
Investors Still Flocked to Muni Bonds in November.

Riding on the optimism of passing the infrastructure package through the House of Representatives, investors piled into municipal bonds during the month of November.

“There’s been record demand for U.S. municipal bond funds in 2021, with an estimated $85.36 billion in net inflows through September, according to Refinitiv Lipper data,” CNBC reports. “While demand slid from August through October, investors poured back into muni bonds in November, despite Democrats’ stalled attempts to increase taxes on the wealthy.”

The interest in municipal bonds ramped up over the past couple of weeks before culminating in the trillion-dollar infrastructure package being signed into law. However, the package may have snubbed the municipal debt market, but it hasn’t stopped investors in their tracks just yet.

“The municipal market has largely been left out of the infrastructure package signed by President Biden Monday, as well as Democrats’ follow-up social-spending and climate proposal, disappointing investors looking to buy new bonds and local governments trying to manage their debt loads,” a Wall Street Journal report notes. “The package could still help strengthen city and state balance sheets, another possible reason for investor optimism.”

Continue reading.

ETF TRENDS

by BEN HERNANDEZ

NOVEMBER 19, 2021

JPMorgan Removed from Louisiana Muni Deal After Gun Scrutiny.

- **State bond panel votes to replace bank on $700 million issue**
- **Commission names Wells Fargo as senior manager on bond offer**

JPMorgan Chase & Co. was removed on Thursday from a $700 million Louisiana municipal-bond deal after the bank’s stance on guns drew criticism from state Republican officials.

After a fiery meeting, the state bond commission voted to have Wells Fargo & Co. replace JPMorgan, the largest U.S. bank, as senior manager on the deal.

The decision came after state Treasurer John Schroder, a Republican, said his team was scrutinizing JPMorgan's gun policies following Chief Executive Officer Jamie Dimon's comments to a Congressional committee earlier this year that his firm won't finance companies that make military-style weapons for consumers.

"I'm not selling our Second Amendment rights to corporate America," Schroder, the panel's chair, said at the meeting in Baton Rouge.

In 2019, Louisiana began asking banks whether they have policies that infringe on citizens' rights to bear arms as part of the firms' application to underwrite bond deals. At the time, JPMorgan said it didn't.

But in advance of this bond sale, Schroder said his office asked banks in the underwriting pool whether they finance the manufacture of certain weapons for civilian use.

JPMorgan didn't submit an answer to that query, and that lack of response led to their disqualification from underwriting the sale, Schroder said. A JPMorgan spokesperson didn't have an immediate comment after the vote Thursday. Allison Chin-Leong, a spokesperson for Wells Fargo, declined to comment.

Originally, JPMorgan was chosen to underwrite the bonds after offering a lower fee than other banks, but now Wells Fargo will match that fee, Lela Folse, director of the bond commission, said during the meeting Thursday.

Matthew Block, executive counsel for Governor John Bel Edwards, a Democrat, questioned the process around disqualifying the bank.

"This is a road, and it leads us to someplace that none of us know where we're going," he said during the meeting, noting the state has already stopped hiring Bank of America Corp. and Citigroup Inc. to underwrite bond sales over gun issues. Block said other banks would offer less competitive borrowing terms as a result.

'Telling the World'

"We are telling the world — not just Louisiana, not just New York — the world, that three of the biggest banks to loan us money at a good rate of interest, we don't want to do business with them," he said.

In addition to Wells Fargo's involvement in the sale of the gas and fuel-tax bonds, Morgan Stanley, UBS Group AG, Loop Capital Markets and Blaylock Van are co-managers. Proceeds will go to refinancing existing debt.

JPMorgan is also facing a hit to its public-finance business in neighboring Texas because of a GOP law that seeks to punish Wall Street banks for wading into social issues. In September, a law went into effect there that bars state and local governments from hiring banks that moved to curtail ties to the firearms industry in the wake of mass shootings.

Bank of America, Citigroup and Goldman Sachs Group Inc. also saw their muni business halted in Texas because of the law.

Louisiana lawmakers passed similar legislation this year that would have barred the state and local governments from engaging in public contracts with firms that have "discriminatory practices" with firearm associations, retailers and manufacturers. But Governor John Bel Edwards, a Democrat, vetoed the bill, saying it would cost taxpayers money.

Schroder said he was considering the intent of the legislature when it came to the decision to remove JPMorgan.

Louisiana is a much smaller market for muni deals than Texas. The state sold about $881 million of bonds last year, while Texas issuers including local governments and state agencies sold about $58 billion, data compiled by Bloomberg show.

The Texas law covers a wide swath of municipal borrowers. Still, Citigroup has moved to restart its underwriting there, raising questions about the measure's effectiveness. On Wednesday, the bank won a Texas bond deal sold through an auction, its first deal since the state legislation went into effect Sept. 1.

Bloomberg Markets

By Amanda Albright and Danielle Moran

November 18, 2021, 9:41 AM PST Updated on November 18, 2021, 12:34 PM PST

[Citigroup Wins First Texas Muni-Bond Deal Since Gun Law Spat.]

- **Bank wins auction for a $27 million sale by a school district**
- **Company hasn't participated in Texas muni market since August**

Citigroup Inc. won a municipal-bond deal in Texas on Wednesday, marking its potential re-entry into a booming corner of the municipal-debt market after a new Republican state law sought to punish Wall Street banks for their gun policies.

The bank won an auction for a $27 million bond offering sold by the Alamo Heights Independent School District, data compiled by Bloomberg show. It stands to be the firm's first muni deal in Texas since late August. The pause in underwriting there came after the law went into effect on Sept. 1, barring governments in the state from working with companies that "discriminate" against firearm businesses or trade groups.

Before the deal becomes final, Citigroup needs the office of the state's attorney general, Republican Ken Paxton, to sign off on the transaction, a step required on public debt sales in Texas. The office didn't respond to an email and phone call requesting comment.

Citigroup bid a net interest cost of 0.68%, according to a list of bidders provided by the district. The next lowest bidder was BOK Financial Securities, which offered 0.73%. Mike Hagar, assistant superintendent of business and finance for the district, confirmed that Citigroup won the deal. A spokesperson for the bank declined to comment.

"We feel confident with Citigroup and that the AG office will approve the sale," Hagar said in an email.

After being ranked the biggest underwriter of Texas munis from 2018 to 2020, New York-based Citigroup has dropped to eighth place this year, data compiled by Bloomberg show. Bank of America Corp., JPMorgan Chase & Co. and Goldman Sachs Group Inc. also haven't underwritten muni bonds sold by the state and its cities, schools, and transit agencies since the legislation took effect.

Citigroup has said repeatedly that it could comply with the law, known as Senate Bill 19, and that it was temporarily pulling back as it worked through the certification process now required under the legislation.

The law targeted banks like Citigroup, which in 2018 said it would forbid retailers that are its customers from offering bump stocks or selling guns to anyone who hasn't passed a background check or is younger than 21.

The state's surging population has driven debt sales for infrastructure, making it a key market for municipal underwriters. In 2020, Texas borrowers sold about $58 billion of debt, trailing only those in California.

In October, Citigroup sent a letter to the state attorney general's office that confirmed it does not have a "practice, policy, guidance, or directive" that discriminates against a firearm entity or trade association. Then, on Nov. 9, the firm said in a statement it was ready to restart underwriting in Texas.

Bloomberg Markets

By Danielle Moran and Amanda Albright

November 17, 2021, 8:59 AM PST Updated on November 17, 2021, 9:41 AM PST

Citi's Texas Strategy Hinges on Rainmaker Who Made Bank No. 1 Underwriter.

- **Bank to lean on Mario Carrasco, lead muni banker for southwest**
- **Top Texas muni underwriter from 2018-2020, Citi is now eighth**

A key Citigroup Inc. rainmaker in Texas is faced with reviving the bank's public-finance business there after GOP officials sought to punish the firm for its gun policies, triggering an unprecedented pullback from underwriting in a fast-growing state.

Mario Carrasco, head of public finance for Citigroup in the Southwest, helped make the bank the biggest municipal underwriter in Texas the past three years. Now, with the company saying it's ready to resume the operations after a two-month halt, he's tasked with recapturing market share in one of the hottest corners of the nation's $4 trillion muni-bond market.

It was Carrasco, a Citigroup veteran of more than a decade, who expressed concern back in April to at least one big issuer, San Antonio, about an early version of Senate Bill 19 that was working its way through the Republican-led legislature, public records obtained by Bloomberg show.

The measure, which evolved and became law in June and took effect Sept. 1, bars governmental entities in the state from working with companies that "discriminate" against the firearms industry. It upended the operations of Citigroup and some of its biggest Wall Street rivals, which had introduced new gun policies in the wake of U.S. mass shootings.

"We do appreciate your understanding and patience as Citi Texas navigates our current legislative issues," Carrasco told issuers via email on Sept. 27.

Now it looks like Carrasco and his Texas colleagues — a squad of roughly nine bankers and analysts — can get back to work in the state.

Citigroup said Nov. 9 that it's prepared to restart its Texas public-finance business after working through a certification process under the new law.

The bank has had conversations with state officials as part of that process and is confident it's able to resume deals soon, according to a person familiar with the matter who asked not to be named as the conversations aren't public.

Citigroup, the second-largest underwriter of munis nationwide, has made no substantive changes to its gun policy in response to the Texas law. The bank has said for months that it can comply with the legislation.

The bank has some ground to make up. After being ranked the biggest underwriter of Texas munis from 2018-2020, New York-based Citigroup has dropped to eighth place this year, data compiled by Bloomberg show. Bank of America Corp., JPMorgan Chase & Co. and Goldman Sachs Group Inc. also haven't underwritten munis sold by the state and its cities, schools, and transit agencies since the legislation took effect.

Citigroup's latest step may mark the beginning of the end of a months-long saga where the normally placid muni market became the latest battleground for the nation's culture wars. This year's standoff came after the bank said in 2018 that it would forbid retailers that are its customers from offering bump stocks or selling guns to anyone who hasn't passed a background check or is younger than 21.

Banking Relationships

For Citigroup to regain its foothold, Carrasco and his colleagues will have to lean on the relationships they've spent their careers building.

A lifelong resident of San Antonio, Carrasco graduated from St. Mary's University in the city in 1998. He joined Citigroup in 2010 after working at firms including Stifel Financial Corp., and has been head of public finance in the Southwest since 2015.

Citigroup declined to make Carrasco available for an interview or to comment further.

At an industry conference in San Antonio last month, several bankers described Carrasco as a central figure in Texas's muni-finance community. In 2019, he led the board of trustees for the Municipal Advisory Council of Texas, which tracks market data and hosts events.

Despite the fallout from the new law, he and his colleagues still attended the San Antonio conference and mingled at the event, for which Citigroup was a sponsor.

Losing access to the Texas market would be a blow for any muni banker. The state's surging population has driven debt sales for infrastructure. In 2020, Texas borrowers sold about $58 billion of debt, trailing only those in California.

Final Approval

Of course, nothing is certain until the Texas attorney general, Republican Ken Paxton, makes it clear he won't block Citigroup's deals. The office hasn't responded to multiple requests for comment.

Paxton's office reviews and signs off on public debt sales in Texas. That presents a potential scenario where, if the office rejects a deal, debt that has already been priced wouldn't close, investors wouldn't receive their bonds and the issuer would have to re-offer the debt. The bank could test the waters by bidding on deals sold via auction, rather than having an issuer hire it before the sale.

Several issuers say they welcome Citigroup's return, signaling they expect it to be able to resume underwriting.

Texas Comptroller Glenn Hegar, a Republican who oversees the state's finances and is a member of its bond review board, said he was glad to see the bank had made the proper certifications.

"I am pleased that Citigroup has certified that they are able to comply with Texas law and will resume underwriting bonds in one of the fastest growing and dynamic markets in the nation," he said in an emailed statement.

Reaching Out

Last week, Citigroup bankers in Texas were already reaching out to clients.

Elizabeth Reich, Dallas's chief financial officer, said she was "pleased" by the news from the bank.

"It is in the taxpayers' and residents' best interests that we have as many potential partners as possible when we are financing needed infrastructure for the City of Dallas," she said via email.

And Bill Bilyeu, administrator for Collin County, part of the Dallas metropolitan area, said the county would be willing to work with Citigroup again and that he heard from Carrasco last week.

"We very much appreciate your patience with this important matter and look forward to continuing to serve the clients of Texas, as we have in the past," Carrasco said via email.

Bloomberg Markets

By Amanda Albright and Danielle Moran

November 15, 2021, 8:30 AM PST

Illinois Local Governments Offer Steady Stream of Pension Bonds.

The wave of local Illinois governments turning to pension obligation bonds shows no signs of abating and could accelerate amid concern that the window is closing on record low interest rates.

Wheaton sold $46 million last month. Berwyn is eyeing an issue and Moline plans to follow its neighbor East Moline into the market.

They continue a trend that made Illinois the third largest source of POB issuance, behind California and Arizona, among local governments rated by S&P Global Ratings from the start of 2020 through September 2021.

"Pension and other postemployment benefit obligation bond issuance is accelerating in the U.S." spurred by a favorable interest-rate environment and local government efforts to control rising contributions, S&P said in an October report.

“We expect continued issuance accelerations as issuers compare peers’ seemingly successful transactions with their own large and growing unfunded liabilities, and some issuers might anticipate the end of record low interest rates” as the Federal Reserve considers tapering asset purchases and raising the federal funds rate, S&P said.

Factors unique to Illinois contribute to the allure of pension borrowing there. The state and many of its local governments fell behind on pension funding over years of contributions built into state law based on schedules tied to factors like employee contributions that fell short of an actuarial level.

One anti-POB argument – that it creates a hard debt service liability from a softer pension obligation with some payment flexibility – is less persuasive in Illinois where the state constitution protects promised retiree benefits against impairment or diminishment and the state’s high court has ruled against Chicago and Illinois’ efforts to cut benefits.

“Many here have come to believe that pensions are a hard liability because of the constitutional mandate and so that can offer a better argument to borrow if the pension cost is already considered a hard liability,” said Richard Ciccarone, president of Merritt Research Services.

State law also now allows for most pension funds to intercept tax revenues or grants that flow through the state if local governments fall short of actuarially-based contributions. Ciccarone cautions that a hard default on bond payment can carry more serious consequences for a borrower than falling short on pension contributions.

POBs draw varying opinions from market participants.

The Government Finance Officers Associations recommends against their use because of the risks that the play on arbitrage between debt service on the bonds and investment earnings on the proceeds will pay off.

Ciccarone is among those that believe POBs can play a role in managing a balance sheet but only in the presence of some type of reform, whether it’s on the benefit or payment side, and even then cautions that risks remain.

“I don’t take that hard core line against them if they are done for the right reasons and they serve as a mechanism for reform that helps the long term health of the borrower,” Ciccarone said. “The key question is whether they can afford and stomach the debt service because there is still risk,” especially for governments with a limited economic base that lacks growth.

Pension burdens weigh heavily on the ratings of Chicago, the state government and some other struggling local governments due to a flawed funding system and legislative action to date has made little headway in solving the quagmire, S&P Global Ratings warned in an August report.

Downstate and suburban public safety funds carried $11 billion of unfunded liabilities in 2017 – up from $10 billion a year earlier – with an average funded ratio of just 55%, according to a 2019 report from the Illinois Department of Insurance.

The state government’s unfunded liabilities rose to a peak $141 billion last year for a 40.4% funded ratio and Chicago carries a $33 billion tab with its firefighters fund 18.97% funded, its police fund 22.21%, the municipal fund at 22.96% and laborers at 44.42%.

The par of pension-related borrowing issued this year has reached around $11.2 billion, said Lisa Washburn, chief credit officer at Municipal Market Analytics. Illinois ranks 4th in terms of par issued and 3rd in number of issuers.

Washburn, who believes municipal governments should avoid POB risks, cautioned that the data from Bloomberg includes a broader range of pension financings, such as Illinois? $850 million issue which earmarked just a portion for a pension buyout program.

Most Illinois-based POB borrowers are paying down their public safety pension plans to meet a state mandate for public safety funds to reach a 90% funded ratio by 2040. If local governments outside Chicago don't make an actuarial payment, pension funds for the last several years have enjoyed the ability to file claims to intercept various tax or grant revenues that flow through the state.

Actuarial contributions have long been required for the Illinois Municipal Retirement Fund which covers general employees outside Chicago and Cook County, and it is 91% funded.

The Illinois Public Pension Fund Association, which represents public safety funds, last year encouraged local government leaders and fund managers to explore the POB option. It lays out the benefits and risks last year in an "informational bulletin."

Many of the Illinois-based local governments issuing POBs are near or fully funding their public safety obligations or setting aside proceeds into a special account to manage the strain of rising contributions on their budgets.

The impact of ratings varies depending on a POB deal's structure, the overall impact on a borrower?s balance sheet and whether the added debt service limits budget flexibility, and its underlying fiscal health.

"Key credit risks, while unique to each U.S. public finance issuer, primarily include market returns falling short of expectations and pension contribution increases pressuring budgets," S&P analyst Todd Kanaster said in the agency's October report.

S&P rated 64 new POB issuances totaling nearly $6.3 billion between January and September 15. That more than doubles rated POB issuance over the $3 billion issued in all of last year.

S&P has observed some changes with the fresh run of borrowing. Some are veering from tradition in using non-GO pledges and more school and park districts are using the tool. Some borrowers also are setting aside some proceeds to mitigate future budget stress.

All of those factors been seen among Illinois-based POB issuance. So far this year, S&P has rated at least six Illinois POBs.

The Addison Fire Protection District, the Bensenville Fire Protection District No. 2, DuQuoin, Elmwood Park and Wheaton all paid down police and firefighter obligations and Geneseo paid down police obligations.

Wheaton held on to its AAA rating and stable outlook from S&P when it sold $46 million of taxable GOs to fully fund its police and firefighter pension plans in a deal underwritten by Stifel and Piper Sandler (PIPR). Baird was advisor.

"The rating reflects our view of such factors as the city's very strong economy, management, budgetary flexibility, and liquidity, and its strong budgetary performance," said analyst Katelyn Kerley.

The Chicago suburb used the proceeds to pay down public safety liabilities with plans to make 12 equal monthly installments to mitigate market timing investment risks and proceeds also established a budget reserve that can be used to pay down liabilities.

Berwyn and Moline are teeing up deals.

S&P put Berwyn's BBB GO rating and A-minus securitization corporation ratings on CreditWatch Developing as it assesses the proposed borrowing's impact. Berwyn would also include a debt restructuring in the deal. The placement indicates there's at least a one-in-two likelihood of a rating change within 90 days, S&P analyst Blake Yocom said in the Sept. 30 report. The review continues, Yocom said this week. COVID-19 pandemic related pressures prompted S&P to revise the Chicago suburb?s outlook to negative in June 2020.

Moody's Investors Service affirmed at A1 the city of Moline which plans a $90 million taxable GO issue.

Moline's borrowing to pay down its public safety tab along with a $3.2 million series for its aquatic center will bring its debt to $120 million.

"The city intends to limit the required increase in future pension contributions with the issuance of pension obligation bonds, though this strategy detracts from the city's overall credit quality by heightening its exposure to potential investment losses," Moody's said.

East Moline suffered a two-notch downgrade from Moody?s in September that left its rating at Baa2 as it prepped a $41 million POB issue. Moody's (MCO) raised concerns over the risky strategy but said the borrowing itself didn't drive the downgrade. Moody's attributed its action to the sum of the city's bonded, pension, and other post-employment benefits burdens.

Baird was underwriter and Speer Financial advised the city. In addition to a GO pledge, the bonds were secured by tax receipts levied for police and fire pensions and corporate purposes, distributions of personal property replacement taxes and sales taxes collections distributed by the state.

Bradley in Kankakee County earlier this year sold $11.9 million to cover its police unfunded liabilities and raise the funded ratio of 61% and fund a budget stabilization fund. The village used higher-than-expected revenues to fully fund its firefighters' fund.

Freeport in 2020 sold $52.7 million of taxable GOs to fully fund its police and firefighter funds that combined were less than 45% funded. The bonds carried insurance from Build America Mutual.

Baird according to its website served as the sole underwriter on Freeport's deal along with the city McHenry's $24.3 million POB deal in 2020. So far this year it has been senior manager on Addison Fire Protection District?s $33.8 million deal and sole manager on East Moline's deal.

By Yvette Shields

BY SOURCEMEDIA | MUNICIPAL | 11/16/21 01:44 PM EST

Overview of Public Procurement: GFOA Webinar

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- Housing Provision in Reconciliation Bill Eases Private Activity Bond Cap.
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- *In re Application of Suburban Natural Gas Company* – Supreme Court of Ohio holds – as a matter of first impression – that assessing whether property is "useful" for purposes of determining a public utility's rate base requires finding that the property be beneficial in rendering service for the convenience of the public as of the date certain.
- And finally, The Only Thing We Have To Mailbox Is Mailbox Itself is brought to us this week by *Smith v. City of Roswell*, in which a, "vehicle left the road and collided with two mailboxes." Ok. Not super cool but, whatever. Cleanup on Aisle 7 and all that. Until the opinion informs us that the fender-bender KILLED EVERYONE IN THE VEHICLE! How is this possible? Who made these? Of what do they consist? Thor's hammer? We fully understand that 20% off at Bed Bath & Beyond is an unalienable right, but still….

ZONING & PLANNING - CALIFORNIA

Chase v. Wizmann

Court of Appeal, Second District, Division 2, California - November 1, 2021 - Cal.Rptr.3d - 2021 WL 5045754

Property owners filed suit against neighbors and related defendants for private nuisance and other causes of action related to neighbors' air conditioning and pool equipment, and property owners sought preliminary injunction.

The Superior Court granted preliminary injunction ordering neighbors to move pool and air conditioning equipment. Neighbors appealed and the injunction was stayed.

The Court of Appeal held that:

- Municipal ordinance did not preclude nuisance actions for equipment noise that did not violate ordinance;
- Property owners showed likelihood of prevailing on merits of private nuisance claim; and
- Balance of hardships favored grant of preliminary injunction.

Municipal ordinance prohibiting operation of air conditioning, refrigeration, or heating equipment for structures, or operation of any pumping, filtering, or heating equipment for pools, above certain decibel levels did not preclude nuisance actions for equipment noise that did not violate ordinance, and thus, irrespective of an ordinance violation, plaintiff could claim the existence of a nuisance; ordinance did not expressly immunize all equipment noise below decibel level proscribed in ordinance or preclude nuisance liability for otherwise excessive or inappropriate equipment noise below that level, and ordinances contained “catchall” for “any” loud noise, indicating possibility of unreasonable noise violations on case-by-case basis, irrespective of decibel level.

Property owners seeking preliminary injunction requiring neighbor to relocate air conditioning and pool equipment from below their bedroom window to other side of property showed likelihood of prevailing on merits of private nuisance claim at trial, though neighbors asserted that property owners’ noise concerns were not credible; record indicated near-constant equipment noise invading property at all hours, mostly at decibel levels in violation of municipal ordinance, reasonable persons of normal sensibilities would find that to be unreasonable amount and duration of noise near bedroom window and in their yard, noise deprived property owners from comfortable enjoyment of property, and property owners made several attempts to address noise concerns before seeking injunction.

Balance of hardships favored preliminary injunction requiring neighbor to relocate air conditioning and pool equipment from below property owners’ bedroom to other side of neighbors’ property, in property owners’ action raising private nuisance claim, though neighbor asserted that any noise violation was minor and controllable and that there were less burdensome alternatives than relocation; record indicated that equipment frequently operated all at the same time, at all hours of day and night, at decibel levels in violation of municipal noise ordinance, there was no guarantee that noise would be adequately controlled if equipment remained in place, and neighbor had already been ordered to comply with noise ordinance and had not done so.

IMMUNITY - GEORGIA

Smith v. City of Roswell

Court of Appeals of Georgia - October 18, 2021 - S.E.2d - 2021 WL 4840802

Survivors and administrators of estates of driver and passenger who died after vehicle left the road and collided with two mailboxes brought wrongful death actions against, inter alia, city and mailbox owners, asserting that mailboxes proximately caused the deaths and city negligently failed to remove the mailboxes.

The Superior Court granted city’s motions to dismiss, and denied surviving daughter’s motion to consolidate wrongful death and estate claims. Plaintiffs appealed.

On consolidated appeal, the Court of Appeals held that:

- Trial court's alleged error in refusing to allow decedent's surviving daughter to bring wrongful death claim when her mother declined to file the claim as surviving spouse was rendered moot when mother passed away;
- Trial court did not abuse its discretion in refusing to order consolidation of wrongful death and estate claims;
- Plaintiffs forfeited right to establish that city waived its municipal immunity by purchasing insurance; and
- Plaintiffs failed to establish that city had ministerial duty to remove mailboxes that were not in or on road.

DEVELOPMENT IMPACT FEES - NORTH CAROLINA

Plantation Building of Wilmington, Inc. v. Town of Leland

Supreme Court of North Carolina - October 29, 2021 - S.E.2d - 2021-NCSC-122 - 2021 WL 5024501

Builder brought action against town seeking refund of all impact fees and capacity fees collected by town as mandatory condition precedent to town issuing building permit.

The Superior Court granted builder's motion for class certification, which had been filed after summary judgment had been granted in builder's favor on issue of liability, and denied town's motion to dismiss for lack of subject matter jurisdiction and two other motions filed by town. Town appealed.

The Supreme Court held that town waived any objection that it may have had to trial court granting builder's motion for class certification after granting builder's motion for summary judgment on issue of liability.

Town waived on appeal any objection that it may have had to trial court granting builder's motion for class certification after granting builder's motion for summary judgment on issue of liability, in builder's action seeking refund of all impact fees and capacity fees collected by town as mandatory condition precedent to town issuing building permit, where motion for continuance filed by builder identified that issue of class certification would be resolved after addressing cross-motions for summary judgment, and expressly stated that both parties to action "join in and consent to this motion," and parties followed that sequence.

PUBLIC UTILITIES - OHIO

In re Application of Suburban Natural Gas Company

Supreme Court of Ohio - September 21, 2021 - N.E.3d - 2021 WL 4269964 - 2021-Ohi--3224

Public gas utility filed application with the Public Utilities Commission of Ohio (PUCO) for a rate increase to cover costs of a pipeline extension. PUCO approved the rate increase and denied consumers' application for a rehearing. Consumers appealed.

The Supreme Court held that:

- As a matter of first impression, assessing whether property is "useful" for purposes of determining a public utility's rate base requires finding that the property be beneficial in rendering service for the convenience of the public as of the date certain, and
- PUCO misapplied the used-and-useful test when it looked beyond the date certain and determined that utility's investment in the pipeline extension was prudent rather than useful, as justification for rate increase.

Whether something is used and useful, for purposes of determining a public utility's rate base, must be measured as of the date certain, not at some speculative unspecified point in time; thus, a public utility is not entitled to include in the rate-base valuation property not actually used or useful in providing its public service, no matter how useful the property may have been in the past or may yet be in the future.

The Public Utilities Commission of Ohio (PUCO) misapplied the used-and-useful test for determining public gas utility's rate base when it looked beyond the date certain and determined that utility's investment in a pipeline extension was prudent rather than useful, such that there would be a rate increase so that utility customers would have to pay for it; used-and-useful test required measurement of the usefulness of the pipeline as of a the date certain, but the PUCO speculated about the pipeline extension's potential for saving time and money in the long run and looked beyond the date certain to find the extension useful.

MUNICIPAL ORDINANCE - PENNSYLVANIA

Apartment Association of Metropolitan Pittsburgh, Inc. v. City of Pittsburgh

Supreme Court of Pennsylvania - October 21, 2021 - A.3d - 2021 WL 4901913

Landlord association brought action against city, a home rule municipality and city of the second class, for injunctive relief and declaratory judgment that city lacked authority to enact ordinance generally prohibiting denial of access to housing based on a tenant's source of income.

City filed motion for judgment on the pleadings, and association filed motion for summary judgment. The Court of Common Pleas denied city's motion, granted association's motion, and declared ordinance invalid and unenforceable under Home Rule Law. City appealed. The Commonwealth Court affirmed. Supreme Court granted city's petition for allowance of appeal, vacated order of Commonwealth Court, and remanded for reconsideration with instructions. On remand the Commonwealth Court affirmed.

The Supreme Court held that:

- General police powers provision of Second Class City Code (SCCC) did not expressly authorize home rule municipality to enact ordinance prohibiting residential landlords from discriminating against tenants based on source of income, and
- Provision of Pennsylvania Human Relations Act (PHRA) authorizing municipalities to establish their own human relations commissions to combat discriminatory practices did not explicitly authorize home rule municipality to enact ordinance prohibiting residential landlords from discriminating based on tenants' source of income.

ZONING & PLANNING - VERMONT

In re 15-17 Weston Street NOV

Supreme Court of Vermont - October 29, 2021 - A.3d - 2021 WL 5023586 - 2021 VT 85

Landlord sought review of city development review board's decision upholding a notice of zoning violation of occupancy restriction prohibiting more than four unrelated adults from occupying a rental unit in a residential low density zoning district.

The Superior Court granted summary judgment for city. Landlord appealed.

The Supreme Court held that:

- Ordinance limiting safe harbor provided by 15-year statute of limitations for zoning enforcement actions was valid exercise of city's authority, and
- Claim preclusion did not apply to bar enforcement action after prior permitting proceedings.

Ordinance limiting safe harbor provided by 15-year statute of limitations for zoning enforcement actions, with respect to unlawful uses that were resumed after discontinuance for more than 60 days, was a valid exercise of city's authority to regulate zoning, where legislature conferred broad authority on municipalities to regulate land development, legislature expressly authorized municipalities to regulate and prohibit expansion and undue perpetuation of lawful preexisting nonconformities, nothing in statutory provision relating to discontinuances of preexisting nonconforming uses compelled a uniform temporal definition of discontinuance, and ordinance was consistent with and promoted the goals of zoning.

Claim preclusion did not apply to bar city from enforcing occupancy restrictions on rental property in residential low density zoning district, specifically the prohibition on more than four unrelated adults occupying a rental unit, after two permitting proceedings involving the property, where permitting proceedings involved the number of dwelling units that could exist on property rather than occupancy of any particular unit, and there was no record evidence or clear agreement among the parties that occupancy of the specific unit that was subject of enforcement action was at issue, or substantially identical, to a claim that was at issue in prior permitting proceedings.

Federal Infrastructure Funds Lessen Public Utility Operating Risk: Fitch

Fitch Ratings-New York/Austin-10 November 2021: The $1.2 trillion Infrastructure Investment and Jobs Act (IIJA), which will soon be signed by President Joseph Biden, includes significant capital funding for utilities to address much needed remediation and resilience projects that will update and replace aging infrastructure and reduce operating risk, Fitch Ratings says. Access to grants and low-cost financing under the IIJA lowers a utility's cost burden and reduces the need to rely on rate increases to cover costs, which alleviates affordability pressures on the rate base.

With more resilient systems, utilities will be better positioned to mitigate increasing weather and cybersecurity threats and avoid more significant costs in the future. While increased capital spending generally improves a utility's lifecycle ratio and annual capex/depreciation, we do not expect ratings upgrades in the near-term based solely on any improvement in these metrics.

The total $55 billion available to water utilities is unprecedented and addresses material infrastructure needs that accumulate as systems age. The IIJA adds over $23 billion for both the Drinking Water State Revolving Fund (SRF) and the Clean Water SRF to fund water projects at lower interest rates, resulting in lower debt carrying costs. Funding will provide water and wastewater utilities essential capital funding for remediation of lead service lines ($15 billion) and PFAS and other contaminants, including $5 billion through SRFs and $5 billion through the grant program for small and disadvantaged communities.

Many of the provisions in the IIJA are intended to broaden utilities' water portfolios, including $100 million in competitive grant funds for water storage projects. Water infrastructure in the western US will receive a separate pool totaling $8.3 billion. Over the medium to long term, these funds will help utilities in the west and southwest fund water storage and alternative water supply projects, such as water recycling, aquifer storage recovery and desalination, offsetting some of the supply pressures experienced due to prolonged drought conditions. The Drought Contingency Plan is also set to receive $300 million under the IIJA to address drought risks to the Colorado River water supply.

IIJA moneys supplement Local Fiscal Recovery Funds for state, local, territorial and tribal governments under the American Rescue Plan Act that may be spent on broader needs and initiatives. A significant portion of these funds are expected to be spent on water and sewer infrastructure.

Water affordability is supported by the Low Income Water Assistance pilot program. This has limited benefit for most of our rated credits, which do not see material nonpayment or have a significant number of customers that would qualify.

Public power utilities will have access to funds that will provide necessary investment in grid resiliency, transmission and cybersecurity, allowing systems to limit incremental borrowings and moderate financial leverage. The most significant amount, $10 billion, is dedicated to strengthening the electric grid's resilience against extreme weather events, and another $3 billion is available to help increase grid flexibility to respond to events that cause demand volatility. Hydropower projects will receive a boost, with incentive payments in the amount of $628.6 million to help fund hydroelectric capital and efficiency improvements.

Funds are also available to assist public and private entities affected by cyberattacks, with an additional $250 million specifically for rural electric cooperatives or county-owned utilities to boost cybersecurity and respond to cyber threats.

Congress will continue discussions on the broader Build Back Better Act (BBBA) later this month. The BBBA currently includes additional public utility funding, particularly for disadvantaged and rural communities to replace lead service lines. Expansion of clean energy tax incentives are also part of the proposal.

S&P: For U.S. Public Power And Electric Cooperatives, There Are Hurdles On The Path To Decarbonization

Key Takeaways

- Although the U.S. electric utility sector has reduced carbon emissions over the past decade, much work remains to be done.
- Preserving credit quality will require public power and electric cooperative utilities to maintain affordable rates and provide reliable service as they transition from carbon-based power resources.
- To achieve affordability and reliability goals, utilities need to identify economical solutions that mitigate the intermittency of renewable resources and their sizable spatial requirements.

[Continue reading.](#)

8 Nov, 2021

[Fitch: Infrastructure Bill Could Spur Overdue Road, Bridge Repairs](#)

Fitch Ratings-New York-09 November 2021: The Infrastructure Investment and Jobs Act (IIJA) provides US state and local governments with important funding to accelerate efforts to address repairs and replacement of aging and failing transportation infrastructure, Fitch Rating says. The roughly $1 trillion bill passed by the House of Representatives on Friday and headed to the President's desk includes $110 billion for roads and bridges and $39 billion for transit systems. Federal spending can boost state and local transportation improvement efforts already underway, or potentially spur new initiatives.

State and local governments own and maintain nearly the entire inventory of such transportation assets. Assessment of the condition and necessary maintenance costs for these assets is opaque and inconsistent across governments, with very few providing a thorough and current accounting of full needs.

For the past several years, the National League of Cities' Fiscal Conditions Report has indicated that infrastructure funding is among the main factors negatively affecting budgets. While the IIJA will help state and local governments address key infrastructure funding gaps, the substantial investments are one-time in nature, and responsibility for long-term, sustainable transportation funding remains with state and local governments.

[Continue reading.](#)

[Fitch: Federal Infrastructure Funds Lessen Public Utility Operating Risk](#)

Fitch Ratings-New York/Austin-10 November 2021: The $1.2 trillion Infrastructure Investment and Jobs Act (IIJA), which will soon be signed by President Joseph Biden, includes significant capital funding for utilities to address much needed remediation and resilience projects that will update and replace aging infrastructure and reduce operating risk, Fitch Ratings says. Access to grants and low-cost financing under the IIJA lowers a utility's cost burden and reduces the need to rely on rate increases to cover costs, which alleviates affordability pressures on the rate base.

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Key Programs From Landmark $1.2 Trillion Infrastructure Act.

Last Friday the $1.2 trillion bipartisan Infrastructure Investment and Jobs Act ("Infrastructure Act"), which passed the Senate on August 10, 2021, was passed in the House. The $1.2 trillion Infrastructure Act includes $550 billion in new funding for private and public sector initiatives related to energy, transportation, water, manufacturing, technology, and environmental infrastructure.

The $550 billion in new spending includes: $110 billion for roads, bridges, and major projects; $66 billion for passenger and freight rail; $65 billion for broadband; $65 billion for power and grid; $55 billion for water infrastructure; $47.2 billion for resiliency projects; $39.2 billion for public transit; $25 billion for airports; $21 billion for addressing legacy pollution; $16.6 billion for ports and waterways; $11 billion for safety projects; $8.3 billion for western water infrastructure; $7.5 billion for clean school buses and ferries; $7.5 billion for electric vehicle charging; and $1 billion for reconnecting communities.

Now that the Infrastructure Act has been passed, Federal agencies will be tasked with shaping and administering a substantial number of programs related to the Act. For many of the programs, agencies will develop specific eligibility requirements, funding procedures, and compliance and reporting standards. In order to facilitate these processes, federal agencies may seek public comment and input on the administration of these programs. Continuing to monitor these developments is essential for businesses, nonprofits, local governments, and Tribal governments seeking to utilize these programs.

Below are some of the key programs in the Infrastructure Act:

Roads, Bridges, & Major Projects

- $36.735 Billion – Bridge Grant Programs
- $7.5 Billion – Rebuilding American Infrastructure with Sustainability and Equity Grants
- $5 Billion – National Infrastructure Project Assistance Grant Program
- $3.2 Billion – Infrastructure for Rebuilding America Grant Program
- $1.25 Billion – Appalachian Development Highway System Formula Program
- $1 Billion – Culvert Removal, Replacement, and Restoration
- $500 Million – Surface Transportation Private Activity Bonds

Passenger and Freight Rail

- $36 Billion – Fed-State Partnership Intercity Passenger Rail
- $16 Billion – Amtrak National Network
- $6 Billion – Northeast Corridor Grants
- $5 Billion – Consolidated Rail Infrastructure and Safety Improvement
- $3 Billion – Railroad Crossing Elimination Program

Broadband

- $42.45 Billion – Broadband Equity, Access, and Deployment Program
- $14.2 Billion – Affordable Connectivity Program
- $2.75 Billion – Inclusive Digital Equity Grant Programs
- $2 Billion – Tribal Grants
- $1 Billion – “Middle Mile” Broadband Infrastructure Grant Program
- $600 Million – Private Activity Bonds

Power and Grid

- $5 Billion – Preventing Outages and Enhancing the Resilience of the Electric Grid
- $5 Billion – Electric Grid Reliability and Resilience Research, Development, and Demonstration
- $3.5 Billion – Establish Four Regional Direct Air Capture Hubs
- $3 Billion – Deployment of Technologies to Enhance Grid Flexibility
- $3 Billion – Battery Material Processing Grant Program
- $3 Billion – Battery Manufacturing and Recycling Grant Program
- $2.5 Billion – Transmission Facilitation Program
- $2.5 Billion – Carbon Storage Validation and Testing Program
- $2.1 Billion – Infrastructure Finance and Innovation Act Program for Carbon Dioxide Transportation Projects
- $2 Billion – Pumped Storage Hydropower Wind and Solar Integration and System Reliability

Initiative
- $1 Billion – Clean Hydrogen Electrolysis Program Research and Development Program
- $750 Million – Advanced Energy Manufacturing and Recycling Grant Program
- $553.6 Million – Maintaining and Enhancing Hydroelectricity Incentives
- $500 Million – State Energy Program
- $500 Million – Clean Hydrogen Manufacturing and Recycling Research and Development Program
- $500 Million – Clean Energy Demonstration Program on Current and Former Mine Land
- $310 Million – Carbon Utilization Grant Program
- $250 Million – Rural and Municipal Utility Advanced Cybersecurity Grant And Technical Assistance Program
- $250 Million – Enhanced Grid Security
- $200 Million – Electric Drive Vehicle Battery Recycling and Second-life Applications Program

Water Infrastructure

- $23.426 Billion – Drinking Water and Clean Water State Revolving Funds
- $13.8 Billion – Increased State Revolving Fund Authority
- $10 Billion – Perfluoroalkyl or Polyfluoroalkyl Substance Treatment
- $3.5 Billion – Indian Health Service Water and Sewer
- $2.5 Billion – Indian Water Rights
- $1 Billion – Bureau of Reclamation Water Programs

Resiliency

- $3.5 Billion – FEMA Flood Mitigation Assistance Program
- $1.7 Billion – Indian Health Services Sanitation Facilities Construction Enhancement
- $1 Billion – FEMA Building Resilient Infrastructure and Communities Program
- $1 Billion – State, Local, Tribal, and Territorial Cybersecurity Grant Program
- $500 Million – Forest Service Community Defense Grants
- $500 Million – Cyber Response and Recovery Fund

Public Transit

- $8 Billion – Capital Investment Grants Program
- $5.25 Billion – Low-No Program for the Purchase or Lease of Low-emission Transit Buses
- $4.758 Billion – State of Good Repair Grants Program
- $2 Billion – Transit Accessibility for Seniors and Persons With Disabilities Program

Airports

- $15 Billion – Airport Improvement Program
- $5 Billion – Airport Terminal Program
- $5 Billion – FAA Facilities and Equipment

Addressing Legacy Pollution

- $11.293 Billion – Abandoned Mine Land Reclamation Fund
- $4.7 Billion – Orphaned Well Site Plugging, Remediation, and Restoration
- $3.5 Billion – Superfund Projects
- $3 Billion – Brownfields Grants

Ports and Waterways

- $5.15 Billion – Army Corps of Engineers Construction
- $4 Billion – Army Corps of Engineers Operations and Maintenance
- $3.85 Billion – GSA/CBP Land Ports of Entry Modernization and Construction
- $2.25 Billion – DOT Port Infrastructure Development Program
- $912 Million – Ferry Boat and Terminal Construction
- $429 Million – U.S. Coast Guard Unfunded Priority Infrastructure
- $400 Million – Reduction in Truck Emissions at Ports

Safety

- $4 Billion – Safe Streets For All Program
- $1.1 Billion – NHTSA Highway Safety Programs
- $1 Billion – Pipeline and Hazardous Materials Safety Administration Modernization
- $500 Million – SMART Grant Program
- $467.5 Million – Motor Carrier Safety Assistance Program
- $200 Million – High Priority Grant Program

Western Water Infrastructure

- $3.2 Billion – Aging Infrastructure
- $1.15 Billion – Water Storage, Groundwater Storage, and Conveyance Projects
- $1 Billion – Water Recycling and Reuse Projects
- $1 Billion – Rural Water Projects
- $500 Million – Dam Safety Projects
- $400 Million – WaterSMART Water and Energy Efficiency Grants
- $300 Million – Drought Contingency Plan

Clean School Buses & Ferries

- $5 Billion – Clean School Bus Program to Reduce Emissions
- $1.25 Billion – Federal Transit Administration's Passenger Ferry Grant Program
- $1 Billion – Establishment of Basic Essential Ferry Services
- $250 Million – Grant Program for the Purchase of Electric or Low-emitting Ferries

Electric Vehicle Charging

- $7.5 Billion – Funds for Alternative Fuel Corridors and to Build Out a National Network of Electric Vehicle Charging Infrastructure

Reconnecting Communities

- $500 Million – Reconnecting Communities Pilot Program

Kilpatrick Townsend & Stockton LLP – Stephen M. Anstey and John C. F. Loving

November 8 2021

Housing Provision in Reconciliation Bill Eases Private Activity Bond Cap.

