supported Entities Criteria provide enough flexibility such that Fitch is able to tailor its analysis to the unique characteristics of each CDFI.

As part of its rating analysis for CDFIs, Fitch assesses three key rating drivers (KRDs): revenue defensibility, operating risk and financial profile. Under the revenue defensibility KRD, Fitch assesses a CDFI's exposure to revenue disruption by evaluating the asset quality of its loan portfolio, including loan performance, portfolio composition, and the availability of collateral and reserves to offset loan losses. Under the revenue defensibility KRD, Fitch also assesses a CDFI's market position and the demand characteristics that influence revenue volatility. When assessing operating risk, Fitch considers the CDFI's risk profile, operating profitability, and its reliance on potentially volatile funding sources. With respect to financial profile, the CDFI's level of financial flexibility and the quality and stability of its financial resources are assessed through various leverage, capital base and liquidity metrics. Notably, Fitch evaluates each CDFI's loan portfolio individually and incorporates historical loan performance into the rating analysis, rather than relying on models or

standard default and loss assumptions.

Generally speaking, CDFIs tend to exhibit stronger or midrange credit characteristics, including solid demand, low loan delinquencies and losses, conservative risk management and strong financial profiles. While loan performance may deteriorate next year given Fitch's expectations for a mild recession beginning in 2Q23, loan losses are expected to remain well within Fitch's stressed rating assumptions. As such, rating changes are not anticipated, and CDFIs remain well positioned to respond given their solid financial profiles. Notably, Fitch's risk analysis for CDFIs is forward-looking, with the aim of achieving ratings stability through economic cycles. Rating changes are therefore intended to reflect shifts in fundamentals for the CDFI or the sector, rather than cyclical or transitory changes in credit quality.

As the CDFI industry continues to evolve, Fitch is committed to ensuring that its rating opinions and criteria reflect the true nature of credit risks in this industry. In fact, Fitch reviews all of its criteria no less than once a year, providing ample opportunities to update the criteria to reflect current trends and market developments and/or incorporate any new risks identified in the sector.

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[Fitch Rtgs 2023 Outlook: Govt Support & Strong Financials to Insulate CDSL from Looming Recession](#)

Fitch Ratings-New York/Chicago/San Francisco-14 December 2022: Fitch Ratings views the outlook for the Community Development and Social Lending (CDSL) sector as neutral for 2023. The CDSL sector faces numerous headwinds heading into 2023. The decline in home prices thus far has not been enough to offset rising mortgage rates, exacerbating the already acute housing affordability crisis. Homeowners and renters are contending with the looming threat of job losses as the risk of recession escalates, further contributing to housing insecurity. Persistent shortages of affordable housing and ever-increasing community development needs continue to present challenges. At the same time, falling home prices and rising unemployment could potentially lead to higher delinquency and default rates.

"Although the CDSL sector is facing strong headwinds, demand for the essential services provided by CDSL issuers will inevitably rise, given the worsening macroeconomic environment that is forecast for 2023," says Karen Fitzgerald, Fitch Senior Director and Sector Head. "In our view, CDSL issuers are well positioned to respond due to their solid financial profiles and the strong federal government support from which they typically benefit."

While the sector's ratings are largely unchanged, there were a number of favourable Rating Outlook

revisions during 2022. The rating actions taken by CDSL in 2022 included two upgrades, two downgrades, and 26 favourable Outlook revisions (from either Negative to Stable or from Stable to Positive). Many of the Outlook revisions to Stable from Negative were driven by the direct linkage between certain housing finance agencies (HFAs) and the U.S. Issuer Default Rating, the Outlook of which Fitch revised to Stable from Negative in July.

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[S&P U.S. Charter Schools 2022 Year In Review.](#)

Key Takeaways

U.S. charter schools maintained credit stability in 2022. With significant help from federal emergency funds, as well as stable to increasing per-pupil funding and general enrollment growth across the sector, charter schools entered 2022 with greater financial flexibility.

Proactive management supported credit quality across the sector. Management teams were able to pivot swiftly and successfully to varied instructional modes, reinforcing the need for sound governance and communication, contingency planning, and internal controls to mitigate risk.

As we look ahead to 2023, key questions will affect credit quality. What will be the lasting implications of the COVID-19 pandemic on kindergarten to grade 12 learning loss, and will it affect charter authorization and renewals? Will enrollment continue to increase post-pandemic? How will per-pupil funding for charter schools fare as inflation and rising expenses affect state budgets? These questions will be addressed in our 2023 sector view report.

[Continue reading.](#)

12 Dec, 2022

[S&P U.S. Not-For-Profit Health Care Rating Actions, November 2022](#)

S&P Global Ratings affirmed 20 ratings without revising the outlooks, took seven rating actions, and revised five outlooks without changing the ratings in the U.S. not-for-profit health care sector in November 2022. There were five new sales in November, of which two had outstanding ratings affirmed with no outlooks revised, one had a revised rating, and two had outlooks revised unfavorably. The 12 rating and outlook actions consist of the following:

- Five downgrades on two hospitals and three health systems, three of which were also placed on CreditWatch with negative implications. Two of the five downgrades were within the speculative-grade category and one other downgrade went to speculative-grade from 'BBB-';
- Two upgrades on one hospital and one human service provider;
- Four unfavorable outlook revisions on two hospitals and two health systems (three from stable to negative, one from positive to stable); and
- One favorable outlook revision to positive from stable due to a merger and acquisition.

The table below summarizes S&P Global Ratings' monthly bond rating actions for U.S. not-for-profit health care providers in November. 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.](#)

14 Dec, 2022

[Quantifying Financial Impact of Climate Risk with Moody's Climate on Demand.](#)

Climate change is widely accepted as the next great integrated risk challenge. To ensure long-term economic resilience, a wholly robust and comprehensive approach for estimating climate impacts will be required, one that captures real asset losses as well as distributive business interruptions.

[Read more.](#)

December 13, 2022

[S&P U.S. Transportation Infrastructure Port Sector Update And Medians: Ports Are Resilient In Shifting Tides](#)

Key Takeaways

- The key near-term challenge for U.S. ports will be managing through economic headwinds, as S&P Global Economics includes a shallow recession in the base-case forecast for the first half of 2023,

coupled with continuing supply chain issues that will keep inflation high.

- Ports also face lingering congestion issues caused by supply chain disruptions and logistical bottlenecks, which, while they will subside, could shift import container traffic from the West Coast to the East Coast.
- Container growth has continued in the pandemic rebound and we expect this year will be 1.6% higher compared with 2021, or 13% higher than levels in 2019, although recent monthly container traffic has fallen significantly.
- Our analysis of rated port issuers' fiscal 2021 financial metrics shows relatively stable performance with median revenues increasing 2.9% in 2021, resulting in median debt service coverage of 2.6x in 2021, compared with 2.3x in 2020 and 3.0x in 2019.

[Continue reading.](#)

13 Dec, 2022

[S&P U.S. Municipal Retail Electric Sector Update And Medians: Resilient Metrics Support Ratings](#)

Key Takeaways

- About 60% of S&P Global Ratings' municipal retail electric utility ratings are in the 'A' category, with a median and modal rating of 'A+', reflecting our view of healthy operations and finances amid utility-specific and industrywide challenges.
- Largely stable outlooks reflect our expectation that most issuers are well positioned to manage the challenges facing the sector.
- Financial metrics influence the highest and lowest ratings more than operational characteristics do.
- Median financial metrics, including fixed-charge coverage, liquidity, and debt, have remained steady over the past three years, which we attribute to widespread rate-setting autonomy, the general practice of passing through power and fuel costs to ratepayers, and credit-supportive management policies and practices.