States would enjoy more private activity bond volume flexibility under an affordable housing provision in the Build Back Better bill.

The legislation would reduce the so-called financing test for tax-exempt private activity bonds to 25% from 50%. Lowering the threshold would free up states' private activity volume for more affordable housing, or any other projects eligible for PABs financing.

The threshold provision means developers would only have to use 25% of tax-exempt PABs in their capital structure instead of 50% to qualify for the 4% low-income housing tax credits that are key to the economic feasibility of many affordable housing developments.

"It is a huge change for affordable housing," said Jennifer Schwartz, director of tax and housing advocacy for the National Council of State Housing Agencies. "It's really going to significantly extend the amount of affordable housing that we'll be able to build."

States like California and New York that regularly hit their PABs cap would especially benefit from the lower threshold as it will free up PABs volume.

"Those states that are cap-constrained are going to have a lot more bond cap for other priorities," Schwartz said.

There are 20 states that are currently oversubscribed with their volume cap, according to professional services organization Novogradac, which has been analyzing the low-income housing provisions in the legislation. Another 23 states are undersubscribed and seven are at parity, the group said.

The latest version of the $1.75 trillion Build Back Better legislation features a swath of housing-related provisions that together would mean the creation of 936,900 additional affordable homes through 2031, according to Novogradac.

The lowered threshold provision is the largest driver of that new production, and would mean 712,400 more units, the group estimates.

The 4% housing tax credit is the "real economic kicker" for affordable housing, said Kyle Richard, an attorney with Foster Garvey's Public Finance & municipal Government Practice who has been tracking bond-related provisions in the Build Back Better bill.

"By making it so you only have to finance the project with 25% PABs, essentially that makes it so that you have to hit less volume cap so should be more volume cap available for everybody," Richard said. "Lowering the threshold also means you have tons more flexibility for how you build your capital structure."

Like other affordable-housing proposals, the lower threshold was stripped out of an earlier version of the Build Back Better bill but added back in the third version that the House Rules Committee released on Nov. 3.

The House could consider Build Back Better as soon as next week. The Senate would then take up the bill and is expected to impose its own changes.

"The provisions in the bill on the housing credit are very popular," Schwartz said. "I don't see these as being anything that would be targeted to be stripped out."

By Caitlin Devitt

Infrastructure Bill Becomes Law.

President Joe Biden Monday signed into law a $1.1 trillion infrastructure package that will infuse billions into state and local governments.

"We're taking a monumental step forward to build back better as a nation," said Biden at a White House ceremony attended by lawmakers, governors, mayors and others. "Things are going to turn around in a big way."

The bipartisan Infrastructure Investment and Jobs Act, approved by the House in November and the Senate in August, features $550 billion for reauthorization of surface transportation infrastructure spending and another $550 billion for assets ranging from bridges, drinking water, public transit, broadband, rail, electric vehicle chargers, ports and airports.

Biden said the package marked the "most significant investment in roads and bridges in 70 years, most significant investment in rail in 50 years and in public transit ever."

House Speaker Nancy Pelosi, speaking at the signing ceremony, called the bill the "biggest, boldest investment in our country's history."

Supporters say the program will generate thousands of new jobs, grow the economy and make the US more globally competitive.

For the municipal bond market, the infusion of federal money is expected to boost state and local credits. It may also accelerate local projects and lift new money supply as issuers take advantage of the federal cash by borrowing to jumpstart their own projects, said market participants said. Municipal Market Analytics projects the new law could boost 2022 new-money issuance to more than $300 billion, up from a pre-infrastructure bill estimate of $275 billion.

The package also doubles private activity bond volume for surface transportation projects to $30 billion from $15 billion, allows the use of PABs for broadband and carbon capture projects, and features other provisions that are expected to boost public private partnerships.

Biden has appointed former New Orleans Mayor Mitch Landrieu as senior advisor to oversee implementation of the infrastructure program. The president Monday also signed an executive order outlining six priorities for implementation – including building resilient infrastructure that can protect against climate change, effective coordination with state, local, tribal and territorial governments and equitable investment of the dollars – and establishes an Infrastructure Implementation Task Force.

"Today is a monumental day for infrastructure across the country. We look forward to working with the administration to track the funds and get the infrastructure investments where they need to go," said Emily Brock, the Government Finance Officers Association's federal liaison.

The Department of Transportation will allocate the money. In a Nov. 8 White House briefing, Transportation Secretary Pete Buttigieg said the agency would focus on supporting projects that show "economic strength, safety, climate, equity, and preparing for the future."

The largest states will get the most money under the new law. California would see $44.56 billion under the new law. Texas would see $35.44 billion and New York is slated to receive just under $27 billion.

The legislation will be paid for with various revenue streams, including more than $200 billion in unspent coronavirus funds.

The bill had been held up for weeks in the House as moderate and progressive Democrats hammered out differences on a companion bill, the $1.75 trillion Build Back Better legislation. With the infrastructure bill now law, all eyes will turn to Build Back Better, which the House has said it may vote on as early as this week. Moderate Democrats want to wait for a full score from the Congressional Budget Office, which has said it would have by Friday.

By Caitlin Devitt

BY SOURCEMEDIA | MUNICIPAL

Construction Ahead: Roughly $1 Trillion Infrastructure Act Tackles Backlog And Future Risks

Key Takeaways

- The Infrastructure Investment and Jobs Act will address traditional infrastructure needs across the U.S., supporting a continued economic recovery.
- Transportation aspects of the act will be the most visible to the average citizen with money for roads, bridges, airports, transit and rail.
- The bill targets both long-standing infrastructure needs and risks related to resiliency, energy transition, electric charging stations, and cybersecurity.

Continue reading.

10 Nov, 2021

S&P U.S. Transportation Infrastructure Sector Update And Medians: U.S. Airport Sector View Is Now Positive

Key Takeaways

- We are revising our U.S. airport sector view to positive from stable based on improving aviation industry conditions. This improvement is reflected in the strong rebound of U.S. domestic passengers in recent months, stabilization of airline credit conditions, massive federal assistance provided to the sector, and recovery in airports' revenue-generating capacity and rate-setting flexibility.
- Our airport sector median analysis and the modest degree of credit erosion across the sector highlight the significance of $15 billion-$20 billion in special federal COVID-19 relief grants, which operators used to pay debt service expenses and operating costs while preserving unrestricted cash reserves comparable with pre-pandemic levels. Separately, the recent passage of the $1.2

trillion Infrastructure Investment and Jobs Act will provide another $25 billion for the airport sector to fund capital projects over the next five years.
- Our analysis of 2020 airport medians revealed the effects of airport management actions taken to limit the financial implications of the precipitous drop in passenger traffic, with median debt service coverage (DSC; S&P Global Ratings-calculated) declining to an adequate 1.1x in 2020 from a strong 1.6x in 2019, while median liquidity levels fell by less than 6% to 489 days and median debt outstanding increased 21% to approximately $840 million.
- We expect the uneven enplanement recovery led by the domestic and leisure market segments will smooth out as business and international travel returns, aided by the lifting of certain travel restrictions on China, India, and much of Europe effective Nov. 8, 2021.
- Airports and related special facility issuers that demonstrate recoveries generally better than our activity estimates or demand levels sufficient to produce financial metrics we consider consistent with a higher rating on a sustainable basis are more likely to receive upgrades in the near term.
- We believe the experience and knowledge gained from handling the complex set of challenges from the severity of the COVID-19 pandemic will better prepare airport management teams and various stakeholders in addressing future shocks.

Continue reading.

10 Nov, 2021

America Has an Infrastructure Bill. What Happens Next?

Friday afternoons are typically the place to hide bad news, but that wasn't this.

Late Friday, November 5th, the House of Representatives passed the Senate version of the Infrastructure Investment and Jobs Act (IIJA). The bill now goes directly to President Biden's desk, where it will certainly become law. America finally has a generation-defining infrastructure bill—and if the reconciliation budget comes through, too, America will begin a building spree larger than what happened during the New Deal.

When landmark legislation like IIJA gets passed, it's easy to overemphasize victories on Capitol Hill. But that's not the case for infrastructure. Passing IIJA is only the end of the beginning.

Continue reading.

The Brookings Institution

by Adie Tomer, Caroline George, Joseph W. Kane, and Andrew Bourne

Tuesday, November 9, 2021

Fitch: Personal Income Spike Leads to Fall in Liability Metric for U.S. States

Fitch Ratings-New York-08 November 2021: Liability metrics for U.S. states fell for a fifth straight year in fiscal 2020, with a surge in personal income the primary catalyst, according to Fitch Ratings in its latest annual report. Actual liabilities remain largely unchanged over the past five years, however, indicating slow progress in addressing outstanding states' outstanding long-term obligations.

Federal measures to support individuals, businesses, and the economy at large helped spark the largest median state personal income jump in 14 years (6.3%). This resulted in Fitch-adjusted net pension liabilities (NPLs) as a percentage of personal income declining to 4.7% in fiscal 2020, from 5.2% as of fiscal 2019 across all states.

"Rapid personal income growth is likely to continue in 2021, given additional federal pandemic aid enacted early in 2021 and the broader economic recovery, with gains in 2022 likely to slow as federal aid expires," said Senior Director Doug Offerman. "Combined with rebounding investment markets, state liability burdens are likely to see further near-term declines."

Although their rankings shifted slightly compared to last year, the five states with the highest burdens remain unchanged, including Connecticut, Illinois, Hawaii, New Jersey and Alaska. Except for Alaska, the highest burden states have long-term liabilities above 20% of personal income. Fitch's data also shows 43 states with carrying costs below 10% of governmental expenditures in fiscal 2020, which Fitch views as low. Two states (Connecticut, Illinois) have elevated carrying costs in excess of 20% of governmental expenditures.

"States by and large avoided reductions to pension contributions as they addressed budget gaps with surging revenues and federal relief limiting fiscal damage from pandemic shutdowns," said Offerman. "Solid contribution practices look to continue at least in the near term, given the expansive fiscal flexibility provided by the economic rebound and the continued availability of federal pandemic relief funds available to offset other state needs."

Over the five years since changes to pension accounting resulted in more consistent reporting, the ratio of state pension assets to liabilities has barely changed. Adjusted to reflect a standard 6% investment return, the ratio stood at 61.7% in fiscal 2020, up from 60.4% in fiscal 2016. The stability of this ratio over time suggests that the state pension changes intended to improve sustainability have not yet meaningfully lowered pension burdens.

"State Liability Burdens Shrink in Fiscal 2020" is available at www.fitchratings.com.

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Additional information is available on www.fitchratings.com

Sustainable Fitch ESG Encyclopedia.

The ESG Encyclopedia provides insights on the credit relevance and materiality of all sector specific environmental credit issues, including air quality, energy and fuel management, water, and more.

This volume of Fitch's ESG Encyclopedia provides insights on the credit relevance and materiality of all sector specific environmental credit issues, namely:

- Greenhouse Heating Gas emissions and air quality
- Energy and fuel management

- Water
- Biodiversity and waste
- Exposure to environmental impact

It explains how these issues can translate into relevant credit issues and materialise as credit risks. As such, it constitutes an absolute reference for investment professionals who need to integrate ESG in their credit investment or risk management processes.

Download Now

S&P U.S. Not-For-Profit Health Care Rating Actions, October 2021.

S&P Global Ratings affirmed 22 ratings without revising the outlooks and took 13 rating actions in the U.S. not-for-profit health care sector in October 2021. One of the affirmed ratings also was removed from CreditWatch with negative implications. There were 21 new sales in October including a rating initially assigned to Vanderbilt University Medical Center, Tenn. The 13 rating and outlook actions were comprised of the following:

- Three upgrades, including two stand-alone hospital and one health system;
- Two unfavorable outlook revisions (to negative from stable); and
- Eight favorable outlook revisions (seven to stable from negative and one to positive from stable).

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

Continue reading.

12 Nov, 2021

NASBO Issue Brief: Outcome of Ballot Measures in the 2021 General Election

Read the NASBO Issue Brief.

Fitch Ratings in a Pandemic: Responsive and Measured

View the Fitch Special Report.

Thu 11 Nov, 2021

Muni Bond Prices Rally After Infrastructure Bill Leaves Out Market.

Yield on a 10-year tax-exempt triple-A muni bond has fallen 8% since Oct. 28

Municipal bond prices rallied over the past two weeks as investors abandoned hopes for a flurry of new bonds from Congress's $1 trillion investment in U.S. infrastructure.

The yield on a 10-year tax-exempt triple-A muni bond has fallen 8% since Oct. 28, according to ICE Data Services. Bond yields fall as prices rise.

The municipal market has largely been left out of the infrastructure package signed by President Biden Monday, as well as Democrats' follow-up social-spending and climate proposal, disappointing investors looking to buy new bonds and local governments trying to manage their debt loads. The package could still help strengthen city and state balance sheets, another possible reason for investor optimism.

Muni market wishlist items included in an earlier draft of included federally subsidized interest payments and a plan to restore the federal tax exemption for early refinancings.

"They left out the tried and true mechanism for building local infrastructure in America," said Ben Watkins, director of Florida's Division of Bond Finance.

In the long term, any investment in roads, sewers and trains is generally seen as good for the market since it helps boost municipal credit. The $1 trillion package could also eventually lead to more bond issuance because some projects will receive partial, rather than full, federal support, and states and cities will need to pay for the rest.

"In many cases the local contribution will come from municipal bonds," said Patrick Brett, head of municipal debt capital markets at Citigroup and chair of the Municipal Securities Rulemaking Board, the muni bond industry's self-regulatory organization.

But any immediate market impact will be muted. Congress's decision to scrap the municipal bond proposals represents a move by federal officials toward paying directly for projects, rather than standing back and ensuring states and cities can borrow cheaply for infrastructure while leaving the details to the locals.

States, cities, counties and school districts borrow at reduced rates in the nearly $4 trillion muni market because investors don't have to pay federal—and often state—taxes on the interest. Local officials retain wide discretion over the projects themselves.

A $3.5 trillion package considered in the House Ways and Means Committee in September included a measure based on the 2009-10 Build America Bonds program. State and local governments sold taxable Build America Bonds to a wide pool of buyers and the federal government paid a portion of the interest cost. That program spurred a record $273 billion in new borrowing in 2010, 54% higher than the yearly average over the past decade.

"It's a great tool to have in the tool kit," said Dallas Chief Financial Officer Elizabeth Reich, who urged a congressional committee to revive the program in March. The Omni Hotel in downtown Dallas was financed with the help of $388 million in Build America Bonds, Ms. Reich said.

Congress particularly disappointed participants in the supply-starved muni market with its decision not to restore municipal governments' ability to refinance debt early at tax-exempt rates. That tool was eliminated in the 2017 tax overhaul to save the federal government money and mitigate the cost of tax cuts.

As a result, the many municipalities that rescheduled debt payments amid a pandemic-induced cash crunch over the past two years had to refinance at higher taxable rates.

Before the 2017 law change, cities and states could use tax-exempt borrowing when they wanted to refinance before a bond's agreed-upon call date to cut interest costs or put off payments. They would issue a second set of tax-exempt bonds, invest the proceeds in safe, short-term securities, and then use those funds to make payments on the older bonds. It is a move that makes the most sense for borrowers when short-term rates are high relative to long-term rates.

But because both sets of bonds remained outstanding until the first set could be refinanced, and both provided investors with interest exempt from federal taxes, the federal government lost out on additional tax dollars. The Joint Committee on Taxation estimated that restoring advanced refunding would have cost the federal government $15 billion over the coming decade.

Municipal borrowers, for their part, could likely have reduced their interest costs, the reason the eliminated bill provision was a favorite of city finance chiefs and state treasurers. Ms. Reich estimated that Dallas saved $147 million with tax-exempt advanced refinancing between 2007 and 2017.

Money managers meanwhile said they would have welcomed an influx of new tax-exempt debt, even if it meant foregoing a bump in the value of their current holdings.

"You want to have a decent amount of supply to create a healthy market with opportunity," said Dan Solender, director of tax-free fixed income at asset manager Lord Abbett.

The Wall Street Journal

By Heather Gillers

Updated Nov. 15, 2021 4:35 pm ET

Muni Investors Stay Flexible As Rates Rise.

Summary

- Truly active managers shine in challenging investment environments, especially when they are given a flexible mandate.
- With tax-loss harvesting, active investors can deliberately sell at a loss to offset taxes on gains elsewhere in a portfolio.
- Rising rates may be less worrisome than expected, at least as far as muni investors are concerned.

Continue reading.

Seeking Alpha

Nov. 09, 2021

[Supreme Court Wades Into Battle Between Billboard Advertisers and City Officials.]

Industry seeks to lift limits on 'off-premises' signs

WASHINGTON—Supreme Court justices Wednesday stepped into an advertising industry battle that could reduce restrictions on billboards across the country.

At issue is a long-recognized difference between on-premises signs that flag a business or activity taking place at a specific location, and off-premises advertising to which most billboards are dedicated.

A billboard company in Austin, Texas, is challenging a local ordinance that makes such a distinction to restrict the proliferation of digital signs, arguing that the First Amendment precludes government from distinguishing between on- and off-premises locations.

The Austin municipal code prohibits converting conventional billboards to digital unless they are on the premises of the business or activity being advertised. Local billboard companies complain that the regulations amount to discrimination based on the content of the message, something government generally is forbidden to do. The city counters that the rules are based on where the signs are located and not what they say.

Justice Brett Kavanaugh said that adopting the advertisers' view could disrupt sign regulations around the country.

"Unlike some of our decisions, this decision is going to affect every state and local official around America," he said. "They spend a lot of money and a lot of time trying to figure out how to comply with the First Amendment implications of sign ordinances."

According to a brief filed by the National League of Cities, the U.S. Conference of Mayors and other organizations representing local government, laws in at least 30 states and in thousands of jurisdictions distinguish between on- and off-premises signs "out of legitimate concerns regarding public safety and local aesthetics."

A decision in the case, City of Austin v. Reagan National Advertising of Austin LLC, is expected before July.

Reagan National Advertising argues that the premises distinction is unconstitutional in light of the court's 2015 decision striking down a Gilbert, Ariz., ordinance that restricted noncommercial temporary signs, with an exemption for political messages but not religious ones. A federal appeals court in New Orleans agreed, siding last year with advertisers.

In its brief, Reagan National Advertising said that digital billboards are superior to the conventional variety. "Digital billboards offer more opportunities to communicate with the public, because multiple messages can be displayed at a given time and updated instantly without the physical labor required to change a traditional billboard," the company said.

The city said in its brief that "signs can cause esthetic harms by their size, number, and placement. They can also pose traffic dangers by distracting drivers and obscuring views. Billboards, because of their size, prominence, and attention-getting designs, amplify those concerns. And digital billboards take those concerns to new levels."

At Wednesday arguments, justices expressed doubts that distinguishing between on- and off-premises businesses raised First Amendment concerns akin to discrimination regarding political, religious or artistic speech.

Chief Justice John Roberts said that treating the premises distinction as a content regulation could imperil the Highway Beautification Act of 1965, a cornerstone of the America the Beautiful program that limits outdoor advertising.

The highway law, a legacy of the late first lady Lady Bird Johnson, makes several distinctions among messages, permitting those from nonprofit groups advertising free coffee for weary motorists, and signs indicating lodging, gas stations, restaurants and other information useful to travelers.

The beautification act includes "five sign provisions, and under your theory, I suppose they would be unconstitutional," the chief justice told Kannon Shanmugam, the lawyer representing Reagan National Advertising.

Mr. Shanmugam said that it was possible the government could justify Highway Beautification Act distinctions enough to survive First Amendment scrutiny.

Several justices asked how the rule could apply to different messages.

"Let's say a sign just says 'Black Lives Matter,'" said Justice Neil Gorsuch. That wouldn't be off-premises because it doesn't mention a location. "But what if Black Lives Matter has a local office and it isn't there?" he continued. "How about if it says 'Black Lives Matter, Do Something About It,' anticipating an upcoming rally, but no information is provided?" he said. Alternatively, he posited, what if it did include the location?

"Somebody's going to have to read this and decide which side of the line these four examples fall on," Justice Gorsuch said.

Justice Elena Kagan said that it was "formally true" that city officials would need to examine a sign's content to determine whether it referenced an on-premises activity. On the other hand, she said, "there are some laws that sort of scream out not to worry in terms of any First Amendment values."

The Wall Street Journal

By Jess Bravin

Nov. 10, 2021 5:51 pm ET

Investment In Stadiums And Municipal Bonds (Radio)

Joe Mysak, Editor of Bloomberg Brief: Municipal Market, discusses, his recent column on the Buffalo Bills stadium, and other issues related to municipal bonds in Bloomberg Market's "Munis In Focus". Hosted by Matt Miller and Taylor Riggs.

Play Episode

Bloomberg Radio

November 12, 2021

Junk Munis Seeing Best Outperformance Since 2012 as Cash Returns.

- **Second-biggest inflow ever in high-yield munis extends advance**
- **Investors 'want to be involved' after seeing sector's strength**

Junk-rated municipal debt is extending its biggest outperformance in almost a decade thanks to one of the largest weekly inflows ever seen into the sector.

Investors added $1.2 billion to high-yield muni mutual funds in the week ended Wednesday, second only to a slightly bigger intake in April, according to Refinitiv Lipper US Fund Flows data.

The rush of money, coming after Treasury yields appeared to stabilize below their October peak, marks a shift from the lackluster demand and even periods of outflows that the riskiest part of the municipal market saw in prior months.

"The pivot from demand sluggishness at the end of October back to strong inflows/demand over the past week has been pretty abrupt," said Gabriel Diederich, a portfolio manager at Robert W. Baird & Co.

Junk munis are poised to gain for a third straight week, something they haven't done since July. The segment has earned 7.2% this year, compared with 1.1% for the overall market for state and local-government debt, Bloomberg index data show. That performance gap is the widest since 2012.

With most of the fixed-income universe posting losses in 2021, munis have been a haven. They've lured money as the economy has recovered from the pandemic, federal relief has flowed to municipalities and as lawmakers in Washington debated steeper taxes on higher earners. That backdrop has benefited the riskiest debt most.

'Garnering Attention'

"The big outperformance that we've seen this year is garnering attention," said Kathleen McNamara, senior municipal strategist at UBS Global Wealth Management. "Muni investors chase returns, they saw how well muni high-yield has done and they want to be involved."

McNamara said that after yields on junk munis rose from the record lows seen this year, investors who had been waiting on the sidelines returned to the market. Then, after the securities staged a rebound this month, more buyers wanted to participate given that municipal credit remains strong.

There's also the fact that munis have entered a "stronger technical backdrop" in November with the calendar of new-issue sales dwindling before year-end and the need to start positioning for 2022, said Terry Goode, a senior portfolio manager at Allspring Global Investments.

That may benefit some high-yield bond sales on the horizon in the weeks ahead.

A conduit borrower in Phoenix, Arizona, is expected to sell $256.7 million of unrated, tax-exempt bonds to finance the construction of a hotel and conference center in Puerto Rico. Separately, Grand Canyon University in Arizona is slated to offer $1.3 billion of taxable, junk-rated bonds next week.

Bloomberg Markets

By Danielle Moran

November 12, 2021, 10:11 AM PST

Hotel Builder Misled Municipal Bond Investors, Trustee Alleges.

- **Hard Rock Hotel developer lied about construction loan: UMB**
- **Bonds defaulted when wholesale lender failed to fund loan**

The developer of a planned Hard Rock Hotel in a suburb of Kansas City, Kansas, allegedly defrauded investors who bought about $23 million municipal bonds issued to help finance the project, according to a lawsuit filed in federal court.

Minnesota developer D. Jon Monson said that he had a $52 million construction loan in place when he sold the bonds, but hadn't closed on that financing, which was only for $48.8 million, UMB Bank NA said in a Nov. 1 lawsuit filed in U.S. District Court in Kansas City. UMB is the trustee for the securities.

Monson was relying on a wholesale lender that in turn relied on third-party lines of credit to fund that loan, UMB said. The warehouse lender wasn't able to fund the project, meaning the project couldn't be completed and leaving no revenue to make required payments for the bonds, UMB said.

The developer also failed to contribute $3 million of the down payment deposit before the bonds were issued and "had no intention" of contributing $4.2 million for predevelopment costs and a $1.5 million equity payment, UMB alleged.

Monson didn't immediately return a call seeking comment.

The developer won approval from the city of Edwardsville in 2018 to build the 241-room hotel and conference center near the Kansas Speedway, a NASCAR racetrack. Edwardsville issued tax-free debt in 2019 backed by the 4,500-person city's hotel tax and incremental increases in property taxes generated by the project.

The case is UMB Bank, NA v. D. Jon Monson; Compass Commodities Group III, LLC; 11 Water LLC, One10 Hotel HRKC LLC' and One10 Hotel Holding LL, 21-cv-2504, U.S. District Court, District of Kansas.

Bloomberg Markets

By Martin Z Braun

November 9, 2021, 1:43 PM PST

Best Practices and Strategies for Public Investing: GFOA Webinar

November 30, December 1 & 3 | 12:30-3:15 p.m. ET

Details:
This course offers attendees a comprehensive agenda of the concepts and techniques needed to effectively manage their investment portfolios. This two-day course highlights the importance for

governmental entities to have a robust investment policy and corresponding procedures, and brings attention to GFOA's best practices related to investing. Through interactive activities and classroom presentations, attendees will gain a better understanding of the various elements of an investment program, whether the portfolio is managed internally or externally. Topics covered include: cash flow forecasting, hiring and managing external professionals, types of investments commonly used in the public sector, investment strategies for liquidity and core investment funds, managing risks, benchmarking, and reporting.

Learning Objectives:

Those who successfully complete this seminar should be able to:

- Understand key components of an investment policy
- Develop an approach to cash flow forecasting and understand how that leads to investment decisions
- Understand key factors in hiring and managing external investment professionals
- Learn how to use tools to raise awareness of and develop tools to manage various risks related to investing
- Approach the multifaceted segments of investment strategies
- Choose the right benchmarking standard for your portfolios

Member Price: $315.00
Non-member Price: $630.00

Click here to register.

Section 48D: A New Tax Credit for Electric Transmission Property - Foley & Lardner

The Biden Administration has proposed the creation of a new tax credit under the new Section 48D of the Code for qualifying electric power transmission property that is placed in service after December 31, 2021, but before January 1, 2032 (such credit, the "**Section 48D Credit**"). The proposal would also allow a direct-pay option to elect a cash payment. The proposed credit would be for an amount equal to 6% of a to-be-determined eligible basis (the "**Base Rate**"), with a possible increase to 30% (the "**Bonus Rate**") if certain criteria are met.

Qualifying property would include overhead, submarine and underground transmission facilities meeting certain criteria, including a minimum voltage of 275 kV and a minimum transmission capacity of 500 MW, and any ancillary facilities and equipment necessary to operate such project. A qualifying electric transmission line may be a replacement, or upgrade, to an existing electric transmission line if the transmission capacity of such electric transmission line, as upgraded, increases to an amount equal to the existing capacity of such transmission line plus 500 MW. However, the basis allocable to the existing transmission line would not be eligible for the Section 48D Credit.

Certain property and projects already in process are not eligible for the Section 48D Credit if (i) a state or political subdivision thereof, any agency or instrumentality of the US, a public service or public utility commission or other similar body of any state or political subdivision, or the governing or rate-making body of an electric cooperative has, before the date of the enactment of these rules, selected such property for cost recovery, (ii) construction begins before January 1, 2022, or (iii) construction of any portion of the qualifying electric transmission line to which such property relates begins before January 1, 2022.

In addition to the technical requirements, to claim the credit at the Bonus Rate, the project must satisfy the new prevailing wage and apprenticeship requirements. To satisfy the prevailing wage requirement,any laborers and mechanics employed by contractors and subcontractors must be paid prevailing wages during the construction of such project and, in some cases, a defined period after. To satisfy the apprenticeship requirement, no less than the applicable percentage of total labor hours (5% for projects for which construction begins in 2022, 10% for projects beginning construction in 2023, and 15% thereafter) must be performed by qualified apprentices. Additionally, each contractor and subcontractor who employs four or more individuals to perform construction on an applicable project must also employ at least one qualified apprentice or, in the case of a lack of availability, show a good faith effort to do so. If a non-exempt project fails to meet the wage and apprenticeship requirements, but otherwise meets the technical requirements for the Section 48D Credit, such property will qualify for the Base Rate.

Finally, qualifying electric power transmission property is eligible for an increase to either the Base Rate or the Bonus Rate if such project meets the domestic content requirement, which requires the steel, iron, or other manufactured products that comprise the project be produced in the United States (i.e., at least 55% of the total cost of the components of such product is attributable to components that are mined, produced, or manufactured in the United States). Projects satisfying this requirement could be eligible for a 2% increase to the Base Rate or a 10% increase to the Bonus Rate.

Friday, October 15, 2021

Foley & Lardner LLP

TAX - GEORGIA

Executive Limousine Transportation, Inc. v. Curry

Court of Appeals of Georgia - October 26, 2021 - S.E.2d - 2021 WL 4979102

Licensed limousine carrier filed action challenging the decision of the commissioner of the department of revenue denying carrier’s application for a refund of previously remitted state and local-option sales taxes as well as a declaration that owner would owe no such taxes in the future.

The Tax Tribunal granted summary judgment in favor of commissioner. Carrier appealed. The Superior Court affirmed. Application for discretionary review was granted.

The Court of Appeals, as a matter of first impression, held that Georgia Limousine Carrier Act did not prohibit local governments from imposing state or local-option sales taxes on for-hire limousine carriers.

Georgia Limousine Carrier Act, which barred local governments from imposing excise, license, and occupation taxes on limousine carriers, did not prohibit local governments from imposing state or local-option sales taxes on for-hire limousine carriers and their customers for the rental of limousines.

SEC Appoints New Director of Office of Credit Ratings: Cadwalader

The SEC named Ahmed Abonamah as its new Director of the Office of Credit Ratings. Mr. Abonamah had served as the Acting Director of the Office of Credit Ratings since October 2020.

Since joining the SEC in 2016, Mr. Abonamah has served in multiple roles within the SEC's Office of Municipal Securities, including as Deputy Director.

Cadwalader Wickersham & Taft LLP

November 9 2021

Nuveen Says Fortress-Backed Luxury Rail Has Path to High-Grade Rating.

- **Speculative venture seeks another $1 billion of tax-free bonds**
- **County fees may give Brightline access to larger buyer base**

A planned bond sale financing a speculative luxury train line in Florida can probably win investment-grade credit ratings, according to Nuveen Asset Management, the biggest holder of the project's debt.

Brightline Holdings, the train company backed by Fortress Investment Group, hopes to sell another $1 billion of tax-free bonds in the coming weeks to help pay for additions that can help the company profit from pandemic-linked migration to Florida. Brightline has previously sold $2.7 billion of tax-free securities that were unrated.

Florida counties would hand over fees to Brightline to add commuter service to its system, payments that would back the bonds. That revenue pledge should help the securities gain investment-grade ratings, said Ryan Rosberg, senior research analyst at Nuveen.

High-grade ratings can draw in a much broader array of investors than unrated securities attract. Muni-bond holders, often retirees looking for tax-free income, tend to crave safety, and the majority of the $4 trillion municipal-bond universe is ranked investment grade.

"An investment-grade rating clearly improves the liquidity and broadens the buyer base for these bonds," said Terry Goode, a senior portfolio manager at Allspring Global Investments, which doesn't hold any of the existing debt.

Asked about the rating potential, Brightline spokesperson Ben Porritt said, "it's our position not to speak publicly about financing plans as we formulate the details." Spokespeople for Moody's Investors Service, S&P Global Ratings, Fitch Ratings and Kroll Bond Rating Agency didn't answer queries on whether Brightline had approached them for grades.

The country's first new privately financed intercity passenger rail line in a century was launched in 2018 along Florida's east coast. Service resumed on Monday between Miami and West Palm Beach after stopping in March 2020 for the pandemic. A train hit a car carrying a woman and her grandchild on the first day, according to the Associated Press. The woman suffered broken bones while the boy didn't appear to be seriously injured, the report said.

When fully built, the system will cost $6 billion. For round trips on Tuesday, Brightline was charging $15 for seating in standard railcars and $37 for service that includes free drinks and lounge access.

The system's ridership and revenue fell short of estimates even before the onset of the Covid-19 outbreak. The company expects 2.89 million total passengers in 2022, and 9.5 million in 2023, which is due to be the first full year with service to Orlando.

On Thursday, Brightline Chief Executive Officer Michael Reininger said proceeds from the new bond sale would primarily go toward work on its existing line between Miami and West Palm Beach, and the expansion already underway of service to Orlando. Fees that Miami-Dade and Broward counties would pay to establish new commuter rail service along the Brightline corridor "have tremendous value," he said.

In documents posted for bond holders, the company said that for helping offer commuter service, it expects to receive as much as $50 million upfront, and then annual payments starting at $12 million from Miami-Dade County. It hasn't revealed estimates of the financial benefits from a Broward partnership.

The alliance with both counties is a positive, Nuveen's Rosberg said, adding that his firm's interest in the new debt will depend on relative value at the time of issuance.

A Brightline bond due in 2049 traded Nov. 5 at an average yield of 6.1%, unchanged from trading the previous week and lower than a high of 7.75% in January, according to data compiled by Bloomberg.

Bloomberg Markets

By Romy Varghese

November 9, 2021, 8:15 AM PST

Citi Says Ready to Resume Texas Muni Business After Gun Spat.

- **Halted deals after law sought to bar banks for gun policies**
- **Bank is 'prepared to resume serving issuer clients in Texas'**

Citigroup Inc. says it's prepared to restart its public-finance business in Texas after halting the operations in the wake of a new Republican law in the state that sought to bar it and other banks from such work as punishment for restrictive gun policies.

The lender says it's ready to once again underwrite new municipal-bond deals sold by Texas issuers, potentially marking a major win after it had to stop doing so in September. After being ranked as the biggest underwriter of Texas municipal debt in 2020, New York-based Citigroup has tumbled to eighth place this year.

The halt to its Texas public-finance business came after a state law went into effect that bars government entities from working with companies that "discriminate" against firearm entities or trade associations. The bank has made no substantive changes to its gun policy in response to the new law.

"We elected not to engage in primary market underwriting activity with public sector clients in

Texas temporarily while we were working through the certification process, which included submitting a standing letter to the Office of the Attorney General," the bank said in a statement Tuesday through a spokesperson.

"Having made the certifications required by the new law, we are now prepared to resume serving issuer clients in Texas," the statement said.

The bank has had conversations with state officials as part of the certification process and is confident that it's able to resume muni deals, according to a person familiar with the discussions who asked not to be named as the conversations aren't public.

Resumption Seen Soon

The bank expects that it will be able to resume underwriting in Texas soon, the person said.

The Texas Attorney General's office didn't respond on Tuesday to email and phone messages seeking comment on Citi's announcement.

The state's law targeted Wall Street banks for wading into the debate over guns in the U.S. Bank of America Corp., JPMorgan Chase & Co. and Goldman Sachs Group Inc. also haven't underwritten munis sold by the state and its cities, schools, and transit agencies since the legislation took effect. Bank of America and Citigroup are the top two underwriters in the $4 trillion U.S. municipal market.

Citigroup has repeatedly said it can comply with the legislation and that it doesn't discriminate against firearm entities. In June, the bank said in a blog post that its policy "simply requires our clients to use best practices when selling firearms."

The Lone Star State is a crucial market for muni business thanks to a growing population that drives infrastructure needs. Texas-based borrowers sold more than $58 billion of municipal debt in 2020, the most of any state after California, according to data compiled by Bloomberg.

In the wake of mass shootings in the U.S., Citigroup in 2018 said it would prohibit retailers that are customers of the bank from offering bump stocks or selling guns to people who haven't passed a background check or are younger than 21.

The sponsor of the Texas law, Republican state Representative Giovanni Capriglione, has said that policies taken on by Citigroup were an example of the type of company policy that his legislation was targeting.

Citigroup took a key step to restart its public-finance operations in Texas by submitting a letter last month verifying its compliance with the new law.

The bank sent a so-called standing letter to the Texas Attorney General's office, a requirement for banks if they want to do business with Texas and its local governments after the legislation took effect.

Bloomberg Markets

By Amanda Albright

November 9, 2021, 10:03 AM PST Updated on November 9, 2021, 1:25 PM PST

— With assistance by Danielle Moran

Illinois Projects Surplus But Gaps Come Back Next Four Years.

- **Fiscal 2022 surplus at $418 million: governor's budget office**
- **Holes in next four years to be smaller than previous forecasts**

Illinois, which has seen a vast improvement in its financial outlook over the last year, expects a bigger surplus this fiscal year and smaller gaps in the next four annual budgets thanks to a quicker than expected recovery in revenues and billions in federal aid.

The state's fiscal 2022 budget surplus will be $418 million, up from an earlier estimate of $88 million, as revenue from sales and income taxes increased more than previously anticipated and after the state taps about $2 billion of its more than $8.3 billion in American Rescue Plan Act funding, according to a report Tuesday from the Governor's Office of Management and Budget. Deficits will return from fiscal 2023 through 2027 but will be smaller than previously expected, according to the report.

"I am committed to building on this significant progress while tackling our remaining fiscal challenges," Governor J.B. Pritzker said in a statement Tuesday. He added that he's focused on working with the Illinois General Assembly to build "long-term fiscal stability for Illinois while ensuring economic opportunity in all of our communities."

Pritzker's budget office is projecting a 2023 shortfall of $406 million, down from $2.9 billion estimated in 2019, and the 2024 deficit was cut to $820 million from $3.2 billion, according to the statement. The state's unpaid bills will drop below $2.75 billion by the end of fiscal year 2022 after topping $16 billion during the state's budget impasse a few years ago.

"It stands on its own how remarkably improved Illinois's budget situation is from all of 12 months ago," Ty Schoback, a senior municipal research analyst for Columbia Threadneedle Investments, which owns Illinois debt as part of $17 billion in muni assets, said in an interview.

Big Turnaround

In November 2020, Illinois was facing the threat of its debt being downgraded to junk after voters rejected a shift to a graduated income tax from a flat rate. Pritzker had championed the move as a way to increase revenue and address the state's structural deficits. At the time, Illinois was headed toward borrowing from the Federal Reserve's Municipal Liquidity Facility for a second time because its penalty for selling debt in the $4 trillion muni bond market surged during the pandemic.

Since then, the state's outlook has dramatically improved. In mid 2021, Illinois received upgrades from S&P Global Ratings and Moody's Investors Service, the first in more than 20 years, while Fitch Ratings boosted its outlook to positive from negative. The state has paid off at least $2.2 billion of the total $3.2 billion it borrowed from the Fed. The extra yield it pays on on its debt compared to 10-year benchmark AAA muni securities has fallen to about 70 basis points from around 300 a year ago.

Schoback gives the state credit for taking prudent steps to improve its credit profile, including reducing its backlog of unpaid bills and interfund borrowing for liquidity. The key for Illinois will be to address longer-term financial pressures, such as its pensions, and building up its rainy day fund in meaningful ways, he said. The state's unfunded pension liability has grown to around $144 billion.

In the report Tuesday, Illinois officials acknowledge that even with "a major sign of critical progress on state finances, and a significant improvement over previous projections for fiscal year 2022," the state has much work to do.

“They have the ability to continue to improve their credit profile and secure further upgrades, but they can’t take their foot off the gas,” Schoback said. “The market will be receptive to slow and steady, but that trajectory needs to continue.”

Fitch Ratings is monitoring the state’s progress to “unwind” steps taken during the pandemic such as the Fed loan and inter-fund borrowing, and “real progress” on such items would support an upgrade, said analyst Eric Kim.

The firm has assigned the state’s debt a BBB- rating, one step above junk, but sees a positive trajectory given plans to pay down those liabilities and the continuation of “normal decision-making,” he said.

An impasse between then Governor Bruce Rauner and state legislators left Illinois without a full budget for more than two years between 2015 and 2017.

“That tone has shifted and if we continue to see that progress where things work in a more normal way, that’s a positive rating factor,” Kim said in an interview.

Bloomberg Markets

By Shruti Singh

November 9, 2021, 3:09 PM PST Updated on November 10, 2021, 9:59 AM PST

GASB Outlook E-Newsletter Fall 2021.

Read the GASB Newsletter.

MSRB Seeks Volunteers For Its FY 2022 Compliance Advisory Group.

The MSRB seeks volunteers for its FY 2022 Compliance Advisory Group! Associated persons of regulated entities serving in compliance, legal, trading, and operations; and public officials and employees of municipal entities are encouraged to volunteer.

Read more.

- The Libor Transition: Protecting Consumers and Investors – SIFMA Statement. **Ed. Note:** Nothing particularly new here, but an excellent primer for those who’ve been meaning to get up to speed on the issue.
- Are We Due for a ‘Golden Age’ of Public Finance as the Infrastructure Bill Crosses the Finish Line?
- CDFA Publishes Annual Volume Cap Report: An Analysis of 2019-2020 Private Activity Bond & Volume Cap Trends
- Every Government Needs a Plan for the Worst-Case Cyber Scenario.

- S&P: Cyber Risk In A New Era: U.S. Utilities Are Cyber Targets And Need To Plan Accordingly
- *Bene v. State* – Court of Appeals upholds validating county development authority's issuance of proposed taxable revenue bonds and related security intended to finance four development projects. **Ed. Note:** We haven't seen a bond validation case for some time now and this one's worth a quick read.
- Substantive California charter school finance case here.
- And finally, Scope? The Mouthwash? is brought to us this week by *Berry v. Commerce Insurance Company*, in which the issue was whether or not Officer Sheehan was acting within the scope of his employment when a wee bit of trouble transpired following a lunch break during a day of firearms training. Let's all join hands, close our eyes, and picture a world in which the scope of an officer's duties includes "coming in a little hot" upon returning to the gun range, kicking up gravel, fishtailing, and pinning a fellow officer between the vehicle and the picnic table upon which he had been innocently enjoying a sandwich. To Swerve and Eject….

IMMUNITY - MASSACHUSETTS

Berry v. Commerce Insurance Company

Supreme Judicial Court of Massachusetts, Bristol - October 25, 2021 - N.E.3d - 2021 WL 4944557

Police officer, who sustained severe injuries to his leg when it was pinned between picnic table and personal vehicle of fellow police officer, who was firearms training instructor, during paid lunch break from firearms certification training at firing range on town-owned property, brought action against instructor's automobile insurer seeking declaratory judgment that immunity provision of Tort Claims Act provided no defense to coverage.

On cross-motions for summary judgment, the Superior Court Department entered judgment in favor of police officer. Insurer appealed, and the Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

The Supreme Judicial Court held that instructor was not acting within scope of his employment as police officer when his personal vehicle pinned leg of fellow police officer.

Firearms training instructor was not acting within scope of his employment as police officer when his personal vehicle pinned leg of fellow police officer against picnic table during lunch break from all-day firearms certification training at firing range, and thus, instructor's automobile insurer could not deny coverage for injured officer's damages on ground that instructor was immune from liability under Tort Claims Act, although instructor conducted training as part of his position with police department, lunch break was paid, and range was on town-owned property; instructor's unsafe driving, including approaching range too fast and proceeding towards picnic tables while spinning tires, braking, and causing vehicle to slide, was not motivated by any purpose to serve police department.

SCHOOLS - ALABAMA

Sumter County Board of Education v. University of West Alabama

Supreme Court of Alabama - September 17, 2021 - So.3d - 2021 WL 4236438

County Board of Education brought action against public university and university's president and former president in their individual and official capacities, asserting claims of reformation of a deed, breach of contract, and fraud and also seeking declaratory and injunctive relief, which claims arose from university's allowance of a charter school to open on a school campus that the board of education had closed and sold to the university with the restrictive covenant that campus not be used as a K-12 school.

The Circuit Court dismissed action. Board of education appealed.

The Supreme Court held that the restrictive covenant was against public policy.

Restrictive covenant prohibiting a charter school to open on school campus that was closed and sold by county board of education was against public policy pursuant to the School Choice and Student Opportunity Act, and thus covenant was void, even though Act was enacted after covenant's execution; covenant contradicted Act's stated policy of making a closed or unused public school facility available to a qualified charter-school organization, and it thwarted Act's overall purpose of fostering competition in public education by encouraging the establishment and proliferation of charter schools.

SCHOOL FINANCE - CALIFORNIA

Mt. Diablo Unified School District v. Clayton Valley Charter High School

Court of Appeal, First District, Division 4, California - October 1, 2021 - 69 Cal.App.5th 1004 - 284 Cal.Rptr.3d 850 - 21 Cal. Daily Op. Serv. 10,330 - 2021 Daily Journal D.A.R. 10,488

School district and charter school filed suits against each other, seeking determination of amounts due for facilities costs that regulations authorized district to charge charter school.

The Superior Court tentatively granted district's motion for judgment on pleadings on cross-petition for writ of mandate and complaint for declaratory relief. Charter school appealed.

The Court of Appeal held that:

- Pro rata share of facilities costs for charter school that paid for its own operations and maintenance excluded districtwide plant maintenance and operations costs, and
- Facilities costs excluded any contributions that district made to its ongoing and major maintenance (OMM) account that were ultimately disbursed to pay costs of type paid by charter school.

School district's calculation of pro rata share to be paid by charter school, that paid for its own operations and maintenance, was required to exclude districtwide plant maintenance and operations costs from "facilities costs," defined by regulation as not including any costs paid by charter school, including, but not limited to, costs associated with ongoing operations and maintenance and costs of any tangible items adjusted in keeping with customary depreciation schedule for each item, since regulation required district to exclude from districtwide facilities costs, of which charter school was required to pay pro rata share, any category of costs paid by charter school, not merely any specific costs that charter school paid.

The state board added plant maintenance and operations costs to the regulatory definition of facilities costs to enable a school district to obtain compensation for such services by way of a charter school's pro rata share in those cases in which the district provides such services to the school, but the concurrently added exclusion paragraph requires a district to exclude its districtwide plant maintenance and operations costs from its facilities costs when calculating the pro rata share of a school that pays for such services itself; otherwise, the school will pay for the services twice, and the district will receive reimbursement for services it did not provide.

School district's contributions to its ongoing and major maintenance (OMM) account that were ultimately disbursed to pay costs of type paid by charter school were required to be excluded from "facilities costs," within meaning of regulation authorizing district to charge charter school pro rata share of facilities costs, but excluding from districtwide facilities costs any category of costs paid by charter school; exclusion paragraph applied to all listed costs, with no basis to differentiate between expenditures from OMM account for operations and those for maintenance.

ZONING & PLANNING - CONNECTICUT

Tillman v. Planning and Zoning Commission of City of Shelton

Supreme Court of Connecticut - October 20, 2021 - A.3d - 2021 WL 4898440

Landowners sought review of city planning and zoning commission's approval of application for planned development district (PDD) for an adjoining 121-acre parcel in city's light industrial park zone.

The Superior Court dismissed. Landowners appealed.

The Supreme Court held that:

- A municipal zoning authority that derives zoning power from statute governing zoning regulations may create a PDD;
- Approval of PDD was not impermissible spot zoning;
- Proposed PDD did not violate uniformity requirement of zoning statute; and
- Approval of PDD did not result in an unlawful subdivision.

Grant of zoning authority contained in statute governing zoning regulations permits a municipal zoning authority to create a planned development district (PDD) when the authority acts in a legislative capacity.

City planning and zoning commission's approval of application for planned development district (PDD) for a parcel in city's light industrial park zone was not impermissible spot zoning, where proposed PDD consisted of approximately 121 acres, majority of parcel had been located in industrial zone for more than 50 years, and regulations identified the area around a major road that partially bounded parcel as an appropriate location for PDDs.

Proposed planned development district (PDD) for 121-acre parcel in city's light industrial park zone did not violate uniformity requirement of statute governing zoning regulations within a municipality, notwithstanding the contemplated mixture of residential, commercial, and professional uses; even a traditional approach to zoning did not mandate a complete monoculture of uses within a particular zone.

City planning and zoning commission's approval of application for planned development district (PDD) for 121-acre parcel in city's light industrial park zone did not result in an unlawful subdivision, even though various development areas were occasionally referred to as "parcels," where there was no indication that the approval of PDD actually caused alteration of any previously existing property line, and the statement of uses and standards ultimately approved by commission expressly noted that any subdivision of the subject parcel would require separate approval.

BOND VALIDATION - GEORGIA

Bene v. State

Court of Appeals of Georgia - October 27, 2021 - S.E.2d - 2021 WL 4987582

State brought bond validation petitions seeking judgment confirming and validating county development authority's issuance of proposed taxable revenue bonds and related security intended to finance four development projects.

"The transactions share a common structure, and this structure is relevant to the issues on appeal. Specifically, the petitions sought to create a bond transaction leasehold estate, where, in consideration for the issuance of the bonds, the Companies agree to transfer fee simple title in the projects to the Authority, and the Authority and the Companies agree to execute a lease agreement under which the Companies would have the right to possession of the respective projects for a term of ten years. During the term of the lease, the Authority's interest in the projects will be exempt from ad valorem taxation; only the Companies' leasehold interest is subject to taxation. In connection with the transactions, the Authority and the Companies executed "Memoranda of Agreement" ("MOA") establishing the valuation methodology to be used in assessing ad valorem taxes on the leasehold estates. The percentage of value for each year for taxation purposes is set forth in the MOAs, starting at 50 percent of the fair market value in the first year after completion of the construction and ramping up to 95 percent of the fair market value in the tenth year following construction. At the conclusion of the lease term, the Companies would have the right to purchase the projects for nominal consideration of $10 pursuant to the terms of the lease agreement."

County resident intervened and filed objections. The Superior Court entered orders validating and confirming the bonds and bond security. Resident appealed.

The Court of Appeals held that:

- State did not fail to comply with statute requiring bond validation petitions to state purpose of bonds to be issued;
- Evidence supported finding that county would derive substantial benefit from bond transaction;
- Superior court did not impermissibly shift burden of proof;
- Superior court did not rule on ad valorem taxation issues without subject-matter jurisdiction;
- Superior court had jurisdiction concerning issue of valuation methodology;
- Superior court's explanation as to why it had subject-matter jurisdiction over State's petition was sufficient to satisfy statutory requirements; and
- Superior court made adequate findings of fact and conclusions of law to support conclusion that bond transactions at issue did not violate Gratuities Clause.

State bringing bond validation petitions seeking judgment confirming and validating county development authority's issuance of proposed taxable revenue bonds to finance four development projects did not fail to comply with statute requiring bond validation petitions to state purpose of bonds to be issued; each petition included their stated purpose in similarly worded language, including that bond proceeds would be "used to finance a portion of the costs of acquisition, construction, equipping and installation of land, improvements and related building fixtures and building equipment" for use as "mixed-use commercial development and an economic development project."

Evidence supported finding that county would derive substantial benefit from bond transaction wherein county development authority would issue taxable revenue bonds to companies to finance four development projects, and therefore trial court did not err in determining that the bond transactions did not result in unconstitutional gratuity; at the hearing on State's petition to validate the bonds, authority's executive director testified that the projects at issue would improve county's infrastructure, create hundreds of jobs, expand tax rolls, and bring economic development.

Superior court did not impermissibly shift burden of proof by requiring county resident, as intervenor, to show cause as to why proposed taxable revenue bonds to finance four development projects should not be validated, and therefore trial court did not err in its assignment of burden of proof, in proceedings on State's bond validation petitions in which resident intervened and filed objections; trial court correctly assigned burdens of proof and found that State satisfied its burden of proof, while resident failed to satisfy his own burden with regard to his affirmative defenses.

In the context of bond validation proceedings, where an intervention has been filed by citizens and taxpayers of the political subdivision involved, it is the intervenors who are quasi-defendants, and the technical adversary position between the governing authority and the solicitor general, acting for the State, will not permit these two entities by admissions in pleadings to establish as proved the essential allegations of the petition for validation, but the burden is on the State, acting through its solicitor general, to prove the material facts which are requisite to obtain bond validation; and where there is a total absence of such proof, it is error for the court to render judgment validating the bonds.

Superior court's ruling in which it validated county development authority's issuance of taxable revenue bonds to finance four development projects included information regarding ad valorem taxation matters only as necessary to resolution of the validity of the bonds, rather than constituting merit-based determination, and therefore superior court did not rule on ad valorem taxation issues without subject-matter jurisdiction; in its orders, superior court simply reiterated that satisfaction of development purposes of the bond transactions justified validation and that a tax exemption was a natural by-product of that validation, as expressly provided by statute expressly exempting development authorities from taxation.

Superior court had jurisdiction to consider issue of methodology formula expressed in county development authority and companies' memoranda of agreement that established method for assessing ad valorem taxes on leasehold estates created by authority and companies' bond transaction to finance four development projects; statutory framework set out in Development Authorities Law vested superior court with exclusive jurisdiction to hear and determine all matters relevant to bond validation.

Superior court's explanation as to why it had subject-matter jurisdiction over State's petition seeking validation of county development authority's issuance of proposed taxable revenue bonds intended to finance four development projects was sufficient to satisfy requirements of statute requiring that, upon request, judgment of court include written findings of fact and conclusions of law; in its validation order, superior court correctly noted that statute governing validation of revenue bonds vested exclusive jurisdiction over bond validation matters in superior courts.

Superior court made adequate findings of fact and conclusions of law to support its conclusion that county development authority and companies' bond transactions for financing four development projects did not violate Gratuities Clause; superior court set forth evidence that projects would create new jobs and promote industry and employment opportunities for public good, and superior court then looked to relevant case law and applied it to facts of case to conclude that authority had demonstrated through substantial evidence that bonds provided substantial benefit to people of

Georgia through economic development and job creation.

County board of assessors did not impermissibly cede its authority in the memoranda of agreement between county and companies that set forth the methodology to be used to value leasehold estates created by bond transactions between county and companies to finance four development projects; board's choice to execute agreement represented exercise of discretion in and of itself, rather than loss of discretion, and the agreement's ramp-up valuation formula that increased value over time was not inherently unlawful.

IMMUNITY - GEORGIA

Sharma v. City of Alpharetta

Court of Appeals of Georgia - October 28, 2021 - S.E.2d - 2021 WL 5001916

Estate of swimmer who died in city swimming pool brought action against city, alleging premises liability, negligence in lifeguards' supervision of swimmers, and negligence in city's training and supervision of lifeguards.

The State Court granted city's motion to dismiss. Estate appealed.

The Court of Appeals held that city did not waive its municipal sovereign immunity when it purchased a liability insurance policy.

City did not waive its municipal sovereign immunity when it purchased a liability insurance policy, where "Sovereign Immunity and Damages Caps" provision of the policy, which stated that "issuance of this insurance shall not be deemed a waiver of any statutory immunities by or on behalf of any insured," was clear expression of intent to preserve city's municipal sovereign immunity where possible and to prevent purchase of the policy from expanding city's liability in any way.

PUBLIC PENSIONS - KENTUCKY

City of Villa Hills v. Kentucky Retirement Systems

Supreme Court of Kentucky - August 26, 2021 - 628 S.W.3d 94

City filed petition for judicial review of order of the State Retirement Systems assessing actuarial costs against city following retirement of one of its employees.

The Circuit Court affirmed. City appealed. The Court of Appeals, 2019 WL 2896454, affirmed. City sought discretionary review.

The Supreme Court held that:

- Pension-spiking statute, which seeks to limit practice of increasing pay of public employee in years immediately leading up to retirement with effect of increasing employee's pension benefits in retirement, applies retroactively;
- Evidence supported determination that city employee's pay increase was not a result of a bona fide promotion; and
- Pension-spiking statute was constitutional.

Pension-spiking statute, which seeks to limit practice of increasing pay of public employee in years immediately leading up to retirement with effect of increasing employee's pension benefits in retirement, applies retroactively.

Evidence supported determination of State Retirement Systems that city employee's pay increase was not a result of a bona fide promotion, in action under pension-spiking statute, which seeks to limit practice of increasing pay of public employee in years immediately leading up to retirement with effect of increasing employee's pension benefits in retirement; employee's formal rank and title within police department did not change despite his additional responsibilities, and employee was doing practically the same inspection work before purported promotion.

Pension-spiking statute, which seeks to limit practice of increasing pay of public employee in years immediately leading up to retirement with effect of increasing employee's pension benefits in retirement, is not unconstitutionally overbroad; parameters of statute are reasonably tailored to purported end.

Pension-spiking statute, which seeks to limit practice of increasing pay of public employee in years immediately leading up to retirement with effect of increasing employee's pension benefits in retirement, is not an unconstitutional ex post facto law.

Decision of State Retirement Systems to assess actuarial costs to city following retirement of police officer, under pension-spiking statute, which seeks to limit practice of increasing pay of public employee in years immediately leading up to retirement with effect of increasing employee's pension benefits in retirement, did not violate Contracts Clause; relationship between city and Retirement Systems was purely one of statute, not contract, and statute did not affect any employer-employee obligations between city and employee.

[Are We Due for a 'Golden Age' of Public Finance as the Infrastructure Bill Crosses the Finish Line?]

There may be a small uptick in muni bond issuance, but perhaps not what bond buyers wanted

The bipartisan infrastructure bill passed late Friday by the House of Representatives promises hundreds of billions for a once-in-a-generation rebuild of America's aging and neglected built environment. But for the municipalities that stand to benefit from the funds, and the bond market where such projects are normally financed, it may not move the needle much, public-finance experts say.

President Joe Biden is likely to sign into law this week the Infrastructure Investment and Jobs Act, including $550 billion in new federal investment in the kinds of projects cities, counties and states fund and manage.

The biggest boost will go to spending on roads and bridges, power systems, rail, broadband, water systems and public transit, according to an analysis from Moody's Analytics. An overview of some specific initiatives, from the National League of Cities, is [here].

Following the $260 billion American Rescue Plan by about six months, it extends what Tom Kozlik, head of municipal research and analytics at Hilltop Securities, calls a "golden age" of U.S. Public Finance.

“I say we’re entering one of the more positive landscapes for municipal bond issuance that we’ve seen for a long time, and I’ve been pretty skeptical about this,” Kozlik told MarketWatch. “Don’t get me wrong, there is still uncertainty out there. But I think the Rescue Plan really put public finance entities in a much different place after this recent financial uncertainty compared to what we saw 10 years ago.”

Yet Kozlik thinks total muni bond issuance may edge up only fractionally next year — to perhaps $475 billion -$500 billion, from roughly $460 billion this year --- hardly a hearty endorsement of the transformative power of bonds to rebuild America, let alone enough to feed a market starved for supply.

As he wrote in a research note after Friday’s House vote, the $550 billion to be spent pales in comparison to the American Society of Civil Engineers 2021 Infrastructure Report Card, which identified a $2.59 trillion infrastructure gap in the U.S over the next decade.

“There’s never been an infrastructure program in this country that doesn’t feature the states and locals,” said John Mousseau, president and CEO of Cumberland Advisors.

Mousseau thinks the legislation may, on the margin, boost supply, but notes that the federal COVID-19 responses that have been most effective have been those that “got money out the door” quickly, like the CARES Act, in contrast to those that moved slowly, like rental assistance programs.

“Being able to streamline the money that’s been approved is just as important as getting new money out,” Mousseau said in an interview.

Indeed, multiple city managers have told MarketWatch that their local infrastructure needs are so great that they moved as quickly as possible to designate some of the spring’s federal dollars to such projects rather than waiting for Congress to pass a stand-alone infrastructure bill.

It’s hard to see anything that might dent demand for muni bonds, which has been red-hot, Kozlik noted. “The Rescue Plan act really put a floor under municipal credit at least for a couple years,” he said.

And because the spending in the infrastructure bill is spread over a few years — which is what will likely keep bond issuance muted — it will be helpful for state and local budgets for some time.

Exchange-traded funds tracking muni bonds were slightly lower Monday, with the iShares National Muni Bond ETF MUB, 0.18% down 0.1% in the afternoon, and the Invesco Taxable Municipal Bond ETF BAB, 0.63% off 0.5%.

MarketWatch

By Andrea Riquier

Nov. 8, 2021

Washington Social-Spending Bill Snubs Municipal Bonds. Will the Market Care?

‘Munis are going to muni,’ says one expert

Provisions that would have benefited the state and local governments that issue municipal bonds have been axed from the $1.75-trillion social spending bill now being debated by Congress, a step some public finance experts say won't help communities struggling to recover from the COVID pandemic, but one that's unlikely to move the needle on an already overheated muni bond market.

The Build Back Better program framework, released in late October by President Joe Biden, omitted the restoration of some forms of debt refinancings and a direct-pay bond program, among other industry priorities.

The framework also added a 15% corporate minimum tax that might hit purchasers of tax-exempt bonds, a step particularly unpopular with industry groups. "The costs will be significant and, again, will be borne by our communities, not by the holders of the bonds," said a group of lobbyists in a letter sent to Congress on Monday.

But some public-finance observers are more sanguine. "Munis are going to muni no matter what's going on," said Eric Kazatsky, head of municipal strategy for Bloomberg Intelligence. "There's still going to be a minimum amount of spending for good repair, to keep the lights on, for states and locals. The muni-friendly provisions in the bill would have been an accelerant thrown onto that."

The refinancing provisions, known as "advance refundings" in bond-market jargon, were taken away from tax-exempt issues in the 2017 Tax Cuts and Jobs Act legislation. (Municipalities may choose to issue bonds that are exempt from taxes for the investors who buy them, or those that can be taxed.)

The restoration of tax-exempt advance refunding was the most critical provision in earlier versions of the bill, said Matt Fabian, a partner with Municipal Market Analytics. MMA estimates that issuers have paid an additional $8-10 billion in extra interest costs since January 2020 because those refundings have been restricted.

"This is Congress pushing the cost of its savings downhill to cities and states," Fabian told MarketWatch.

In contrast, Kazatsky argued that the loss of a revitalized direct-pay bond program akin to the Build America Bonds introduced after the Great Recession is the bigger hit. Build America Bonds were taxable, and their presence helped attract many nontraditional investors, for whom the tax exemption wasn't key, into the muni market.

Right now, the landscape for state and local governments is tough, Fabian said. Many are still trying to determine whether their current revenue mix reflects the economy they have now, or the one they had before the pandemic.

"Issuers are unsure of the future, their current financials are volatile which, in their world, feels untrustworthy, and they're coming off 10 years of austerity," Fabian said. In that sense, even just a little more acknowledgment from Congress of problems on the state and local level would be helpful, he added.

"Partisan politics has made everything more tenuous than it used to be. Politicians have had to become more defensive about investment, even though long-term borrowing needs are probably as high as they've ever been because of climate change and deferred maintenance."

In a series of recent interviews with MarketWatch, several city managers said one of the great advantages of the massive amounts of federal stimulus directed their way was the ability to avoid issuing debt.

See: ‘Infrastructure week’ is here: Local governments aren’t waiting for Congress any more

That stimulus has helped offset some of the uncertainty from Washington, Kazatsky said in an interview. And it’s a big reason municipal issuance has been relatively tepid, even at a moment when interest rates aren’t likely to go any lower.

That’s happening even as demand is through the roof, with muni-bond inflows notching multiple weekly records this year and causing one mutual fund to close to new investors, while also pushing yields to among all-time lows.

“It‘s hard to get too worried about anything for this sector right now,” Fabian said.

MarketWatch

Nov. 5, 2021

Munis and the Fed: Municipal Bonds are in Good Shape Coming into 2022: BlackRock's Peter Hayes

Watch video.

YouTube Finance

Nov 4, 2021

Market Expert: Social Spending Provisions Won’t Stop Municipal Bonds

Municipal bonds can provide investors with low credit risk, yield, and tax-free income, but will a social spending bill quash their appeal in the debt markets?

According to a MarketWatch report, “Provisions that would have benefited the state and local governments that issue municipal bonds have been axed from the $1.75-trillion social spending bill now being debated by Congress, a step some public finance experts say won’t help communities struggling to recover from the COVID pandemic, but one that’s unlikely to move the needle on an already overheated muni bond market.”

An influx of bond investors piled into municipal debt, especially during the height of the pandemic where a safe haven scramble saw heightened muni interest. As mentioned, munis also provide tax-free income, shielding investors from Uncle Sam, but could that benefit be banished?

President Joe Biden’s “Build Back Better” program removed types of debt re-financings and direct-pay bond programs. Furthermore, a 15% minimum corporate tax could also apply to tax-exempt bonds, which could sour their appeal — but will they?

“Munis are going to muni no matter what’s going on,” said Eric Kazatsky, head of municipal strategy for Bloomberg Intelligence. “There’s still going to be a minimum amount of spending for good repair, to keep the lights on, for states and locals. The muni-friendly provisions in the bill would have been an accelerant thrown onto that.”

Kazatsky's view comes as municipal bond inflows have been in high demand this year with weekly records reached, according to the MarketWatch article.

"It 's hard to get too worried about anything for this sector right now," said Matt Fabian, a partner with Municipal Market Analytics.

ETF TRENDS

by BEN HERNANDEZ

NOVEMBER 5, 2021

CDFA Publishes Annual Volume Cap Report: An Analysis of 2019-2020 Private Activity Bond & Volume Cap Trends

View the CDFA Report.

CDFA | Nov. 5

Despite Pandemic Concerns, Multifamily Private Activity Bond Issuance Reaches $17.2B in 2020.

View the Novogradac Report.

Novogradac | Nov. 5

How the $1 Trillion Infrastructure Bill Aims to Affect Americans' Lives.

The legislation seeks to ensure fewer blackouts and cleaner water, but in some areas it might fall short of needed upgrades

Congress has voted to pass the largest federal investment in infrastructure in more than a decade, a bipartisan injection of money across vast sections of the U.S. economy.

The $1 trillion package would invest in refurbishing aging roads, bridges and ports; easing transportation bottlenecks; replacing harmful lead pipes; expanding internet access; upgrading the nation's power grid; and boosting infrastructure resilience amid growing concerns over climate change. The spending is to be paid for with a variety of revenue streams, including more than $200 billion in repurposed funds originally intended for coronavirus relief but left unused; about $50 billion from delaying a Trump-era rule on Medicare rebates; and $50 billion from certain states returning unused unemployment insurance supplemental funds.

The legislation, spending billions in each of the next five years or more, falls short of the full ambitions of the Democratic Party, which is pursuing a separate, larger bill opposed by the Republicans. But the scope of the bill just passed makes the legislation significant in its own right.

Here is a look at how the infrastructure package will affect American consumers and businesses, and where it might fall short of expectations.

Continue reading.

The Wall Street Journal

Nov. 6, 2021

This Is Where the States Want Billions in Infrastructure Funding Spent.

The plan finally approved on Friday will address transportation, water, broadband, energy and public safety needs that have been building for years, sometimes decades.

On the highway over the Teton Pass in Wyoming, avalanches have been threatening motorists since the 1960s. In Washington and Oregon, drivers live with the daily awareness that, in a major earthquake, the bridge between Vancouver and Portland will probably collapse. In California, residents are increasingly at the mercy of out-of-control wildfires and megadroughts — and their stratospheric costs.

America's to-do list has been growing for years, since well before President Biden and a bipartisan committee in Congress agreed this year to a historic upgrade of the nation's aging infrastructure. On Friday, the measure — held up for months amid negotiations over some $2 trillion in other spending — finally passed.

"This is a game changer," said Mark Poloncarz, the county executive in New York's Erie County. "Right off the bat, I have somewhere around $150 million in capital projects we could move, from bringing our wastewater treatment system into the 20th century to smaller bridges, some of which are 100 years old."

Continue reading.

The New York Times

By Shawn Hubler, Emily Cochrane and Zach Montague

Nov. 6, 2021

Fitch Ratings Updates U.S. Public Finance College and University Rating Criteria

Fitch Ratings-Chicago-04 November 2021: Fitch Ratings has updated its "U.S. Public Finance College and University Rating Criteria" as part of the routine criteria review process. Revisions to the criteria are mostly editorial in nature and there is no impact on existing ratings.

Primary revisions to the criteria are: minor editorial changes; clarification of the long-term debt definition to better match audit presentation and disclosure standards; and an updated and streamlined discussion of the scenario analysis to add clarity and support cross-sector criteria consistency.

This new criteria report replaces the criteria report of the same name dated Oct. 7, 2020.

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Ailing U.S. Roads Would Get Relief in Bill Unleashing Federal Aid.

Bill with bipartisan support would expand the permitted spending of the $350 billion of American Rescue Plan aid as Treasury guidance provides limited uses for infrastructure

Crumbling U.S. roads and bridges stand to get a boost from legislation in Congress allowing states and local governments to spend pandemic relief aid on a broader array of infrastructure projects.

A bill with bipartisan support in the House of Representatives would allow municipalities to spend unused federal funds on areas like highways and bridges. Such legislation passed the Senate unanimously last month. By one lobbying group's estimate, it could unleash tens of billions of dollars of spending just on the county level.

Representative Carolyn Bourdeaux, a Democrat from Georgia, said in an interview that some localities still have relief money to spend and would like to make a "down payment" on infrastructure work.

"We have a lot of infrastructure needs," she said. She said she expects the bill to pass.

The measure was introduced in the House in October by Bourdeaux and Representative Dusty Johnson, a Republican from South Dakota whose office noted it doesn't increase federal spending.

States and cities have already used aid from the $350 billion American Rescue Plan to fund water, sewer and broadband infrastructure, categories that are acceptable under the Treasury's interim guidance. West Virginia Governor Jim Justice, for example, is proposing to use $90 million of his state's allocation as part of a $1 billion broadband investment.

However, the Treasury guidance doesn't give the green light for broader infrastructure projects, like roads and bridges, that aren't explicitly tied to efforts to combat the economic damage from the pandemic. Some states and cities have been slow to spend the aid, and governments have asked for the funding constraints to be relaxed to make it easier to deploy.

Letting governments use the aid on a wider scope of infrastructure work could reduce the need to borrow for such projects. That risks further suppressing issuance in the $4 trillion municipal market, where sales are down about 3% year-over-year, according to data compiled by Bloomberg. The diminished supply has helped munis outperform the broader bond market in 2021.

Return Option

The House bill also creates a pathway for "well-off" entities to give back aid, according to Johnson's office. Under the bill, any returned money should go toward reducing the federal deficit.

That provision may appeal to Republican lawmakers like Florida Senator Rick Scott, who said he supported the legislation. He has called for governments to return aid that goes beyond pandemic-related expenses.

A variety of state and local-government lobbying groups have endorsed this infrastructure bill.

The National Association of Counties estimates it would allow counties to use more than $27 billion for new transportation and infrastructure projects.

"Counties are interested in that extra flexibility," said Eryn Hurley, the group's deputy director of government affairs.

Bloomberg CityLab

By Amanda Albright

November 4, 2021, 10:43 AM PDT

What's New In Retirement Facility Defaults.

The biggest source of municipal bond defaults for at least the last 40years have been bonds issued for retirement and congregate care facilities. Some 737 bond issues totaling $11.7 billion dollars have been involved in defaults,. Unique among such defaults is that many facilities have defaulted , been sold and defaulted again. Most of these defaults are due to dishonest developers, corrupt bond underwriters or just plain incompetence in managing an extremely demanding business. Nevertheless, new bond offerings appear monthly since there are few better places to obtain funding for what is by definition a high risk business with limitless demand and much of the business is funded by a single payer, Medicare.

Getting an underwriter and bond issuing authority approval for a new facility is relatively easy as long as you know you will have to pay an interest rate 50% or more than investment grade paper. Too many issues have to achieve a trouble free startup to avoid default. Since this is unlikely, the projects usually end up in the hands of a successor manager, but with a much smaller debt service cost. Unfortunately, the successor owner is frequently operating a multiple of projects and will co-mingle funds from different bond issues if not outright steal them.

Covid-19 promises a surge of new defaults and two new and one old developments promise a rich harvest of more default abuses.. A new bond issuing authority has arisen in Texas which allows a private non-profit entity authority to issue tax free municipal bonds. The authority is described as follows in a recent offering statement – "Woodloch Health Facilities Development Corporation is a nonprofit corporation created and existing under the laws of the State and is authorized to issue the Bonds pursuant Chapter 221 of the Texas Health and Safety Code, as amended." There is no identification as to who formed Woodloch nor is there any proof that such an entity received authorization under this law. Perhaps none is needed? We also note that no such named corporation was incorporated in the state of Texas. This should be mandatory as a means for stopping just anyone from abusing this privilege. We make an issue of who authorized Woodloch because it has so far authorized 4 bond issues since 2016. Two are in default, one is in distress and the third is unknown since no documentation has been filed with the MSRB. Details for the three known issues are described in this issue. We suspect Piper Jaffray may have had a hand in forming Woodloch; since they are the underwriter on the two defaulted issues.

My second "What's New" topic is that there is a rising star in the retirement community bad actors category named Mark Bouldin. He is a Florida based retirement community developer who has ventured into Texas via the two Woodloch defaulted issues. We guess we will be hearing more about him given that his difficulties pre-date Covid-19.

My third "What's New" observation is that some of the defaults occurring today seem to follow a confusing sequence of events with little clarification as to objective. This is leading to many bondholders selling out at 50 to 65 cents on the dollar. The question that arises should always be, who would buy such bonds when events are so unclear. The answer is usually, the party who has a major stake and knows what he intends to do once he has bought out all the weak players. Meanwhile, the lack of information only makes the buyout of bonds cheaper. This strategy is currently most apparent in the Proton Center bond issues, as discussed in our October issue, but has been standard fare for years in the retirement and nursing home arena.

It's time the MSRB got some backbone.

Forbes

by Richard Lehmann

Nov 6, 2021

Every Government Needs a Plan for the Worst-Case Cyber Scenario.

Relying on a one-off cybersecurity plan is no viable way for governments to defend their systems. Leadership changes, budgets and new technologies must be continually considered for long term success.

A colleague asked me last week if I could chat about refreshing her government organization's cybersecurity strategic plan, and the very next day the California Department of Technology and its Office of Information Security published "CAL-SECURE," described as the state's "multi-year information security maturity roadmap." Talk about coincidence: It's an issue that couldn't be more timely and worthy of discussion both inside the cybersecurity community and throughout government leadership.

The CAL-SECURE plan is one of the best I've seen, and when I asked California's chief information security officer, Vitaliy Panych, about it, he told me that "planning a roadmap that is applicable to all public-sector entities requires a community-driven approach where input from across the public and private sector is considered." The CAL-SECURE road map, he added, "consists of multiple people, process, and technology initiatives to continuously increase privacy and security for the benefit of all residents of California."

I have written or co-written several cybersecurity strategic plans over the years, and I think California's approach is right on target. As I thought about how I could help my CISO colleague with her strategic-plan refresh, I focused on some of the common mistakes and what I believe are the critical and essential elements of an exceptional plan.

A proper cybersecurity plan should be viewed through the lens of CAL-SECURE — as a road map that sets the stage for the future, and in government that means preparing for the people, processes and technology resources to carry out the mission. It also means calibrating with the CIO's goals to ensure that the cybersecurity road map is in alignment with the jurisdiction's digital transformation initiatives and the delivery of citizen-facing services.

I found a number of state government cybersecurity strategic plans online and also discovered the National Governors Association's "Meet the Threat" memo on state cybersecurity strategies that, while a few years old, uncovered some incredibly consistent data across 18 state strategic plans. The NGA's Resource Center for State Cybersecurity is another goldmine for tools and recommendations to develop cybersecurity policies and practices.

One of the significant differences between private- and public-sector strategic planning is the dynamic nature of executive branch leadership over the course of election cycles. There is almost certain to be an election between the time a plan is published and the plan's time horizon, and priorities are often dramatically adjusted between administrations. A solid strategic plan helps keep long-term cybersecurity initiatives in focus and on target.

"It is especially important for government organizations to plan ahead because of the way budgets work," said Mike Lettman, who served as state CISO in both Arizona and Wisconsin. "Government entities are often asked to determine their risk and recommend a technology to fill it, but the funding doesn't happen until a year later and implementation until a year after that. Because technology innovation happens so quickly compared to the pace of government, both the risk and the technology will have undoubtedly changed by the time you get the funding or are ready to implement the technology."

One of my soapbox issues that I believe should be mandatory in any cybersecurity strategic plan is how the organization is planning for the growing and potentially calamitous cybersecurity workforce deficiencies. The just-released (ISC)2 Cybersecurity Workforce Study highlights that in the United States alone there are more than 350,000 vacancies in the cybersecurity workforce. Security executives everywhere should take the opportunity to read through this report, because while it highlights the challenges we face in hiring qualified people it also suggests a number of interesting and innovative approaches to address the development and retention of existing staff and provides key takeaways for managers seeking to hire people into cybersecurity roles.

While there are a number of fundamental components in a good strategic plan, I think there are three critical ones that hold the keys to success:

- Make success measures actionable and quantitative. A strategic plan is not the time to be solely aspirational. Putting stakes in the ground with measurable goals that clearly identify success and will survive the test of time encourages organizations to take ownership and be accountable.
- Get input from every organization with a role in the success of the strategic plan. Nothing sours a plan quicker and creates more animosity than being held accountable to a plan you didn't have a role in developing.
- A strategic plan is the beginning, not the end. Far too many state government cybersecurity plans are simply check-in-the-box exercises and begin to gather dust the moment they are signed. A strategic plan should be viewed as a living document, and because the cybersecurity threat and vulnerability environment change so rapidly, it should be reviewed at least annually to make sure the things you planned for last year are still valid. A strategic plan that hasn't been updated in two or three years is almost certainly worthless.

"Updated strategic plans were always vital to our enterprise success," said Dan Lohrmann, former chief technology officer and chief security officer for the state of Michigan. "Articulating a clear vision as well as an actionable road map to delivering expected results meant that everyone stayed on the same page from the governor's office all the way to the frontline workers. Strategic plans guide enterprise priorities, funding, project initiatives, resource gaps and much more."

Dan has it right: Cybersecurity has become a fundamental organizational component of all government organizations, and solid strategic planning is the least we can do for the citizens who support us.

Governing

November 04, 2021 • Mark Weatherford

[S&P: Cyber Risk In A New Era: U.S. Utilities Are Cyber Targets And Need To Plan Accordingly]()

Key Takeaways

- S&P Global Ratings evaluates cyber security risks at U.S. utilities in our Operational and Management Assessment and as a component of environmental, social, and governance risks.
- Given that water and sewer services are critical to health and safety as well as the economy, the sector is particularly attractive to bad actors and cyber attacks could be devastating if not properly managed.
- Many U.S. utilities have historically prioritized the maintenance of their physical assets over their data-related systems, but the allocation of resources will need to be rebalanced to fully mitigate cyber risk.
- Failure to implement the most basic standards of cyber security indicates potential credit vulnerabilities, which can result in a lower rating given that a cyber incident can cause financial, legal, and reputational risk and even result in loss of life.

[Continue reading.]()

3 Nov, 2021

Voters Weigh $27 Billion of Bonds on Ballots Across U.S.

The amount of borrowing seeking voter approval is the lowest since 2017, according to IHS Markit data.

Voters across the U.S. are set to decide on an estimated $27 billion worth of bond measures during Tuesday's elections to finance municipal improvements ranging from school repairs to road fixes.

The amount is about half of what voters faced during last year's presidential election, even though some local governments scrapped borrowing plans at that time amid pandemic uncertainty. This year's total is the lowest since 2017, and slightly below average over the last decade, according to preliminary data from IHS Markit.

"There are probably more ballot measures in years where the economy is not only growing, but when there is also a positive landscape for passage," said Tom Kozlik, head of municipal research and analytics at Hilltop Securities Inc.

State and local government payrolls still haven't recovered to pre-pandemic levels despite an influx of federal stimulus money. That cautious fiscal approach may be contributing to deflated borrowing on ballots this year, much like the aftermath of the Great Recession, when planners were reluctant to add debt to balance sheets amid layoffs intended to balance budgets, Kozlik said.

Measures that pass will pump bonds into the $4 trillion municipal market that's recently been plagued by scarcity. Governments have sold about $386 billion of debt year-to-date in about 8,500 deals, a roughly 4.3% drop from the same period last year, according to data compiled by Bloomberg.

The biggest measure up for a vote this year is a $1.2 billion bond to fund construction and renovation of schools in Fort Worth Independent School District in Texas, the sixth-biggest in the state. The measure is part of a package of bond proposals totaling $1.49 billion. Other portions would be used for projects like stadium construction and auditorium upgrades.

Among the 10 largest bond measures, about half are for funding school improvements. Texas is proposing the most bonds, with about $18.6 billion of debt up for a vote, followed by Virginia and Colorado, according to IHS Markit's preliminary tally.

Virginia's largest issue up for referendum is a $567.5 million flood protection bond in Virginia Beach that would use proceeds to fund mitigation measures like barriers, drainage improvements and pump stations. If passed, residents would see real estate taxes increase between 4.3 cents and 6.4 cents per $100 of a home's assessed value. For the median home owner, that would mean paying an additional $115 to $171 annually, according to the the city's website.

In Texas, voters will decide on more than $8 billion of bonds for utility and hospital districts. Some of those measures, if approved, would grant districts the authority to issue bonds up to a given amount, but wouldn't obligate them to do so.

Bloomberg CityLab

By Nic Querolo

November 1, 2021, 11:01 AM PDT

— With assistance by Danielle Moran

[Voters Pass at Least $15 Billion of Munis, Majority of Proposals.]

- **About $27 billion of bonds were up for approval nationwide**
- **Propositions totaled lowest amount since 2017: IHS Markit data**

U.S. voters are slated to approve at least $14.9 billion of local-government debt sales on ballots this election, more than half the amount proposed nationwide, according to preliminary results after Tuesday's polling.

All in all, voters were asked to decide on about $27 billion of municipal bonds, the lowest tally since 2017, according to data compiled by IHS Markit. The largest measures up for vote were set to fund work ranging from school construction to flood-prevention measures in Virginia Beach.

Continue reading.

Bloomberg Markets

By Nic Querolo and Joseph Mysak Jr

November 3, 2021, 6:30 AM PDT Updated on November 3, 2021, 12:20 PM PDT

[U.S. Voters Passed at Least 65% of State and Local Bond Measures.]

- **Approved bonds to finance infrastructure improvements**
- **$1.2B benchmarked for construction of schools in Texas**

Voters in the U.S. on Tuesday approved at least 65% of the $28.7 billion in municipal bonds they were asked to decide, according to IHS Markit.