[Continue reading.](#)

14 Dec, 2022

[Should the Deadline to Spend ARPA Dollars be Extended?](#)

Some local officials involved in managing American Rescue Plan Act aid describe a 2026 cut-off to use up all of the money as uncomfortably close.

Local government officials involved in overseeing hundreds of millions of dollars in federal pandemic aid are cautioning that a 2026 deadline to spend the money could be tight.

Part of the reason it's taking awhile to get the American Rescue Plan Act dollars out the door, they say, is that governments devoted significant time during the past two years to conducting community outreach to align their spending with residents' priorities. Another set of difficulties is

that the money can get bogged down in bureaucratic finance procedures, rigid procurement processes and working with outside “subrecipient” organizations brought on to run programs.

In many cases, local governments are moving to spend on initiatives that they are either starting from scratch or significantly expanding, which can also prove to be time consuming. And while President Biden signed the law in March of 2021, the Treasury Department didn’t finalize guidance for the \$350 billion State and Local Fiscal Recovery Funds Program until January of this year, leaving some governments hesitant to start putting the money to use right away.

[Continue reading.](#)

ROUTE FIFTY

by BILL LUCIA

DECEMBER 15, 2022

[Municipal Water Leaders Want More Federal Help for Poor Customers.](#)

They say they’re facing an untenable situation as low-income households are pressured by higher rates and systems need major upgrades. One official warns that a recent drinking water failure in Mississippi “is a harbinger of a wider national problem.”

In the wake of a drinking water crisis in Mississippi earlier this year, several municipal water utility leaders called on Congress Wednesday to take a greater role in helping low-income residents pay for their water bills.

The assistance would be similar to how the federal government helps poor people with other utilities, they said, and could help cash-strapped customers cope with water bills that have been rising at twice the rate of inflation since 2000. Those rate increases, the executives noted, are often required to help water utilities comply with federal mandates.

The added money would also put the utilities themselves on better financial footing, which would help them avoid systemic failures of municipal water systems, like the one seen over the summer in Jackson, Mississippi and previously in places like Flint, Michigan, they added.

[Continue reading.](#)

ROUTE FIFTY

by DANIEL C. VOCK

DECEMBER 14, 2022

[Transit-Oriented Planning Grants Begin to Change Cities.](#)

A pilot program has gradually amassed more than \$100 million in Federal Transit Administration grants, which are laying the groundwork for land use projects that promote

mobility and affordability.

For the last decade, Woodlawn United, a nonprofit group in Birmingham, Ala., has been working to revitalize its corner of the city and secure long-term accessibility for the people who've built their lives there.

The group works in Woodlawn, a northeast Birmingham neighborhood that's seen decades of disinvestment since the deindustrialization and white flight of the mid-20th century, says Joe Ayers, the group's real estate director. Its approach is modeled on the East Lake Initiative in Atlanta, a three-pronged revitalization effort focused on education and community wellness as well as physical redevelopment of property.

Ayers says it's also hoping to learn from that effort's shortcomings: how the improvements in income and educational attainment in the target area were accompanied by a substantial decrease in Black residents and increase in white residents — what one Urban Institute study described as “changes of people rather than changes for people.” Woodlawn United has focused on buying and banking property to create long-term opportunities for affordable housing even as the neighborhood improves.

[Continue reading.](#)

governing.com

by Jared Brey

Dec. 16, 2022

TAX - MISSOURI

[Collector of Winchester v. Charter Communications, Inc.](#)

Missouri Court of Appeals, Eastern District - December 13, 2022 - S.W.3d - 2022 WL 17587187

City brought putative class action against providers of voice over internet protocol (VoIP) telephone services through their broadband cable networks seeking declaratory judgment that proposed class members' municipal or county ordinances imposing business license tax on telephone service providers were applicable to providers' gross receipts generated by their telephone business in each jurisdiction, injunctive relief, and an accounting.

Following certification of five subclasses and bench trial, the Circuit Court entered final judgment in favor of class and ordered providers to pay \$39,048,386 in damages consisting of unpaid taxes, pre-judgment interest, post-judgment interest, attorney fees, and legal expenses. Providers appealed.

The Court of Appeals held that:

- Telecommunications Act did not preempt ordinances;
- Cable Communications Policy Act did not preempt ordinances;
- Provider was “telephone company” providing “telephone service” subject to ordinances;
- Cities and county were entitled to back taxes based on all revenue generated by providers' VoIP telephone services in each jurisdiction;
- Providers were not entitled to any exemptions when calculating back taxes owed;

- Circuit Court had jurisdiction over city's class action; and
- County's ordinance was not retroactively repealed by constitutional amendment that resulted in county no longer being first-class county, as used in tax-enabling statute.

Telecommunications Act did not preempt municipal and county ordinances imposing business license tax on telephone service providers, as applied to voice over internet protocol (VoIP) telephone services provided through broadband cable network, even if VoIP was "information service" rather than "telecommunications service" within meaning of Telecommunications Act, since there was no express preemption in Act for information services, and Act's tax-savings clause rendered inapplicable any implied preemptive effect resulting from definitional distinctions between "telecommunication services" and "informational services."

Business license taxes imposed by municipal and county ordinances on telephone service providers, as applied to providers of voice over internet protocol (VoIP) telephone services through a broadband cable network, were taxes of "general applicability," within meaning of provision of Cable Communications Policy Act creating safe harbor for state or local taxes of general applicability from the Act's preemption provision; ordinances imposed business license taxes on any entity providing telephone service to customers in each jurisdiction, and did not single out providers of VoIP services or unduly discriminate against providers based on their status as cable operators.

Provider of voice over internet protocol (VoIP) telephone services through a broadband cable network was "telephone company" providing "telephone service" subject to municipal and county ordinances imposing business license taxes on telephone service providers, although relevant license-tax-enabling statutes and ordinances did not define terms "telephone company," "telephone," or "telephone service" to specifically include VoIP-enabled telephone service; ordinances were intended to cover all telephone services, regardless of type of technology used, and provider stated in advertisements that its service was "regular telephone service" that happened to be "provided using a different technology" and was "functionally equivalent" to traditional wire-line service.

Cities and county were entitled to back taxes, pursuant to municipal and county ordinances imposing business license tax on telephone service providers, based on all revenue generated by providers' voice over internet protocol (VoIP) telephone services in each jurisdiction, where ordinances did not expressly exclude any category of call, such as intrastate, interstate, local, or long distance.

Providers of voice over internet protocol (VoIP) telephone services were not entitled to any exemptions from business license tax imposed by municipal and county ordinances on telephone service providers, precluding reduction in providers' tax base when calculating back taxes owed, where providers did not identify any discrepancy in amount owed, or include any documentation evidencing amounts they claimed should have been excluded from their tax base.

Circuit Court had jurisdiction over city's class action seeking declaratory judgment that municipal or county ordinances imposing business license tax on telephone service providers were applicable to gross receipts generated by providers' voice over internet protocol (VoIP) telephone services in each jurisdiction, even though action pertained to municipal tax ordinance violations, since Circuit Court was court of general jurisdiction, and a municipal corporation was "person" under Declaratory Judgment Act.