The $18.7 billion of approved borrowing will finance everything from road improvements to sewer lines, new schools, public transportation, stadiums and swimming pools. At least $4.8 billion in bonds were rejected by voters, while results on another $5 billion or so are still pending, according to IHS Markit.

The largest issue on the ballot anywhere Tuesday was a $1.2 billion school bond in Fort Worth, Texas. The measure, Proposition A, was winning by just 42 votes, according unofficial county election results. The measure was part of a package of bond proposals totaling $1.49 billion. The other portions, for projects like stadium construction and auditorium upgrades, were defeated, according to HIS Markit.

The $28.7 billion on ballots was well below the $45 billion voters faced during last year's presidential election, even though some local governments scrapped borrowing plans at that time amid pandemic uncertainty. This year's total is the lowest since 2017, and slightly below average over the last decade, according to IHS Markit.

Bloomberg Politics

By Sri Taylor and Joseph Mysak Jr

November 5, 2021, 12:36 PM PDT

— With assistance by Nic Querolo

Does Municipal ESG Make Sense?

Municipal bonds underscore the weaknesses of ESG investing.

The rise of Environmental, Social, and Governance (ESG) investing in corporate securities has reached the municipal-bond markets. But recent experience shows that incorporating ESG factors into municipal investing can be a convoluted, quixotic effort.

While ESG encompasses a wide range of factors, it is the "E" that gets the most attention in the municipal bond market, with climate change being the major concern. When thinking about the role of climate change in municipal finance, we can imagine two issues: (1) Does climate change increase the risk of a municipal-bond default for specific issuers?; and (2) can investors choose bonds that finance projects that provide the largest reductions in greenhouse-gas emissions? Let's consider these two questions in turn.

Climate Change and Default Risk

Unlike corporate equities, municipal bonds offer little financial upside related to global warming. While an equity investor may achieve enormous returns by purchasing shares in a company that invents new green technologies, the best-case scenario for a municipal-bond buyer is the return of principal at par along with interest payments that rarely exceed 5 percent annually.

Continue reading.

NATIONAL REVIEW

By MARC JOFFE

November 2, 2021

Muni Bond Provisions Likely Dead in Democrats' Spending Package.

A last-ditch effort to salvage tax-exempt advance refunding and other proposals appears to have come up short.

It's unlikely that a municipal bond refinancing tool and other state and local public finance provisions will make it into the Democratic spending package taking shape on Capitol Hill, according to the office of a lawmaker who is a key advocate for the proposals.

A spokesperson for U.S. Rep. Dutch Ruppersberger, a Maryland Democrat who co-chairs the municipal finance caucus, said by email Tuesday morning that the congressman "made a final appeal" to House Speaker Nancy Pelosi's office to include the finance provisions—which included the revival of tax-exempt advance refunding—in the bill. But it appears to have been unsuccessful.

“We’ve put up a good fight and are disappointed they will not likely make the cut but understand that compromises must be made as we work toward a bill that can be passed and signed into law,” said Jaime Lennon, Ruppersberger’s director of communications.

The roughly $1.75 trillion spending bill and a $1.2 trillion infrastructure bill that is also pending in the House “are still ultimately good for states and counties,” Lennon added. “We remain optimistic that Congressman Ruppersberger’s advance refunding and related bills can be absorbed into future legislative packages as they are bipartisan, popular and enjoy support from committee leadership.”

When Route Fifty asked Ruppersberger at the Capitol on Monday night about the outlook for the provisions, he referred to how finalizing the spending bill had turned into a complex balancing act among Democrats—which has bogged down legislative progress.

Democrats are seeking to fit in a wide range of programs related to the environment, health care, housing, education and other areas, while containing costs to satisfy moderate senators.

“Appropriations is about priorities,” Ruppersberger said.

“We’re going to come up with other strategies,” he added, referring to the muni bond provisions. “We’re still going to stay on top of it, because it’s needed and everybody in leadership understands that. But right now, we got to get out of this situation we’re in.”

Tax-exempt advance refunding was a tool states and localities previously used to refinance and restructure debt to achieve cost savings. But the 2017 Republican tax overhaul killed the tax exemption for interest investors earned on the bonds, halting their issuance.

State and local government groups and their advocates in Congress have pushed to restore tax exempt advance refunding in the years since. The infrastructure legislation and the spending bill were seen as a good opportunity to do that, given municipal debt is commonly used to finance infrastructure projects.

A provision to bring back advance refunding was included in legislation the House Ways and Means Committee marked up in September. But it was left out of the framework that the Biden administration rolled out last week.

When it comes to federal budget legislation, the tax break for the bonds shows up as a cost in the form of sacrificed tax revenue, complicating the case for restoring advance refunding as Democrats tried to thin down their bill.

Congress’ Joint Committee on Taxation, around the time the 2017 tax bill passed, projected that the repeal of the advance refunding tax exemption would increase federal revenues by $17.4 billion between fiscal years 2018 and 2027.

Looking to the state and local level, the Government Finance Officers Association estimates that between 2007 and 2017 advance refunding transactions nationwide saved tax- and rate-payers over $18 billion.

Language designed to increase the access small municipal borrowers have to capital, through “bank qualified debt,” which is generally considered lower cost than turning to the traditional bond market is also unlikely to make it into the spending legislation. As is a program to revive “direct-pay” type bonds—similar to the Build America Bonds launched around the time of the Great Recession.

ROUTE FIFTY

by BILL LUCIA

NOVEMBER 2, 2021

Public Finance and Racism.

Abstract

Mainstream public finance research has largely ignored racial issues. This paper calls on public finance economists to explore racial issues more extensively. The obvious reasons are to understand the effects of inequitable and inefficient policies, help develop remedies, and ensure that public finance is addressing the issues most salient to society. The less obvious reason is that public finance has tools and frameworks that can provide useful insights into the economics of racism. As economists search for issues that are both amenable to analysis and important for society, the pervasive effects of racism stand out in both regards.

Download the full report.

The Brookings Institution

by William G. Gale

November 4, 2021

Muni Investors Put 'Buying Shoes' Back on After 3-Month Slide.

- **State, local debt rebounds with biggest weekly gain since July**
- **Calm in Treasuries is helping, Neuberger Berman's Iselin says**

The municipal-bond market is seeing a bullish vibe re-emerge after the longest streak of monthly losses since 2016 put a dent in what has otherwise been a robust year for the securities.

The $4 trillion market for state and local debt is coming off its strongest week since July, according to Bloomberg indexes. What's more, the flood of cash into muni mutual funds, a key driver of the debt's outperformance in 2021, has picked up again.

Much of the credit for the rosier backdrop goes to Treasuries, where volatility has ebbed after Federal Reserve Chair Jerome Powell said last week that officials can be patient on raising interest rates.

Investors are starting to put their "buying shoes" back on after lacking conviction to dive in from August through October, said James Iselin at Neuberger Berman, which manages over $12 billion in munis.

"It definitely feels like a bit of a better tone, with Treasuries calming down at least a little bit in the short-term," said Iselin, the firm's head of municipal fixed income. "That's probably given people a bit more confidence to start buying.”

Even with the slide of the past three months, munis are still beating other fixed-income asset classes in 2021. They’ve earned about 1% this year, while the broader U.S. bond market has lost about 1%, according to Bloomberg index data.

Cash has poured in partly as lawmakers in Washington have been debating lifting levies on higher earners. That’s one big risk hanging over the market — that Democrats’ efforts to introduce tax increases on wealthy Americans stall out, squelching demand for tax-exempt debt.

More Cash

For now, stability across debt markets has been enough to revive investor appetite. Last week’s muni rebound coincided with increased retail interest. Investors added about $603 million to muni funds during the week ended Wednesday, the most since the week through Sept. 22, according to Refinitiv Lipper US Fund Flows data.

They’re buying in as tax-free yields remain relatively high compared with recent months. The rate on the 10-year AAA municipal benchmark is around 1.12%, compared with the average of 0.94% for this year. It was as low as 0.66% in February.

Iselin said the resurgent demand has boosted bonds sold by large issuers, like the state of Illinois, which had seen credit spreads widen in the past few months. An index of 10-year Illinois general-obligation bonds yielded about 71 basis points more than top-rated debt on Nov. 5, down from around 91 in late October.

Tobacco bonds are also benefiting, an encouraging sign for high-yield munis as the securities are seen as a bellwether for the junk sector because they’re relatively easy to trade.

High-yield tobacco debt posted its best performance last week since November 2020, according to Bloomberg index data. The price on Buckeye Tobacco Settlement Financing Authority debt due in 2055, the index’s biggest holding, have inched back up in the last month.

For Barclays Plc strategists led by Mikhail Foux, it’s adding up to a solid closing stretch for this year.

“We will likely end 2021 on a strong note,” they said in a Nov. 5 note.

Bloomberg Markets

By Amanda Albright

November 8, 2021

[Texas Gun Law Isn’t Hurting One of Its Largest Bond Issuers, CFO Says.]()

- **DFW International Airport easily sold bonds last month**
- **A change in underwriters had no impact on pricing, CFO says**

Dallas Fort Worth International Airport faced a potential bind ahead of its recent $1.2 billion bond sale: a new Texas law designed to stop banks from straying into political issues had forced three underwriters to bow out of part of the offering.

But the airport, one of the largest issuers of municipal bonds in Texas, ended up swapping in two other banks. There didn't appear to be any impact on the pricing when it sold the securities late last month, said Christopher Poinsatte, the airport's chief financial officer, in an interview.

The airport's ability to sell bonds even after a last-minute change in underwriters underscores how demand for municipal bonds remains intense, even with recent signs that investor interest might be cooling a bit. With money managers still clamoring for the bonds, dozens of banks are eager to fill the void left by any banks affected by the state law.

The new Texas law bars state and local governments from doing business with banks that have limited their ties to the firearms industry. A separate measure restricts state contracts with firms that have shunned fossil-fuel producers, a major industry in Texas.

The laws come after activists have for years pressed banks to stop lending to gun makers as well as drillers and transporters of fossil fuels. In some cases, banks have listened to that pressure.

Now those banks are facing pushback from Texas. Citigroup Inc., JPMorgan Chase & Co., Bank of America Corp. and Goldman Sachs Group Inc. have faced a hit to their public finance business in Texas since legislation went into effect on Sept. 1.

Citigroup, JPMorgan, and Bank of America were expected to underwrite the roughly $700 million taxable portion of the airport's offering, but were replaced with Barclays Plc and Morgan Stanley, Poinsatte said. The taxable securities received orders equal to more than six times the amount for sale.

"We were very pleased," Poinsatte said. "Barclays and Morgan Stanley stepped in, they really only had about three weeks to ramp it up. They did a great job with it."

Overall, the deal received more than $7 billion of orders from 155 unique investors, he said. The bonds were sold to refinance debt and fund construction projects.

One place where state and local governments could see difficulty with the new laws is with finding firms to provide them with banking services, Poinsatte said, such as making deposits and getting credit cards.

"That's probably the biggest issue," Poinsatte said. "There are a lot of other underwriters that we can go to, banking relationships will be a harder problem to solve."

The airport is about two years into a 10-year contract with JPMorgan that was finalized before the laws went into effect on Sept. 1. The legislation only impacts new contracts, so the airport's agreement isn't affected. Poinsatte called that "fortunate" but other government entities going through the requisition process for banking services could see challenges with some large players unable to participate.

"I think the area that could impact Texas municipalities more than any other is the banking relationship," Poinsatte said.

Dallas Fort Worth Airport is one of the largest issuers of municipal bonds in Texas and it's in the middle of a borrowing spree, with plans to sell $4.2 billion of new money bonds to finance capital projects through the 2027 fiscal year, according to a presentation to investors dated Oct 7. That doesn't include refinancings.

As the three biggest U.S. banks have faced pressure in Texas, other firms including UBS AG, Wells Fargo & Co. and smaller players like Hilltop Securities have stepped into the breach.

Bloomberg Markets

By Danielle Moran

November 3, 2021, 9:00 AM PDT

— With assistance by Amanda Albright

[Despite Volatility, Munis Are Still a Good Deal.]

There are some market segments that are just boring. And one of them happens to be the municipal bond market. Historically, munis have been a 'steady-as-she-goes' investment. It is perhaps the ultimate buy and hold for high-net-worth individuals, institutional investors, and insurance funds. Typically, munis are as exciting as watching paint dry. But lately, that steadfastness has been put to the test.

Munis have suffered from some high bouts of volatility.

Several factors have helped munis become a pretty sector since the end of the summer. While that may dampen some of munis' appeal, the reality is bonds are still a good deal and may even be a better buy for the future ahead. In the end, don't let some increased volatility persuade you from moving out of the municipal bond sector.

Continue reading.

municipalbonds.com

by Aaron Levitt

Nov 03, 2021

TAX - ILLINOIS

Guns Save Life, Inc. v. Ali

Supreme Court of Illinois - October 21, 2021 - N.E.3d - 2021 IL 126014 - 2021 WL 4898891

Gun rights organization, firearm supply retailer, and individual resident of county brought action against county and related defendants for declaratory judgment and injunctive relief challenging county ordinances imposing taxes on sale of firearms and certain types of ammunition.

Following order dismissing retailer and resident's challenges to firearms tax, the Circuit Court denied plaintiffs' motion for summary judgment and granted summary judgment in favor of defendants. Plaintiffs appealed, and Appellate Court affirmed. The Supreme Court allowed leave to appeal.

The Supreme Court held that tax ordinances were unconstitutional under the uniformity clause.

Relationship between tax classifications in county ordinances imposing taxes on sale of firearms and certain types of ammunition and use of tax proceeds was not sufficiently tied to the stated objective of ameliorating costs of gun violence, and thus tax ordinances were unconstitutional under the uniformity clause; revenue generated from the firearm taxes was not directed to any fund or program specifically related to curbing the cost of gun violence, and nothing in the ordinances indicated that the proceeds generated from the ammunition tax must be specifically directed to initiatives aimed at reducing gun violence.

TAX - GEORGIA

Executive Limousine Transportation, Inc. v. Curry

Court of Appeals of Georgia - October 26, 2021 - S.E.2d - 2021 WL 4979102

Licensed limousine carrier filed action challenging the decision of the commissioner of the department of revenue denying carrier's application for a refund of previously remitted state and local-option sales taxes as well as a declaration that owner would owe no such taxes in the future.

The Tax Tribunal granted summary judgment in favor of commissioner. Carrier appealed. The Superior Court affirmed. Application for discretionary review was granted.

The Court of Appeals, as a matter of first impression, held that Georgia Limousine Carrier Act did not prohibit local governments from imposing state or local-option sales taxes on for-hire limousine carriers.

Georgia Limousine Carrier Act, which barred local governments from imposing excise, license, and occupation taxes on limousine carriers, did not prohibit local governments from imposing state or local-option sales taxes on for-hire limousine carriers and their customers for the rental of limousines.

Citi Takes Key Step to Restart Texas Muni Business.

- **Bank said to verify its compliance with new GOP gun law**
- **Citi is said to have sent letter to attorney general's office**

Citigroup Inc. is said to have taken a key step to restart its public finance business in Texas by submitting a letter verifying its compliance with a new state law seeking to punish banks that have taken on restrictive gun policies.

The bank sent a so-called standing letter to the Texas Attorney General's office in October, according to a person familiar with the matter. It is still in conversations with state officials and is not imminently reviving underwriting there, said the person, who declined to be identified because the exchanges are not public.

Such a letter is a requirement for banks if they want to do business with Texas and its local governments after the GOP legislation went into effect Sept. 1.

In order for bond underwriters to work on deals, Assistant Attorney General Leslie Brock said in a Sept. 22 letter to bond counsels that it would require companies to submit a letter verifying that they do not have a practice or policy that "discriminates" against a firearm entity or trade association.

Since the law went into effect, Citigroup hasn't underwritten any Texas municipal-bond sales. The bank has previously said it believes it can comply with the law but has temporarily pulled back as it works through the certification process. Bank of America Corp. and JPMorgan Chase & Co. have also seen their Texas muni business halt after the law.

Law firm Greenberg Traurig, which represents Citigroup, sent a Sept. 3 letter to Attorney General Ken Paxton, a Republican, and Brock, chief of the office's public finance division, to detail the bank's gun policies and explain why it complied with the law. It also warned that the law may violate the First Amendment.

"We are also concerned that Senate Bill 19 may impair First Amendment rights of freedom of speech, assembly, and association," Dale Wainwright, co-chair of Greenberg Traurig's national appeals and legal issues group and chair of the Texas appellate practice, wrote in the letter. "Barring engagements or refusing to approve a bond issuance when a company's contract verification is compliant with the statute may raise such concern."

The letter also touted the bank's history in Texas and its work on municipal-bond deals. Wainwright said the law's "potential repercussions are imminent and substantial." Bloomberg News received the letter on Thursday through a public records request.

The Texas Attorney General's office did not have an immediate comment.

'Unqualified Verification'

The law targeted banks like Citigroup, which in 2018 said it would prohibit retailers that are customers of the bank from offering bump stocks or selling guns to people who haven't passed a background check or are younger than 21.

As part of SB19, companies have to provide written verification that they comply with the terms of the law. In its Sept. 3 letter, Citigroup proposed language that it could include in contracts verifying its compliance. The bank said its policy doesn't discriminate based on a business's status as a firearm entity, and instead discourages certain transactions based on "traditional business reasons."

However in her Sept. 22 letter to all bond counsel, Brock of the attorney general's office said banks should provide a letter making an "unqualified verification" that they comply and that they can't use language detailing what the company understands the law to require.

Citigroup noted in its September correspondence to the AG's office that it has been the leading bond underwriter in the state for the past three years and led the financing of $16.5 billion of bonds funding critical infrastructure from 2018 to 2020.

An appendix included with Wainwright's letter entitled "Citi's Positive Impact In Texas" noted the bank has 8,500 employees in Texas and that it made nearly $4 million in charitable and foundation gifts in the state in 2020.

"The many governmental entities with whom Citigroup is pleased to engage in municipal finance and bond business should not be precluded or otherwise discouraged from continuing or initiating a mutually-beneficial relationship," the September letter says.

Bloomberg Markets

By Amanda Albright

November 4, 2021, 1:44 PM PDT

Citi Tells Texas It Doesn’t Discriminate Against Gun Companies.

Citigroup Inc.’s public finance heads told the Texas Attorney General’s office in mid-October that they believe the bank could comply with a new Republican-backed law seeking to punish Wall Street banks that have enacted restrictive gun policies.

The bank sent a letter to the office confirming it does not have a “practice, policy, guidance, or directive” that discriminates against a firearm entity or trade association, according to the letter obtained by Bloomberg through a public records request. Such a letter is a requirement for banks if they want to underwrite bonds sold by Texas and its local governments after the legislation went into effect Sept. 1.

The letter was signed by Daniel Tomson and Paul Creedon, co-heads of Citigroup’s public finance department. A spokesperson for the bank declined to comment.

“The Office of the Attorney General of Texas may rely on this letter in its review and approval of public securities under Texas law,” the letter says. “Should a change occur that renders this letter ineffective, Citigroup, Inc. will notify the Public Finance Division promptly.”

Bloomberg Markets

By Amanda Albright

November 5, 2021, 10:10 AM PDT

Newly Flush With Cash, Retirement Funds Struggle to Find Appealing Investments.

Long-underfunded pension systems share bittersweet challenge with other investors that see hazards in many asset classes

State and local pension funds are reaping a historic windfall thanks to billions of dollars in record market gains and surplus tax revenues. Now they need to decide what to do with the money.

It is a bittersweet dilemma that the chronically underfunded retirement systems share with many household and institutional investors around the country. Just when they finally have cash to play around with, every investment opportunity seems perilous.

Leave the money in stocks, and a pension fund becomes more vulnerable to the type of losses suffered in the 2008-09 financial crisis. Move the money into bonds for safekeeping, and the fund risks losing even minimal gains to inflation. Seek out alternative assets to help diversify and drive up returns, and the fund enters a crowded competition for private equity and real estate where it can take years for money to be put to work.

Continue reading.

The Wall Street Journal

By Heather Gillers

Nov. 7, 2021 9:00 am ET

S&P: Texas Winter Storm Brought Downgrades And Spurred Response Among Public Power And Electric Cooperative Utilities

Key Takeaways

- Last February's storm disruptions of the Texas electricity and gas markets resulted in a significant number of negative rating actions for electric cooperatives and public power utilities.
- Credit deterioration largely stemmed from utilities' having to procure electricity or natural gas in significantly higher-than-usual quantities at extremely elevated prices for almost a week, which led to financial challenges.
- Despite legislative approval allowing securitization of "extraordinary costs" for wholesale purchases, and new Public Utility Commission rules requiring weatherization, uncertainty remains as to additional market reforms that will shield utilities and their customers from recurrences.
- Utilities and the regulator have yet to demonstrate the effectiveness of market reforms, including winterization measures.

Continue reading.

MSRB Reviews Initiatives under Strategic Plan: Cadwalader

At its quarterly Board of Directors meeting, the MSRB reviewed initiatives under the strategic plan for the municipal securities market (see previous coverage here).

The MSRB considered updates on:

- outreach to ensure municipal securities advisor principals are qualified with the Series 54 exam by November 30, 2021;
- the MSRB request for public comment on amendments to MSRB Rule G-27 ("Supervision");
- implementation of new MSRB Form G-32 for filing primary market data;
- the Electronic Municipal Market Access website's redesign; and
- environmental, social and governance considerations in the municipal market.

Cadwalader Wickersham & Taft LLP

October 29 2021

Fitch: Hurricane Ida Further Stalls Tepid Job Recovery in Louisiana

Fitch Ratings-New York-02 November 2021: Louisiana's tepid job recovery took another step back last month amid a stagnant September for broader national employment recovery, according to Fitch Ratings in its latest State Employment Tracker.

Its recovery numbers already well behind most other states, Louisiana's job recovery numbers fell by 10.4% month over month due to Hurricane Ida, a Category 4 storm that made landfall in late-August. 'Louisiana's recovery prior to Ida was already a slow 49% of pre-pandemic jobs prior to Ida with roughly 80% of job losses emanating from New Orleans, which bore the brunt of the storm and exacerbated an already bleak picture for the state,' said Senior Director Olu Sonola. However, Louisiana's September declines are largely temporary. High frequency Google mobility data suggests that New Orleans' recovery from Ida improved rapidly in subsequent weeks

Louisiana's performance belied a broader decline nationwide with national employment gains coming in at roughly 197,000 jobs added, a decrease from 366,000 in August and the lowest monthly employment gain since January 2021. Other states that saw declines, albeit more modest ones, were Idaho (5.5%) and Delaware (4.6%).

September had its bright spots with Oklahoma, Florida and Texas leading recoveries on a month-over-month basis increasing by 8%, 6.7% and 6.6% respectively. Texas and Florida are states to watch as they approach 100% recovery. As of September, Texas has recovered 92% of pandemic declines and Florida 84%.

Fitch's latest 'U.S. States Labor Markets Tracker' is available at www.fitchratings.com.

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Additional information is available on www.fitchratings.com

The Libor Transition: Protecting Consumers and Investors - SIFMA Statement

SUMMARY

SIFMA Statement for the Record submitted to the U.S. Senate Committee on Banking, Housing, and Urban Affairs on the November 2, 2021 Hearing titled: The Libor Transition: Protecting Consumers and Investors.

View the SIFMA Statement.

SIFMA Joint Letter to Senate Re Transition from LIBOR to Alternative Reference Rates.

SUMMARY

SIFMA in a joint letter with with other associations, provided comments to the United States Senate Committee on Banking, Housing, and Urban Affairs in support of federal legislation to address "tough legacy" contracts that currently reference LIBOR.

View the SIFMA Letter.

SIFMA signed with the following:

Structured Finance Association
Institute of International Bankers
Consumer Bankers Association
Bank Policy Institute
Commercial Real Estate Finance Council (CREFC)
U.S. Chamber of Commerce, Center for Capital Markets Competitiveness
Mortgage Bankers Association
Government Finance Officers Association
The Loan Syndications and Trading Association (LSTA)
The International Swaps and Derivatives Association (ISDA)
Student Loan Servicing Alliance
Housing Policy Council
The Financial Services Forum
Investment Company Institute
The Loan Syndications and Trading Association (LSTA)
The Real Estate Roundtable
American Bankers Association
The American Council of Life Insurers (ACLI)
National Association of Corporate Treasurers

Puerto Rico Oversight Board Files New Debt Plan.

The revised plan eliminates cuts to public-sector retiree benefits, but changes benefits for working teachers and judges

A federal board overseeing Puerto Rico's bankruptcy this week filed a new plan for restructuring the U.S. territory's debt that preserves pension benefits for retired public-sector employees, a point of contention that had threatened to derail the debt-restructuring deal.

Hearings on the revised plan are scheduled to start Monday in U.S. Bankruptcy Court in San Juan. Puerto Rico's debt adjustment would reduce the island's $33 billion in bonds and other debt to $7 billion in the largest-ever U.S. municipal bankruptcy case.

The oversight board and Puerto Rico's government had been at odds until last week on provisions in the restructuring plan.

The latest version of the plan is in line with a law enacted by the island's government last week. The oversight board and the island's government had been negotiating for weeks over the law, which authorizes the territory to raise new debt on the condition that it makes no cuts to retired government employees' pension benefits.

The new plan takes out cuts to retired workers' benefits that had been in a previous version of Puerto Rico's plan of adjustment.

At the same time, the amended plan keeps language from a previous version that freezes defined-benefit pension plans for working teachers and judges. Under the plan, these employees would get the defined-benefit pensions they have already earned from the government, but their subsequent pension benefits will be defined-contribution plans, meaning the employees will be setting aside money from their paychecks, according to a spokesman for the oversight board.

The amended plan also specifies that there will be no cost-of-living adjustments for judges starting Jan. 1, according to a Wednesday court filing by Natalie Jaresko, executive director of the oversight board.

Republicans Oppose Bill Aimed at Banning Certain Corporate Bankruptcy Strategies November 3, 2021
The bill signed into law last week by Gov. Pedro Pierluisi allows the island to raise new debt needed to complete its restructuring.

Days before the legislation was enacted, the oversight board had asked the bankruptcy judge overseeing the case to delay the start of confirmation hearings, because it was at loggerheads with the legislature over the bill.

The oversight board had agreed to drop the cuts to retiree pension plans in September, but had other objections to the legislation. Last week, Judge Laura Taylor Swain, who is presiding over Puerto Rico's bankruptcy case, ordered the government and the board to enter into negotiations along with a court-appointed mediator. Last week, the oversight board announced that it had reached agreement with Puerto Rico's government over the new legislation.

The Wall Street Journal

By Soma Biswas

Updated Nov. 5, 2021

It's Long Overdue for Public Finance Scholars to Study Racism in the Tax Code.

In reckoning and renewed attention to issues of racial equity and justice. This long-overdue awakening led me to read extensively about racism and to think about interactions between race and tax policy. In a new paper, "Public finance and racism," I explore some of these links.

While I've studied tax policy for over 30 years, I'd not yet spent much time focusing on connections between race and tax issues that clearly exist.

Three observations, however, are abundantly clear. First, widespread and long-standing racial discrimination in the United States has had enormous, lasting, and deleterious economic effects on Black households. Second, tax policies and other government policies have contributed materially to this problem. Third, changes to the tax code, spending programs, or regulations can help ameliorate the effects of racism, but it is crucial to take into account the persistent effects of racism and the impact of past policies on Black households. Policies that some may view as race-blind may still cement the status quo and reinforce the ills of past and continuing racism.

Continue reading.

The Brookings Institution

by William G. Gale

November 4, 2021

Understanding Government Compensation and Payroll: GFOA Webinar

November 17, 18 & 19 | 2-4:45 p.m. ET

Member Price: $315.00
Non-member Price: $630.00

REGISTER

Puerto Rico Bankruptcy Tab Nears $1 Billion As Case Nears End.

- **Judge Swain begins confirmation hearings on debt plan**
- **Island seeking to cut $22 billion of bonds to $7.4 billion**

Puerto Rico is making its case in bankruptcy court for a plan to slash billions of dollars in debt, an expensive process that has so far racked up nearly $1 billion in legal and professional fees that island residents will pay.

Hurricanes, earthquakes, ousting a governor from office and the coronavirus pandemic have prolonged the commonwealth's bankruptcy to more than four years, adding to its costs and keeping the island under a cloud of default.

Continue reading.

Bloomberg Markets

By Michelle Kaske and Steven Church

November 8, 2021, 4:00 AM PST Updated on November 8, 2021, 8:29 AM PST

[Munis In Focus: Kazatsky (Radio)]

Eric Kazatsky, Senior Municipal Strategist for Bloomberg Intelligence, discusses the latest from the muni market. Hosted by Matt Miller and Sonali Basak.

[Play Episode]

Bloomberg Radio

November 5, 2021 — 9:18 AM PDT

[Chicago Police Pension Costs Seen Swelling With Proposed Law.]

- **Measure could add $3 billion to cost through 2055: Chicago CFO**
- **Legislation would boost cost-of-living hikes for younger cops**

Chicago's police pension obligations could increase by another $3 billion total through 2055 if the state of Illinois passes a proposed law designed to force the city to acknowledge its probable liabilities for annual pay increases to retirees.

Illinois State Senator Robert Martwick is preparing to push legislation in 2022 to change eligibility restrictions for cost of living adjustments for police retirees, saying current law understates the impact of those costs. The new law would bring rules for police in line with firefighters, and make the city's future costs more transparent, he said.

"It's making the unfunded liability reflect what the actual numbers are," Martwick said in an interview regarding the bill he's pressing for. "That will require the city to put in the necessary payment."

Chicago officials oppose the measure, calling it a burden. The extra liabilities added would be "unaffordable," said city Chief Financial Officer Jennie Huang Bennett.

"It is something that we are very concerned about and monitoring very closely," Bennett said in an interview regarding the legislation. The police cost of living adjustment "would be very expensive for the city."

The legislation would remove a requirement that police retirees be born before 1966 to be eligible for a 3% automatic annual increase in payments. Martwick says the state legislature repeatedly has made the required birth date later to include more retirees, meaning the actual costs for Chicago end up being higher than expected.

'Sizable' Shortfall

Underfunded pensions are a problem for city and state governments nationwide. But the shortfall is particularly acute in Chicago.

Overall, the city has about $33 billion of unfunded liabilities across four pension funds for police, firefighter and other municipal workers, after years of inadequate contributions. That's an amount nearly twice as large as the $16.7 billion fiscal 2022 budget that the Chicago City Council passed last month.

Moody's Investors Service rates the city's debt as junk largely because of what it calls an "extremely sizable unfunded pension liability." Chicago is trying to fix the problem by boosting contributions and finding new sources of revenue. It's also getting large amounts of federal aid.

S&P Global Ratings and Fitch Ratings, which give the city investment-grade ratings, have both recently changed their medium-term outlooks for the city's grades to "stable" from "negative" after Moody's took a similar step in July. They have all cited the easing of pandemic-related pressure.

Firefighters' Version

Earlier this year, Martwick successfully supported a similar measure for the city's firefighter pension plan, which was passed by the state legislature and then signed into law by Governor J.B. Pritzker in April.

In April Pritzker said he signed the legislation because it "gives all firefighters certainty and fair treatment." The pending sale of the James R. Thompson Center, which houses Illinois government offices, should return the state building to property tax rolls and generate $45 million annually that would be partly shunted toward added pension costs, he said in April.

Chicago Mayor Lori Lightfoot staunchly opposed the measure, saying the change would increase the city's liability by more than $800 million through 2055. In January 2021, Lightfoot called it an "irresponsible piece of legislation" that would "pass on a massive, unfunded mandate to the taxpayers of Chicago at a time when there are no extra funds to cover this new obligation."

The city's total retirement contributions for fiscal 2022 will increase to $2.3 billion across its four funds, a jump of about $460 million from 2021. To help pay for retirement costs, the city is currently reviewing bids for a casino in Chicago, and plans to use tax revenue from the gambling for police and fire pensions. The deadline for bids was last week, and Lightfoot's administration would like to recommend a finalist to the Illinois Gaming Board in the first quarter, the mayor said Friday in response to questions from a reporter.

Martwick said in early 2022 he will request a committee assignment for the proposed legislation that he originally introduced in February, as a first step before it potentially heads for a floor vote. If the Illinois General Assembly approves the legislation, it would head to the governor's desk for his signature.

The legislature is adjourned until January and would review assignments of committees for proposed bills closer to the return of session, John Patterson, a spokesman for Illinois Senate President Don Harmon, said in an email.

"We don't do analysis on bills that don't move, so we don't have a stance on this one," Jordan Abudayyeh, a spokeswoman for Pritzker, said in an email noting the bill does not have co-sponsors or a committee assignment.

The Illinois Municipal League, which represents towns all over the state, opposes the proposed bill because it would be a mandate that results in less money for other Chicago city services and operations, Brad Cole, the group's executive director, said in an email.

The city's pension burdens weren't created by Lightfoot and took decades to mount, Martwick said. Mayors historically have wanted to provide the benefits without putting the money in, he said.

"That's a bad equation," Martwick said.

Bloomberg Markets

By Shruti Singh

November 5, 2021, 8:47 AM PDT Updated on November 5, 2021, 1:47 PM PDT

Fortress Firm Plans to Sell $1 Billion of Debt for Florida Train.

- **Brightline has already sold $2.7 billion of tax-free bonds**
- **Service suspended because of pandemic set to resume Nov. 8**

Brightline Holdings, the Florida luxury rail company backed by Fortress Investment Group, wants to sell an additional $1 billion of tax-exempt private activity bonds primarily to finance its Miami to Orlando line.

The company, which has already sold $2.7 billion of debt for the $6 billion project, plans to seek formal authorization from a Florida agency needed to access the financing within a "couple weeks" and market the bonds shortly afterward, said Chief Executive Officer Michael Reininger by phone Thursday.

The issuance will be the last such financing for the line, he said.

The country's first new privately financed intercity passenger rail in a century, launched in 2018 along Florida's east coast, missed passenger and revenue forecasts even before the onset of the Covid-19 outbreak. But over recent months, the company has notched several wins to boost ridership, such as reaching an agreement with Walt Disney World Resort to develop a station on its property. Brightline is also working on commuter rail initiatives with Miami-Dade and Broward counties.

Fees from those commuter partnerships would be collateral for the new debt, Reininger said. The company also plans to allocate about $100 million from the sale's proceeds to cover the interest to bond holders through January 2023.

"We think it's going to be attractive for the bond market," Reininger said.

The train, which was suspended in March 2020 because of the pandemic, is set to resume service between Miami and West Palm Beach on Nov. 8. Construction on its Orlando expansion is expected to wrap up by the end of next year.

Municipal-bond investors have welcomed the developments. A bond due in 2049 traded Oct. 28 at an average yield of 6.1%, compared with a high of 7.75% in January, according to data compiled by Bloomberg.

Of the $1 billion in proceeds, $740 million would go to costs for the Miami to Orlando line and $20 million to preliminary work on extending the train to Tampa, Reininger said.

Bloomberg Markets

By Romy Varghese

November 4, 2021, 2:54 PM PDT

How the Failed Arena Bond Measure Shows Denver's True Priorities, According to Activists.

As the results started trickling in Tuesday night, election night in Denver, one ballot measure's numbers weren't looking good to Mayor Michael Hancock and his supporters.

It started to look like, for just the second time since 1982, Denver voters were going to reject issuing municipal bonds to pay for a city project the mayor had personally supported.

Early returns showed voters rejecting Referred Question 2E, which would have allowed the city to borrow $190 million in municipal bonds to build a new arena at the National Western Center in Elyria-Swansea and make renovations to another building on the site. It was one of five measures comprising a $450 million bond package dubbed RISE Denver.

Continue reading.

denverite.com

by Esteban L. Hernandez

Nov. 4, 2021

- **Ed. Note:** A technological meltdown prevented us from distributing last week's newsletter. Following the (literal) sacrifice of assorted farm animals, as well as the (literal) sacrifice of assorted IT folk, we're back in biz. We apologize for the (literal) hassle.
- Hawkins Advisory: Revisions to IRS Form 8038-CP and Instructions for Issuers of Tax Credit Bonds
- IRS Moves to Mandatory E-Filing of Forms for Direct Payment Bonds.
- MSRB Proposes Extension of Remote Inspection Relief: Cadwalader
- GASB Changes Name of Report to "Annual Comprehensive Financial Report"
- As US Cities Build Green Infrastructure, Here's One Way They're Paying For It.
- Flooding Could Leave Billions of US Municipal Debt Under Water.
- Cyber Risk In A New Era: Are Third-Party Vendors Unwitting Cyber Trojan Horses For U.S. Public Finance?
- Fitch: Cryptocurrency Poses Risks, Opportunities for US Public Finance
- And finally, It's A Goddamn Paddle! is brought to us this week by *In re Wright & Boester Conditional Use Application*, in which the Supreme Court of Vermont referred to a building (A Goddamn Boathouse!), "used to store canoes, kayaks, and related accoutrements." Related accoutrements, you say? Rather than compile last week's newsletter, we embarked on a comprehensive, historic review of the nautical canon, from Homer's *Odyssey* to Trimmer's *How to*

Avoid Huge Ships. Our preliminary conclusion is that this is indeed a novel usage. Well, other than Farragut's immortal, "Damn the accoutrements! Full speed ahead!"

EASEMENTS - ALASKA

Windel v. Matanuska-Susitna Borough

Supreme Court of Alaska - October 8, 2021 - P.3d - 2021 WL 4697717

Landowners sued borough, challenging the validity of easements that crossed their property to give access to neighboring residences.

The Superior Court dismissed most of the claims on res judicata grounds, granted borough's motions for summary judgment or judgment on the pleadings, and, following bench trial, entered judgment for borough on claim that borough violated landowners' due process rights by towing their truck from disputed roadway. Landowners appealed.

On rehearing, the Supreme Court held that:

- Privity requirement of res judicata was met;
- Borough could treat easement as one acquired by donation, rather than by dedication;
- Permit application did not establish that borough could not grant a construction permit to neighbor who was not an adjoining landowner to road;
- Borough's act in towing landowners' pickup truck from road did not violate landowners' due process rights; and
- Award of enhanced attorney's fees was an appropriate exercise of discretion.

Borough could treat easement as one acquired by donation, rather than by dedication, such that it could be acquired simply with borough manager's approval and no further procedure was necessary; acquisition by dedication and acquisition by donation were similarly described in the borough code and were not further defined, the donators' grant of a right of way in exchange for nominal consideration could be categorized as either or both, and the borough's interpretation of the undefined terms in its ordinance was a reasonable one consistent with the statutory grant of broad authority over planning and land use.

MUNICIPAL ORDINANCE - CALIFORNIA

Chevron U.S.A., Inc. v. County of Monterey

Court of Appeal, Sixth District, California - October 12, 2021 - Cal.Rptr.3d - 2021 WL 4743024 - 21 Cal. Daily Op. Serv. 10,548 - 2021 Daily Journal D.A.R. 10,699

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

The Superior Court entered judgment striking down the ordinances. County appealed.

The Court of Appeal held that state law governing oil and gas operational methods and practices preempted county ordinances.

County ordinances banning land uses in support of new oil and gas wells and land uses in support of wastewater injection in unincorporated areas of county were preempted as conflicting with Public Resources Code section giving the state oil and gas supervisor authority to supervise and permit oil and gas operational methods and practices throughout state, where Code permitted and encouraged drilling of new wells and use of wastewater injection and explicitly vested in the state the authority to permit that conduct, even though ordinances did not regulate many of the technical aspects of oil drilling operations addressed by voluminous state statutes and regulations.

LIABILITY - GEORGIA

Hall v. City of Blakely

Court of Appeals of Georgia - September 14, 2021 - S.E.2d - 2021 WL 4165738

Motorist brought action against city, alleging that she suffered injuries resulting from city fire department pick-up truck hitting her vehicle.

City moved for judgment on the pleadings. The Superior Court granted motion. Motorist appealed.

The Court of Appeals held that ante litem notice filed by motorist did not provide specific amount of monetary damages sought from city.

Ante litem notice filed by motorist, who had allegedly incurred injuries resulting from city fire department pick-up truck hitting her vehicle, did not provide specific amount of monetary damages sought from city, and thus notice failed to either strictly or substantially comply with provision of statute governing demand prerequisite to suit for injury that required such specific amount and dismissal of claim brought by motorist against city was warranted; while notice indicated that motorist would make claims for injuries and damages and provided minimum and maximum monetary amount sought, and motorist argued that if city had agreed to pay amount within such range, it would have been able to enforce settlement, seeking unknown number was too indefinite to constitute binding offer of settlement.

POLITICAL SUBDIVISIONS - NORTH CAROLINA

Southern Environmental Law Center v. North Carolina Railroad Company

Supreme Court of North Carolina - August 13, 2021 - 378 N.C. 202 - 2021-NCSC-84 - 861 S.E.2d 533

Requester brought action requesting the entry of an order declaring that the North Carolina Railroad Company was an agency of the State of North Carolina for purposes of the Public Records Act, declaring that the records requested from the railroad constituted public records, and ordering the railroad to make those records available for inspection.

After the case was designated a mandatory complex business case, the Superior Court granted railroad's motion for summary judgment, and requester appealed.

The Supreme Court held that as a matter of first impression, railroad was not an agency of North Carolina government or a subdivision of such an agency.

North Carolina Railroad Company was not an agency of North Carolina government or a subdivision of such an agency as defined by the Public Records Act, although the State was the Railroad's sole shareholder and the Railroad enjoyed a number of benefits due to its relationship with the State, where both the General Assembly and other governmental entities consistently treated the Railroad as a private corporation rather than a public agency or subdivision, the State lacked a sufficient degree of control over the day-to-day operations of the Railroad, and the Railroad consistently maintained its separate corporate identity and structure and made decisions independently of any directives that it might receive from governmental officials, and owned its own property and paid taxes to counties and the State.