Constitutional amendment that resulted in county no longer being first-class county did not retroactively repeal county's ordinance imposing business license tax on telephone service providers that was enacted pursuant to tax-enabling statute granting first-class counties power to tax telephone service; county was first-class county at time it enacted ordinance, intent of constitutional amendment was that there would be no direct fiscal impact, and amendment was designed to

maintain existing laws.

TAX - LOUISIANA

[NAR Solutions, Inc. v. Kuhn](#)

Supreme Court of Louisiana - December 9, 2022 - So.3d - 2022 WL 17546556 - 2022-00425 (La. 12/1/22)

Successor tax-sale purchaser of immovable property filed petition to confirm and quiet tax sale title and for declaratory judgment as to validity of sale.

The 24th Judicial District Court entered final default judgment declaring tax sale valid and declaring successor to be full owner of property. Pre-sale owner of property filed devolutive appeal. The Fifth Circuit Court of Appeal vacated and remanded. Successor's application for writ of certiorari was granted.

The Supreme Court held that successor was entitled to default judgment quieting title against 100% owner at time quiet title action was instituted.

Grantee of title following tax sale more than three years earlier was entitled to default judgment quieting title against 100% owner at time quiet title action was instituted, even though nothing indicated service of tax delinquency or sale upon his siblings who had inherited interests in the property and transferred their interest to owner; owner took no action within prescribed time period to annul the tax sale.

Since a certified copy of the tax sale certificate is prima facie evidence in a quiet title action of the regularity of all matters regarding the tax sale and the validity of the tax sale, the former property owner must then carry the burden of proving any defects in the tax adjudication proceedings.

[JPMorgan Topples Citi as No. 2 Muni Underwriter in 2022 Rankings.](#)

- **Issuance of muni bonds down about 21% from last year's record**
- **JPMorgan has managed about \$38 billion of sales this year**

JPMorgan Chase & Co. is the clear winner this year in an increasingly competitive municipal-bond market, encroaching on Bank of America Corp.'s stranglehold on the top slot of underwriting rankings.

The New York-based bank managed \$38.2 billion of long-term state and local government debt as of Dec. 15, or roughly 11% of the overall issuance, according to data compiled by Bloomberg. That marks a nearly 3 percentage point jump from the bank's share last year, the biggest increase among the 91 managers who have run at least one deal this year, the data shows.

"We were fortunate this year to have a very balanced performance across numerous sectors in the market, however, our market leadership in the energy space with rate-payer securitizations was a key differentiator for us," said Jamison Feheley, head of public finance investment banking at JPMorgan.

[Continue reading.](#)

Bloomberg Markets

By Jennah Haque

December 15, 2022

[Shrinking Office Building Values Are Becoming a Dilemma for City Budgets.](#)

Office landlords appeal property-tax assessments, which could lead to reductions in jobs or programs in some jurisdictions

The sharp decline in office building values is likely to become a growing problem for the budgets of cities, schools and other jurisdictions that depend heavily on property taxes from these building owners.

Most municipal budgets haven't suffered much yet. For a variety of reasons, declines in property values typically take years before they are reflected in the real-estate assessments of most taxing jurisdictions.

But municipalities might soon start feeling pain, say lawyers and appraisers throughout the country. Property tax is the largest single expense for most office landlords. Many hope to reduce it to help offset lost revenue from the sluggish return of employees to their desks and the cascading damage it is causing to local businesses catering to these workers. More recently, job cuts in the tech sector are reducing demand for workspace.

[Continue reading.](#)

The Wall Street Journal

By Peter Grant

Dec. 13, 2022

[Muni Bonds Look Forward To 2023 \(Bloomberg Audio\)](#)

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

[Listen to audio.](#)

Bloomberg

Dec 16, 2022

[JPMorgan to Convert Another \\$2 Billion of Mutual Funds to ETFs.](#)

- **Plans follow success of firm's first four conversions in June**
- **The funds' long track records help the conversions: Seyffart**

JPMorgan's asset management arm filed to convert four more mutual funds with assets of about \$2 billion into exchange-traded funds.

The plans follow the success of the firm's first four conversions in June and would bring JPMorgan's US ETF lineup to 50 funds. The funds slated to be changed are two municipal bond funds, one short-dated bond fund and one equity fund, according to a press release.

"We think one of the big benefits of conversion versus other options is the ability to carry over track records. And these funds have seriously long track records," said James Seyffart, ETF analyst at Bloomberg Intelligence.

[Continue reading.](#)

Bloomberg Markets

By Emily Graffeo

December 15, 2022

[Disney Investor Demands Files Over Opposition to Florida's 'Don't Say Gay' Law.](#)

- **Criticism of Florida law said to have 'far-reaching' effects**
- **Statute bans sexual-orientation talks in some school classes**

Walt Disney Co. created "far-reaching" financial risks for itself by opposing a Florida law limiting instruction on sexual orientation or gender identity in elementary schools, according to an investor who is demanding the company turn over internal records about the decision.

By criticizing the state for enacting the restrictions - which critics dubbed the "Don't Say Gay" law - Disney lost control over tax and improvement issues at its Orlando-area theme park, investor Kenneth Simeone said in a lawsuit unsealed Friday in Delaware Chancery Court.

In April, Governor Ron DeSantis signed legislation eliminating the special-municipal district Disney has operated in the state since the late 1960s. It's part of a drive to punish the company for its stand against the 'Don't Say Gay' law, which was championed by DeSantis and imposed limits on instruction from kindergarten through third grade.

[Continue reading.](#)

Bloomberg

By Jef Feeley

December 12, 2022

[**Nuveen's Rodriguez Says Fundamentals Back Return in Demand for Munis.**](#)

Tony Rodriguez, head of fixed income strategy at Nuveen Asset Management, says a likely peak in long-term interest rates and the credit health of state and local governments is behind the recovery in municipal bond markets. He speaks on "Bloomberg Surveillance."

[Watch video.](#)

Bloomberg SurveillanceTV Shows

December 12th, 2022

[**Chicago Taps Brakes on Gentrification With a Tax on Teardowns.**](#)

With multi-unit dwellings giving way to single-unit homes, Logan Square leaders pushed for measures to keep the neighborhood's Latino population in place.

Right next to the California stop on Chicago's Blue Line, one-bedroom apartments in a new luxury building start north of \$2,000 a month. Recently built single-family homes on adjacent streets frequently go for \$1 million or more. Coffee shops and craft breweries have become neighborhood staples.

Scattered throughout: taquerias marked with a single dollar sign on Google Maps, and traditional duplexes and triplexes. These multi-unit dwellings have housed members of Logan Square's Latino population since a wave of immigration in the 1960s, but lately the flow has gone in the opposite direction. The Latino population in the neighborhood has diminished to 36% from 65% in 2000, according to the US Census Bureau, as wealthy, and often White, residents find appeal in the area's trendy businesses and proximity to The 606, a 2.7-mile railway-turned-walking and biking path that opened in 2015.

"Living in a gentrifying neighborhood is like living with a live and open wound," said Christian Diaz, who was born in Mexico but has called Logan Square home for most of his life. "It turns our streets into an emotional minefield because it just seems like our neighborhood is valuable now because White people want to live here. And it wasn't before, because it was predominantly Latinx."

[Continue reading.](#)

Bloomberg CityLab

By Mackenzie Hawkins

December 14, 2022

[**How the Current Interest Rate Environment Is Shaping the Municipal Debt Markets.**](#)

With the ongoing interest rate hikes, the cost of accessing the capital market to finance municipal capital projects has become significantly more expensive than a year ago. More and more local governments are pricing in the increased cost of capital, the interest cost on the entire debt issuance, and the increased cost of procuring the materials, due to the supply chain imbalance and overall market inflation, in their timing decision to undertake any large capital projects.

Due to the aforementioned reasons, some local governments are considering current market conditions as a double whammy on their finance - both from financing a project at an increased cost and the need to allocate more capital for the project that perhaps would have cost less in normal market conditions.

In this article, we will take a closer look at current market conditions and their adverse impacts on municipal debt markets.

[Continue reading.](#)

municipalbonds.com

by Jayden Sangha

Dec 14, 2022

[Fitch: Hurricane Ian Compounds Florida Homeowners' Insurer Vulnerability](#)

Fitch Ratings-Chicago/New York-05 December 2022: The Florida homeowners' insurance market's already precarious position will weaken further with the destruction generated by Hurricane Ian, a storm that is potentially the second largest hurricane in terms of insured losses, Fitch Ratings says. Losses will resonate through primary and assumed reinsurance markets with sharp changes in pricing and underwriting terms, and future primary market capacity and reinsurer risk appetite uncertain.

The broader concern is that a lack of property coverage availability for Florida residents could promote economic repercussions affecting the state's real estate, mortgage and labor markets. Hurricane Ian could lead to further market exits by Florida homeowners' insurers, as many private carriers face capital concerns, coupled with reduced availability and sharply higher costs for reinsurance.

Catastrophe modeling experts have pegged insured loss estimates for Ian of between \$35 million and \$73 billion, with economic losses from the event likely exceeding \$100 billion. Losses from November's category 1 storm, Hurricane Nicole, will incrementally compound this total with insured loss estimates of between \$1 billion and \$2 billion.

The effects of Ian losses on different types of (re)insurance organizations will vary but will still influence future pricing and market conditions and the ability of (re)insurers to withstand the next major Florida weather event. Signs of new insurers entering the Florida homeowners primary market are few, which will lead to further policy count growth at insurer of last resort, Citizens Property Insurance Corporation (Citizens/AA Stable).

Incurred loss information on Ian continues to accumulate as insurers report estimated losses in

third-quarter results. A compilation of reported net losses for 42 individual entities currently totals approximately \$30 billion, with over 40% associated with state-sponsored entities Citizens and the Florida Hurricane Catastrophe Fund (FHCF; AA/Stable).

Central Utah Water Conservancy District: Fitch New Issue Report

The 'AA+' ratings primarily reflect Central Utah Water Conservancy District's (the district) very strong purchaser credit quality, supported by its independent rate-raising ability, unconditional purchaser contracts and unlimited ability to reallocate costs. The district and purchasers benefit from very favorable demographics within the primary service area of Utah County and Salt Lake County. The district's operating risk profile is very strong, given a very low operating cost burden, reflected as total costs relative to water production, and a very low lifecycle ratio. District leverage, measured as net-adjusted debt to adjusted funds available for debt service, based on consolidated audited financial statements, registered an exceptionally low 2.9x in fiscal 2022, up modestly from 2.8x the year prior.

ACCESS REPORT

Fitch to Upgrade CA GO Commercial Paper Notes Series A-8 & B-8 Rating to 'F1+'

Fitch Ratings-Chicago/New York-14 December 2022: On the effective date of Dec. 15, 2022, Fitch Ratings will upgrade the rating assigned to the \$125,000,000 California General Obligation Commercial Paper Notes Tax-Exempt Series A-8 and Taxable Series B-8 (notes) to 'F1+' from 'F1'. A maximum of \$125,000,000 aggregate principal amount of Series A-8 and B-8 authorized notes may be outstanding at any given time.

The rating action is in connection with: (i) the substitution of the current irrevocable letter of credit (LOC) provided by Bank of the West (rated 'A/F1'/Rating Watch Positive) which currently supports both series of notes, with a LOC to be provided by Bank of Montreal (BMO, rated 'AA-/F1+'/'Outlook Negative'); and (ii) the reoffering of the notes from time to time.

KEY RATING DRIVERS:

On the effective date, the rating on the notes will be upgraded to 'F1+' from 'F1' based on the support of the BMO LOC. The LOC has a stated expiration date of Dec. 12, 2025, unless extended or earlier terminated. The BMO substitute LOC will provide sufficient coverage for the principal amount of the notes and 90 days of interest calculated at 11%, based on a 365-day year.

U.S. Bank Trust Company National Association will continue acting as Issuing and Paying Agent (IPA) for the notes, and as IPA, is directed to request a drawing on the substitute LOC to pay principal and interest on maturing notes to the extent proceeds from rollover notes or other funds supplied by the State of California are insufficient to make such payment in full.

All notes will be issued at par, with interest due at maturity. Following the occurrence of an event of default under the Reimbursement Agreement, BMO may direct the IPA to stop issuing additional notes. The substitute LOC will terminate after all the notes supported by the LOC and issued prior to

receipt of such no-issuance notice have been paid. US Bancorp Investments, Inc. and & J.P. Morgan Securities LLC are the dealers of the notes.

RATING SENSITIVITIES

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

-The Short-Term rating assigned to the notes is the highest Short-Term rating and cannot be upgraded.

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

-The Short-Term 'F1+' rating assigned to the notes will be adjusted downward in conjunction with the Short-Term rating of the bank.

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Additional information is available on www.fitchratings.com

[Texas Attorney General to Rule on Citigroup's Underwriting Status by Next Month.](#)

- **Letter to bond counsels says announcement to be made promptly**
- **Citi has been doing business in Texas during AG's review**

The Texas Attorney General's office will decide by Jan. 13 whether Citigroup Inc. "discriminates" against the firearms industry, a ruling that will determine the bank's ability to underwrite most municipal-bond offerings in the state.

The New York-based bank has been under review by Attorney General Ken Paxton's office because

of a Republican-backed state law that aims to punish financial firms for instituting anti-gun policies. In a Dec. 13 letter viewed by Bloomberg, Leslie Brock, assistant attorney general, said in order to “minimize disruption to the municipal public securities market,” the office would make its determination and “promptly” announce its decision.

Governments in Texas that have chosen to work with Citigroup during the review have been required to ask the bank for additional assurance that they do not run afoul of the law. The bank has been stating for over a year that it can comply with the legislation and has managed about \$3.5 billion of bond sales in Texas in 2022.

[Continue reading.](#)

Bloomberg Markets

By Danielle Moran

December 13, 2022

[Muni-Bond ETFs Lure \\$28 Billion as Mutual Funds Bleed Cash.](#)

- **Citigroup says market volatility catalyst to greater adoption**
- **Low costs and model portfolios also spur adoption, bank says**

Market volatility supercharged the growth of municipal-bond exchange traded funds in 2022 at the expense of open-end mutual funds, which may lose some of those assets for good.

Despite the worst market rout in 40 years, investors plowed a record \$27.8 billion into municipal-bond ETFs this year, a striking contrast to open-end funds which lost more than \$130 billion. As much as half the inflows came from mutual fund holders selling shares at a loss to offset gains and swapping into ETFs, according to estimates by Drew Pettit, director of ETF analysis and strategy at Citigroup Inc.