PUBLIC UTILITIES - OHIO

[In re Application of FirstEnergy Advisors for Certification as a Competitive Retail Electric Service Power Broker and Aggregator]()

Supreme Court of Ohio - October 14, 2021 - N.E.3d - 2021 WL 4783198 - 2021-Ohio-3630

Public Utilities Commission of Ohio (PUCO) granted application to certify electric utility as a competitive retail electric service (CRES) provider to provide aggregator and brokerage services, and denied objectors' request for rehearing.

Objectors appealed, and the Supreme Court of Ohio granted utility's request to intervene in appeal.

The Supreme Court held that:

- PUCO's order violated statute governing certification;
- PUCO's failure to provide reasoned explanation of the basis of its decision warranted remand; and
- PUCO violated its duty to find that electric utility was fit and capable of complying with all applicable rules for CRES providers by deferring all consideration of corporate-separation issues to other proceedings after granting certification.

Order of Public Utilities Commission of Ohio (PUCO) granting application of electric utility for certification as a competitive retail electric service provider violated statute governing certification by failing to explain reasoning and factual grounds for granting application, failing to make any independent findings about utility's managerial fitness and competence to provide competitive retail electric services to Ohio consumers, and failing to identify facts in the record on which it based its decision.

Without knowing why Public Utilities Commission of Ohio (PUCO) decided to certify electric utility as a competitive retail electric service (CRES) provider, objectors faced an almost insurmountable task in showing prejudice, thus warranting remand for PUCO to make factual and legal findings consistent with its obligations under statute governing certification.

Public Utilities Commission of Ohio (PUCO) violated its duty to find that electric utility was fit and capable of complying with all applicable rules for competitive retail electric service (CRES) providers by deferring all consideration of corporate-separation issues to audit case after granting certification; there was no examination of the shared employees or of procedures and policies utility had in place to prevent information from passing improperly between shared employees, and instead of determining whether utility had shown that it could comply with code of conduct, PUCO deferred all issues regarding corporate-separation requirements to other proceedings.

MUNICIPAL ORDINANCE - PENNSYLVANIA

Apartment Association of Metropolitan Pittsburgh, Inc. v. City of Pittsburgh

Supreme Court of Pennsylvania - October 21, 2021 - A.3d - 2021 WL 4901913

Landlord association brought action against city, a home rule municipality and city of the second class, for injunctive relief and declaratory judgment that city lacked authority to enact ordinance generally prohibiting denial of access to housing based on a tenant's source of income.

City filed motion for judgment on the pleadings, and association filed motion for summary judgment. The Court of Common Pleas denied city's motion, granted association's motion, and declared ordinance invalid and unenforceable under Home Rule Law. City appealed. The Commonwealth Court affirmed. Supreme Court granted city's petition for allowance of appeal, vacated order of Commonwealth Court, and remanded for reconsideration with instructions. On remand the Commonwealth Court affirmed.

The Supreme Court held that:

General police powers provision of Second Class City Code (SCCC) did not expressly authorize home rule municipality to enact ordinance prohibiting residential landlords from discriminating against tenants based on source of income, and
Provision of Pennsylvania Human Relations Act (PHRA) authorizing municipalities to establish their own human relations commissions to combat discriminatory practices did not explicitly authorize home rule municipality to enact ordinance prohibiting residential landlords from discriminating based on tenants' source of income.

General police powers provision of Second Class City Code (SCCC) did not expressly authorize home rule municipality to enact ordinance prohibiting residential landlords from discriminating against tenants based on source of income, including federal housing vouchers, and, thus, did not protect ordinance from Business Exclusion to municipality's broad home rule powers; police powers provision did not expressly permit city to enact legislation requiring residential landlords to affirmatively participate in otherwise voluntary federal housing subsidy program.

Provision of Pennsylvania Human Relations Act (PHRA) authorizing municipalities to establish their own human relations commissions to combat discriminatory practices, including housing discrimination, did not explicitly authorize home rule municipality to enact ordinance prohibiting residential landlords from discriminating based on tenants' source of income, including federal Section 8 housing vouchers, and, thus, ordinance was subject to Business Exclusion on home rule powers; PHRA did not identify "source of income" as protected class, and by expressly defining "source of income" to include Section 8 vouchers, ordinance required landlords to comply with burdensome Section 8 Program regulations, which had previously been voluntary, going far beyond scope of PHRA.

City waived its appellate argument alleging that by enacting the nondiscrimination ordinance, which prohibited residential landlords from discriminating based on tenants' source of income, including federal Section 8 housing vouchers, the city was enabling the implementation of federal housing policy as evinced by the United States Housing Act of 1937 and the Fair Housing Act of 1968 (FHA) to eradicate discriminatory practices within a sector of the nation's economy, and thus Business Exclusion exception did not apply to invalidate ordinance, where the city did not raise the argument before the Commonwealth Court either of the times it briefed the case in that court.

PUBLIC UTILITIES - TEXAS

City of New Boston, Texas v. Netflix, Inc.

United States District Court, E.D. Texas, Texarkana Division - September 30, 2021 - F.Supp.3d - 2021 WL 4771537

City brought putative class action against video service providers alleging violation of Texas Utility Code franchise fee statute.

Providers filed motion to dismiss.

The District Court held that Texas Utility Code unambiguously granted authority only to Public Utility Commission (PUC) to issue state certificate of franchise for provision of cable service or video service.

Texas Utility Code unambiguously granted authority only to Public Utility Commission (PUC) to issue state certificate of franchise for provision of cable service or video service; statute did not qualify authority in any way, statute did not give court any basis upon which it could act as franchising authority, and statute did not reserve to individual municipalities any authority to declare a provider a holder of a state-issued certificate of franchise authority.

ZONING & PLANNING - VERMONT

In re Wright & Boester Conditional Use Application

Supreme Court of Vermont - October 15, 2021 - A.3d - 2021 WL 4806937 - 2021 VT 80

Applicants sought conditional use permit or variance from local development review board allowing applicants to demolish and rebuild lakeside structure on its existing footprint, adding a third level and increasing building's height by ten feet.

Board conditionally approved application, allowing rebuilding of structure to its original height of two stories. Applicants appealed to the Superior Court, Environmental Division, which granted permit based on revised application, and applicants' neighbors appealed.

The Supreme Court held that:

- Structure was a "boathouse," not an "accessory building," and
- Environmental Division should have remanded to local development review board.

Two-story lakeside structure, which was within 150 feet of lakeshore and which applicants sought to demolish and rebuild on its existing footprint while adding a third level and increasing building's height by ten feet, was a "boathouse," not an "accessory building," for purposes of local zoning ordinance limiting boathouses to 15 feet maximum height and accessory buildings to 30 feet; although structure had been used for more than storing boats, zoning ordinance's intent was to increase restrictions over time to protect lakeshore, boathouses were only new development permitted within 150 feet of lakeshore, and to conclude otherwise would allow any preexisting structure not fitting narrow definition of boathouse to be up to 30 feet high and increase burden on lakeshore.

Environmental Division should have remanded applicants' application to demolish and rebuild lakeside structure on its existing footprint, adding a third level and increasing building's height by ten feet, to local development review board, rather than granting conditional permit based on revised application, where revisions were major, implicating additional analyses the review board did not have occasion to consider, review board might have invoked comment from interested persons who had no objection to original plan, and because new proposal would shift structure much closer to existing septic system, which did not conform with local ordinances, and add a fiberglass ramp at the shoreline with the heavily regulated "shoreland buffer resource zone."

Barclays Says Green Bond Investors Pay More for Less Liquidity.

- **Findings imply that most green bond investors are buy-and-hold**
- **Demand for the securities is strong enough to weigh on yields**

Demand is so strong for green bonds, or debt that funds environmentally friendly projects, that investors are accepting lower yields for securities that are harder to trade, according to Barclays Plc.

Barclays looked at trading volumes across U.S. dollar and euro-denominated investment-grade markets, and found that green bonds trade less often than corporate bonds in general. Meanwhile, new environmentally friendly bonds tend to yield about 0.04 percentage point less, even after record issuance of the securities, Barclays strategists led by Charlotte Edwards and Bradley Rogoff wrote in their report.

The results confirm what investors have long suspected: that more investors in green bonds are of the buy-and-hold variety, including pension funds, asset management arms of insurance companies and mutual funds, rather than active traders. But the findings also imply that if many investors decide to liquidate their holdings at some point, they may be disappointed by demand in the secondary market.

Newly issued green bonds denominated in U.S. dollars do trade more often than the broader market, Barclays found, but after three months that shifts, with the environmentally-linked debt trading with reduced frequency. For euro-denominated debt, green notes trade less than average from the start.

Paying Up

Borrowers are taking advantage of the robust demand to fund environmental projects. Corporations and governments globally have sold a record $411 billion of green bonds so far this year, compared with $234 billion raised in all of last year, data compiled by Bloomberg show. Global sales of environmental, social and governance bonds are also at a record and are expected to hit $1 trillion by end of this year.

Firms have long been able to get cheaper funding by selling green bonds, but even with record issuance that benefit has only shrunk marginally, by just 1 basis point from the peak of 5 basis points earlier this year. Barclays expects demand to support a greenium of 4 basis points to 5 basis points over the medium term, assuming elevated issuance.

The strategists screened the U.S. high-grade market for green bonds trading with yields well below similar non-green debt, on the thinking that the divergence "is likely not justified" longer term.

"For holders of green bonds who are less concerned about the green label, swapping into similar maturity non-green bonds makes sense, in our view," wrote the strategists.

Bloomberg Green

By David Caleb Mutua

October 18, 2021, 8:56 AM PDT

[New EMMA Feature Helps Investors Identify Green, Social, Climate and Sustainable Bond Investments.]

Washington, D.C. – The Municipal Securities Rulemaking Board (MSRB) announced today that it has launched a new feature on its free Electronic Municipal Market Access (EMMA®) website that indicates when an upcoming municipal security new issue is either self-designated or certified as meeting certain Environmental, Social or Governance (ESG) criteria.

"It is not surprising that impact investors are turning to the municipal securities market for investments that meet certain ESG criteria. Our market finances many projects that advance environmental and social goals in our communities, such as public transportation, clean water and affordable housing," said MSRB CEO Mark Kim. "While there is no universally accepted ESG standard or definition on labeling an ESG security in the municipal market, there are internationally recognized frameworks that many states and municipalities follow to label their bonds as ESG. Integrating these frameworks into the free new issue calendar on EMMA will improve market transparency about the emerging trend of ESG and empower investors to make informed investment decisions."

The MSRB established the EMMA website more than a decade ago to provide investors and the public with centralized, online and free access to real-time municipal securities transaction prices and disclosure documents. The new issue calendar is one of several free tools available on EMMA that enhances market transparency. The new issue calendar lists the municipal securities scheduled to come to market across the country, as well as those that have recently sold.

Using data uploaded to EMMA from financial services technology and data provider IHS Markit, the new ESG Type field will show whether a new issuance has been designated as Green, Climate, Social, or Sustainable, among others, while the new ESG Certifier field will show whether the new issuance has been certified by one of several verifiers that assess the issuance for adherence to ESG criteria.

Date: October 25, 2021

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[As US Cities Build Green Infrastructure, Here's One Way They're Paying For It.]

In 2015, rainstorms in Washington DC would cause parts of the city's sewer system to overflow dumping millions of gallons of raw sewage into the Anacostia and Potomac rivers. Pipes buried in the 19th century combined stormwater and sewage, discharging a noxious brew of trash, bacteria, and heavy metals that polluted the rivers. By 2005, the pollution had gotten so bad it violated Environmental Protection Agency clean water standards, killed wildlife, and posed a threat to people living in the area. The federal government ordered DC Water, the region's sewer and water management authority, to clean up the rivers.

At first, DC Water tried to tackle the problem with traditional "gray" infrastructure: big underground tunnels to store excess stormwater. But the agency's leaders were in search of a cheaper, more sustainable solution. So in 2015, DC Water proposed using parks, plants, and permeable pavements strategically distributed to absorb some stormwater runoff and prevent overflow.

This "green infrastructure" was appealing for engineers: it had the potential to be less costly than gray infrastructure, and had knock-on benefits for neighborhoods, like providing natural cooling in summers, and improving property values. But it was uncharted territory; DC Water had never built green infrastructure before, and few other US cities had.

Continue reading.

quartz.com

By Camille Squires

Published October 27, 2021

Flooding Could Leave Billions of US Municipal Debt Under Water.

Approximately a quarter of the entire U.S. infrastructure is at risk of severe flooding, hitting the $ 4 trillion municipal bond market price and crediting city and state issuers, according to a new study. It can jeopardize your strength.

New York-based climate research firm First Street Foundation has issued a report finding that US infrastructure, such as roads, hospitals, and power plants, shows a higher risk of flooding than previously estimated. This has serious implications for state and city financial resources, asset value, mortgage-backed securities and municipal bonds.

Louisiana, Florida, and West Virginia have the potential for the worst floods in the continental United States, First Street Foundation data show. In Louisiana, 45% of all critical infrastructure facilities, including hospitals, fire departments, airports and power plants, are at risk of failing due to this year's floods.

In addition, 39% of roads and 44% of social infrastructure (schools, government buildings, places of worship) are at risk of closure. In some cities in Louisiana, such as Metairie and New Orleans, the risk for all these categories is almost 100%.

Municipal bonds have long been a shelter asset class and are popular with long-term investors such as pension funds and insurance companies. Municipal bond default rates have historically been low, but can rise as underfunded cities struggle to keep up with the costs of extreme weather damage.

Municipal bonds also tend to mature between 15 and 30 years. According to the Securities and Financial Markets Association, the average maturity issued last month was 18.6 years. Climate change is so fast that there is a lot of time left before a disaster strikes.

Investors also face the risk of geographical concentration. Owning a munis issued by the state in which you live gives investors certain tax incentives, so muni investors tend to be highly exposed to certain areas. Therefore, in the event of bad weather, the vast value of the municipal bond portfolio can quickly be lost.

"It's clear that (climate) is a risk factor in the municipal bond market," said Peter DeGlute, head of municipal bond research at JP Morgan. "Increasing the frequency and intensity of meteorological events is a costly and complex issue for the federal government, as well as for state and local governments."

Floods can affect municipal debt in a variety of ways. It has a direct impact. Municipal bonds issued to fund the construction of hospitals are at risk of depreciation or default if their source of income is abruptly terminated when the hospital is destroyed by a storm.

Natural disasters can also alienate people and businesses, reduce the value of existing assets, and reduce the tax base of a state or city. This is another way for municipal bonds to be repaid.

Extensive floods are also very expensive. Between 1980 and 2020, natural disasters caused $ 1.8 trillion worth of damage. About half of them were associated with hurricanes and tropical storms. Municipalities must borrow more to pay for reconstruction and to build new climate-adapted infrastructure. This increases the credit risk of existing bonds and the cost of borrowing new funds.

Led by Paul Goldsmith Pinkham of Yale University, the municipal bond market is already beginning to price the risk of rising sea levels.

The federal government has traditionally intervened to help rebuild cities after a catastrophe. However, as these events become more frequent, resources can be under pressure and local governments may be more responsible for funding recovery efforts.

Of the top 10 states with the highest risk of infrastructure floods, Connecticut and New York are also the most helpful. Connecticut has the highest per capita net tax support debt of all 50 states, the second highest net tax support debt as a percentage of personal income, and the second highest net tax support as a percentage of state gross domestic product. I have debt. According to credit rating agency Moody's. New York is also in the top 10 in each of these categories.

California News Times

Clean Energy Giant NextEra Begins Push Into Water Utilities.

- **NextEra recently spent $45 million on Texas water assets**
- **CEO 'optimistic' about extension of clean-energy tax credits**

NextEra Energy Inc., which calls itself the world's biggest provider of wind and solar power, plans to buy up municipal and privately owned water assets to build a "world-class water utility," the company said in its third-quarter earnings call Wednesday.

"We're really excited about building a significant presence in the water business," said chief financial officer Rebecca Kujawa. She also announced the company recently spent $45 million to buy regulated water and wastewater utility assets in eight counties near Houston, Texas. NextEra's water strategy will also focus on assets outside Texas and will probably target certain U.S. regions, she said.

NextEra chief executive Jim Robo said on the call that he's "optimistic" about the reconciliation bill U.S. lawmakers are debating and that he'd be shocked if there wasn't a long-term extension of the clean energy tax credits that boost the company's business. "I feel good about both the policy tailwinds and how our business is executing along those goals," he said.

Bloomberg Markets

By Josh Saul

October 20, 2021, 7:47 AM PDT

SIFMA Statement on Exclusion of Muni Bond Provisions from Reconciliation Bill.

Washington, D.C., October 29, 2021 – SIFMA today issued the following statement from president and CEO Kenneth E. Bentsen, Jr.:

"It is regrettable that the municipal bond provisions have been dropped from this version of the reconciliation bill and hopefully Congress will restore these important state and local government funding measures. State and local governments, unlike virtually everyone else in America, are unable to take full advantage of historically low interest rates through advanced refundings and generate cashflow to reinvest in their communities. Direct pay bonds and updating the small issuer rules will attract more private capital to state and local government projects, and combined with refundings will serve as critical infrastructure funding source. We are also concerned that the proposed change to the corporate minimum tax rate as currently drafted would have a negative impact on the demand for municipal bonds by some investors, increasing the cost to state and local government issuers."

Muni Market Letdown as Bond Proposals Cut From Biden Plan.

- **Advance refunding revival, taxable infrastructure bonds axed**
- **Proposals were seen spurring tens of billions in new issuance**

A key debt-refinancing tool for state and local governments and the creation of a Build America Bonds-style debt program are among the municipal-bond provisions excised from the Build Back Better legislation proposed by the Biden administration on Thursday.

Advance refundings, a new version of taxable Build America Bonds, an expansion of bank-qualified bonds and an increase in private activity bond issuance aren't in the latest bill.

"Never been more disappointed," Emily Swenson Brock, director of the Government Finance Officers Association's Federal Liaison Center, said in an email on Thursday. "Bonds are out entirely in the framework."

The new BABs would have helped municipalities to finance much-needed new infrastructure, said Brock. "Jurisdictions across the country really thought this was our time."

Brock added that "there's still some process to go," meaning one or more of the provisions could be added back into the legislation as it's still subject to possible amendment.

Michael Decker, who lobbied for the provisions for the Bond Dealers of America trade group, called their being dropped "a disappointment" in an email, and added, "The bond provisions that have been under consideration are all modest in cost but with outsized benefits for state and local taxpayers around the country."

Bond issuers, bankers and buyers in the $4 trillion market had welcomed the provisions when the new bill was unveiled in September, saying they could spur the issuance of tens of billions of dollars in new bonds. Their enthusiasm was short-lived.

"Like a scene from a movie that wasn't crucial, muni provisions got left on the cutting room floor," said Eric Kazatsky of Bloomberg Intelligence. "This speaks to the growing divide between the importance of these provisions to MuniLand and perhaps lack of importance to everyone else."

Tom Kozlik, head of municipal strategy and credit at Hilltop Securities in Dallas, Texas, said in an email that he wasn't too surprised that the muni provisions were dropped, "when so many priorities like community college and paid leave were being abandoned. I thought there was a very slight chance the direct pay infrastructure program could at least be included," he said, referring to the new version of Build America Bonds.

Bloomberg Markets

By Joseph Mysak Jr

October 28, 2021, 11:56 AM PDT Updated on October 28, 2021, 1:11 PM PDT

— With assistance by Martin Z Braun

Push Is On to Salvage Muni Finance Provisions Left Out of Biden Plan.

A key refinancing tool that states and localities want to see brought back, along with other proposals, didn't make the cut.

The roughly $1.75 trillion domestic spending plan President Biden unveiled on Thursday leaves out provisions that supporters say would provide state and local governments greater flexibility and substantial cost-savings when financing infrastructure projects.

In response, over two dozen groups that represent cities, counties, towns, government finance officials and public works agencies are mounting a last ditch effort to get those proposals included, sending a letter to congressional leaders after the plan's release pleading their case. But the window to make changes to the package could be tight.

One of the absent municipal finance measures would restore what's known as advance refunding for state and local government bonds. States and localities relied on tax-exempt advance refunding as a key tool to refinance and restructure debt before it was eliminated in the Republican-crafted tax law that passed in late 2017.

Continue reading.

ROUTE FIFTY

by BILL LUCIA

OCTOBER 29, 2021

Will Muni Bonds Get a Big Boost from Capitol Hill?

Pending municipal finance provisions in the big spending bills before Congress could benefit issuers, investors and taxpayers. To get the best deal, state and local leaders must press their case immediately.

As Congress continues to kick around bills for infrastructure and federal spending priorities, state and local leaders need to keep their eyes on the shape the legislation's somewhat arcane provisions for municipal finance will take.

In the grand scheme of things, they don't cost federal taxpayers that much, so one would think that they stand a good chance of adoption, but nobody can take that for granted. It's one of those esoteric topics that rarely makes the headlines outside of industry newsletters, but the benefit/cost ratio for local taxpayers is easily demonstrable. Whether the muni provisions make into law is now very much up in the air as the Senate whittles down its version's "tax expenditures."

Although many state and local officials are fixated foremost on the infrastructure bill, the House budget reconciliation bill has three provisions that are a big deal in the world of municipal bond finance; on the Senate side, these provisions are now in peril. One of them gives issuers of tax-exempt debt an option to sell their bonds on a taxable basis, pay a higher interest rate and receive a federal cash subsidy. Economists call it a "taxable bond option" (TBO), though it's better known in the industry as Build America Bonds (BABs) from the Obama era when they were allowed temporarily during the Great Recession.

Continue reading.

governing.com

October 26, 2021 • Girard Miller

NASBO Issue Brief: Analysis of State Fiscal Recovery Fund Allocations

Read the Issue Brief.

The Global Supply Chain Chaos and its Impacts on Local and State Economies.

With the rapid rollout of coronavirus vaccines, the global economy is emerging out of the pandemic. However, with the sudden closure of the large economies, the global supply chain is seriously grappling with issues like labor shortages for manufacturers and distributors and a rapid increase in global demand.

In recent months, these issues were paired with things like the emergence of the Delta variant, global power outages in certain parts of China, and a shortage of truckers in the U.S., further exacerbating the already huge challenges of the global supply chain. In addition, paired with historically low labor participation rates, the U.S. is also seeing labor shortages in areas related to the national supply chain (e.g., warehouse workers, port employees, truck drivers), further adding to congestion and backlog in the overall supply chain.

In this article, we will take a closer look at how global supply chain issues will impact local and state revenues and when the situation can get better.

Continue reading.

municipalbonds.com

by Jayden Sangha

Oct 21, 2021

Public-Pension Funding Hits Highest Since 2007, Powered by Market Returns.

Plans gained a median 27% in financial markets so far in 2021

Public-pension funding surged in 2021 thanks to buoyant financial markets, taking funding levels to the highest in over a decade.

As of June 30, 2021, the aggregate funded ratio of the 100 largest U.S. public pension plans is estimated at 85%, according to the 2021 Public Pension Funding Study from Milliman, an actuarial company, marking what the group calls "a stunning improvement" from 70% in 2020.

It's also the highest level of funding in the eight-year history of Milliman's report. According to another data source, Public Plans Data at the Center for Retirement Research, which covers a larger universe of pension plans, the last time funding was so high was 2007.

Continue reading.

MarketWatch

By Andrea Riquier

Oct. 27, 2021

Cyber Risk In A New Era: Are Third-Party Vendors Unwitting Cyber Trojan Horses For U.S. Public Finance?

Key Takeaways

- Digitalization in operations and IT services can increase risks of cyber attacks for U.S. public finance (USPF) issuers if proper vendor risk management is not in place.
- Integration of third-party vendor risks into a comprehensive cyber-defense strategy is an important aspect for an issuer to help reduce the frequency and mitigate the effects of a cyber attack.
- Failure to incorporate these risks into risk-management policies could result in negative rating pressure if an issuer's practices seem materially weaker than those of peers.

Continue reading.

25 Oct, 2021

Fitch: Cryptocurrency Poses Risks, Opportunities for US Public Finance

Fitch Ratings-Chicago/Austin/New York-19 October 2021: A limited number of US public finance issuers are encouraging cryptocurrency (crypto) ventures and exploring the use of crypto as a form of exchange to grow economies and promote efficiencies, but this can expose issuers to a still-evolving economic and regulatory environment, Fitch Ratings says. Public entities have so far typically been recipients of crypto that is converted to cash.

Crypto offers ease and speed of transfer of value, relative to settlement through the conventional US financial system. Because crypto transactions are conducted via distributed ledger technology (DLT), payments can be automatically executed once conditions of the contract recorded on the electronic ledger are met.

However, cryptocurrency can introduce financial and operating risks, particularly as a result of price volatility. The lack of an overarching regulatory framework in the US and other countries contributes to market uncertainty, with changes in regulations potentially affecting value. Increased crypto investment holdings could negatively affect budgets and the ability to pay obligations if there are material price swings. Most municipalities' investment guidelines are typically governed by state statutes, which may allow for crypto investments as regulation develops. In contrast, pension fund investment guidelines are typically at the discretion of the funds' boards or their designees and allow a much broader range of options.

Crypto use will likely require new IT spending, including reinforcing cybersecurity. The rapid rise in the market values of cryptocurrencies, such as Bitcoin, has made them an attractive target for cyber criminals. The nascent global crypto regulatory environment and transaction anonymity contributes to the increased risk of cybercrime and ransomware attacks.

Issuers focused on environmental effects may view the energy-intensive computing power required for the proof-of-work consensus mechanism to validate transactions and mine coins such as bitcoin as detrimental to environmental, social and governance (ESG) goals. Furthermore, social and governance issues may arise from crypto payments or donations from anonymous sources that could create risks for public entities.

Public finance interest in cryptocurrency is not new. Ohio became the first state in 2018 to allow companies to pay taxes in crypto. A third-party processor converted the payment to US dollars, which would then be deposited into a state account. Within a year the program was suspended, with the Ohio State Attorney General citing legal prohibitions against the use of a payment processor to convert cryptocurrency into US dollars for the electronic payment of taxes. Ohio has left the door open to future use.

State and local governments have taken different approaches to crypto, with some cultivating the crypto market by establishing accommodative legal frameworks. Two Texas laws established a working group on blockchain technology and updated the state's Uniform Commercial Code to recognize crypto. Wyoming passed laws that explicitly exempt virtual currencies from state money transmission laws and permits state-chartered depositories to provide banking services to virtual currency companies. Rhode Island and New York introduced crypto regulations.

Miami accepts donations from CityCoin, a non-profit opensource protocol. CityCoin allows users to mine "MiamiCoins", which are not affiliated or endorsed by the city. Thirty percent of the contributions submitted by miners is converted to US dollars and transferred to the city. The protocol generated several million for the city since its inception. Miami is not permitted to hold or invest in crypto under current state law.

Not-for-profit healthcare and higher education entities have begun to receive donations in the form of crypto, potentially tapping a new philanthropic base. Many opt to liquidate immediately to avoid the risk of volatility, and crypto remains a small percentage of total giving. Technological infrastructure and a clear policy framework are necessary to accept and process these donations.

Related Research:

- FinTechs, Financial Institutions Balance Risks, Rewards of Crypto (October 2021)
- Digital Assets to Become More Institutionalized in US Financial Sector (September 2021)

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The above article originally appeared as a post on the Fitch Wire credit market commentary page. The original article can be accessed at www.fitchratings.com. All opinions expressed are those of Fitch Ratings.

Fitch: New Covid Variants Ground Recent Traffic Improvements for Airports

Fitch Ratings-New York/Austin/London/Sao Paulo/Mumbai-19 October 2021: New Covid variants could impede recent improvements in vaccination rates and recent subsequent increases in passenger traffic at airports throughout the world, according to Fitch Ratings in its latest quarterly Global Airport Traffic Tracker.

Vaccination rates have improved significantly during the past three months, with all countries administering at least one dose to at least 50% of their populations and Spain leading at 81%. However, there are 11 variants classified as “under monitoring” by the World Health Organization. “Passenger traffic recovery may be vulnerable as these variants could trigger lockdowns, especially in countries with low inoculation rates — as has been the case in Australia,” said Director Jeffrey Lack.

Australia’s lockdown is already having a discernible effect with Fitch paring back its global airport traffic recovery estimates to roughly 68% by 2022, down from 78% in Fitch’s 2Q report, with a full recovery still on tap for 2024.

Drilling down into regions of the world, passenger traffic for U.S. airports continued to ramp up through July 2021, surpassing 80% of pre-pandemic levels in that month. “Passenger traffic at U.S. airports is likely to plateau this quarter before recovering gradually to 100% by 2024,” said Lack.

Tempering the effect of Australia’s recent lockdown are faster recovery prospects in China and Brazil, which could see full traffic recovery by 4Q’22 and 4Q’23, respectively. Fitch anticipates slower recoveries in France, Italy, Spain and the UK, where recovery is not likely until 2025-2026.

Fitch’s ‘Global Airport Traffic Tracker: 3Q21 Update’ is available at ‘www.fitchratings.com’.

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Fitch: Delta Variant Reverses Leisure Jobs Recovery for Major U.S. Metros

Fitch Ratings-New York-19 October 2021: The Delta variant has pumped the brakes on leisure & hospitality job growth sector growth for U.S. metros throughout the country, according to Fitch Ratings in its latest U.S. Metro Labor Markets Tracker.

August marked a stagnant period for employment recovery for the U.S. as a whole thanks largely to broad reversals in the leisure and hospitality (L&H) sector.

The Northeastern L&H sector's recovery rate fell back to 88%, represented a 4% decrease from July. "Boston, Philadelphia, and New York City each saw job leisure and growth flatten and, in the case of Philadelphia, fall in August," said Senior Director Olu Sonola.

The Midwest and the South also posted month-over-month declines. Meanwhile, Kansas City is the latest major metro to achieve a 100% L&H recovery since February 2020. The Southern metros' L&H recovery rates declined sharply in August, falling to 81% from 87%. "Miami and New Orleans in particular saw their recent strong recoveries reverse in August," said Sonola.

Noteworthy among Western metros is Las Vegas, which has the highest L&H employment concentration among major metros. Las Vegas' L&H sector accounted for two thirds of job losses from February 2020 through August 2021 and has only recovered 57% of those jobs.

Fitch's latest "U.S. Metro Labor Markets Tracker" is available at www.fitchratings.com.

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Fitch: Congestion, Expanded Operations Challenge US Cargo Port Efficiency

Fitch Ratings-New York-20 October 2021: US cargo ports continue to see strong revenue performance as a result of sustained congestion and record volume, Fitch Ratings says. However, maintaining operational efficiency is an increasing challenge as bottlenecks have not yet resolved due to disrupted supply chains, mismatched rolling stock, capacity-strained logistics networks and ongoing labor shortages. Ports are now expected to see congestion pressures persist through the holiday season, with throughput patterns not expected to normalize until early 2022.

As noted in our July commentary, the San Pedro Bay Port Complex has been experiencing exceptionally high and growing volumes since mid-2020, driven by robust goods consumption. Port of Long Beach's (POLB; AA/AA-/Stable) total calendar 2021 YTD 20-foot equivalent units (TEUs) through September have grown 24% over the same nine-month period a year prior, while Port of Los Angeles' (POLA; AA/Stable) YTD TEUs through September were up 27% versus the same period in 2020. Fitch-tracked West Coast port TEUs were up 25% through August 2021 from the same period in 2020, and up 15% from the same period in 2019.

POLA recently announced it would move to 24/7 operations, as POLB did in September. Round-th--clock operations may help shift additional containers off ships, though ports are only the first stop along the way for imports, which make up the vast majority of cargo handled at West Coast ports. Sticking points remain in the form of warehouse capacity and trucking availability to move goods from the ports, particularly when expanded hours at ports do not match warehouses' and distribution centers' operating hours.

Continue reading.

S&P: U.S. Public Finance Housing Rating Actions: September 2021 And Third-Quarter 2021

S&P Global Ratings' U.S. Public Finance Housing rating actions for the third quarter of 2021 had 10 downgrades and seven upgrades. There were also five favorable and seven unfavorable outlook revisions.

The number of downgrades slightly outpaced upgrades, highlighting the mixed bag of results seen over the various rated housing sectors during the ongoing COVID-19 pandemic.

There were 56 affirmations out of 87 total rating actions during the third quarter, or about 64% of rating actions. Currently, about 88% of our ratings carry stable outlooks, partially attributable to both ongoing federal support and existing balance-sheet strength, despite headwinds posed by the pandemic. However, we continue to observe volatility in the rental housing bond sector. Rental housing bond issuers, already strained prior to the pandemic, continued to experience occupancy shortfalls and subsequent deterioration in coverage, and accounted for 16 of the 19 negative rating and outlook actions. These 16 individual actions covered seven issuers.

Additionally, one issuer defaulted in the third quarter, and encompassed three rating actions based on the separate individual issuances. The ratings for Capital Trust Agency; Florida H-Bay Ministries Inc., Texas; and Affordable Housing were lowered to 'D' on July 7, 2021, and subsequently withdrawn 30 days later.

Continue reading.

27 Oct, 2021

S&P U.S. Public Finance Rating Activity, September 2021.

Rating Activity

S&P Global Ratings took the following rating actions in U.S. public finance in September 2021:

24 downgrades
60 upgrades
66 outlook revisions to stable
75 outlook revisions to positive
16 outlook revisions to negative

Continue reading.

Reimagining Local Public Finance: Equitable Reform of Taxes, Fines, and Fees

As a result of the American Recovery Plan Act (ARP), many cities and counties are seeking to make transformative investments while prioritizing equity in the process. Naturally, the spending decisions local governments are making have received a lot of attention.

However, local governments should also take advantage of this opportunity to review and reform revenue-raising (i.e. taxes, fines, and fees) practices with an eye toward equity. The ARP provides local governments significant flexible funds to replace revenue that they lost due to the pandemic, but policymakers should not be satisfied with just replacing revenues. Black taxpayers and other taxpayers of color bear a heavier tax burden for public services due to the local assessment and collection practices of tax and non-tax revenues. Counties and cities should strive to achieve the ARP's explicit equity goals not only through spending programs, but also by evaluating, and when necessary, reforming the methods through which they raise revenue in the first place.

LOCAL GOVERNMENTS RAISE REVENUES INEQUITABLY

Depending on the local unit of government, revenues can consist of local taxes, such as sales taxes and property taxes, as well as other forms of non-tax revenue, such as fines and fees. Fees are often used as a surcharge to fund local government services, whereas a fine is more punitive—a form of punishment for violating a municipal code or law, such as a parking ticket.

Continue reading.

The Brookings Institution

by Tonantzin Carmona

October 19, 2021

[S&P: How The Western States Plan Is Critical To Ratings As Colorado River Flows Slow To A Trickle]

Key Takeaways

- Drought, aridification, and climate change are expected to reduce Colorado River water allocations to record lows for the foreseeable future, necessitating significant changes to how the western states use, store, and conserve water.
- Drought and water scarcity could pressure issuer financial margins, supply adequacy, rate affordability, and growth prospects if not properly managed.
- Stress testing suggests the sector is well positioned to weather the growing environmental risks related to drought cycles.
- We predict that issuers who are not already planning for severe water scarcity will face greater rating pressure.

Continue reading.

18 Oct, 2021

[S&P U.S. Local Governments Credit Brief: California Counties And Municipalities]

Overview

California counties and municipalities (or local governments [LGs]) have demonstrated stable credit quality through the pandemic, and S&P Global Ratings expects credit quality for California LGs to remain stable in the near term. The stability is supported by growing property tax bases, strong budgetary performance, and very strong financial flexibility.

S&P Global Ratings maintains ratings on 252 LGs within the state. Overall, LG credit quality remained stable, with 6.7% experiencing rating movement since January 2020. During this period, California LGs had 12 positive rating movements and five negative rating movements on general obligation or general fund-secured bonds. Additionally, at 96%, the majority of the ratings have a stable outlook, while 1% have positive and 3% have negative outlooks.

Continue reading.

S&P: Online Sales Tax Collections Continue To Grow; Helped Offset Pandemic

Declines Last Year

Key Takeaways

- Since the South Dakota v. Wayfair, Inc. decision in June 2018, online sales tax collections have surged across the U.S. with the enactment of economic nexus laws, which consider remote sellers to have an economic presence in a state if they meet certain sales or revenue thresholds.
- All states with a sales tax have enacted marketplace facilitator collection laws. This requires online marketplaces to collect taxes on behalf of their sellers, leading to more online sales being incorporated into governments' tax bases.
- Online sales tax collections helped mitigate pandemic-related declines in total sales tax collections for many U.S. cities in 2020 and we expect these collections will help support sales tax revenues as online sales proliferate the marketplace.

Continue reading.

28 Oct, 2021

MSRB Proposes Extension of Remote Inspection Relief: Cadwalader

The MSRB proposed to extend temporary relief for municipal securities dealers to conduct internal inspections remotely for calendar year 2022 until June 30, 2022. The MSRB stated that this extension is appropriate, given ongoing operational challenges due to the COVID-19 pandemic.

The proposed rule change to Supplementary Material .01 of MSRB Rule G-27 ("Supervision") would condition a dealer's election to conduct a remote inspection on:

- the dealer amending its written supervisory policies as appropriate;
- the dealer's use of remote inspections as part of an effective larger supervisory system; and
- maintenance of records related to remote inspections.

The MSRB filed the proposed rule change with the SEC for immediate effectiveness.

Cadwalader Wickersham & Taft LLP

October 27 2021

Fitch: Environmental Costs Increase for California Public Power Utilities

Fitch Ratings-New York/Austin/San Francisco-26 October 2021: California public power utilities face increased costs as a result of extreme drought conditions that have reduced hydroelectric generation and increased wildfire risk, Fitch Ratings says. Public power utilities have taken actions to shore up their financial resilience in light of recurring droughts, including fortifying cash reserves and adopting automatic rate adjustors. Our report Drought and Wildfires Increase Costs for California Public Power Utilities notes credit quality is not expected to be affected, but utilities with already high operating cost burdens may see negative credit pressures.

Hydroelectric generation is expected to be 49% lower this year than last year according to the US

Energy Information Administration, forcing utilities to purchase natural gas to meet power demands. Gas prices recently reached a seven-year high. Northern California utilities rely heavily on hydroelectric generation sources and are the most affected by higher purchased power costs. These utilities may implement higher retail electric rates and/or see reduced financial margins.

The drought exacerbated this year's wildfire season, which is set to exceed last year's record-setting season. A utility can be held financially liable for wildfire damage if its equipment is determined to have sparked a wildfire, even if lines were maintained in accordance with industry best practices and the utility is not found to have acted negligently, according to California's application of inverse condemnation. Utilities are spending increased amounts annually on wildfire prevention efforts and mitigation plan development and compliance.

The pace of clean energy regulation is more rapid in California than most other states, and investments in transmission and other new technologies to comply are also contributing to utilities' increased operating costs. California utilities have a higher operating cost burden,15.1 cents/kWh in 2020, than the average of 10.32 cents/kWh across Fitch's national portfolio of public retail electric utilities.

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TAX - NEW HAMPSHIRE

Shaw's Supermarkets, Inc. v. Town of Windham

Supreme Court of New Hampshire - October 20, 2021 - A.3d - 2021 WL 4888979

Commercial tenant appealed town’s denial of its property tax abatement claim.

The Superior Court denied town’s motion to dismiss for lack of standing, and the Court granted the tax abatement request. Town appealed.

The Supreme Court held that:

- Tenant had standing to maintain property tax abatement claim, and
- Tenant’s appraisal was credible and thus supported determination of fair market value of the property.

Commercial tenant had standing to maintain property tax abatement claim, as it actually paid the allegedly disproportionate tax to the town on the landowner’s behalf, and, under its lease, would have been required to reimburse the landowner for 100% of the tax paid if the landowner had made the payment itself.

Appraisal by commercial tenant’s appraiser was credible and thus supported determination of fair market value of the property, even if it deviated from the uniform standards of professional appraisal practice; trial court addressed the deviations and determined that the appraiser’s trial testimony sufficiently responded to the town’s objections.

Los Angeles Turns Supply-Chain Mess Into Biggest Covid Rebound.

The area’s employment growth and performance in the stock market has topped its U.S. peers.

America’s shortage of labor, products and services — provoked by Covid-19’s disruption of the global economy — has a platinum lining in Los Angeles.

Obscured by unprecedented supply-chain bottlenecks, California’s largest city and No. 2 in the U.S. after New York, has no peers unloading, processing and transporting the nation’s imports from its two busiest ports. Being the supreme gateway for U.S. trade helps make the Southern California area of about 630 square miles (Los Angeles, Long Beach and Anaheim) the fastest-growing labor market among the five largest American metropolises during the past year and perennially No. 1 for factory workers, according to data compiled by Bloomberg.

Continue reading.

Bloomberg Opinion

By Matthew A. Winkler

October 20, 2021, 2:00 AM PDT

Municipal Bonds: Supply & Demand, Taxes & Infrastructure

Summary

- In 2021, inflows to municipal bond funds have been strong (demand has been exceptionally high), outstripping supply.
- By design, high yield municipal bond funds carry larger allocations to credit risk relative to investment-grade municipal bond funds.
- During periods of limited supply and strong inflows, larger municipal bond funds have historically struggled to be discerning when it comes to credit selection.

Continue reading.

Seeking Alpha

Oct. 22, 2021

MSRB Holds First Quarterly Board Meeting of New Fiscal Year.

The municipal market's self-regulatory organization held its first quarterly Board of Directors meeting of Fiscal Year 2022 in Washington, DC, on October 27-28, 2021. The Municipal Securities Rulemaking Board (MSRB) discussed initiatives to advance the four goals outlined in its long-term strategic plan.

"Building on years of groundwork and investment in our people, our technology and our understanding of our diverse stakeholders' needs, the MSRB is poised to have one of the most productive and impactful years in our history," said MSRB Chair Patrick Brett. "This year, we are making meaningful strides to modernize municipal market regulation, provide transparency through technology, fuel innovation through data, and uphold the public trust."