Municipal bond Investors, who had been reluctant to move out of mutual funds during the bull market because of capital gains, have seen muni market losses of 8% this year, as the Federal Reserve hiked interest rates at the fastest pace in decades. The historically poor returns, however, provided tax conscious municipal-bond investors the opportunity to harvest losses.

[Continue reading.](#)

Bloomberg Markets

By Martin Z Braun

December 13, 2022

[Municipal Bonds May Be About to Rebound.](#)

Municipal bonds and the related exchange traded funds have been under pressure this year due to

rising interest rates. However, there are examples of muni bond ETFs outperforming aggregate bond funds.

With that in mind, some market observers are constructive on municipal debt as a 2023 rebound idea, noting that investors can currently use munis and the corresponding ETFs to access above-average yields without taking on undue risk.

That setup could be encouraging for ETFs such as the SPDR Nuveen Municipal Bond ESG ETF (MBNE). MBNE debuted earlier this year as one of the few ETFs offering the coveted combination of municipal bonds with an environmental, social, and governance (ESG) overlay. Adding ESG to the equation could make MBNE all the more attractive in 2023.

“For the first time in a long time, yields are attractive. At the beginning of the year, the yield on the Bloomberg Municipal Bond Index was close to 1%, near the lowest level in the history of the index. That’s no longer the case,” according to Charles Schwab research. “The yield on the index has risen to roughly 3.4%. While this isn’t as high as other fixed income options, municipal bonds are one of the few investment options that are often exempt from federal and potentially state income taxes if the issuer is located in your home state, so after adjusting for this, they are attractive relative to alternatives.”

Further bolstering the allure of MBNE as a muni rebound idea is the point that the ETF is actively managed, meaning the fund’s managers can work to mitigate credit and interest rate risk. Likewise, they can also scour the landscape of municipal bonds with strong ESG credentials to identify potential value opportunities.

Speaking of credit, the muni-to-Treasury ratio, which evaluates AAA-rated munis against U.S. government debt, indicates there are opportunities with intermediate-term munis. That’s relevant to investors considering MBNE because the ETF’s option-adjusted duration is 5.16 years, which is firmly in the intermediate-term territory.

“The ratio is below its five-year average for most maturities on the curve. It’s especially below its longer-term average for short-term bonds. Tactically, this can be translated to mean that intermediate-term bonds offer more attractive relative yields than shorter-term bonds. This isn’t to say that we don’t suggest holding some short-term bonds, but we think investors should consider extending duration in 2023 to take advantage of the move up in longer-term yields,” concluded Schwab.

by Tom Lydon

Dec 14, 2022

etfdb.com

[Technical Headwinds Create a Silver Lining for Municipal Bonds.](#)

Municipal bonds have seen significant outflows this year as higher yields have caused one of the largest drawdowns on record for the asset class. But these technical headwinds have also created attractive valuations relative to U.S. Treasuries, creating an opportunity for investors who can also benefit from munis’ tendency to do well in late-cycle and recessionary environments.

Like most areas of the bond market, municipal bonds have been under considerable pressure throughout the course of this year. Inflation has proven to be stickier than previously thought, spurring the U.S. Federal Reserve to embark on its most aggressive tightening cycle in decades, shifting bond rates across the curve sharply higher than they were at the start of this year.

This rise in yields has caused a spate of negative performance for the municipal bond space and investors within the asset class are understandably nervous. As of the end of October, the drawdown in the Bloomberg Municipal Bond Index has reached -10.83%. By comparison, this drawdown is larger than that experienced during March 2020 as pandemic fears weighed on the markets, or even in 2008 during the global financial crisis.

[Continue reading.](#)

jhinvestments.com

December 14, 2022

[BAB: The Only ETF In The Taxable Municipal Bond Sector](#)

Summary

- The Invesco Taxable Municipal Bond ETF is the only ETF I found that focuses on the taxable municipal segment of the US bond market.
- Unlike the three CEFs I covered in this segment, BAB gives investors a leverage-free option to invest in. I compare returns between these four, plus corporate bond ETF.
- Based on how BAB has performed against the CEFs and several long-term corporate bond ETFs, the best I can muster is a Hold. A good candidate for tax-loss swapping.

[Continue reading.](#)

Seeking Alpha

Dec. 16, 2022

[San Francisco Mayor Warns of Budget Deficit as Remote Work Hits Revenue.](#)

- **Mayor needs to cut costs for \$728 million two-year deficit**
- **Tech hub struggles with vacant offices and uncertain recovery**

San Francisco is projecting a \$728 million budget gap over the next two fiscal years as the technology hub reels from the economic hit of remote work and the depletion of one-time federal aid.

Mayor London Breed asked municipal departments Thursday to find ways to reduce costs by 5% in the next fiscal year and by 8% in the year after that as part of the budget process for the city, which has a \$6.8 billion general fund. The fiscal plan for the years beginning in July 2023 and July 2024 must balance by June 1 when she submits it to the board of supervisors for approval.

San Francisco, suffering from some of the nation's weakest office occupancies and stubbornly low transit ridership, is now expecting business taxes over the next two years to decline by \$179.3 million from previous estimates. Significantly, property taxes — usually a stable revenue source in downturns — are now projected over the same period to drop by \$261 million from the earlier forecast.

[Continue reading.](#)

Bloomberg CityLab

By Romy Varghese

December 15, 2022

[Financial Accounting Foundation \(FAF\) Trustees Reappoint Chair and Vice Chair of the Governmental Accounting Standards Advisory Council \(GASAC\).](#)

Norwalk, CT, November 15, 2022 — The Board of Trustees of the Financial Accounting Foundation (FAF) announced today the reappointment of Elizabeth Pearce as chair and Robert Hamilton as vice chair of the Governmental Accounting Standards Advisory Council (GASAC) respectively. Both will serve their terms starting January 1, 2023 and concluding on December 31, 2024, at which time they will be eligible for reappointment for one additional term.

The GASAC advises the Governmental Accounting Standards Board (GASB) on strategic and technical issues, project priorities, and other matters that affect standards setting. Members of the GASAC are responsible for consulting with the GASB on technical issues on the Board's agenda, project priorities, matters likely to require the attention of the GASB, and such other matters as may be requested by the GASB or its chair.

"The FAF and the GASB are pleased to have both Elizabeth and Robert serve in these essential roles. As members of the GASAC, and during their first terms as chair and vice chair, they have shown a genuine interest in listening to all perspectives while also sharing their own. They are both thoughtful when giving their opinions and are well received by other GASAC members," said Kathleen L. Casey, chair of the Financial Accounting Foundation. "We are excited for them to continue in these leadership roles and in their continuing encouragement of all GASAC members to share their views to enhance the standards-setting process," added Ms. Casey.

For a complete list of current GASAC members, visit the [GASAC webpage](#).

[New GFOA Federal Funds Training Scheduled for January.](#)

Attend this eLearning event **January 9 and 13** to gain a basic understanding of the Federal grants process for state and local governments and applicable GFOA Best Practices. This course will include current Federal grant programs such as American Rescue Plan Act funding and ongoing programs such as Community Development Block Grants.

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

MSRB Seeks Board of Directors Applicants.

Washington, D.C. – The Municipal Securities Rulemaking Board (MSRB), the self-regulatory organization (SRO) established by Congress to safeguard the \$4 trillion municipal securities market, is soliciting applications for four positions on its Board of Directors for the 2024 fiscal year. Selected candidates will be elected to four-year terms beginning October 1, 2023, where they will have the opportunity to oversee the advancement of the organization’s [Strategic Plan](#) to deploy the tools of regulation, technology and data in impactful ways that strengthen the municipal market and serve the public interest.

“In order to uphold the public’s trust in the municipal market’s SRO, we must ensure our governing Board is diverse and inclusive and reflects the wide variety of perspectives that contribute to the field of public finance across our nation,” said Thalia Meehan, MSRB Board member and Chair of the Board’s Nominating Committee, which leads the process of identifying new Board members. “While we are particularly interested in applicants with compliance, technology and data proficiency, we encourage individuals with municipal securities experience from all regions of the United States to apply for membership on the Board.”

The Board is charged with setting regulatory policy, authorizing rulemaking, enhancing market transparency systems and overseeing operations for the organization. The Board is currently overseeing the execution of the MSRB’s long-term strategic goals of modernizing the MSRB rule book, enhancing market transparency through investments in technology, fueling innovation through data, and upholding the public trust through a commitment to social responsibility, diversity, equity and inclusion. Board members are compensated for their service.

Board Composition

The Board is composed of 15 total members. During the current nominating process, the Board will elect two public and two regulated representatives to join a Board that will consist of eight members who are representatives of the public, including investors, municipal entities and other individuals not regulated by the MSRB, and seven members from firms that are regulated by the MSRB, including representatives of broker-dealers, banks and non-dealer municipal advisors. With respect to the two public member positions, the MSRB is interested in including an investor in municipal securities, either institutional or retail. All applicants must be knowledgeable of matters related to the municipal securities market.

Application Details

Applications are available on the [MSRB Board of Directors Application Portal](#) and will be accepted from December 14, 2022 through February 6, 2023. At least one letter of recommendation must be submitted with the application. Additional details on the Board application process, information about Board service requirements and FAQs are available on the MSRB’s website. Questions regarding the application and selection process should be directed to Jake Lesser, General Counsel, at 202-838-1395 or jlesser@msrb.org.

Date: December 14, 2022

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

The Municipal Securities Rulemaking Board (MSRB) protects and strengthens the municipal bond market, enabling access to capital, economic growth, and societal progress in tens of thousands of communities across the country. The MSRB fulfills this mission by creating trust in our market through informed regulation of dealers and municipal advisors that protects investors, issuers and the public interest; building technology systems that power our market and provide transparency for issuers, institutions, and the investing public; and serving as the steward of market data that empowers better decisions and fuels innovation for the future. The MSRB is a self-regulatory organization governed by a board of directors that has a majority of public members, in addition to representatives of regulated entities. The MSRB is overseen by the Securities and Exchange Commission and Congress.

[MSRB Announces Members of 2023 Compliance Advisory Group.](#)

[View the MSRB press release.](#)

December 12, 2022

- [A Chance to Make Government Financial Data Transparent and User-Friendly.](#)
 - [“Lame Duck” Congress May Take Up Modified Financial Transparency Rules.](#)
 - [S&P U.S. Public Finance Year In Review: Credit Stability. Will It Last?](#)
 - [State Credit Enhancement Programs Promote Capital Investment in Low-Income Districts.](#)
 - [Mispriced Municipal Bonds Cost Mutual Fund Shareholders And Taxpayers Billions Of Dollars.](#)
 - [ESG Investing’s Real Problem Is a Lack of Data, Fixed-Income Pros Say.](#)
 - [How Wall Street Banks Will Reap Billions From Tax-Free Renewable Energy Bonds.](#)
 - [17 Attorneys General Write Letter Supporting Consideration of Climate Change Issues in Investment Process: Cadwalader](#)
 - Interesting California eminent domain case [here](#). Our friends at Nossaman run the excellent California Eminent Domain Report. We’ll steal their take on this case and pass it on as soon as it’s available.
 - And finally, Well That Hardly Seems Sporting is brought to us this week by [Matter of DiGuglielmo](#), in which, “The investigation found that Officer DiGuglielmo [pantheon-level NJ name, btw] recklessly endangered innocent persons by permitting the probationary officer to drive against traffic and unlawfully cross an intersection without activating the vehicle’s warning lights. Video footage also revealed that Officer DiGuglielmo yelled threatening profanities at the juvenile bicyclist, and the report indicated that he failed to provide medical aid following his use of physical force.” Sleep well, students of the New Jersey Institute of Technology, safe in the knowledge that Officer DeGuglielmo will stop at nothing to protect you from insolent little punks riding their bikes through campus.
-

ZONING & PLANNING - CALIFORNIA

[Save Lafayette v. City of Lafayette](#)

Court of Appeal, First District, Division 3, California - November 30, 2022 - Cal.Rptr.3d - 2022 WL 17336106

City residents petitioned for writ of mandate alleging that apartment development project approved by city conflicted with city's general plan and zoning requirements, environmental impact report (EIR) was inadequate, and supplemental EIR was required.

The Superior Court denied petition. Residents appealed.

As matter of apparent first impression, the Court of Appeal held that under Housing Accountability Act, city's general plan and zoning standards in effect when original application was deemed complete applied.

Under Housing Accountability Act, city's general plan and zoning standards in effect when original apartment development application was deemed complete applied to variant of original application, as opposed to standards in effect when applicant terminated process agreement that had suspended original application for consideration of alternative project and asked city to resume processing variant of its original application, although there was lengthy delay between certification of environmental impact report and project approval that was outside time limits of Permit Streamlining Act; consequence under Permit Streamlining Act of any failure by city to act was project being deemed approved, not disapproved, and applicant's request to resume processing did not serve as resubmittal.

EMINENT DOMAIN - CALIFORNIA

[Gearing v. City of Half Moon Bay](#)

United States Court of Appeals, Ninth Circuit - December 8, 2022 - F.4th - 2022 WL 17492266

Landowners brought § 1983 action against city, alleging a regulatory taking and related claims.

City moved for federal court to abstain pending resolution of state-court eminent domain action, which the United States District Court for the Northern District of California granted. Landowners appealed.

The Court of Appeals held that:

- Even if *Pullman* abstention was prohibited when it would create effective exhaustion requirement for a takings plaintiff, abstention from instant action would not subject landowners to such a requirement;
- Landowners' action touched on sensitive area of social policy, supporting determination that *Pullman* abstention was appropriate;
- Constitutional question in federal action could be mooted or narrowed by a definitive ruling on state law issues, supporting determination that *Pullman* abstention was appropriate; and
- Federal action involved unclear question of state law, supporting determination that *Pullman* abstention was appropriate.

Even if *Pullman* abstention was prohibited when it would create effective exhaustion requirement for a takings plaintiff, abstention from landowners' § 1983 action against city, alleging a regulatory taking and related claims, would not subject landowners to effective exhaustion requirement, supporting district court's determination that *Pullman* abstention was appropriate pending resolution of city's state-court eminent domain action against landowners; state court could adjudicate the eminent domain action without reaching the regulatory taking issue because eminent domain and regulatory takings suits compensated a property owner for different injuries, and

landowners had made express reservation in state court to prevent ruling on federal issues.

Landowners' § 1983 action against city, alleging a regulatory taking and related claims, touched on sensitive area of social policy, supporting district court's determination that Pullman abstention was appropriate pending resolution of city's state-court eminent domain action against landowners, where landowners' federal claim arose from city's denial of building proposal pursuant to city land use plan.