Market Regulation

November is the final month of a 24-month grace period for municipal advisor principals to pass the MSRB's Series 54 professional qualification examination. The Board discussed the importance of continued outreach to municipal advisor firms to remind them of available resources and their obligation to ensure that any individual functioning in the capacity of a municipal advisor principal is properly qualified with the Series 54 exam by the compliance deadline of November 30.

The Board also received an update on regulatory initiatives underway, including the ongoing review of the library of interpretive guidance in the MSRB rule book to identify pieces of guidance that should be clarified, amended or retired to facilitate compliance.

"As part of our commitment to prudent and practical regulation, we are focused on a retrospective review not just of the rules themselves but the over 200 pieces of associated guidance," said MSRB Vice Chair Meredith Hathorn. "We will continue to make incremental but impactful progress toward reducing unnecessary compliance burdens on regulated entities and ensuring our rule book aligns with current market practices."

The Board also received an update on regulatory initiatives authorized by the Board at previous meetings, including requesting public comment on potential amendments to modernize MSRB Rule G-27 on dealer supervision.

The Board discussed potential next steps to ease challenges raised by dealers related to the implementation of new MSRB Form G-32 for filing primary market data.

Market Transparency

The Board received an update on a six-month effort to reimagine the user experience and user interface of Electronic Municipal Market Access (EMMA®) website through collecting extensive input from a variety of stakeholders and producing future-state EMMA product design and functionality wireframes. This redesign will provide users with enhanced functionality and improve data quality and customization capabilities. While the complete overhaul of EMMA is a multi-year project, this most recent stakeholder input is already informing the creation of a roadmap for near-term enhancements, such as an improved feature to make it easier for issuers to ensure their disclosure filings are associated with all the necessary individual securities within the EMMA system.

“After years of behind the scenes work, we’re ready to start rolling out powerful new cloud-based tools on EMMA that will take the transparency of our market to a new level, and transform EMMA into a more dynamic and effective tool for informed decision-making,” Brett said.

Market Structure and Data

The Board discussed its data strategy and received a demonstration of a new master data management platform that will enhance the MSRB’s data governance and oversight capabilities. The Board also received an update on potential research topics to add to the MSRB’s growing library of market data analyses that shed light on trends and developments in market structure.

“Our strategic plan lays out an important focus on providing high quality market data that enables greater understanding of the market and empowers innovators to create data tools and services that serve the information needs of all market participants,” Brett said. “We are tremendously excited to invite our stakeholders to collaborate with us in test-driving data tools in our forthcoming EMMA Labs innovation hub.”

Public Trust

The Board discussed several topics that benefit from ongoing stakeholder engagement, including seeking information from the public about Environmental, Social and Governance (ESG) considerations in the municipal market; efforts to advance diversity, equity and inclusion in public finance; and a comprehensive review of the MSRB’s fee model as described in the Fiscal Year 2022 Budget.

“The Board appreciates hearing from market stakeholders, especially on an evolving market trend such as ESG that lends itself to many different perspectives,” Brett said. “We look forward to providing a forum for all interested stakeholders to share information and viewpoints on ESG considerations for the municipal market through our forthcoming public request for information.”

Date: October 29, 2021

Contact: Leah Szarek, Chief External Relations Officer
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IRS Moves to Mandatory E-Filing of Forms for Direct Payment Bonds.

The Internal Revenue Service has moved to mandatory electronic filing of its Form 8038-CP, its form for returning credit payments to issuers of qualified bonds.

That and a number of other developments were announced during the IRS update as part of the Government Finance Officers Association's 3rd annual MiniMuni conference.

"The IRS is moving to e-filing of 8038-CP for those of you that want direct payments on your Build America Bonds," said Johanna Som de Cerff, senior technician reviewer, IRS Office of Chief Counsel Financial Institutions and Products Division Branch 5.

The IRS published its proposal for electronic filing in the federal register on July 23 requesting comments and on Oct. 22, announced that they will officially be moving to electronic filing of these forms. Soon, electronic filing will be mandatory, despite not rolling the program out quite yet.

"New forms have been designed and those, even the paper form, needs to be used for the 2022 filing year," Som de Cerff said.

She also urged panelists to subscribe to the IRS's newsletter, where all related developments of this sort will be announced. "You'll be getting detailed later as to when the electronic filing is actually going to be available," she said.

This is part of a larger effort by the IRS to respond to the COVID-19 pandemic, in addition to wider modernization and restructuring efforts happening across the agency, with further updates for bond issuers coming down the line.

"We are going to update the revenue procedure on the recovery of rebate overpayments," Som de Cerff said. She didn't mention updates to Form 8038-R, which deals with this issue, by name, but mentioned that updates to the procedure for how to ask for those rebates will be centralized in one document.

"We don't know if it's exactly going to be this year, but it's certainly one of our priorities that we're working on," she said.

The agency is also working on developing regulations for the transition from LIBOR.

"You saw proposed regulations a couple years ago, we had a revenue procedure on fallback rates," Som de Cerff said. "But the final regulations are being worked on being very conscious of the fact that LIBOR and other IBORs may be disappearing fairly soon," she added. "So that is a very active project as well.

The Bond Buyer

By Connor Hussey

October 22 2021

Hawkins Advisory: Revisions to IRS Form 8038-CP and Instructions for Issuers of Tax Credit Bonds

The Internal Revenue Service has released, in draft form, a new Form 8038-CP, Return for Credit

Payments to Issuers of Qualified Bonds (the "Form"), and new Schedule A, Specific Tax Credit Bonds Interest Limit Computation ("Schedule A"). While the new Form and Schedule A are not yet final, and should not yet be used by issuers in their current form, the IRS's objective in revising these documents is to facilitate electronic filing of the Form in 2022.

Attached, please find the Hawkins Advisory regarding the new Form 8038-CP and Schedule A.

MSRB Announces Topics for Quarterly Board Meeting.

October 2021 Board of Directors Meeting Discussion Items

The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) will meet October 27-28, 2021, in Washington, DC, for its first meeting of FY 2022, where it will discuss initiatives to advance the four goals outlined in its long-term strategic plan:

Market Regulation
The Board will receive an update on initiatives underway to modernize the rule book, including forthcoming requests for comment on draft MSRB Rule G-46 for solicitor municipal advisors and potential amendments to harmonize MSRB Rule G-27 on dealer supervision. Also in progress are regulatory filings to seek approval from the Securities and Exchange Commission (SEC) to modernize the text of MSRB Rule G-34 on obtaining CUSIP numbers and amend MSRB rules in light of SEC Regulation Best Interest.

The Board will receive an update on the implementation of new MSRB Form G-32 for filing primary market disclosures, as well as the Series 54 examination for municipal advisor principals.

Market Transparency
The Board continues its oversight of efforts to leverage cloud technology to modernize the MSRB's critical market transparency systems, including the Electronic Municipal Market Access (EMMA®) website. The Board will receive an update on how input from stakeholders is advancing efforts to redesign the EMMA user interface and user experience.

Market Structure and Data
The Board will discuss its data strategy and receive a demonstration of a new master data management platform that will enhance the MSRB's data governance and oversight capabilities. The Board also will discuss potential future research publications and initiatives to enhance understanding of trends and developments in market structure.

Public Trust
The Board will discuss several topics that benefit from ongoing stakeholder engagement, including seeking information from the public about Environmental, Social and Governance (ESG) considerations in the municipal market; efforts to advance diversity, equity and inclusion in public finance; and a comprehensive review of the MSRB's fee model as described in the Fiscal Year 2022 Budget.

October GFOA Government Finance Review Available Now.

This month's GFR is now available to read electronically. Among the topics in the October edition is an in-depth look into interruptions at work with ideas to tame distractions to maximize workplace productivity.

READ ONLINE

GASB Changes Name of Report to "Annual Comprehensive Financial Report"

Norwalk, CT, October 19, 2021 — The Governmental Accounting Standards Board (GASB) today issued a pronouncement that changes the name of the most extensive report prepared following its standards to the annual comprehensive financial report or ACFR. Until now, the name applied to those reports was the comprehensive annual financial report.

The name change was prompted by GASB stakeholders raising concerns that the acronym of the prior name of the report sounds like a profoundly offensive term when spoken. The changes in the name and acronym were widely supported by individuals and stakeholder groups that responded to the April 2021 Exposure Draft proposing the changes.

Statement No. 98, *The Annual Comprehensive Financial Report*, establishes the annual comprehensive financial report and ACFR in generally accepted accounting principles (GAAP) for state and local governments and eliminates the prior name and acronym. Otherwise, no changes were made to the report's structure or content.

Regarding the issuance of Statement 98, GASB Chair Joel Black said, "Once this issue came to our attention, it was clear that working with our stakeholders to rename this important document was simply the right thing to do. Thank you to everyone who worked with us and shared their input."

Financial reports prepared following GAAP are required to contain basic financial statements (including notes to financial statements) and required supplementary information (such as management's discussion and analysis). Governments may voluntarily present those required components in an ACFR, which also contains more background and explanatory information from management, additional financial statements disaggregating certain columns in the basic financial statements, and a "statistical section" of 10-year trends in financial, economic, demographic, and operating information.

The requirements of Statement 98 are effective for fiscal years ending after December 15, 2021. Earlier application is encouraged.

Surge in Munis Up for Sale as Yields Catch Up With Treasuries.

- **Spreads jumped in block sale of debt from top-rated Maryland**
- **Follows the rise in Treasury yields on rate-hike speculation**

Municipal-bonds traders are catching up with the repricing that's raced through the world's sovereign debt markets, causing a surge in the number of state and local government securities offered for sale.

Yields on tax-exempt bonds jumped by as much as 5 basis points Thursday, after traders elsewhere started pricing in that the Federal Reserve will increase interest rates twice by the end of next year.

That drove investors to put out about $860 million of bonds for bids, the most since May 13, according to data compiled by Bloomberg.

The weak tone was set early in the day, which saw a spike in the selling of large blocks of securities. Ben Pease, head of municipal trading at Breckinridge Capital Advisors Inc., said the market took note when a dealer traded about $6 million of AAA rated Maryland general-obligation bonds at a spread of 11 basis points off the benchmark, up from 4 basis points last week.

"I think it felt a touch fragile this week, and today's bids wanted and early trades were the catalyst," Pease said. "We just needed momentum to pick up on the downside for buyers to step back."

In addition, the time it takes dealers to move their inventory has slowed in the last week, indicating there aren't enough buyers, he said.

With Thursday's rise, 5-year benchmark municipal bond yields have increased about 20 basis points since late September to about 0.6%. Similar Treasuries have risen about 38 basis points since then, with the yield now around 1.23%.

Bloomberg Markets

By Martin Z Braun

October 21, 2021, 1:38 PM PDT

Puerto Rico Bankruptcy Judge Orders Monday Call on Debt Plan.

- **Judge Swain seeks status of debt plan after bond bill stalls**
- **Legislation is needed to restructure debt and leave bankruptcy**

The judge overseeing Puerto Rico's record bankruptcy ordered Governor Pedro Pierluisi, the island's political leaders and its financial oversight board to participate in a conference call Monday after lawmakers failed to enact legislation to restructure the commonwealth's debt.

Confirmation hearings set for November on the oversight board's debt restructuring plan will remain in place pending completion of the call, U.S. District Court Judge Laura Taylor Swain said in her order Friday.

The purpose of the conference is for the parties to explain the status of the debt restructuring plan "and any alternative measures in light of the absence of the contemplated legislation," Swain wrote.

The oversight board on Thursday said it would ask the court to delay the planned November hearings if island lawmakers failed to enact a bond bill by 2 p.m. ET on Friday that authorizes the commonwealth to sell new restructuring bonds. The legislation is a key step in getting Puerto Rico closer to exiting its more than four-year bankruptcy.

The commonwealth's debt adjustment plan seeks to resolve $33 billion of bonds and other debt. It's the largest bankruptcy in the municipal bond market and already has been delayed by natural disasters and the coronavirus pandemic.

Puerto Rico’s Senate on Thursday failed to round up the necessary 14 votes to pass the bond bill after the House of Representatives approved the measure on Tuesday. Pierluisi supports the legislation.

Swain’s order included the participation of Senate President Jose Dalmau and Rafael ‘Tatito’ Hernandez, Speaker of the House of Representatives.

The Senate’s lack of votes for the bond bill prompted a comment on the issue Friday from Popular Inc., the island’s biggest bank by both assets and deposits.

“Failure to approve legislation to enable the debt adjustment plan could jeopardize the ongoing economic recovery of Puerto Rico,” Ignacio Alvarez, Popular’s president and chief executive officer, said in a statement Friday. “While not perfect, we believe approving the plan is in the best interest of Puerto Rico.”

Bloomberg Markets

By Michelle Kaske and Jim Wyss

October 22, 2021, 4:00 AM PDT Updated on October 22, 2021, 11:32 AM PDT

JPMorgan Bond Deal Is Paused by Louisiana Over Gun Policy.

- **State bond commission delays approving $700 million borrowing**
- **Attorney general asks Dimon to clarify bank’s stance**

More Republican state officials are picking a fight with Wall Street.

On Thursday, a Louisiana panel delayed the approval of a $700 million state bond sale set to be underwritten by JPMorgan Chase & Co. as the attorney general pushes for information on the bank’s policies on gun control.

State Treasurer John Schroder, a Republican, said during the state bond commission meeting that the group wouldn’t consider an agenda item allowing for the refinancing of gasoline- and fuels-tax bonds that JPMorgan was slated to underwrite. Schroder, the commission’s chair, said the state needed to look at its underwriting criteria, joining the efforts by some in the GOP to punish Wall Street banks for wading into social issues.

“We are going to pull that,” said Schroder, who said they would “give it a month” to review its underwriting criteria. He said he had informed the bank of the decision late Wednesday.

The scrutiny comes as the largest U.S. bank is facing a hit to its public finance business in neighboring Texas over its gun policies. In September, a law went into effect in Texas that bars state and local governments from hiring banks that moved to curtail ties to the firearms industry in the wake of mass shootings. That led JPMorgan and Citigroup Inc. to pull back from seeking work in the state, which was the largest issuer of municipal-debt after California last year.

A spokesperson for JPMorgan declined to comment.

The Louisiana commission’s move comes one week after Attorney General Jeff Landry asked JPMorgan Chief Executive Officer Jamie Dimon to clarify the bank’s policy regarding any restrictions on business with the gun industry. Landry cited media reports on the fallout from the Texas law that affected JPMorgan's municipal business. The bank has said the legal risk of the legislation has prevented it from bidding on most business with Texas public entities as a result.

The Louisiana move stems from a decision by the state in 2019 to question banks over whether they have gun-related policies. In 2018, Louisiana blocked Bank of America Corp. and Citigroup from underwriting a bond issue because of such policies, and the following year required would-be underwriters for specifics.

As part of the 2019 application process for those seeking to act as senior underwriters on Louisiana state bond deals, banks had to certify that they didn't restrict or infringe on the citizens' "constitutionally protected rights" to keep and bear arms, or discriminate against citizens based on the exercise of their constitutional rights. At the time, JPMorgan told the bond commission that it had no such policies and it was selected in February 2020 as one of eight banks to join the state's underwriting pool. It has since served as senior manager on two deals totaling $1.1 billion, according to the letter.

Earlier this year, Dimon told a Congressional committee that his bank won't finance gun companies that make military-style weapons for consumers.

"I believe that the Bond Commission should not conduct any business with an entity that discriminates against law-abiding citizens and businesses in the state of Louisiana," Landry, a Republican, wrote in the Oct. 14 letter to Dimon, asking him to provide a supplemental certification regarding JPMorgan's policies.

"The State reserves the right to reject the response if this certification is subsequently determined to be false," he wrote in the letter, quoting the Dec. 2019 solicitation for offers for underwriting services.

Schroder's decision on Thursday could be a harbinger of more trouble ahead for JPMorgan's public finance business as Republicans look to punish Wall Street for wading into social issues.

Still, the state of Louisiana only issued about $881 million of bonds last year, which pales in comparison to the Texas debt market, where issuers including local governments and state agencies sold about $58 billion of debt in 2020, according to data compiled by Bloomberg. The Texas law covers a wide swath of municipal borrowers.

Lawmakers in Louisiana passed a piece of legislation similar to Texas earlier this year that would have barred the state and local governments from engaging in public contracts with firms that have "discriminatory practices" with firearm associations, retailers and manufacturers. But Governor John Bel Edwards, a Democrat, vetoed the bill, saying it would cost taxpayers money.

Bloomberg Markets

By Danielle Moran and Amanda Albright

October 21, 2021, 1:58 PM PDT Updated on October 21, 2021, 2:59 PM PDT

[Texas Showdown Shows Limits of Seeking Gun Control through Banks.]()

We now have the first measurable results of the campaign to use major banks' market power to curb the US gun trade. When faced with a legal counter-attack from the Republican-controlled state of Texas, the anti-gun movement appears to have been unsuccessful.

Back in early 2018, public outrage following a series of mass shooting incidents in the US, including one at a Parkland high school, led to activist demands for the financial industry to cut off support for the gun trade.

At the time, the National Rifle Association, the largest US gun lobbying group, was facing accusations of financial mismanagement that ultimately led to an investigation by New York State authorities and a bankruptcy proceeding. Anti-gun activists had reason to believe it was a good moment to strike.

At first, the activists made progress. By March 2018, Citigroup had announced that it would require retailers who were clients of the bank not to sell firearms to customers under the age of 21, and to cease the sale of devices "that increase the firing rate of semi-automatic firearms". Shortly after, Bank of America said it would halt lending to manufacturers of "military-style" weapons.

JPMorgan Chase was a bit slower to react to the mass-shooting revulsion, but this year chief executive Jamie Dimon told Congress that the bank would also no longer finance the makers of military-style weapons. Goldman Sachs made a similar commitment. Others, such as Morgan Stanley, made more equivocal pledges to step back from the gun trade.

There were, however, banks who have held back on restricting support for the firearms and ammunition trade. Among the largest are Wells Fargo and Barclays' US bank.

As I have noted in the past, the consumer end of the gun making industry in America is a highly fragmented, low-tech metal bending trade. On past form it is more likely to be a source of bankruptcy attorneys' fees than profit growth for its lenders.

But more than a third of Americans say they own guns. When gun owners are asked why they own a firearm, they most frequently cite personal safety or defence. Less than half say they bought a gun for hunting.

Gun buying does track political identification. According to a Pew Research public opinion survey, 44 per cent of Republicans and Republican-leaning independent voters say they own a gun, in contrast to only 20 per cent of Democrats or Democrat-leaning independents.

Politicians paid attention. Democrats in Republican-leaning states, such as Joe Manchin in West Virginia, and populist Republicans such as Marjorie Taylor Greene of Georgia have made campaign videos showing them shooting guns at copies of locally unpopular legislation or exploding targets.

Texas Republicans, whose control of the state government has become shakier in recent years, have fastened on the anti-mass shooting movement as a useful foil.

In June, the Texas legislature passed into law Senate Bill 19, which prohibits state contracts with companies that "discriminate against the firearms or ammunition industries". This included the major banks' limitations on doing business with the gun trade, and "state contracts" included the underwriting of municipal bonds.

Texas is the third-largest municipal bond issuer (after California) in the US, with over $408bn in total outstanding public debt. This was a major test for the anti-gun campaigns.

Yet Bill 19's language is ambiguous and an underwriter might find hairsplitting ways to get around its stated purpose. Nevertheless, JPMorgan, Bank of America, Citigroup, Goldman and others pulled back from underwriting Texas muni bonds after the law went into effect on September 1.

What happened when Texas re-entered the bond market after the return from the summer holidays? Hardly anything. By the third week of October, the state had issued $730m of new bonds, which were underwritten by lower-tier banks and dealers.

While October was a difficult month generally for the municipal market, according to CreditSights, an independent analytics firm, the yield on the state's AAA bonds hovered around 1.41 per cent, just 0.17 percentage points higher than the benchmark ICE BAML Municipal Bond Index.

As one municipal dealer says: "The smaller dealers got excited for a hot second, but that was it. The state government made a move that seemed congruent with its population's sentiments."

The thin results of the anti-gun campaign in the banking industry show the limits of creative fixes for divisive issues marked by deep social fears and political tribalism.

PublicWire

October 30, 2021

[The Fight Between Texas and Wall Street Is About to Get Bigger.]

- **Gun and oil laws have put some bank deals on hold during boom**
- **'This is much bigger than the municipal bond business'**

Outside San Antonio this month, a veteran of Texas politics got so upset about Wall Street's retreat from fossil fuels that he compared the oil industry's fight for funding to the civil rights struggle.

In Dallas, a hedge fund manager trading junk bonds on his iPhone lamented his upcoming move to the posh Highland Park neighborhood, fearing locals might brand him an outsider even though he relocated from New York years ago.

And at an Austin diner, a finance executive whose grandfather was governor hoped for compromise between Wall Street and the Lone Star State, but warned it may get worse before it gets better.

Welcome to the tense battle brewing between Big Finance and Texas. Just a few months ago, drawn by the promise of low taxes and light regulation, some of the largest banks and asset managers in the U.S. were ramping up their flight from the coasts.

Then Governor Greg Abbott signed a law banning state investments in firms that cut ties to oil and gas and another blocking local governments from working with banks that limit their lending to gun companies. That halted business for some top municipal-bond underwriters. JPMorgan Chase & Co., Bank of America Corp., Citigroup Inc. and Goldman Sachs Group Inc. have all stopped muni underwriting in the state, at least for now.

But what's happening in Texas isn't just about muni bonds or a Republican governor leaning to the hard right in a bid to win reelection next November. It's a broader conflict between a state that would be among the world's top economies if it were its own country and an industry whose leaders have begun to raise their voices on social issues from racial equity to climate change while pledging to consider stakeholders besides investors.

Interviews with more than a dozen bankers, traders and investors suggest that when Texas decides banks have gone too far, it presages a bigger struggle over corporate power and the reach of Wall Street's influence.

Bigger Than Munis

"This is much bigger than the municipal bond business," said Phil Gramm, a former Republican U.S. senator from Texas. "This is the beginning of telling Wall Street that if you're going to discriminate due to your fealty to special interest groups, you're going to have to pay for it."

Gramm helped write the law that allowed for the creation of Citigroup and other Wall Street giants, and later was vice chairman of UBS AG's investment bank. He prefers to use what he calls the language of the civil rights movement, comparing an oil driller's ability to borrow funds to the right to sit at segregated lunch counters: "Discrimination is discrimination."

Until recently, the finance industry's ties to Texas had never looked stronger. Goldman Sachs has been on the hunt for a new Dallas-area campus that could be its biggest in the U.S. outside Manhattan. Charles Schwab Corp. built new headquarters in the wealthy suburb of Westlake. And Vanguard Group announced a new Dallas-Fort Worth office not too far from fresh space for hedge fund Canyon Partners.

Inside an Austin restaurant called Cisco's, where a wall of luminaries includes a photo of former governor Bill Clements, his grandson George Seay ate huevos rancheros with biscuits and gravy.

Seay, the founder of investment firm Annandale Capital, said it was "a big, big move" when JPMorgan boss Jamie Dimon and other top executives said in 2019 they're redefining the purpose of corporations to benefit workers and communities, not just shareholders.

The way he sees it, things are coming to a head in Texas because corporations have "become woke" just as Abbott, who's running for a third term, is signaling to supporters that he's the biggest conservative in town.

Texas all but banned abortion this year and stopped transgender high school athletes from playing on teams that don't align with their birth certificate. When North Carolina passed a parallel bathroom bill five years ago, corporate boycotts helped pressure the state to abandon it.

"That's not going to work down here," Seay said last week. Instead of one side getting its way on social issues, he said, executives and politicians will have to each make compromises, he said. "You can be friends with someone who doesn't agree with you."

'We Need the Brains'

When Bobby Tudor moved to Texas decades ago, Goldman colleagues told him he was making a mistake. But then they gave him a hard time around bonus season because he got to keep so much more of it than colleagues in New York, where taxes are higher. "My answer was: 'Move to Texas, dude.'" Some of them did.

Tudor, who co-founded the energy-focused investment bank Tudor, Pickering, Holt & Co., said Texas didn't start this fight. Corporate leaders are "feeling compelled to speak out and take positions on all sorts of matters that aren't necessarily central to their business."

In an office that looks down on the Houston Ship Channel, he said people in Texas feel their "version of a great world isn't the same as Larry Fink's." He added that the Greater Houston Partnership, a group of business leaders he has helped run, supports the right of businesses to require vaccinations, something Abbott has tried to ban.

Asked about the tension, Abbott said "people and businesses vote with their feet, and month after month they are choosing to move to Texas," according to a statement sent through a spokesperson. He cited the pull of "no corporate or personal income taxes, a predictable regulatory climate, and a young, growing, and skilled workforce."

The fight is already spreading past Texas. Last week, a panel in Louisiana delayed approving a $700 million state bond sale set to be underwritten by JPMorgan while the attorney general presses for information on the bank's gun policies. Dimon told Congress this year that his bank doesn't finance gun companies that sell military-style weapons to consumers.

Over the years, it's frustrated Lucy Billingsley to watch Texas pass socially conservative laws she can't support. Even so, the Dallas real estate investor and developer adores the state's pro-business environment, those low taxes and light regulation. She wants finance firms to embrace that same calculus.

"Come engage and lead," she said. "We need the brains — and we need to make this a better place."

Cullum Clark, a finance veteran who teaches economics at Southern Methodist University and runs the Bush Institute-SMU Economic Growth Initiative, predicts a long push and pull over corporate influence.

"We will see more and more statements and measures like the Texas one, some left and some right," he said. And then, he predicts, executives may fight back. "Wall Street is strong, these are not weak entities that have no resources. I think they're watching closely."

Bloomberg Equality

By Max Abelson

October 29, 2021, 5:00 AM PDT Updated on October 29, 2021, 9:05 AM PDT

— With assistance by Amanda Albright, and Danielle Moran

[Essential Tools for Effective Payable Policies and Procedures in the Treasury Department: GFOA Webinar]

November 8, 2021 | 2 p.m.-4 p.m. ET

Details:

Governments make payments every day through a variety of avenues, including ACH, checks, wire transfers, p-cards, cash, and other methods. It is critical that governments have appropriate policies and procedures in place to ensure timely payments, maintain necessary government operations, and prevent against internal and external fraud instances. This course will assist finance officers with developing, reviewing, and updating their policies and procedures related to payables. Key components of the training will include: Overview of payable methods typically used by governments Benefits and risks of utilizing electronic payments, cash payments, and check payments Expanding options available for making electronic payments Third-party relationships required to make payments (banks, payment providers, etc.) Tracking payments internally and the associated software needs Internal controls required to prevent internal and external fraud Timely reconciliation and record keeping.

Learning Objectives:

Review the core payables function in the Treasury Office
Learn recommended policies and procedures
Identify fraud hazards from multiple sources and ways to prevent fraud
Understand the opportunities and responsibilities with any external relationships used to assist with a government's payables function

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Munis In Focus: All Tricks No Treats For Muni Bonds (Radio)

Eric Kazatsky, Senior Municipal Strategist for Bloomberg Intelligence, discusses the latest muni market news. Hosted by Paul Sweeney and Kailey Leinz.

Play Episode

Bloomberg Radio

October 29, 2021

Puerto Rico Board Ends Spat That Threatened Restructuring.

- **Oversight board says bond law allows for debt restructuring**
- **Board decision ends need for mediation with lawmakers**

Puerto Rico's debt restructuring plan can move forward as a new law that allows the island to sell bonds was cleared by the commonwealth's financial oversight board, resolving an impasse that threatened to derail the largest bankruptcy case in the municipal-market's history.

The board announced in a statement Thursday morning that the bond bill was acceptable for the debt restructuring. The decision allows both sides to skip mediation talks planned for this week to try and hash out a compromise on disagreements over changes to public worker pensions.

Puerto Rico's bankruptcy case was at risk of being tossed out. U.S. District Court Judge Laura Taylor Swain warned the parties during a hearing Monday that she may be forced to consider dismissing the bankruptcy if the commonwealth didn't have a debt restructuring plan that she could confirm promptly.

“I am relieved and pleased that we are back on track and can move forward with the plan of adjustment to end Puerto Rico’s painful bankruptcy,” David Skeel, the board’s chairman, said in a statement Thursday. “This plan reduces Puerto Rico’s debt to sustainable levels and its confirmation will provide a foundation for sustainable economic growth.”

Bondholders, creditors and bond insurance companies have negotiated with the board for years to reach agreements on how to reduce Puerto Rico’s obligations. The debt restructuring plan would help resolve $33 billion of bonds and other debt, including cutting $22 billion of bonds tied to the central government down to $7.4 billion.

Trades Up

Prices on some Puerto Rico securities jumped following the board’s decision. General obligation bonds maturing in 2035 with an 8% coupon changed hands Thursday at an average 87.5 cents on the dollar, up from 86.1 cents the day before, according to data compiled by Bloomberg.

The board late Wednesday told the court in a filing it supports the confirmation of the debt adjustment plan, which also addresses more than $55 billion of unfunded pension liabilities. Swain is set to begin confirmation hearings on that debt cutting proposal on Nov. 8.

“Let there be no illusions,” the board said in the court filing late Wednesday. “The people and the creditors have each suffered serious losses. The plan does not restore everything lost. But, the plan and the fiscal plan measures preceding it and following it, can enable the commonwealth to provide much brighter futures.”

Governor Pedro Pierluisi signed the bond bill into law late Tuesday after both legislative chambers approved the measure earlier that day.

“Puerto Rico is on the way to recovery,” Pierluisi said in a statement Thursday. “The wise decision to go ahead with the confirmation of the debt adjustment plan to make the debt restructuring of the government of Puerto Rico viable is a great step towards the promising future of Puerto Rico.”

The board and lawmakers had clashed over potential changes to pensions for public workers. The board has proposed freezing the pension benefits that current teachers and judges would receive once they retire, a change that lawmakers oppose.

A dismissal of Puerto Rico’s bankruptcy would be an expensive failure for the commonwealth. Since the island’s bankruptcy started in May 2017, lawyers, accountants and other financial professionals working on the case have billed commonwealth taxpayers more than $960 million for their work.

Bloomberg Politics

By Michelle Kaske

October 28, 2021, 7:18 AM PDT Updated on October 28, 2021, 10:07 AM PDT

— With assistance by Steven Church

Minnesota Charter School Loses $4.3 Million on Hedge-Fund Bet.

- **Founder of Hmong College Prep Academy resigned Monday**

- **St. Paul, Minnesota, school has $70 million in muni debt**

The founder and superintendent of a St. Paul, Minnesota, charter school with about $70 million in municipal debt resigned a week after the state auditor found the school lost $4.3 million in an improper hedge-fund investment.

Christianna Hang, superintendent of the Hmong College Prep Academy, resigned Monday at a special board meeting.

The departure came after the K-12 charter school drew attention for losing almost all of the $5 million it invested with Woodstock Capital LLC, a New Jersey-based hedge fund, in 2019. The investment wasn't permissible under state law and conflicted with the school's policy, according to a Oct. 18 report by state auditor Julie Blaha.

Hang didn't respond to a message left with the school. Clark Reiner, managing partner of Woodstock Capital, didn't immediately return a call seeking comment.

Charter school bonds are among the riskiest in the municipal market because of the chance that they will shut down if enrollment or academic performance falters. Charter schools receive public funding based on how many students enroll but are operated independently.

About $200 million of $26.3 billion of municipal debt issued for charter schools is currently in default, according to data compiled by Bloomberg.

Hmong College Prep Academy issued $43.3 million of bonds in 2016 and another $26.1 million in 2020 to finance the renovation and expansion of the school, which educates about 2,400 students. The debt is rated BB+ by S&P Global Ratings Inc., one step into junk. Hmong College Prep Academy operates under a charter contract with Bethel University, which oversees the school.

Nuveen LLC was the largest holder of the school's debt as of Sept. 30, with about $33 million, according to data compiled by Bloomberg. Jessica Greaney, a Nuveen spokeswoman, didn't immediately respond to an email requesting comment.

Woodstock, the hedge fund, provided a letter to the school indicating the money would be invested in safer, more liquid instruments such as U.S. Treasuries, according to the school's 2020 financial statement. But when the the school sought to withdraw its funds at the end of 2020, it discovered the value of the investment had plummeted. Minnesota law prohibits the investment of public funds in private equity partnerships or hedge funds.

Hmong College Prep Academy has sued Woodstock and Reiner, the managing partner, alleging they fraudulently induced the school to invest.

Hmong College Prep Academy had about $14 million in cash and investments as of June 30, 2020, according to its financial statement. The school was able to recover $684,762 of its $5 million investment. Woodstock hasn't provided an accounting of its investment activity, according to the financial statement.

In an Aug. 30 letter to the academy, Bethel University said it had "great concern" related to the management of the school's finances, governance and legal compliance. Bethel called on the school to fire the superintendent, hire an outside financial consultant and create a a chief financial officer position to remove financial responsibilities from the superintendent. Bethel also recommended that the school be led by someone without any ties to it.

Bloomberg Markets

By Martin Z Braun

October 26, 2021, 11:11 AM PDT

Long-Dated Munis Reach Cheapest of 2021 Amid Tax-Hike Debate.

- **Weakening relative to Treasuries comes as fund inflows slow**
- **Latest ICI data show smallest intake since outflow in March**

Long-maturity municipal bonds have reached the cheapest levels seen all year as demand for tax-free debt fades with Democratic lawmakers in Congress struggling to determine how to boost revenue to help pay for President Joe Biden's agenda.

Yields on benchmark 30-year munis are now about 89% of those on similar-maturity Treasuries, the highest proportion of 2021, according to data compiled by Bloomberg. The ratio is extending its climb from record lows set around mid-year as cash flooded into state and local debt, in part from high earners looking for shelter from potentially higher tax levels.

But Democrats' inability to hammer out an accord on tax increases has helped erode that demand. A proposed levy on billionaires' assets has been dropped in negotiations, and legislators are now discussing a surtax for those earning more than $10 million, House Ways and Means Chair Richard Neal said Wednesday. The back and forth is adding to the uncertainty around the possibility of steeper taxes on income.

"As long as those prospects continue to wane, I think that is going to have an impact upon municipal demand," said Jeff Lipton, head of municipal credit strategy at Oppenheimer & Co. "I think by the end of the year, munis will comfortably outperform Treasuries, even though that performance spread may narrow."

Munis are on track for a third straight monthly decline for the first time since 2016. Driving home the ebbing appetite for the debt, muni mutual funds collected $193 million during the week ended Oct. 20, the smallest intake since an outflow in March, according to the Investment Company Institute.

Even amid the latest slide, state and local debt remains one of the stronger corners of fixed income this year, earning 0.4% through Tuesday's close while Treasuries have lost almost 3%, Bloomberg index data show. And there's little doubt that a broad bond-market selloff amid concern about elevated inflation is contributing to the waning appetite for munis.

"Fund flows are weakening because rates are rising, it is as simple as that," said Vikram Rai, head of municipal strategy at Citigroup Inc.

Still, investors say they're monitoring the shifting political sands in Washington as a key part of the muni market backdrop in coming months.

"It seems like when the whole Biden infrastructure plan came, a lot of the tax reform was already priced into the market," said Max Christiana, a portfolio manager at Belle Haven Investments LP. "Now you've had a lack of progress from Congress, and you're seeing some fatigue in the market."

Bloomberg Markets

By Nic Querolo

October 27, 2021, 10:40 AM PDT Updated on October 27, 2021, 12:46 PM PDT

Munis Head for Longest Slide Since 2016 on Sign of Ebbing Demand.

- **3-month drop comes as state, local mutual funds draw less cash**
- **Analysts point to impasse in D.C. on spending plans, tax hikes**

Municipal bonds are headed for a rare three-month slide, joining a broad slump in the U.S. debt market, amid signs that the insatiable demand that's buoyed tax-exempt securities this year may be waning.

Muni mutual funds collected $385 million of cash in the week ended Oct. 13, according to Investment Company Institute data. That was the second-smallest haul since March, and it compares with the $1.9 billion weekly average for 2021. What's more, municipal exchange-traded funds saw an outflow for the first time since February, CreditSights data show.

It's a possible indication that muni investors may be tiring of waiting for lawmakers in Washington to hammer out new spending measures that include tax increases on wealthy Americans. The expectation of such legislation has been a key driver behind the influx of cash into municipal debt this year, fueling the market's outperformance relative to Treasuries.

"Some of the slowdown in mutual fund flows may be due to seasonal factors, but because flows into muni ETFs have also slowed in the past two weeks, we think that there is a partial shift in market sentiment occurring," wrote Patrick Luby and John Ceffalio at CreditSights in a Monday research note.

The lackluster demand combined with rising Treasury yields have munis on track to lose 0.4% in October. It would be the third straight monthly decline, the first time that's happened since late 2016, according to Bloomberg index data. It's not as rare an occurrence in Treasuries, which are on the cusp of a similar slump and also suffered a four-month losing streak from December through March.

The appetite for munis may falter further should expectations for higher tax rates not materialize, said Matt Fabian, a partner at research firm Municipal Market Analytics.

"Congressional Democrats are finding those hikes to be difficult to implement," Fabian and colleague Lisa Washburn wrote in a note dated Monday.

'More Value'

Some money managers are finding a silver lining. Nisha Patel at Parametric Portfolio Associates LLC said the softening market has created a buying window for the ample amount of cash waiting on the sidelines.

"We saw a bit more value than what the new normal has been as of late," she said. "It's as exciting as it's been in a little bit of time."

Of note, municipals are still up for 2021, earning 0.4%. That's better than U.S. Treasuries, which have lost 3% this year as elevated inflation has led investors to bring forward bets on when the Federal Reserve will starting lifting borrowing costs.

"If you pull money out of munis, where are you putting it?" Patel said.

There's another way to gauge the opportunity created by the selloff. Relative to Treasury yields, muni rates are close to a seven-month high. That ratio hovered near all-time lows for months in 2021 as cash poured into tax-free debt.

"We reached a point where it was logical to have a bit of a pushback," said James Iselin, head of the municipal fixed-income group at Neuberger Berman Group. "We need higher yields, we need ratios for high-grade bonds to be more attractive, all those things are healthy for the market."

Bloomberg Markets

By Danielle Moran

October 26, 2021, 11:00 AM PDT

Muni-Bond Niche Defies Sales Slump as Banks Seize on Cheap Rates.

- **Gas-bond sales rises on gap between tax-exempt, taxable yields**
- **Barclays says such sales could hit record high this year**

Municipal-bond sales are surging in one corner of the market as banks seize on a way to secure low-cost financing, bucking the broader slowdown in borrowing by state and local government agencies.

Issuance of so-called prepaid gas bonds — which municipal utility agencies sell to lock in long-term fuel supplies from commodity trading arms of banks — have jumped to some $6.5 billion this year, more than four times as many as were sold in all of 2020, according to data compiled by Bloomberg.

While a recent surge in natural gas prices may be giving utilities a reason to borrow to lock in prices now, the increased use of such bonds has been driven by something more technical: the difference between yields in the tax-exempt and taxable debt markets. That gap widened earlier this year as investors shifted into municipal bonds on speculation that tax rates will rise under President Joe Biden.

That's effectively given banks access to a low-cost source of funds in the municipal-bond market, since they receive the proceeds of the debt sales in exchange for providing gas supplies in the years ahead.

"Its simply cheap financing for banks right now," said Charlie Hill, a portfolio manager at T. Rowe Price Group Inc. "Munis are very rich to Treasuries in the front end of the curve, so if [prepaid gas bonds] can price relative to a rich AAA, its cheaper than coming in the corporate market."

Two year tax-exempt bond yields over the past two decades have, on average, been roughly the same as those on Treasuries. But the municipal bonds were yielding about 49% of Treasuries by the close of trading Thursday. In August, that ratio hit a record low 26%, according to data compiled by Bloomberg.

Barclays Plc analysts led by Mayur Patel expect the brisk pace of prepaid gas bond sales to continue, putting them on pace for a potentially record-setting year.

The analysts said that such issuance historically has had more to do with the relationship between market interest rates than it has with commodity prices.

“While higher prices may attract municipal utilities to structure prepay gas deals in order to lock in long-term savings on their natural gas purchases, we find that the historical relationship between natural gas prices and prepaid gas supply is not that strong,” the analysts wrote in an Oct. 21 research note.

Bloomberg Markets

By Nic Querolo and Sri Taylor

October 22, 2021, 11:03 AM PDT

— With assistance by Natalia Lenkiewicz, and Martin Z Braun

High Yield Municipal Bonds Have Pulled Back - A Buying Opportunity?

As long-term interest rates have risen since the start of August from 1.17% to 1.63%, both investment-grade bonds and high-yield municipal bonds have sold off, explains Marvin Appel of Signalert Asset Management.

In the case of high-yield municipal bond funds, declines from August – October have ranged from 1.2%-1.8%. In comparison, the Vanguard Total Bond Market Index Fund (VBMFX), a taxable investment-grade bond fund) lost 1.6% over the same period.

Considering that high-yield municipal bond fund portfolios have longer maturities (typically nine years’ duration) than the average investment-grade bond (6.5 years), high-yield municipal bond funds have held up better than one might have feared. Year-to-date, they remain one of the best areas of the bond market. The benchmark S&P High-Yield Municipal Bond Index is up 5% in 2021, compared to much smaller gains in investment-grade munis (S&P Municipal Bond Index up 0.9%) and to a total return loss of 2% in investment-grade bonds.

Continue reading.

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10/29/2021

The ABCs of ESG: Practical Considerations for Environmental, Social and Governance Disclosure in Municipal Finance.