Constitutional question in landowners' federal action, a § 1983 claim alleging a regulatory taking arising from city's denial of building proposal pursuant to city land use plan, could be mooted or narrowed by a definitive ruling on state law issues, supporting district court's determination that Pullman abstention was appropriate pending resolution of city's state-court eminent domain action against landowners; state action would require court to interpret sections of land use plan which were relevant to federal action, because such interpretation would be required for determination of properties' fair market values.

Landowners' § 1983 claim alleging a regulatory taking arising from city's denial of building proposal pursuant to city land use plan involved an unclear question of state law, supporting district court's determination that Pullman abstention was appropriate pending resolution of city's state-court eminent domain action against landowners; case involved interaction between land use plan and state senate bill prohibiting the rejection of certain affordable-housing proposals, and senate bill had not yet been interpreted by any state courts.

EMINENT DOMAIN - MICHIGAN

[Mount Clemens Recreational Bowl, Inc. v. Director of Department of Health and Human Services](#)

Court of Appeals of Michigan - November 17, 2022 - N.W.2d - 2022 WL 17070755

Owners of restaurants, bars and banquet halls brought purported class action against the Governor, Director of Health and Human Services, and Chairperson of the Liquor Control Commission, seeking just compensation for their alleged regulatory taking by promulgating executive orders and regulations in response to the COVID-19 pandemic.

The Court of Claims denied owners' motion to transfer venue and granted defendants' motion for summary disposition. Owners appealed.

The Court of Appeals held that:

- Owners could not pursue their action in a circuit court by a jury under Court of Claims Act;
- Owners failed to state a claim for regulatory taking under Penn Central; and
- Governor did not engage in ultra vires conduct, as required for owners' claims to avoid governmental immunity.

Action brought by owners of restaurants, bars, and banquet halls against the Governor, Director of Health and Human Services, and Chairperson of the Liquor Control Commission, seeking just compensation for an alleged regulatory taking through executive orders promulgated during the COVID-19 pandemic, was against the State, and thus, owners had no right to jury under Court of Claims Act, where owners sued the Governor, Director, and Chairperson in their official capacities.

In their action seeking just compensation for an alleged regulatory taking through executive orders

promulgated during the COVID-19 pandemic, owners of restaurants, bars and banquet halls could not pursue their action against the State by a jury in the circuit court under the Court of Claims Act; owners' complaint made clear that they were seeking money damages under state constitution, and their claims were not brought under Uniform Condemnation Procedures Act (UCPA), as would allow them to demand a jury trial, because they did not allege that the State acquired their property.

Owners of restaurants, bars and banquet halls failed to state a claim that governor's executive orders that closed and imposed restrictions on their businesses during the COVID-19 pandemic constituted a regulatory taking under Penn Central, as required for owners to be entitled to just compensation under state constitution; even though owners alleged that regulations and executive orders at-issue were not actually warranted, they emphatically argued government's purpose in making restrictive regulations was not pertinent to a regulatory-takings analysis under Penn Central, stating that whether orders were "arbitrary, invalid exercises of police power" was ultimately irrelevant to regulatory taking analysis, and they did not argue that the executive orders at-issuer were imprudent.

Governor did not engage in ultra vires conduct by promulgating executive orders that closed and imposed restrictions on owners' restaurants, bars and banquet halls during the COVID-19 pandemic, as required for owners' tort claims for interference with business and contractual relationships to avoid governmental immunity; Governor was clearly acting, at the very least, under implied authority under the Emergency Powers of the Governor Act of 1945, even if the Supreme Court had ruled against that authority.

LIABILITY - MISSISSIPPI

[Simmons as Estate of Simmons v. Jackson County](#)

Court of Appeals of Mississippi - November 22, 2022 - So.3d - 2022 WL 17099959

Wife of deceased motorist, as administratrix of motorist's estate, brought action pursuant to the Mississippi Tort Claims Act (MTCA) against county, county's road manager, and construction company hired to repave the road just prior to motorist's death.

Following a bench trial, the Circuit Court held that the county bore no liability for motorist's death. Wife appealed.

The Court of Appeals held that sufficient evidence supported trial court's finding that deceased motorist's own negligence constituted the sole proximate cause of his accident.

Sufficient evidence supported trial court's finding that deceased motorist's own negligence, in failing to exercise vigilant caution or to reduce his speed as he drove down road under construction, constituted sole proximate cause of accident, in which motorist ran off road due to alleged defect in roadway, in negligence action brought by deceased motorist's wife, as administratrix of motorist's estate, pursuant to Mississippi Tort Claims Act (MTCA) against county, county's road manager, and construction company hired to repave road just prior to motorist's death; witness testified that motorist seemed to be driving fast, edges of pavement were visible with vehicle headlights, and witnesses' knowledge of the road conditions existing at time of accident attested to need for vigilant caution.

EMPLOYMENT - NEW JERSEY

Matter of DiGuglielmo

Supreme Court of New Jersey - November 28, 2022 - A.3d - 2022 WL 17246816

Employer, a state university, sought review of Public Employment Relations Commission's (PERC) determination that former employee, a campus police officer, was eligible to challenge his termination for alleged non-criminal misconduct through special disciplinary arbitration.

The Superior Court, Appellate Division affirmed in part and reversed in part. Employee petitioned for certification, which was granted.

The Supreme Court held that:

- Special disciplinary arbitration is not limited to non-civil service municipal police officers, and
- An officer suspended with pay prior to termination is eligible to engage in special disciplinary arbitration.

Special disciplinary arbitration is not limited to non-civil service municipal police officers but rather includes non-municipal officers like campus police officers at a public university.

A municipal or public university police officer who is suspended with pay prior to termination is eligible to engage in special disciplinary arbitration.

ZONING & PLANNING - OHIO

Willow Grove, Ltd. v. Olmsted Township Board of Zoning Appeals

Supreme Court of Ohio - December 9, 2022 - N.E.3d - 2022 WL 17542590 - 2022-Ohio-4364

Developer sought judicial review of decision by township's board of zoning appeals denying its application for a zoning certificate allowing it to construct single-family townhomes on a single parcel of land, due in part to developer's failure to comply with zoning resolution's off-street parking requirements.

The Court of Common Pleas affirmed in part, reversed in part, and remanded with instructions to issue zoning certificate. Both sides appealed. The Eighth District Court of Appeals affirmed in part, reversed in part, and remanded to the trial court. Developer's petition for discretionary review was accepted.

The Supreme Court held that column headings in schedule for zoning resolution regulating number of off-street parking spaces had to be read substantively and could not be read as mere guidepost.

Column heading entitled "Principal Building or Use" in schedule for township zoning resolution regulating number of off-street parking spaces "for each facility or use," which consisted of a column setting forth number of spaces of off-street parking for each principal building or use identified in a second column, served as more than a guidepost, but rather, provided details of a law, and thus, it had to read substantively to limit schedule's application to principal buildings or uses, because the heading used specific terminology, namely, "principal use," that was defined within the resolution, which gave the term legal significance.

ZONING & PLANNING - OREGON

Urban Renewal Commission v. Williams

Court of Appeals of Oregon - November 16, 2022 - P.3d - 322 Or.App. 615 - 2022 WL 16960508

Urban renewal agency, which operated under urban renewal plan approved by city, brought action against city and an individual proponent of amendment to city's charter that restricted urban renewal activities within the city, seeking declaratory judgment that amendment was unconstitutional under Oregon Constitution and that amendment was preempted by state law.