In order to make an informed investment decision as to the purchase of municipal bonds, the latest trend is for investors to evaluate environmental, social and governance (“ESG”) factors relative to the bond issuers in question, state and local governments.[1] In making this determination, investors primarily look to the information provided by the issuers in the offering document or official statement for the issuance of the bonds. As a result, in preparing their offering documents, issuers must now weigh the applicability, significance and scope of ESG factors with respect to their financial condition, operations and overall investor mix. In this blog, we will discuss ESG disclosure practices, review the benefits and risks of including such disclosure and contrast general ESG considerations with specific green bond issuances.

Currently, neither the Securities and Exchange Commission nor the Municipal Securities Rulemaking Board ("MSRB") has weighed in with regulatory guidance as to ESG disclosure in the municipal marketplace. Some industry participants have argued for a uniform set of criteria or a checklist for ESG disclosure, as a means of promoting clarity and consistency. However, questions remain as to whether a "one size fits all" approach would be feasible for issuers and meaningful to investors, given the diversity of issuers and credits in the municipal space. Others have advocated for a principles-based approach, with general guidelines that issuers can apply and adapt to their particular facts and circumstances. The Government Finance Officers Association ("GFOA") has taken the lead role in this regard, releasing best practices for ESG disclosures.

Generally, the GFOA's ESG best practices focus on two main principles: (1) identifying and, if possible, quantifying the material ESG risks or factors affecting the issuer of the municipal bonds, specifically as they affect the issuer's operations and financial position, including its credit quality and ability to repay the bonds, as well as its infrastructure and ongoing projects (including projects to be funded with the bond proceeds) and (2) the policy actions to be taken by the issuer to address those risks/factors. In that regard, the environmental component of ESG is intended to address matters such as climate change and resiliency, energy efficiency and renewable energy. The social component focuses on diversity and inclusion, equity and social justice issues affecting the long-term sustainability of a community, such as income disparities, housing affordability, access to quality healthcare and public education and internet access and affordability. The governance component touches on the particular government's organizational structures, decision-making processes, budgetary practices, transparency, risk mitigation (cybersecurity), legal framework for the issuance of debt, financial reporting requirements and pension and OPEB liabilities. In that respect, it is likely that issuers are already addressing most of the topics under the governance component in their offering documents. Nevertheless, the current focus on ESG factors represents an opportunity for issuers to consider this information in a new light.

As a practical matter, the majority of projects financed with the proceeds of municipal bonds are likely to already fall within at least one of the three ESG categories. Nevertheless, ESG disclosure is intended to go beyond the specific projects, providing investors with a broader window into the issuer's overall operations and creditworthiness, with an emphasis on these factors.

It is worth noting that, under two key antifraud provisions of the federal securities laws, Section 17(a) of the Securities Act of 1933 and Rule 10b-5 of the Securities Exchange Act of 1934, issuers must avoid making misstatements or omissions of material facts (with respect to ESG matters or otherwise) to investors in connection with the issuance and sale of municipal bonds to the public. Therefore, without a clear pricing differential or market advantage to offset this corresponding regulatory scrutiny, issuers may be understandably weary of including any new ESG disclosure in their offering documents. Additionally, to comply with MSRB Rule 15c2-12, underwriters involved in certain offerings of municipal bonds must confirm that the issuer will provide investors (through a filing with the MSRB) with annual updates to the financial information and operating data included in the offering document. Issuers should carefully consider whether any new ESG disclosure included in the offering document would be picked up by this annual reporting requirement.

Like ESG disclosure, issuances of bonds with particular labels such as "green," "climate," "social" or “sustainable,” where the proceeds are used to finance related projects, have increased in popularity during the past decade. Although the concepts have certain similarities, providing broad ESG disclosure about an issuer in an offering document does not necessarily transform the bond issue into green, climate, social or sustainable bonds. Likewise, providing specific project-related details in connection with an issuance of green, climate, social or sustainable bonds may capture some, but not necessarily all, of the ESG disclosure principles outlined above relative to the issuer. Stated differently, notwithstanding the potential for overlap, ESG disclosure focuses on the status of the issuer overall, whereas a labeled bond issue focuses on the use of the bond proceeds to finance a particular project or set of projects. Green bond disclosure guidance is currently under development by both the National Federation of Municipal Analysts and the GFOA in any event.

It appears that investor interest in ESG considerations will be with us for the foreseeable future. Issuers should work with their bond counsel, disclosure counsel, financial advisors and underwriters to develop a sensible approach to address this trend.

[1] For conduit issuers, attention should be paid to the issuer and the borrower when evaluating ESG factors.

Adler Pollock & Sheehan P.C.

October 29, 2021

SEC Charges School District and the District’s Former Chief Financial Officer with Violations of Securities Laws in a 2018 Bond Offering.

On September 16, 2021, the Securities and Exchange Commission (“SEC”) entered an order against a school district (Sweetwater Union High School District (the “District”) in San Diego County, California) and charged the school district’s former chief financial officer (“CFO”) with misleading investors who purchased $28 million of the District’s 2018 bonds (the “Bonds”).

In its actions, the SEC noted that the District and its former CFO presented stale and misleading financial information in connection with the offering of the Bonds. Specifically, the District included misleading FY2018 budget projections in its offering document for the Bonds, which budget did not reflect salary increases approved prior to the start of FY2018. When the District’s financial standing was being reviewed and then disclosed in the bond offering document, the District projected that its operations would result in a general fund balance of around $19.5 million when in reality, its operations resulted in a negative $7.2 million general fund balance; the District did not disclose that this projection was inconsistent with known actual expenses at that time. The former CFO’s department generated reports that showed expenses trending higher than its budget projected, to which the SEC said the District “continued to ignore reports showing that its budget for the 2018 Fiscal Year was untenable.” The District continued to use the stale budget projections in its reporting to the finance team1, the rating agency and eventually bond purchasers. Further, the former CFO attested to the accuracy of the information in the offering document when she signed the offering document, the bond purchase agreement and a certification to the underwriter.

The charges were brought under the Securities Act of 1933 Section 17(a)(2) and (3) for the District and 17(a)(3) for the former CFO; violations of these provisions do not require intentional wrongdoing on the part of the actor and can be established on the basis of negligence. Section 17(a)(2) and (3) provide, in relevant part, as follows:

> It shall be unlawful for any person in the offer of sale of any securities … directly or indirectly – …
>
> (2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
>
> (3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

"A statement or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision."2

The SEC order against the District found that the District violated Section 17(a)(2) and (3) by "making misleading statements and omissions to investors, as well as to the bonds' credit rating agency and other municipal industry professionals on the transaction." The District was ordered to cease and desist violating Section 17(a)(2) and (3), implement various written policies and procedures, conduct staff training, retain an independent consultant to review the policies and procedures, implement recommendations of the independent consultant, disclose this settlement in future bond offerings, and provide certifications of compliance to the Staff of the SEC regarding these settlement conditions.

The SEC charged the former CFO with violating section 17(a)(3). The former CFO has agreed to settle with the SEC, including being enjoined from participating in any future municipal securities offerings and paying a $28,000 penalty. The settlement is pending court approval.

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1 The finance team consisted of the underwriter and its counsel, bond counsel, disclosure counsel and the District's municipal advisor.
2 Securities Act of 1933 Release No. 10981, September 16, 2021, citing Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

Dorsey & Whitney LLP

by Jennifer Block, John Danos, David Grossklaus, Cristina Kuhn, James Smith

October 27, 2021

Virginia Beach Confronts Inescapable Costs of Rising Seas.

VIRGINIA BEACH, Va. (AP) — Voters in the sprawling coastal city of Virginia Beach will decide whether to approve one of the larger municipal bonds in the U.S. that would be used to protect against rising seas and intensifying hurricanes.

If it passes Tuesday, the $568 million would fund anything from elevating roads to closing a 100-acre city golf course to collect stormwater.

If it fails, economists said the city could lose billions of dollars in the next half-century as recurrent flooding inundates roads, businesses and homes.

The referendum underscores the mounting costs of adapting to climate change for U.S. cities. However, it will also be a measure of Americans' willingness to approve such bonds as more communities seek funding.

"I'm not confident that it will pass," said Virginia Wasserberg, whose Virginia Beach home was among 1,400 houses and businesses flooded by heavy rains from the remnants of Hurricane Matthew in 2016.

Wasserberg, 41, is a conservative Republican who home-schools her children and supports the bond. She's campaigned for more flood protections ever since her neighborhood's drainage systems were overwhelmed by weeks of rain that culminated with Matthew.

Homes that are miles from the city's beaches on the Atlantic Ocean and Chesapeake Bay were inundated for the first time. Wasserberg said she and her family fled to the second floor and called 911 — only to be told that responders couldn't reach them.

"I like to say it took a disaster to wake me up," Wasserberg said.

Voter approval is far from guaranteed in this city of nearly half a million people, which some political observers said can lean libertarian. If the bond passes, property taxes would rise by $115 to $171 a year for a home of median assessed value, city officials said.

The need for money to protect communities against climate change is growing across the globe, particularly in the world's poorest countries. It will be an area of discussion at an upcoming UN Climate Change Conference, which starts Sunday in Glasgow.

In the U.S., 26 percent of ZIP codes are "highly exposed to floods," according to Moody's ESG Solutions, which tracks climate risks and sustainable finance.

"As climate change becomes a greater threat, more governments will focus on climate adaptation and resilience projects," said Matt Kuchtyak, the group's vice president of outreach and research.

Several cities have already approved significant bonds. For instance, Miami residents voted in 2017 to fund a $400 million bond, nearly half of which would pay for such things as storm drain upgrades and sea walls.

San Francisco voters passed a $425 million bond to pay for the first phase of strengthening a sea wall that protects against earthquakes and rising oceans. The same year, Houston-area voters supported $2.5 billion in bonds for flood-control projects in the wake of Hurricane Harvey.

Bonds could emerge as the principal vehicle for funding, said Richard Wiles, executive director of the Center for Climate Integrity, which argues that oil companies should cover such costs because of fossil fuels' link to climate change.

"None of these cities has hundreds of millions of dollars hanging around," Wiles said, adding Virginia Beach has proposed one of the biggest bonds.

The city could prove to be an interesting testing ground.

A 2021 telephone survey of 400 residents found just more than half were willing to pay more in taxes for flood-protection projects, according to a report by Old Dominion University. However, half also agreed people who do not experience flooding on their properties should not have to pay for such projects.

And yet, the land in Virginia Beach is sinking and the seas are rising at an alarming rate. Since 1960, sea levels have risen by nearly a foot. And they're likely to rise by 1.5 feet to 3 feet over the next half-century.

Much of Virginia Beach sits on low coastal plains. Water can drain slowly into tidal rivers and tributaries, sometimes with nowhere to go during heavy rains and high tides.

The bond-funded projects could help the city avoid up to $8 billion in losses to flooding as well as associated economic impacts in the coming decades, according to the Old Dominion University report. The losses are equivalent to about a quarter of Virginia Beach's gross domestic product — or its total output of goods and services.

"As flooding becomes more prevalent, insurers will raise premiums, refuse coverage and at some point exit Virginia Beach entirely," economics professor Robert McNab said. "Businesses will have more difficulty in moving goods to market and, of course, residents will have more problems moving around the region."

John Moss, a city councilman who's been a large force behind the referendum, said Virginia Beach could still complete the flood-protection projects if the referendum fails. However, he said it would take 25 years instead of about a decade.

And even if the bond passes, the projects will make up about a third of what's needed overall protect to against 1.5 feet of sea-level rise, Moss said.

"It's a big ask," Moss said of the bond. "But the threat is real."

News Tribune

Oct. 29 2021

[Fitch ESG Outlook Conference.]

8-9 December 2021 | 09:00 – 13:00 EST

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Here is a sneak peek at this year's agenda:

Day 1 – 8 December

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- Post COP 26 Review: Thoughts and Implications

- Introduction to ESG Ratings with Case Study
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REGISTER NOW

Puerto Rico House Passes Bond Bill to Restructure Debt.

- **Senate has yet to vote on the measure, set to meet on Thursday**
- **Legislation needed to help get Puerto Rico out of bankruptcy**

Puerto Rico's House of Representatives approved a bill late Tuesday that allows the commonwealth to issue new bonds to replace existing debt and cut its obligations, a key step that moves the island closer to resolving its record bankruptcy.

The Senate failed to take up the measure on its floor, as that chamber works to garner sufficient votes to pass the legislation, Rafael "Tatito" Hernandez, Puerto Rico's speaker of the house, said in a telephone interview.

"It's always an issue of votes in every deal in the House and Senate because we don't have a supermajority," Hernandez said. "So we have to make deals. That's the way to do things."

The legislation is needed so the commonwealth can execute a debt restructuring that will slash $33 billion of debt, including $22 billion of bonds, to $7 billion. The bill, which has Governor Pedro Pierluisi's support, stipulates that Puerto Rico's financial oversight board must remove a proposed 8.5% cut to some public-worker pensions from its debt restructuring plan, a major concession the panel agreed to last week to get island lawmakers to vote for the restructuring bonds.

The island's legislature is under deadline to approve the bond bill as U.S. District Court Judge Laura Taylor Swain is set to hold confirmation hearings next month on the board's debt adjustment plan.

The Senate is set to reconvene on Thursday and could take up the bond bill then. Senate President Jose Dalmau will need to round up the necessary votes.

"Let him do his magic," Hernandez said about Dalmau's vote hunt. "Let him do his stuff."

Still, the more lawmakers tinker with the legislation, the greater the risk that the oversight board could determine that the bill fails to comply with Puerto Rico's multi-year fiscal plan, which aims to keep spending in line with revenue collections.

The board has contemplated asking the court to authorize new bonds if Puerto Rico lawmakers fail to approve the new securities, a rare move in the $4 trillion municipal-bond market. State legislatures and local elected officials tend to authorize borrowings.

While the board has agreed to remove pension cuts from the debt plan, Swain may still require reductions to retirement benefits, according to the oversight board.

Pierluisi expressed his support for the bond bill during a press conference in San Juan on Tuesday.

"We will be able to leave the bankruptcy behind, which is a dark cloud over Puerto Rico," Pierluisi told reporters.

Puerto Rico has been in bankruptcy since May 2017 after years of borrowing to cover budget gaps and population decline.

Bloomberg Markets

By Michelle Kaske

October 19, 2021, 8:37 PM PDT

S&P U.S. Local Governments Credit Brief: Minnesota Cities, Counties, And Schools

Overview

As the COVID-19 pandemic continues, the ratings on Minnesota local governments rated by S&P Global Ratings have mostly remained resilient, driven by largely stable property tax bases, balanced budgets, and very strong reserves and liquidity.

S&P Global Ratings maintains ratings on 326 cities, 64 counties, and 122 school districts in Minnesota as of Sept. 30, 2021. Overall, local government credit quality in the state remained stable despite the COVID-19 pandemic, as most entities do not have outsized reliance on economically sensitive revenue, and most responded preemptively by managing their revenue expectations and expenditures.

Only 10% of the rated issuers experienced rating changes as of January 2020 through Sept. 30, 2021. During this time, 2% of Minnesota local governments had positive rating actions and 8% had negative rating actions on their issuer credit ratings or general obligation bonds. Most of the ratings, 96%, have a stable outlook.

Most downgrades resulted from weakened economic measures and concentration, deteriorating budget performance, and weakened budgetary flexibility. In some cases, financial deterioration was exacerbated by weakened management controls. Weak to very weak debt burdens also contributed to diminished flexibility and credit deterioration. While upgrades were not common, they were mainly attributed to sustained economic and financial improvement.

Continue reading.

21 Oct, 2021

[Ending the State and Local Taxes (SALT) Deduction: Brookings Podcast]

Millions of American taxpayers itemize their deductions, one of which is for state and local taxes, or the SALT deduction. Most of these filers are at the upper end of the income distribution and live in high-income urban areas. On this episode, Senior Fellow Richard Reeves, director of the Future of the Middle Class Initiative at Brookings, says the SALT deduction mostly benefits the wealthiest taxpayers, gives little or no benefit to the middle class, and should be eliminated entirely. He also talks about the unusual politics of the debate in Washington, where Democratic leaders are calling for repeal of the SALT deduction CAP put in place in the 2017 tax law, championed by congressional Republicans.

[Listen to Podcast.]

The Brookings Institution

Richard V. Reeves and Fred Dews

Friday, October 22, 2021

[Illinois Supreme Court Strikes Down Cook County Tax on Guns as Unconstitutional.]

Majority leaves door open for narrower tax language

The Illinois Supreme Court ruled Thursday that a Cook County tax on gun purchases is unconstitutional, but it left the door open for a more tailored tax that specifically goes toward mitigating gun violence and its effects.

The Cook County gun tax, which took effect in April 2013, imposed a $25 fee for retail gun purchases in the county, as well as a 5 cent fee per cartridge of centerfire ammunition and 1 cent per cartridge fee for rimfire ammunition.

The taxes were challenged by the trade group Guns Save Life Inc. in a lawsuit against the county.

The Supreme Court's Thursday opinion, written by Justice Mary Jane Theis, stated that, "While the taxes do not directly burden a law-abiding citizen's right to use a firearm for self-defense, they do directly burden a law-abiding citizen's right to acquire a firearm and the necessary ammunition for self-defense."

In the 14-page, 6-0 opinion, the Supreme Court reversed an appellate court ruling that would have allowed the taxes to stay in place. Chief Justice Anne Burke did not take part in the decision.

While the court rejected the tax, it did specifically note that the county's failure to earmark the revenue from the tax for gun violence prevention programs played a major role in the decision.

It gave particular scrutiny to the question of whether the tax violated the uniformity clause of the Illinois Constitution, which states: "In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly."

Citing previous court precedent related to that clause, the court wrote it had to determine whether the tax on guns “bears some reasonable relationship to the object of the legislation or to public policy.”

“Under the plain language of the ordinances, the revenue generated from the firearm tax is not directed to any fund or program specifically related to curbing the cost of gun violence,” the court wrote. “Additionally, nothing in the ordinance indicates that the proceeds generated from the ammunition tax must be specifically directed to initiatives aimed at reducing gun violence. Thus, we hold the tax ordinances are unconstitutional under the uniformity clause.”

Justice Michael Burke agreed with the opinion, but issued a four-page special concurrence disagreeing with the majority’s analysis that the county’s spending plans affected whether the tax was permissible.

“The majority’s analysis is problematic because it leaves space for a municipality to enact a future tax — singling out guns and ammunition sales — that is more narrowly tailored to the purpose of ameliorating gun violence,” Michael Burke wrote.

He argued the majority opinion is leading the county “down a road of futility,” citing Article 1, Section 22 of the state constitution, which reads: “Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.”

“The only problem with the majority’s approach — and the guidance it offers the county — is that such counsel, if followed, would still violate the provision of the Illinois Constitution noted above that plainly states that the right of the individual to keep and bear arms is subject only to the police power, not the power to tax,” he wrote.

“Thus, the majority is leading the county down a road of futility,” he added.

One major precedent cited by the court was from Boynton vs. Kusper, a 1986 Supreme Court ruling which struck down a $10 state tax on marriage licenses in certain counties that went to the Domestic Violence Shelter and Services fund.

The court said at the time the marriage license tax “directly impeded the exercise of the fundamental right to marry,” and should be subject to greater scrutiny.

The court ruled in the Boynton case that even though the $10 fee was “de minimis,” or small, if the court granted that authority, it would essentially mean “there is no limit on the amount of the tax that may be imposed,” according to previous case law.

The same argument can be applied to the gun tax, the court wrote, noting that a stricter level of scrutiny is needed because the tax applies to a fundamental right.

Given that necessary scrutiny, the court ruled the gun taxes unconstitutional.

“In applying that standard to the firearm and ammunition taxes, we recognize that the uniformity clause was ‘not designed as a straitjacket’ for the county … and acknowledge the costs that gun violence imposes on society,” the court wrote. “Nevertheless, the relationship between the tax classification and the use of the tax proceeds is not sufficiently tied to the stated objective of ameliorating those costs.”

In a statement, a Cook County spokesperson noted shootings in Chicago are up nearly 10% over the last year with almost 2,900 shooting incidents this year, and said guns “have had a significant impact on the County's public safety, health and general expenditures."

The county intends to meet with its legal counsel and "determine any next steps that may be warranted," according to the statement.

"Addressing societal costs of gun violence in Cook County is substantial and an important governmental objective," the spokesperson said. "We continue to maintain that the cost of a bullet should reflect, even if just a little bit, the cost of the violence that ultimately is not possible without the bullet. We are committed to protecting County residents from the plague of gun violence with or without this tax."

Capitol News Illinois

by Jerry Nowicki

Oct 22, 2021

Capitol News Illinois is a nonprofit, nonpartisan news service covering state government and distributed to more than 400 newspapers statewide. It is funded primarily by the Illinois Press Foundation and the Robert R. McCormick Foundation.

- MSRB Requests Comment on Draft Compliance Resources for Supervisors: Cadwalader
- GFOA Best Practices in ESG Disclosure: Environmental
- GFOA Best Practices in ESG Disclosure: Social
- GFOA Best Practices in ESG Disclosure: Governance
- Fitch Quarterly Review on ESG 3Q21.
- Climate Change Litigation: The Case For Better Disclosure And Targets
- S&P: Pension Obligation Bond Issuances Continue To Increase In 2021
- And finally, Perhaps Light Desk Duty Going Forward? is brought to us this week by *Cavey v. Tualla*, in which the court enumerated a list of attributes of a school district employee as: 1) having hit plaintiff while driving a vehicle registered to the school district; 2) "having a medical condition of continued epilepsy;" c) had been involved in "at least three motor vehicle accidents while working for the district; and 4) had recently been charged with hit and run. And with what job was employee tasked? So glad you asked. That's right – driver. Our working theory is that there simply isn't anything someone named Policarpio Tacas Tualla, Jr. can't get away with. (And note the Jr.!) We have no idea what this name is or where it came from, or what it denotes. Frankly, we don't want to know; we simply wish to bask in its glory. The wheels on the bus go, uh, round and round? And where they stop, nobody knows.

ZONING & PLANNING - CALIFORNIA

Schreiber v. City of Los Angeles

Court of Appeal, Second District, Division 6, California - September 28, 2021 - Cal.Rptr.3d - 2021 WL 4436987 - 21 Cal. Daily Op. Serv. 9989 - 2021 Daily Journal D.A.R. 10,274

Neighbors filed petition for writ of administrative mandamus to challenge city planning commission's approval of a mixed-use development project which included density bonus incentives and waivers.

The Superior Court denied the petition, and neighbors appealed.

The Court of Appeal held that:

- Developer was not required to show that the incentives granted under the density bonus law would actually result in cost reductions;
- City ordinance requiring documentation to show that the waiver or modification of any development standards are needed in order to make restricted affordable units economically feasible is therefore preempted by state law; and
- Financial feasibility study was sufficient to support any required finding by city planning commission under the density bonus law that incentives would result in cost reductions.

LIABILITY - CALIFORNIA

Cavey v. Tualla

Court of Appeal, Fifth District, California - September 24, 2021 - Cal.Rptr.3d - 2021 WL 4343719 - 2021 Daily Journal D.A.R. 10,075

Plaintiff filed personal injury action against school district and district employee for injuries sustained in a traffic accident involving a school district vehicle.

The Superior Court sustained school district's demurrer without leave to amend and entered a judgment of dismissal. Plaintiff appealed.

The Court of Appeal held that:

- As a matter of first impression, a claim is presented "by a person acting on the claimant's behalf" within the meaning of the Government Claims Act if the claimant knowingly and intentionally authorized the third person to present it or knowingly and intentionally ratified the claim after it was presented;
- As a matter of first impression, an unauthorized, unratified claim is a nullity under the Government Claims Act and has no legal effect;
- Plaintiff's timely filing of lawsuit against school district operated as a repudiation of the claim presented to district by chiropractic clinic;
- School district did not clearly and affirmatively established it was unduly prejudiced by plaintiff's repudiation of claim submitted by chiropractic clinic;
- Claim submitted by chiropractic clinic was a nullity and, therefore, was invalid with no force or effect; and
- School district's notice of rejection of claim filed by chiropractic clinic was defective and did not start six-month statute of limitations.

EMINENT DOMAIN - GEORGIA

Department of Transportation v. Mixon

Supreme Court of Georgia - October 5, 2021 - S.E.2d - 2021 WL 4528939

Landowner brought action against Georgia Department of Transportation (GDOT), alleging nuisance and inverse condemnation arising from flooding on her property following road-widening project, and seeking injunctive relief and compensation.

The Superior Court dismissed in part. Department applied for interlocutory appeal, which was granted. The Court of Appeals affirmed. Department petitioned for writ of certiorari, which was granted.

The Supreme Court held that:

- State constitutional takings provision waives sovereign immunity for two types of claims for injunctive relief, and
- Provision waived Department's sovereign immunity for landowner's inverse condemnation claim seeking injunctive relief.

Waiver of sovereign immunity effected by just compensation provision of State Constitution for claims seeking injunctive relief allows an injunction only to stop the taking or damaging until such time as the authority fulfills its legal obligations that are conditions precedent to eminent domain.

Just compensation provision of State Constitution waived Georgia Department of Transportation's (GDOT) sovereign immunity against landowner's inverse condemnation claim seeking injunctive relief arising from flooding on her private property following road-widening project, where landowner alleged that GDOT's failure to maintain its storm water drainage systems resulted in regular flooding on property, there was no suggestion that GDOT afforded landowner compensation for the alleged taking, and there was no suggestion that GDOT availed itself of legal process to exercise its eminent domain power over landowner's property. property.

PUBLIC MEETINGS - NEW HAMPSHIRE

Sivalingam v. Newton

Supreme Court of New Hampshire - October 5, 2021 - A.3d - 2021 WL 4552444

Former member of town board of selectmen brought action for injunctive relief against town and current board members, seeking current members' dismissal.

The Superior Court granted summary judgment to current members but denied board's motion to dismiss. Former member and board appealed, and current members cross-appealed.

The Supreme Court held that:

- Information disclosed during board meeting by current members was insufficient to adversely affect former member's reputation, as would be required to state claim under statute providing for dismissal of a town officer who violates oath of office through divulgence of certain information obtained by virtue of official position;
- Trial court acted within its discretion in declining to award attorney fees to current members under a "bad faith litigation" theory;
- Trial court acted within its discretion in declining to award attorney fees to current members under "substantial benefit" theory; and
- Provision of Right-to-Know Law permitting a public body to enter nonpublic session to consider matters which would likely affect adversely a person's reputation does not require that the public body provide notice of its intent to enter nonpublic session to discuss a particular person.

MUNICIPAL ORDINANCE - NEW YORK

People v. Torres

Court of Appeals of New York - October 12, 2021 - N.E.3d - 2021 WL 4732737 - 2021 N.Y. Slip Op. 05448

Defendant pled guilty in the Criminal Court of the City of New York, New York County to failure to exercise due care to avoid collision with a pedestrian and failure to yield to a pedestrian, pursuant to provision of city administrative code known as the “Right of Way Law.”

Defendant appealed, and the Supreme Court affirmed. In a separate case, another defendant was convicted after a bench trial in the Criminal Court of the City of New York of violating the same administrative code provision. Defendant appealed, and the Supreme Court, Appellate Term, affirmed. Leave to appeal was granted to defendant in each case.

The Court of Appeals held that:

- Right of Way Law did not violate due process by imposing ordinary negligence as the culpable mental state;
- Mens rea standard under Right of Way Law was not void for vagueness under Due Process Clause;
- Article of Penal Law governing culpability did not preempt the Right of Way Law;
- State’s Vehicle and Traffic Law did not preempt the Right of Way Law; and
- City’s enactment of Right of Way Law was valid exercise of delegated police power from the State.

SCHOOL DISTRICTS - PENNSYLVANIA

In re Formation of Independent School District

Supreme Court of Pennsylvania - October 7, 2021 - A.3d - 2021 WL 4618660

Coalition of inhabitants of borough appealed an order of the Court of Common Pleas denying its petition for formation of an independent school district after the Secretary of Education determined the petition had no educational merit.

The Commonwealth Court reversed. Districts sought review.

The Supreme Court held that as a matter of first impression, Secretary of Education could consider financial implications of transfer upon quality of education provided in affected districts.

In considering petition to establish school district independent of existing district for sole purpose of having new district be absorbed into neighboring district, Secretary of Education could consider financial implications of transfer upon quality of education provided in affected districts.

In reviewing for educational merit a petition for establishment of an independent school district for transfer of territory to another district, the Secretary of Education must take a holistic approach, looking not just at the students who would be transferred, but at the students in each of the affected school districts.

In considering petition to establish school district independent of existing district for sole purpose of having new district be absorbed into neighboring district, Secretary of Education could consider audit addressing educational impact of proposed transfer over objection that financial projections in audit were “conjectural,” where audit was entered into evidentiary record by stipulation and opponent agreed that auditor would not be required to offer witness to testify regarding its contents.

SIFMA: US Fixed Income Securities Statistics

SIFMA Research tracks U.S. fixed income markets, including issuance, trading, and outstanding data breaking out U.S. Treasuries, mortgage-backed securities (MBS), corporate bonds, municipal securities, federal agency securities, asset-backed securities (ABS), and money markets (outstanding data only). Data is downloadable by monthly (issuance and trading only), quarterly and annual statistics including trend analysis.

Current YTD statistics include:

- Issuance (as of September) $9,915.9 billion, +10.9% Y/Y
- Trading (as of September) $955.8 billion, -2.4% Y/Y
- Outstanding (as of 2Q21) $51.5 trillion, +5.8% Y/Y

Download xls

Climate Change Litigation: The Case For Better Disclosure And Targets

Key Takeaways

- The volume of climate change-related litigation against companies and governments worldwide appears to be growing.
- Climate change attribution science is strengthening and could increasingly contribute to judgments against heavy emitters.
- We believe climate-related judgments may ultimately have financial and reputational consequences for affected issuers.
- While to date climate litigation has not had a material credit impact, it is one of many potential levers that could make transition and physical risk crystalize sooner for issuers globally.
- In this paper, we explore in case study form the current state of climate litigation globally and suggest ways in which the potential financial and reputational risks associated with this emerging issue could be identified and managed.

Continue reading.

6 Oct, 2021

S&P ESG Brief: ESG Pension And OPEB Analysis In U.S. Public Finance

Environmental, social, and governance (ESG) is integral to our public finance credit analysis and we continue to amplify our transparency efforts for market participants. This brief aims to identify when our view of pension analytics and governance as part of ESG intersects with credit rating analysis.

Credit rating analysis for pension and OPEB is built around cash flows, both current and future, and how contribution costs could negatively affect an issuer's willingness and ability to meet its debt obligations and operational expenditures. In our view, ESG factors begin to overlap with our credit rating analysis for pension and OPEB when prioritization of plan contributions, through forward-looking plan governance decisions, is viewed through the lens of risk management, culture, and oversight.

Continue reading. [Registration required.]

7 Oct, 2021

S&P U.S. Higher Education Rating Actions, Third-Quarter 2021.

View the S&P Report.

13 Oct, 2021

S&P U.S. Not-For-Profit Health Care Rating Actions: September 2021 And Third-Quarter 2021

View the S&P Report.

14 Oct, 2021

S&P: Pension Obligation Bond Issuances Continue To Increase In 2021

Key Takeaways

- Pension and other postemployment benefit (OPEB) obligation bond (POB and OOB) issuance is accelerating in the U.S.
- Factors driving issuances include a favorable interest-rate environment and issuers' desire to control contribution escalation.
- Key credit concerns, while unique to each U.S. public finance (USPF) issuer, primarily include market returns falling short of expectations and pension contribution increases pressuring budgets.
- Obligations that aim to address pension liabilities might come in different forms, but with similar credit risks.

Continue reading. [Registration required.]

Fitch: U.S. Airport & Toll Road Traffic Inch Closer to Pre-Pandemic Highs

Fitch Ratings-New York-11 October 2021: Traffic at U.S airports and on toll roads continues its gradual return to pre-pandemic levels, according to Fitch Ratings in its latest U.S. Airports & Toll Roads Traffic Monitor.

One of the hardest hit infrastructure sectors due to COVID-19, U.S. airports have recovered to 70% of 2Q19 levels on average through the end of June, with a few airports exceeding pre-pandemic levels in certain leisure focused O&D markets. 'Airport traffic continues to improve across the U.S., though the recent surge of Delta variant infections is an area to watch to see if it pares back recent passenger growth,' said Director Henry Flynn. Domestic leisure traffic continues to show strength, while international traffic and business travel are expected to recover more slowly.

Conversely, one of the most resilient sectors during the pandemic continues to recover at a steady pace, with U.S. toll road average traffic volume in 2Q21 at 90% of 2Q19 levels. Certain markets continue to outperform and have already returned to pre-pandemic levels, particularly in Texas and Florida.

The traffic monitor is a web-based interactive platform that provides traffic volume information for more than 50 U.S. issuers. It compares current traffic levels as a percentage of 2019 traffic levels, to allow tracking of the sector's recovery to pre-pandemic levels. The monitor also compares actual data versus Fitch Rating Case, flagging how each issuer is performing against Fitch's scenarios. It provides several ways to sort data and produces charts to allow for visual comparisons between issuers. The latest version of the monitor includes enhanced functionality to compare recovery across airports at different time periods since the onset of the pandemic, in addition to map functionality.

To access the Traffic Monitor, visit: https://www.fitchratings.com/infrastructure-projec--finance/traffic-monitor.

For more information on Fitch's latest airport recovery assumptions, visit: https://www.fitchratings.com/research/infrastructure-project-finance/fit-h-revises-us-air-traffic-assumptions-upward-for-airlines-airports-12-07-2021.

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Fitch: U.S. Public Finance Strengthening Despite Uptick in 3Q Downgrades

Fitch Ratings-New York-11 October 2021: U.S. public finance sectors hit hard by the coronavirus pandemic continued to move away from the pandemic's fallout last quarter, according to Fitch Ratings in its latest quarterly rating actions report.

Fitch upgraded 26 U.S. public finance ratings and downgraded 30 in third-quarter 2021 (3Q21) compared with 28 and 18, respectively, in 2Q21. The uptick in downgrades last quarter was partly driven by unusual downgrade activity in the public power sector, namely among Texas public power and electric cooperatives.

The uptick in downgrades was driven in part by changes Fitch made to its criteria for U.S. life plan communities (LPC) earlier this year; subsequent review of credits placed 'Under Criteria Observation' contributed modestly to the number of downgrades. Overall, about 87% of U.S. public finance ratings carry a Stable Rating Outlook.

The fiscal turnaround continues for U.S. states with Fitch revising its Rating Outlooks for New Jersey and Nevada to Stable from Negative and Ohio's Rating Outlook to Positive from Stable last quarter. Updated revenue forecasts for fiscal years 2021 and 2022 generally reflect improved economic performance and outlooks. However, 'caution is warranted for some states around the tax revenue effects if services spending rebounds while goods spending weakens,' according to Arlene Bohner, Fitch's Head of U.S. Public Finance.

Fortunes also continue to improve more broadly for not-for-profit hospitals with most providers well positioned to absorb future coronavirus aftershocks, even with cases on the rise again. Colleges and universities are also seeing improvement with no downgrades in 3Q21, one upgrade and six favorable Outlook revisions thanks to better-than-anticipated enrollment and favorable operating performance. That said, net tuition revenue growth will remain stagnant through both this academic year and the next.

'U.S. Public Finance Rating Actions Report and Sector Updates: Third-Quarter 2021' is available at 'www.fitchratings.com'.

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Fitch Ratings Publishes Special Report on Transfers for U.S. Public Power

Utilities.

Fitch Ratings-New York/Austin-12 October 2021: Fitch Ratings has published a special report on transfers for U.S. Public Power Utilities. This report summarizes Fitch's view and treatment of transfers in Fitch's U.S. Public Power Rating Criteria.

The full report, "Transfers Not a Significant Credit Risk for Public Power Utilities", is available at www.fitchratings.com.

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Fitch Ratings Launches Summary Sheet of Changes to ESG Relevance Scores.

Fitch Ratings-London-15 October 2021: Fitch Ratings has summarised changes to ESG Relevance Scores (ESG.RS) for the first nine months of 2021. Across the Fitch rated universe there were nearly 380 instances of an ESG.RS being changed, split nearly equally between scores improving and deteriorating. In some cases, an issuer or issue will see a deterioration and subsequent improvement, but they are counted as unique changes.

Changes to scores related to environmental issues accounted for 19% of score changes, with slightly more than half being improvements to scores, mostly from a '3' to a '4' and a few to a '5'. This indicates that a general issue was having a material impact on the credit rating, either in conjunction with other factors ('4') or was a key rating driver ('5').

'Exposure to Environmental Impacts' was the most frequent cited issue, with the highest concentration around US public finance (USPF) entities, specifically utilities affected by the extreme cold weather in Texas in February 2021. With 27 scores increasing, this was the highest concentration in any asset class around a single general issue.

There were also some increases in ESG.RS that reflected a positive impact on the credit rating.

These were driven by sustainable building practices that led to a rise in scores in two US structured finance CMBS issues and a non-bank financial institution transaction that focused on sustainable infrastructure.

Improvements in ESG.RS occurred for a variety of reasons and usually scores moved from a ‘4’ to a ‘3’. Most instances were in corporates, with smaller concentrations in financial institutions and public finance. The reduction in ESG.RS scores were due to clear and updated emissions targets, divestment from coal-fired power generation and reduced exposure to extreme weather.

Changes to scores related to social issues accounted for 14% of all changes. Financing and leasing issuers had a high prevalence of deterioration in scores around ‘Customer Welfare’ due to exposure to high-cost consumer lending and to compliance risks. Under general social issues, there were instances of score increases reflecting a positive impact on the rating (signified with a ‘+’ next to the score), mainly revolving around a business’s positive impact on access and affordability of financial or housing services to under-banked or under-served populations. These can be beneficial through a financial institution’s central policy role or through access to state-guarantees to provide banking services to citizens with lower incomes.

The largest share of score changes was in governance, with nearly two-thirds of all score changes, in line with the wider trend of Governance issues being the dominant drivers of elevated ESG risks in credit ratings. The split was equal between scores being raised and lowered.

Half of all score changes within governance were improvements, but nearly 20% of these were instances of the score falling from a ‘5’ to a ‘4’, indicating that the issue was still pertinent for the credit rating. Most decreases were in corporates often due to material weakness in internal controls or owners’ strong influence on management.

North American entities experienced material weakness in internal controls. APAC issuers had problem that caused delays in finalising refinancing and independence risk at board level. European and South American companies had concerns over concentration of ownership and reorganisation. There was also a concentration in ‘Management Strategy’ and ‘Financial Transparency’ issues.

For further details, please see a sample of “ESG.RS Changes Summary 9M 2021” available at www.fitchratings.com. The full list of ESG.RS changes, including rationales and links to the relevant RACs, is available for Fitch Solutions feed subscribers.

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GFOA: Meaningful Disclosure Encouraged in ESG by State and Local Governments

GFOA's Executive Board approved several new best practices on the Social and Governance factors of ESG and Disclosure as well as a comprehensive best practice on voluntary disclosure. Similar to action taken in 2019 to establish the Disclosure Industry Workgroup, the GFOA has taken a leadership role in our market to develop a pragmatic approach to encouraging meaningful disclosure in the area of ESG by state and local governments.

Publication date: October 2021

DOWNLOAD FULL RELEASE

GFOA Best Practices in ESG Disclosure: Social

Social

It is important for issuers to consider the social factors that are challenging their community and decide if any have a connection to repayment of their bonds or could negatively impact operations or financial position over the term of its debt.

DOWNLOAD BEST PRACTICE

GFOA Best Practices in ESG Disclosure: Environmental

Environmental

The increase in the number of extreme weather events in recent years has raised public awareness about climate change. Investors and rating analysts are not just looking to see if risks are present, but also want information regarding what plans a government has to address these risks.

DOWNLOAD BEST PRACTICE

GFOA Best Practices in ESG Disclosure: Governance

Governance

Governance factors have always been a part of government management, operations, and finances. Governance includes governmental decision-making, policies, legal requirements, organizational structure, and financial and budget management practices.

DOWNLOAD BEST PRACTICE

TAX - NEW HAMPSHIRE

[Merrimack Premium Outlets, LLC v. Town of Merrimack]

Supreme Court of New Hampshire - October 1, 2021 - A.3d - 2021 WL 4487259

Property owner and operator of retail outlet shopping mall, which leased property, brought action against town for declaratory judgment and injunctive relief challenging town's reassessment of taxable property.

The Superior Court granted town's motion to dismiss complaint for failure to state claim, to extent that it sought declaratory relief on basis that town lacked authority to change assessed value of property, and dismissed constitutional claim with prejudice as discovery sanction, and subsequently denied plaintiffs' motion for reconsideration. Parties cross-appealed.

Holdings: The Supreme Court, Hicks, J., held that:

- Some "change" is a prerequisite to a municipality's legal authority to adjust a property's tax assessment under provision of statute which directs assessors and selectmen to annually adjust assessments to reflect changes;
- Extreme underassessment of property was not "change" that would allow town to adjust assessment the following year; and
- Reassessment of value of property was not necessary to ensure proportionality required by statute or state Constitution.

Town's extreme underassessment of property on which retail outlet shopping mall was operated was not "change" that would allow town to adjust assessment under provision of statute which directed assessors and selectmen to annually adjust assessments to reflect changes; statute governing how property was appraised required assessors and selectmen to appraise all taxable property, other than certain types of property specifically excepted, "at its market value," meaning property's full and true value as the same would be appraised in payment of a just debt from a solvent debtor, and town's acquisition of information bearing on property's value, in connection with property's use as collateral for loan, was not change in value itself.

Reassessment of value of property on which retail outlet shopping mall was operated to correct extreme underassessment of property the previous year was not necessary to ensure proportionality required by statute governing adjustment of assessments and state Constitution; under statute's plain language, annual adjustment so that all assessments were reasonably proportional within municipality had to occur "to reflect changes," and underassessment did not qualify as "change," current statutory scheme sought to ensure proportionality through municipality-wide reappraisals at least every five years and annual adjustments to assessments of properties that had changed in value, and town did not raise developed claim that statutory scheme violated Constitution.