On cross-motions for summary judgment, the Circuit Court granted proponent's motion on agency's claim that amendment was unconstitutional, and granted agency's motion on its claim that amendment was preempted. Proponent appealed, and agency and city, which aligned with agency, cross-appealed.

The Court of Appeals held that:

- Agency was independent from city, and, thus, was not subject to direct regulation by city;
- Amendment to city's charter was preempted by chapter of state statutes governing urban renewal;
- Section governing prospective urban renewal plans in amendment was not severable from amendment;
- City's home rule authority did not prevent preemption of amendment; and
- Chapter of state statutes governing urban renewal was a general law addressed primarily to substantive social, economic, and regulatory objectives of the state, and, thus, city's home rule authority did not prevent preemption of amendment.

Urban renewal agency was independent from city, and, thus, was not subject to direct regulation by city, except through powers reserved to city under state's urban renewal statutes; relevant statutes emphasized separateness of agency from city, agency had power to sue and be sued, to contract, to make rules and regulations, to acquire and dispose of real property, and to acquire funds and incur indebtedness, agency was created for city, not by city, actions of agency were independent of city, agency could amend its plans without approval from city, and agency had power to operate outside of territorial boundaries of city.

Amendment to city's charter restricting urban renewal within city was preempted by chapter of state statutes governing urban renewal; amendment purported to direct actions of urban renewal agency created for city, agency was separate entity from city under statutes, agency was statutorily required to carry out approved urban renewal plan and was authorized by statute to acquire funds to carry out urban renewal plans, amendment was passed long after city declared need for urban renewal agency and approved urban renewal plan for agency to carry out, and amendment placed direct prohibitions on city and agency regarding financing and property acquisition for that renewal plan, such that amendment and statutes could not operate concurrently.

Section governing prospective urban renewal plans, in amendment to city's charter restricting urban renewal plans, was not severable from section of amendment that was expressly preempted by chapter of state statutes governing urban renewal; nothing in amendment suggested that it was an effort to shape future approval of urban renewal plans not yet in effect, and section at issue explicitly sought to direct current actions of city and urban renewal agency.

City's home rule authority did not prevent preemption of amendment to city's charter restricting

urban renewal in city by state statutes governing urban renewal; urban renewal agency, which was created for city, was not an agency of the city, but, rather, was a public corporation created by statute that was independent of the city.

Chapter of state statutes governing urban renewal was a general law addressed primarily to substantive social, economic, and regulatory objectives of the state, and, thus, city's home rule authority did not prevent preemption of amendment to city's charter restricting urban renewal in city by those statutes; statutes were primarily concerned with combatting perceived detrimental social and economic effects of allowing blighted urban areas to persist, statutes were directed at statewide concerns, accomplished through creation of independent urban renewal agencies without changes to political form of local government, and statutes were not irreconcilable with local community's freedom to choose its own political form

INDEMNIFICATION - PENNSYLVANIA

[McGuire on behalf of Neidig v. City of Pittsburgh](#)

Supreme Court of Pennsylvania - November 23, 2022 - A.3d - 2022 WL 17170459

Judgment creditor, as assignee of judgment debtor's right, if any, to indemnification from city as a police officer, filed an action against city for declaratory judgment, alleging that city failed to comply with its alleged obligation to indemnify judgment debtor following a federal district court judgment that was entered against judgment debtor, in his individual capacity as a police officer, in favor of judgment creditor, who was an arrestee.

Following a jury trial, the Court of Common Pleas denied the parties' post-trial motions and entered judgment on the jury verdict in favor of city. Judgment creditor appealed. The Commonwealth Court affirmed. Judgment creditor petitioned for allowance of appeal, which was granted.

In matters of apparent first impression, the Supreme Court held that:

- Restatement (Second) of Agency section setting forth "scope of employment" test would be adopted to determine if public employee's conduct fell within "scope of office or duties" under indemnity provision of Political Subdivision Tort Claims Act (PSTCA), and
- Determination that officer acted "under color of state law," for purposes of § 1983, did not establish that he acted "within the scope of his office or employment," for purposes of the PSTCA.

Restatement (Second) of Agency section, providing that employee's conduct falls within the "scope of his employment," for purpose of common law vicarious liability, if it is of the kind he is employed to perform, it occurs substantially within the authorized time and space limits, it is actuated, at least in part, by a purpose to serve the employer, and if force is intentionally used by employee against another, the use of force is not unexpected by the employer, would be adopted in determining whether public employee's conduct fell within his "scope of office or duties" under indemnity provision of the Political Subdivision Tort Claims Act (PSTCA).

Determination that a police officer acted "under color of state law," for purposes of § 1983 liability, did not establish that officer acted "within the scope of his office or employment," for purposes of indemnity provision of the Political Subdivision Tort Claims Act (PSTCA); the two phrases involved different inquiries and were not synonymous, as officer could act under color of state law without necessarily acting with the scope of his employment.

PUBLIC ROADWAYS - RHODE ISLAND

Davis v. Town of Exeter

Supreme Court of Rhode Island - December 1, 2022 - A.3d - 2022 WL 17347388

Property owner brought action against town, seeking declaratory and injunctive relief in dispute over whether unimproved land between cul-de-sac at terminus of a road leading to a subdivision and his property was a public road which he had right to use to access his land.

The Superior Court entered summary judgment for town. Owner appealed.

The Supreme Court held that:

- Unimproved property was not intended to be a public roadway;
- Town did not accept the unimproved property for public use;
- Unimproved property was not accepted as a roadway by a public user; and
- Futility exception to administrative exhaustion requirement did not apply.

Record demonstrated that subdivision developer intended unimproved property between end of cul-de-sac at termination of an improved, paved road to subdivision and owner's property line to be designated a paper street, not dedicated as a public roadway, at time the improved road was developed, for purposes of owner's action seeking injunctive relief to prevent town from denying his use of the improved road for development applications and from blocking road so it could not be used to access his property; paved road and cul-de-sac were designated on official map with double lines while the unimproved area after the cul-de-sac was designed with only a single solid line, and minutes of planning board meeting indicated that town and developer intended the public roadway to extend to the cul-de-sac and no further.

There was no clear and convincing evidence that town accepted undeveloped land between end of cul-de-sac at termination of improved, paved road leading to a subdivision and owner's property line for public use, as would support owner's claim for injunctive relief to prevent town from denying his use of the improved road for development applications and from blocking the road so it could not be used to access his property, where subdivision developer never performed any construction or clearing of the land beyond the cul-de-sac, and town had never opened, certified, or accepted the land for public use, nor did it ever maintain the land.

Undeveloped land between end of cul-de-sac at termination of improved, paved road leading to a subdivision and owner's property line was not accepted as a roadway by a public user, as would support owner's argument that the land was a public roadway that he had right to use for development applications and to access his property, where property in dispute had been inaccessible to vehicular access since inception of the subdivision and had been covered by vegetation and trees until owner's unauthorized excavation.

Property owner failed to show that town planning board's refusal of road opening permit would be near certainty, and thus, futility exception to exhaustion of administrative remedies requirement did not apply in action alleging that paper street, an undeveloped land between cul-de-sac at terminus of a paved road leading to a subdivision and his property was a public roadway which he could use for development applications and as access to his land, where owner failed to follow procedures for a paper street to be certified as a public road and accepted by the town.