['Fiscal Justice Ratings' Fight Police Brutality With Finance.]

A new project aims to incorporate the cost of lawsuit settlements and inequality when rating municipal bonds.

Napoleon Wallace, a bond analyst and municipal budget wonk, sees disaster in the finances of America's largest cities where others do not.

When it comes to assessing the value of municipal bonds issued by many American cities, he says investors — and the public — are often looking at the wrong numbers, overlooking the true embedded costs of a social justice system that has become normalized. He believes paying more attention could be an path for change.

To Mr. Wallace, factors that contribute to inequality, including police misconduct, add up to trouble for both residents and city finances. He believes that municipal bond investors should consider “fiscal justice” before investing in a city’s debt. His firm, Activest, plans to introduce a new type of ratings system this year to help them do it.

Take Louisville, Ky. The city gets an AA rating or higher from the major credit rating agencies, including Fitch, Moody’s and Standard & Poor’s. Mr. Wallace, however, gives Louisville’s finances poor marks across the board. According to his research, which he plans to publish in a report next month, the city is overreliant on fines and fees to generate revenue, corporate tax abatements are excessive and housing affordability is a problem. Mr. Wallace estimates that it also loses $100 million a year because of inequality, in large part because lower wages for Black and Latino residents result in lower tax revenue for the city and less economic activity.

Then there are the legal settlements. Louisville has paid nearly $31 million over the past five years to settle cases involving excessive police force, according to the report, which used data from the nonprofit Root Cause Research Center in Louisville. Not all of these payments have been publicly disclosed. The largest, $12 million, was made last year to the family of Breonna Taylor after Louisville police officers shot and killed her during a botched raid on her apartment.

A spokeswoman for the Louisville mayor’s office said Activest’s police settlements figure was wrong, but did not offer an alternative. “Equity is the central principle around every decision Louisville Metro Government makes,” said Jessica Wethington, the office’s deputy director of communications. “This year’s city budget focused on accelerating the city’s economic recovery, reimagining public safety, expanding youth development efforts and housing.”

Counting the cost of police misconduct

Activest bases its ratings on eight social and justice factors, with a heavy emphasis on policing, but also education, health care and affordability. Some practices that traditional credit raters see as good, such as high revenue from fines or fees, use of tax abatements and large police budgets, can erode a city’s tax base, exacerbate overpolicing and serve as early warning signs of social unrest, Mr. Wallace says. His fiscal justice ratings aim to account for this long-term impact.

The ratings also acknowledge the potential cost of police misconduct, which traditional rating agencies have typically ignored. In one exception that illustrates how police killings can destabilize city budgets, Moody’s downgraded the bonds of Ferguson, Mo., after a white police officer shot and killed Michael Brown, an unarmed Black teenager, in 2014. Moody’s cited “the potential financial impact of ongoing litigation costs,” legal settlements and negotiations with the Department of Justice to overhaul the city’s justice system.

“The ability to clearly and precisely distill all of the many fiscal justice risks into an outlook is very needed in this market,” Mr. Wallace said.

Activest, which Mr. Wallace founded six years ago with Ryan Bowers, a racial equity consultant, plans to publish research reports and ratings for as many as 50 U.S. cities. The initial goal is to bring to light police settlements, both public and private, and identify cities that are most at risk of not being able to pay them or meet other obligations.

But the ultimate goal is to use the bond market to rein in police brutality and make cities more just. As investors look for socially responsible investments, Mr. Wallace believes Activest's fiscal justice ratings could influence bond prices and, therefore, the interest rates. By attracting more investors, a city would lower its borrowing costs, improving budgets and possibly allowing politicians to lower taxes or at least spend money elsewhere. And that could provide an incentive to treat citizens more fairly.

E.S.G. for municipal bonds

Municipal bonds were the original socially responsible investment. In ubiquitous television commercials that ran throughout the 1970s and 1980s, the bond salesman Jim Lebenthal stood in front of landfills, power plants and bridges to pitch the idea that investing in local government debt was putting money toward a better America.

But the modern iteration of socially responsible investing, known as the environmental, social and governance, or E.S.G., movement, has mostly steered clear of the muni bond market, and when E.S.G. investing tactics are applied to muni bonds, the focus is usually on environmental issues.

One reason for this, muni market experts say, is a lack of data. Larry Bellinger, the head of municipal bond research at AllianceBernstein, which manages $55 billion in local government debt, said that he had found relatively adequate research on carbon footprints and natural hazards, but that on social and justice issues, "data is a problem."

That could change as muni bond investors become more interested in these issues. Michael Belsky, a former mayor of Highland Park, Ill., and a municipal bond veteran at HilltopSecurities, said that George Floyd's murder last year, and the protests that followed, had sparked much of the new interest in E.S.G. from muni bond investors.

After Mr. Floyd was killed by a Minneapolis police officer, there were widespread calls to ban so-called police brutality bonds — municipal bond deals that raise money to pay for legal settlements tied to excessive policing. Banning such bonds is difficult because cities rarely raise money specifically for legal settlements. The same bonds that raise money to pay legal settlements, called general obligation bonds, also help pay for garbage pickup, the upkeep of parks and other city services.

Proposed boycotts fizzled. But an E.S.G. approach, which evaluates a number of measures to find out if investment targets, in this case city governments, are acting responsibly may be more lasting.

Some firms are already seeking better data on cities' social and justice issues. A number of large money management firms, including BlackRock and Vanguard, have recently joined an effort by two minority-owned underwriting firms, Loop Capital Markets and Siebert Williams Shank, to get local officials to answer questions about policing policies, as well as stats on race-based inequalities.

Activest aims to make this type of data easily accessible.

"What Napoleon and Activest are doing is uncovering a new set of data for investors to use," said Kimberlee Cornett, the director of impact investing at the Robert Wood Johnson Foundation, a nonprofit that is working on its own racial and equity-focused rating score for cities. "Investors are increasingly asking the racial equity question, and if data becomes consistently available, I think investors will pay attention to it."

Beyond the data problem

The first money management firm to sign on with Activest, Adasina Social Capital, has raised nearly $60 million in less than a year for its fiscal justice investment strategy.

But even with more data and plenty of investor interest, some experts are skeptical that a fiscal justice rating could meaningfully influence bond prices and, therefore, push cities to tackle racial inequities.

Thomas Doe, the founder of Municipal Market Analytics, said that though environmental data and ratings had been in the muni bond market for a while, they had yet to have much impact on borrowing rates.

“Munis default so infrequently that there isn’t enough data out there to prove that fiscal justice has an impact on default risk,” Mr. Doe said.

And even if social ratings are successful, they could create ethical dilemmas. Minority populations in low-rated cities may see their community resources shrink further when borrowing rates rise.

Mr. Wallace of Activest thinks the firm’s fiscal justice ratings not only can influence bond prices but can also be an instrument of engagement.

“Using the power of the purse to motivate municipalities to ask, ‘Is this really the best use of resources for residents and bond holders?’ is a really compelling way to engage the market,” he said.

Adasina plans to buy bonds of cities that perform poorly in fiscal justice and then address the issues with city managers, who may be more willing to listen to their lenders.

“Fiscal justice strategy is driving more money to majority Black communities,” said Rachel Robasciotti, Adasina’s founder. “Activest’s folks, rather than call for divestment, are advocating for reforming behavior.”

The New York Times

By Stephen Gandel

Oct. 16, 2021

[Municipal 30-Day Supply Is Highest Since 2020 at $18 Billion.]

U.S. state and local governments are projected to issue approximately $18 billion in bonded debt over the next month, according to data compiled by Bloomberg.

This is the biggest 30-day supply in almost a year, with municipal bond sales peaking at $18.7 billion in November 2020. Investors said seasonal factors help explain the surge, citing states and cities seeking to get deals done before any potential delays during the holiday season as one of the main driving forces.

“This time of the year, the markets begin to get distracted by the string of holidays at the end of the year,” said Patrick Luby, CreditSights senior municipal strategist. “That stretch between labor day and thanksgiving become the time of year where it’s convenient for issuers to issue updated financials.”

The upward drift in supply is also likely a response to the threat of higher rates, according to municipal investors. Issuers are constantly on the lookout for refunding opportunities and taxable bonds have provided solid savings.

Bloomberg Markets

By Sri Taylor

October 13, 2021, 11:13 AM PDT

A Pioneering Environmental Impact Bond for DC Water (Updated)

In September, the DC Water utility repaid an Environmental Impact Bond in full with no penalty. When we first covered it in 2017, the bond was a novel approach that priced and sold the risk of green infrastructure performance to investors. If the utility's new green-infrastructure pilot project didn't reduce sewage in public waterways by a critical threshold, investors would send roughly $3 million back to DC Water. And if it beat that threshold resoundingly, investors would earn a premium.

Abby Martin, who wrote the article heralding the bond, now works in fundraising consulting and has watched its success from afar. Catching up with CFN last week by Zoom, she reflected that the project became a "transferable" example for cities with risk-averse financial managers who wanted to support experimental conservation approaches. Indeed, Quantified Ventures, which helped structure the bond, now reports oversubscribed environmental-impact bond offerings in Buffalo, Atlanta, and elsewhere.

We also caught up with Quantified Ventures' president Eric Letsinger, who spoke of the project's promise in the article we're reposting here. Looking back, Letsinger sees "the number one overlooked benefit" of the bond's structure in its power to control the project's total cost of ownership. Bondholders paid for measurement and monitoring, he stressed, which freed engineers to observe and adjust to reach the systematic improvements they sought. "In municipal government, we pay for everything up front, don't invest in rigorous prediction and don't report out, and then when a project is over it becomes an advocacy effort for some to say hey, that was a wild success and somebody else to say it was not."

As more cities face annual weather catastrophes and changing climates, green infrastructure must prove effective to compete alongside gray infrastructure investments. DC Water's repayment of the Environmental Impact Bond is a proof point in predicting and pricing performance risk and measurement, and an important signal for utility engineers and investors alike.

This article first ran on January 2, 2017.

District of Columbia Water and Sewer Authority (DC Water) has created an innovative municipal bond that covers the downside risk of using green infrastructure to control stormwater runoff. Compared with conventional gray infrastructure, green options have a shorter performance record and are more difficult to model. However, they are often cheaper and offer visible community benefits.

If this bond package is successful, it could change the perception of green infrastructure as a risky, unproven option for managing stormwater. This might encourage water and sewer agencies to adopt green infrastructure techniques more widely.

Facing pressure from a federal consent decree to clean up its waterways, the city is looking for innovative ways to control urban runoff. But, like many government agencies, DC Water hopes to avoid bearing the full cost of any failed experiments.

DC Water's solution is the nation's first Environmental Impact Bond (EIB), which links financial payouts with environmental performance. The $25 million tax-exempt EIB, which was sold privately to Goldman Sachs and the Calvert Foundation in September 2016, will fund a pilot green infrastructure project within DC Water's Clean Rivers Project. The $2.6 billion, 25 year-old project is the city's effort to improve water quality to comply with its consent decree.

Why Is Infrastructure Being Created?

Like around 770 other communities in the United States, Washington, DC relies on a combined sewer system that mixes stormwater and sewage into the same pipes. Wet weather can overwhelm DC Water's one treatment plant, forcing discharges of raw sewage into local rivers. The Clean Rivers Project works to reduce these combined sewer overflows with massive underground tanks that will hold effluent until the plant has treatment capacity.

More recently, the city has also explored adding green infrastructure like rain gardens and permeable pavement as a first line of defense in preventing stormwater runoff from entering the system. Green infrastructure offers more visible community benefits at a lower cost than the concrete-intensive gray infrastructure of DC's planned holding tanks. However, green infrastructure is less proven compared to the gray alternative, said DC Water's CFO, Mark Kim.

In early 2016 the Environmental Protection Agency signed off on DC Water's modification of its original stormwater control plan, which relied solely on gray infrastructure. The change included more green infrastructure. The modification package allows DC Water to eliminate one of three massive tunnels and redesign another, Kim said, replacing gray infrastructure capacity with approximately 300 acres and over $90 million of green infrastructure. The modification represents significant potential savings, as well as substantial risk.

How Is the Risk Being Quantified?

Although the performance of traditional gray infrastructure is straightforward to model and measure, green infrastructure is less predictable and measurable.

Performance of a green infrastructure installation depends on that site's particular climate, soils, vegetation, and a host of other factors, said Eric Letsinger, president of Quantified Ventures, the firm that helped analyze the risk of the EIB. And measuring water absorbed into soils across a city is much more challenging than gauging flow through sewer mains.

Successes in other cities, or even elsewhere in DC, would not guarantee that DC Water's large-scale green infrastructure will meet EPA-mandated performance goals, Kim said.

To help address these issues, the agency is building a pilot green infrastructure installation that channels all water from its site into a single, gauged outflow pipe to enable accurate performance measurement. The agency has conducted 12 months of baseline stormwater runoff measurements at the site. These will be compared with 12 months of runoff measurements after the green infrastructure is installed.

The EIB effectively insures DC Water against extreme underperformance. Kim said the operational risk of these natural systems is problematic. “The agency’s performance depends on our green infrastructure success. We are planning to spend north of $100 million on green infrastructure – and we can’t afford to make a $100-million mistake.”

The innovation within the EIB, Letsinger and Kim said, is DC Water’s packaging and selling of the performance risk for its green infrastructure program.

Using water-modeling software, DC Water calculated that its green infrastructure installation would reduce stormwater runoff by about 30 percent. A Monte Carlo simulation, a modeling technique that calculates a range of possible outcomes and the probability that each outcome will occur, helped Quantified Ventures calculate the risks inherent in the project’s performance.

Three tiers of performance help DC Water finance the most extreme project outcomes. The agency has conducted 12 months of baseline stormwater runoff measurements at the site. These will be compared with 12 months of runoff measurements after the green infrastructure is installed.

If the green infrastructure reduces runoff as expected in 95 out of 100 iterations, the EIB will function like a conventional 30-year municipal bond. Investors will receive the stated 3.43-percent coupon rate and the principal at maturity. This rate is comparable to the historic rate for DC Water’s 30-year bonds, Kim said.

Any performance-based payments will occur at the five-year mark, when the project has been installed and post-construction performance has been measured. At that point, the bond will be refinanced into a conventional 25-year bond.

The Tier 1 and Tier 3 payments will cover the most extreme five percent of outcomes. Models suggest a 2.5-percent chance that the green infrastructure installations will reduce storm-water runoff by less than 18.6 percent, and a 2.5-percent chance that reductions will be greater than 41.3 percent. These numbers reflect a 95-percent confidence interval for the project’s performance.

A Tier 1 underperformance, or runoff reductions of less than 18.6 percent from baseline, would trigger a contingency payment of $3.3 million from investors to DC Water. This “Shared Risk Payment” covers almost the entire cost of DC Water’s interest payments over the first five years, Kim said, insuring the agency against failure. In this scenario, DC Water would go back to the drawing board on its green infrastructure plan, likely replacing much of it with gray infrastructure.

Conversely, a Tier 3 overperformance, or runoff reductions of more than 41.3 percent from baseline, would trigger a $3.3 million payment from DC Water to investors. This “Outcome Payment” would be in addition to the stated coupon and principal payments.

But this outcome would still represent significant savings for DC Water, Kim said, because the pilot green infrastructure would have proven to be extraordinarily efficient. The proven high performance would enable DC Water to handle the same volume of water with less green infrastructure – and possibly replace additional gray infrastructure with cheaper green alternatives.

“The EIB allows us to ask and answer the question ‘does it work?’ for these specific technologies for DC’s climate,” Kim said. Green infrastructure projects provide significant societal and environmental benefits beyond stormwater runoff reductions that are not valued in this offering. Kim said. “Green infrastructure has to work for managing stormwater to be worthwhile to DC Water. If it doesn’t work for what we need, we shouldn’t be doing it.”

DC Water’s goal has been to concentrate the performance risk for its entire green infrastructure plan into a single bond offering. With the success of this pilot project, Kim said, the agency will have satisfied itself that green infrastructure works. Then, it will be comfortable using conventional bond offerings to fund additional green infrastructure investments.

How Is the Project Scaling up?

The Environmental Impact Bond was sold in a private offering to Goldman Sachs and the Calvert Foundation. Eric Letsinger described the deal as a model for a wide variety of investors. "We wanted to demonstrate the attractiveness of this vehicle across a broad range of the investment field. We've created a financial structure that attracted institutional investors like Goldman alongside Calvert, a pure-play impact investor."

"The Calvert Foundation is greatly interested in green jobs and other co-benefits of green infrastructure," Kim said. "But they have not made a charitable investment with possibility of return; they have invested on the same terms as other investors."

DC Water and its partners believe the EIB will be more easily replicated than previously issued social impact pay-for-performance bonds. In the past, these bonds have typically been issued as one-off private contracts between financiers and governments, often using philanthropic support to cover the risk of project failure.

As Kim said, "There is no philanthropic capital to take a write-off to get this deal done." It is the first true social impact bond, a debt instrument with a risk-adjusted market rate of return.

Other communities could replicate this performance-based payoff structure, adjusting to the needs of specific projects. Performance payouts (the Tier 1 and Tier 3 of the EIB) could cover different proportions of the bond's coupons. The thresholds triggering performance payouts (the 95 percent of outcomes covered in Tier 2 of the EIB) would be tied to local data. The range could be tightened for a project with higher confidence in a specific performance.

Future bond offerings might need higher returns to attract non-institutional investors, said Jacob Galardi, a senior analyst at investment firm Emerging Energy and Environment Investment Group, who studies the green bond market.

With a contingency payment of only 13 percent of the bond's $25 million par value, this investment attracts conservative institutional investors, Galardi said. More sophisticated later offerings might test a wider range of performance values, narrower than the 95-percent confidence interval of the DC Water EIB.

From an environmental investment standpoint, "this is a very conservative offering because it is protecting against only five percent of outcomes," Galardi said. Future projects might use this risk-sharing model to protect against less extreme underperformance, or to fund more than a small pilot section of a project. "It is a tiny part of the overall capital issuance [of the $2.6 billion Clean Rivers Project], but a good first step."

At that point, performance measurement might need to be more nuanced. Narrowing the range to a 50-60 percent confidence interval might require longer-term monitoring plans to control for seasonal extreme weather, Galardi said.

For example, 12-month flow data used for DC Water's EIB could be thrown off by a single unusually wet or dry season, but that the 95-percent confidence interval is wide enough that measurements are likely to fall within the Tier 2 range expected performance outcomes. As green infrastructure modeling and monitoring technology evolve, water authorities should be able to dial in a more precise performance range.

This vehicle was designed to be replicable for green infrastructure projects and beyond, despite different risk profiles across projects. DC Water was confident enough in its design and implementation capabilities to manage that risk internally, Kim said, but other communities with less technical expertise might want to control risk elsewhere in the design process.

Meanwhile, Quantified Ventures is exploring the EIB's applications for protecting against performance risk in other new infrastructure investments like renewable energy, or the performance risk of water quality controls for agricultural runoff.

"We're a long way from cookie-cutter, but with more Environmental Impact Bonds, we'll get better, faster, cheaper, and more creative," Letsinger said, "I think the sky is the limit."

Conservation Finance Network

by Abby Martin, Alec Appelbaum

September 27, 2021

Sixth Circuit: City's Placement of a Park Entrance was not a Taking Under the Fifth Amendment.

The U.S. Supreme Court issued several important decisions altering and clarifying available procedures and arguments for landowners under the Fifth Amendment's Takings Clause in recent years. Most notably, in *Knick v. Township of Scott*, Pennsylvania, 139 S.Ct. 2162 (2019), the Supreme Court overturned a 30-year-old precedent that required landowners to exhaust all state law remedies before bringing a federal Takings Clause claim. This decision requires local governments to be more cognizant of their land use, planning, and zoning decisions because those decisions can be subject to immediate constitutional claims in federal court.

More recently, in *Cedar Point Nursery v. Hassid*, 141 S.Ct. 2063 (2021), the Supreme Court held that an access regulation requiring employers to permit labor organizations a right of access onto the employer's property to solicit support for unionization was a taking under the Fifth Amendment. The Court reasoned that a physical appropriation is a clear taking that can occur by whatever means, including taking the property owner's right to exclude from its property.

In September, in *Golf Village N., LLC v. City of Powell, Ohio*, the Sixth Circuit relied upon both *Knick* and *Cedar Point* in upholding a decision to dismiss a developer's claim that the city of Powell's placement of a municipal park entrance that actually connected to a private street system, and the increased traffic resulting from that placement, was a taking under the Fifth Amendment.

Golf Village alleged that the city appropriated Golf Village's right to exclude the public from its private property but failed to plead any factual content demonstrating such a taking. Per the Court, Golf Village needed to allege that the city authorized and licensed the public's use of the private streets and then deprived Golf Village of its right to exclude to establish a taking.

The city had appropriated one of the private streets in connection with the placement of the park entrance, and the city maintained that this was the intended public entryway to the park. Golf Village was specifically alleging that the remaining private streets could be used as an alternate access route to the park. Golf Village, however, did not allege that it was barred from excluding the public from the remaining private streets – the alleged alternate access route; indeed, the city conceded that Golf Village had the right to block access to the remaining private streets so that traffic could not use them to access the public park. Because the city did not require Golf Village to permit public traffic on its property, the Court found no government-authorized physical invasion of Golf Village's property requiring compensation.

The Court also rebuffed Golf Village's contention that the right to exclude is appropriated even if the property owner can take a specific action, like building a gate, to stop the taking. In short, there is no taking if the private property owner maintains its right to exclude. Because it was undisputed that Golf Village had that ability, there was no taking.

The same reasoning applied to Golf Village's argument that increased traffic along the remaining private roads would result in higher maintenance costs and violate Golf Village's right to use and enjoy property. The city never appropriated a right of access for members of the public to the remaining private streets and admitted that Golf Village has the right to exclude public traffic through any lawful means. Further, Golf Village retained the same ability to use and enjoy the private streets that it had before the challenged city actions.

Frost Brown Todd LLC – Jesse J. Shamp, Yazan S. Ashrawi and Jeremy M. Grayem

October 14 2021

MSRB Requests Comment on Draft Compliance Resources for Supervisors: Cadwalader

The MSRB requested comment on draft compliance resources to assist regulated entities in their supervision over new issue pricing of municipal securities. The MSRB stated that "the goal of the compliance resources is to enhance understanding regarding the existing regulatory standards applicable to regulated entities' supervision of conduct when pricing a new issuance of municipal securities."

One proposed compliance resource would focus on underwriting activity under MSRB Rule G-17 ("Conduct of Municipal Securities and Municipal Advisory Activities") and supervisory obligations under MSRB Rule G-27 ("Supervision"). The second resource would focus on duty of care obligations under MSRB Rule G-42 ("Duties of Non-Solicitor Municipal Advisors") and non-solicitor municipal advisors' duties under MSRB Rule G-44 ("Supervisory and Compliance Obligations of Municipal Advisors").

Both proposed resources would summarize the relevant rule requirements, provide responses to FAQs and offer "Questions for Consideration" to help entities design their compliance procedures.

The MSRB specifically requested comment on the following issues, among others:

- the relevance of the questions posed and the usefulness of the responses given in the FAQs;
- the format of the resources;
- the language of the draft compliance resources in conveying the "flexibility" afforded to entities in tailoring their supervisory systems; and
- whether the MSRB should amend the abovementioned rules or adopt formal interpretive guidance expressly to define new issue pricing obligations.

Comments on the compliance resources must be submitted by January 4, 2022.

Cadwalader Wickersham & Taft LLP

October 6 2021

[Cities Sell Muni Debt. One Bank Thinks They Should Buy It Too.]

- **Cabrera pitches clients on merits of cities buying munis**
- **Way to expand investor base amid uptick of taxable muni deals**

At the Cabrera Capital Markets office in Chicago, public finance bankers Brian King and Edward Kurth were kicking around ideas when it occurred to them: amid the current wave of taxable deals, why not expand the investor base by pitching municipal governments themselves to buy the debt?

Municipal treasurers aren't typical buyers of the kind of the debt they sell themselves. They don't benefit from the tax exemption on most muni bonds, and the assets they buy tend to be short-dated. Indeed, state and local governments hold just $20 billion of municipal bonds, a fraction of the universe, according to Federal Reserve data.

But, as King said in a phone interview, municipal issuers always ask underwriters to find more buyers for their bonds. The issuers themselves don't get calls from muni-bond salespeople, and they sometimes turn to corporate bonds to invest their cash. But the rise of taxable municipal sales provides a unique entry.

"It struck us that this would be a natural way for them to vastly increase their investor base," King said. "And at the same time provide an opportunity for municipal treasurers to make what would be really good investments in municipal bonds of other governments."

Since their epiphany at the middle of last year, King said, Cabrera salespeople have ramped up their calls to local governments to buy new muni deals. He and other Cabrera bankers have also pitched government issuers about the potential of tapping this investor base and recommended moves such as marketing directly to governments or even giving such buyers a preference during sales.

Keep Competitive

King doesn't expect a radical shake-up of the investor base. Still, the pitch shows how underwriters are adapting to developments in the staid municipal-bond market and trying to keep competitive with new ideas. More banks are vying for deals, to the benefit of issuers.

There are about 50,000 governmental units managing more than $7.6 trillion of funds in the U.S., according to a Cabrera presentation in June to the California treasurer's office obtained through a public-records request.

Underwriters could pitch municipal buyers for the short maturities — six months to five years — that they are interested in, and if such investors get first dibs, corporate buyers would then have to buy debt further along the curve, King said.

"We're able to generate additional demand in the short end, more order flow," King said.

The record pace of taxable deals is slowing after last year, however. Still, King said the idea holds value as a long-term approach to building up a diverse investor base. He said Cabrera is recommending to their issuer clients that they tell their other bankers to solicit relationships with government buyers.

It's positive that underwriters are thinking creatively, said Matt Fabian, partner at research firm Municipal Markets Analytics. Still, he said, the prospect of munis buying munis is "a little weird."

Sell Quickly

Local governments hold assets that they can sell quickly in times of distress, with their investment policies often requiring highly-rated, short-dated securities.

"If the city itself is in trouble, it's likely that its peers will be in trouble," Fabian said. "And so, its investments would thus be underperforming when the city itself needs more money."

And if there's a default, a city would find itself in the politically awkward position of being a creditor to another local government, he said.

For Tim Schaefer, California's deputy treasurer, Cabrera's pitch was interesting, although "it's not necessarily as applicable to the state of California simply because of the weighting we give to selling tax-exempt debt and longer-dated debt," he said. Indeed, the holdings of top 10 local-government investors of California's general obligation bonds tally about $129 million, much less than the $6.6 billion held by the state's biggest investor, Vanguard Group, data compiled by Bloomberg show.

Still, Schaefer said, other jurisdictions should "absolutely" consider marketing their taxable deals to others.

"It would be unwise to not explore how to expand your buyer's market," Schaefer said. "You won't know until you try."

Bloomberg Markets

By Romy Varghese

October 13, 2021, 10:30 AM PDT

— With assistance by Natalia Lenkiewicz

Muni Trading Hasn't Been So Slow Since Turn of Century.

- **Market's trading volume tumbles 34% this year to 22-year low**
- **Bonds have grown scarce with cash flowing steadily in**

The loneliest place on Wall Street may be the muni-bond trading desk.

Even with the volume of new state and local government debt sales on pace to surpass last year's record, trading activity has dried up considerably. The par amount of bonds traded has tumbled by 34% so far this year to $1.43 trillion, a 22-year low, according to data compiled by Bloomberg.

On average, about $8.9 billion of municipal bonds are changing hands each day, the least since 2001.

The dearth of activity is likely a side effect of the massive influx of cash into the $4 trillion municipal securities market, with mutual funds receiving an average of about $2 billion each week since the start of the year, according to Investment Company Institute figures.

As a result, money managers have faced brisk competition to get in on new bond deals and yields have held near the lowest in decades. And it seems those who own the securities are, on the whole, not eager to sell.

“Overall a lot more investors, whether they are participating in new issues or not, they are just holding on to their paper,” Jonathan Law, a portfolio manager at Advisors Asset Management, said in an interview Wednesday.

It doesn’t look like the gulf between supply and demand will narrow much soon. Over the next month, there’s about $10.6 billion of new municipal debt sales scheduled so far, according to data compiled by Bloomberg. That’s about $14.3 billion less than the amount of cash bondholders will receive from debt that’s being paid off, which they typically seek to reinvest.

Bloomberg Markets

By Shruti Singh and Skylar Woodhouse

August 25, 2021, 11:37 AM PDT Corrected October 12, 2021, 11:07 AM PDT

— With assistance by Natalia Lenkiewicz

Munis In Focus: Puerto Rico Pensions (Radio)

Joe Mysak, Editor of Bloomberg Brief: Municipal Market, discusses the latest news from the muni market. Hosted by Paul Sweeney and Matt Miller.

Play Episode

Bloomberg Radio

October 15, 2021

Puerto Rico Board Agrees to Remove Pension Cuts in Debt Plan.

- **Board backs away from pension cuts if lawmakers approve bonds**
- **Oversight panel sought an 8.5% reduction to some pensions**

Puerto Rico’s financial oversight board agreed to remove proposed public employee pension cuts from a plan to slash the island’s debt, a major concession aimed at securing lawmakers’ approval for a bond restructuring that will put an end to its more than four-year bankruptcy.

The board included a 8.5% reduction to some pension benefits in the debt adjustment plan that it filed to the bankruptcy court in March. Governor Pedro Pierluisi and island legislators have balked at any pension cuts.

The board’s concession was made to end a clash with lawmakers over legislation authorizing new bonds to replace existing debt, an exchange that will allow the government to cut what it owes to investors. Still, the panel maintains Puerto Rico must freeze the teacher and judges pension systems, a move the island’s Senate is trying to block.

“When the legislature and governor enact acceptable legislation, the oversight board will amend the plan to eliminate cuts to the accrued pensions of retired public employees and current employees of the commonwealth,” David Skeel, the board’s chairman, wrote in a letter dated Thursday to Pierluisi and the island’s legislative leaders.

The board last week warned that it may be forced to withdraw its debt restructuring plan from the court if lawmakers pass legislation that includes Senate amendments that would increase the island’s expenses by tens of billions of dollars. Such a step would put court confirmation of the plan at risk and prolong a bankruptcy that began in May 2017.

“While the oversight board continues to have reservations about the impact on the plan, it is prepared to accept the wishes of the elected representatives of the residents of Puerto Rico to the extent it can do so prudently and without failing to carry out its duties under Promesa,” Skeel wrote.

The board’s announcement was welcomed by Pierluisi, who said he has consistently fought against pension cuts and is also seeking to protect funding for the island’s university and its municipalities. The board also agreed to such funding.

“We will continue fostering dialogue and working to get out of bankruptcy and respond to the needs of our people,” he said in a statement Thursday.

While the board has agreed to remove pension cuts from the debt plan, U.S. District Court Judge Laura Taylor Swain may still require reductions to retirement benefits, according to the letter.

Swain is set to hold confirmation hearings next month on the debt plan, which would restructure $33 billion of debt, including $22 billion of bonds. Island lawmakers are under deadline to pass the legislation authorizing the new restructuring bonds before those hearings.

The board’s willingness to remove the proposed retirement reduction from its debt plan could prompt island lawmakers to approve the necessary legislation.

The board also agreed to Senate amendments allocating $500 million annually for five years to the University of Puerto Rico, increasing municipal funding and spending $1 million for a study on the feasibility of extending medical coverage to uninsured residents, according to the letter.

Bloomberg Markets

By Michelle Kaske

October 14, 2021, 11:03 AM PDT Updated on October 14, 2021, 12:43 PM PDT

[Chicago Seeks Approval for $4.4 Billion in Borrowing in 2022.]

- **Request follows $4.6 billion of bonds already approved**
- **‘Robust bond program’ will go toward projects, refinancing**

Chicago is poised to be a frequent issuer in the $4 trillion municipal-bond market through the end of next year for projects and refinancing if the city council approves Mayor Lori Lightfoot's borrowing plans as part of her 2022 budget proposal.

Lightfoot's administration is seeking authorization from aldermen to issue as much as $4.41 billion of bonds, most of which would be sold next year, according to Chief Financial Officer Jennie Huang Bennett. That amount would include $2.06 billion in new money and $2.35 billion for refinancing old debt. That's in addition to the city's already authorized issuance of up to $4.66 billion, Bennett said.

"It's a robust bond program," Bennett said in an interview. "Interest rates are extraordinarily low. The city's credit spreads have come in significantly since we started the economic recovery from Covid."

While Chicago still has a junk rating from Moody's Investors Service, both S&P Global Ratings and Fitch Ratings consider the city's debt to be investment-grade at three notches and one level above junk respectively. The city has seen its financial strain ease amid the broader economic recovery and the influx of federal relief. Chicago is set to receive nearly $1.9 billion from the American Rescue Plan.

The trading in some Chicago debt reflects the improved outlook. A taxable refunding bond maturing in 2042, among the city's most-actively traded debt over the past month, saw its spread over benchmark debt at 219 basis points last week, compared to 447 basis points a year ago, according to data compiled by Bloomberg.

The city's bond ordinance proposal seeks authorization to sell $660 million in general obligation bonds that could be offered in several tranches starting in the second quarter of 2022. The ordinance also asks to issue $1.2 billion, split evenly between new debt and refinancing bonds, in the first half of next year for water and wastewater projects.

In the second half of next year, the administration wants to sell $1.55 billion of bonds for O'Hare International Airport, with $850 million for refunding and $700 million of new debt as well as $1 billion for Chicago Midway International Airport, with most of that for refinancing old debt.

The full city council is scheduled to hold a budget hearing on Thursday, and aldermen are expected to vote on the budget and related bond ordinances on Oct. 27.

The council has already approved the sale of as much as $1.2 billion in G.O. and sales-tax-backed bonds to refinance old loans by the end of this year. City officials expect the refinancing, pending some federal legislative action, to lower the interest rate on outstanding bonds to as low as 2% from 5%. Of the $254 million in interest savings projected from the deal, $232 million would go to police back-pay and $22 million would help close the $733 million deficit that the city faces in 2022.

The city also has approval for a tender exchange of up to $1.2 billion but may not tap the full amount, Bennett said. And $760 million of new debt for O'Hare and $1.5 billion for a multi-year public works program starting the middle of next year have also been approved.

"It's a great time for the city to be in the market," Bennett said

Bloomberg Markets

By Shruti Singh

October 14, 2021, 8:11 AM PDT Updated on October 14, 2021, 8:52 AM PDT

New York City Is Advised to Tout Bonds in Broadway's Playbill.

- **Program targets a 'captive and typically affluent demographic'**
- **Publication 'closely scrutinized' by city's theatergoers**

Like the show? Buy the bond!

New York City should advertise its bonds in Playbill, the program distributed at all theaters as well as venues such as Lincoln Center, Carnegie Hall and the Metropolitan Opera, one firm suggested in the city's latest Request for Proposal for Underwriting Services.

"This approach would directly target a captive and typically affluent demographic," underwriter Rice Financial Products Co. said in its response. "Playbill is closely scrutinized by theatergoers while awaiting the commencement of a performance and during intermission."

The average net worth of readers of Playbill "classic arts" programs distributed at venues that aren't Broadway theaters is $1.3 million, while the average household income is $217,000, Rice said. For those distributed at theaters, the income level of readers would be just below that.

Timing is everything, as they say in the theater. The Rice response was dated Feb. 3, 2020. Just over a month later, Broadway was ordered closed by then-Governor Andrew Cuomo, a shutdown which lasted almost 18 months as the pandemic raged.

Rice, which is based in New York City, was chosen last year as a co-manager to underwrite New York City and New York City Transitional Finance Authority and New York City Municipal Water Finance Authority bonds.

Ads Pondered
In its response, Rice said it didn't believe that advertising had a measurable impact on demand or pricing of the city's bonds "due to the very limited amount of 'Mom and Pop' retail investors. The vast majority of retail sales is through professional retail investor outlets, which get their information on upcoming bond sales through the same methods as institutional investors."

However, advertising have other "positive attributes," Rice added, "the primary one being that it promotes to the local population the City's efforts to invest in City infrastructure."

The company declined to comment on its proposal. A spokesperson for the comptroller said that office and the city haven't advertised city bond transactions since March 2020.

Bloomberg Markets

By Joseph Mysak Jr

October 15, 2021, 9:59 AM PDT

Fitch Quarterly Review on ESG 3Q21.

Thursday 28 October | 15:30 BST | 10:30 EDT

Please join Sustainable Fitch for our quarterly live presentation on ESG and its ever-growing credit implications. Our Sustainable Finance team will be reviewing the latest developments in the ESG markets and give you a glimpse of the wealth of resources Fitch's dedicated specialists produce.

The discussion will focus on:

- Key ESG Relevance Score trends and market developments for 3Q21 and a review of changes YTD, including what factors have been the main drivers over 2021.
- A review and assessment on the major developments around sustainability and climate-related disclosures in major markets.
- Exploring why Biodiversity and Nature-related Risks are rising in investors agendas.
- Expectations ahead of COP26 and the key benchmarks for success.

Speakers:

- Marina Petroleka, Global Head of ESG Research
- David McNeil, Head of Climate Risk

Register now.

- Banks Press Ahead with Term SOFR Preparation; Credit Sensitive Rates Under Scrutiny: McGuireWoods
- SEC Approves Changes to MSRB Customer Disclosure Rules.
- UBS's Botched Muni Statements Cost Clients Millions, Suit Says.
- A Tax Loophole for Greenwich. [This DOES NOT constitute an endorsement of the WSJ's editorial take on this issue.]
- *Kane v. Option Care Enterprises, Inc.* – In breach of contract & quantum meruit claim brought by attorney against client, appeals court holds that the agreement between the parties – in which attorney was to evaluate and negotiate tax credits and other federal, state, and local level incentives from state government officials – was unenforceable as a matter of public policy because it provided for contingency fee lobbying.
- And finally, Great Moments In Anticlimax (For God, For Country, For Yale) is brought to us this week by *University of Kansas Hospital Authority v. Board of County Commissioners for Franklin County*, in which a driver was spotted driving through town at a hight rate of speed, without headlights, and jacked up on meth. The police gave chase, at which point driver fled, exiting onto the highway at a high rate of speed into oncoming traffic. The cops called off the chase, but shortly thereafter responded to a call reporting a grass fire which they discovered had been ignited when the driver rolled his SUV. He was extricated from the burning vehicle and airlifted out for medical care. The court's opinion contains *two pages* of bullet points itemizing the carnage, only to end with this final, damning fact: "The driver has no insurance available." Surely not! Who could have guessed? He struck us (ha!) as such a responsible young man.

ZONING & PLANNING - CALIFORNIA

Muskan Food & Fuel, Inc. v. City of Fresno

Court of Appeal, Fifth District, California - September 27, 2021 - Cal.Rptr.3d - 2021 WL 4398417 - 21 Cal. Daily Op. Serv. 10,011

Owner of gas station and convenience store petitioned for writ of mandate seeking to set aside city's approval of a conditional use permit for the development of a neighborhood shopping center across the street from his store.

The Superior Court denied petition, concluding substantial evidence supported city's zoning decision. Owner appealed, and real parties in interest filed cautionary cross appeal.

The Court of Appeal held that:

- Word "petition," as used in municipal code describing the procedures for appealing city's approval of a conditional use permit, was vague; but
- Meaning of "petition" encompassed both oral and written requests;
- Informal dinner with city council member was not a "petition" to the council member to appeal city planning commission's decision approving a conditional use permit; and
- e-mail sent to mayor from the president of city's chapter of convenience store association was not a "petition" to appeal city planning commission's decision approving a conditional use permit.

Word "petition," as used in municipal code describing the procedures for appealing city's approval of a conditional use permit, was vague, requiring court to resolve ambiguity, since it failed to provide the level of formality required to challenge permit; term "petition" could mean making a simple oral request, making a formal written request, or something in between.

Word "petition," as used in municipal code describing the procedures for appealing city's approval of a conditional use permit, encompassed both oral and written requests made to the mayor or council member, since there was no specific language in related code sections requiring it only to be in writing.

ZONING & PLANNING - FLORIDA

City of West Palm Beach, Inc. v. Haver

Supreme Court of Florida - September 30, 2021 - So.3d - 2021 WL 4467768 - 46 Fla. L. Weekly S281

City residents brought action against city, challenging city's inaction in response to residents' complaints claiming that neighbor was running a group home in violation of a city zoning ordinance, and seeking injunctive relief requiring city to investigate and, if necessary, take enforcement action against neighbor's alleged zoning violation, a declaratory judgment that city violated its ordinance by refusing to take enforcement action against neighbor, a writ of mandamus requiring city to determine whether neighbor had violated the zoning ordinance and then to take enforcement action, and a writ of certiorari to quash any quasi-judicial decisions or acts taken by city in connection with their refusal to enforce the zoning ordinance against neighbor.

The Circuit Court granted city's motion to dismiss. Residents appealed, and the Fourth District Court of Appeal affirmed dismissal of the mandamus and certiorari claims, but reversed as to the claims for injunctive and declaratory relief, and certified conflict. City petitioned for discretionary review.

The Supreme Court held that injunctive relief is not available to compel a city to enforce a zoning ordinance against a third party.

MUNICIPAL ADVISORS - ILLINOIS

Kane v. Option Care Enterprises, Inc.

Appellate Court of Illinois, First District, THIRD DIVISION - September 8, 2021 - N.E.3d - 2021 IL App (1st) 200666 - 2021 WL 4076323

Attorney James H. Kane, d/b/a Kane & Co. (Kane), brought claims of breach of contract and quantum meruit against Option Care Enterprises, Inc. (Option Care), seeking $764,762 in compensation for services he provided pursuant to a contingency fee contract to “evaluate and negotiate tax credits and other federal, state, and local level incentives” from Illinois and Wisconsin “government officials.”

The trial court granted summary judgment to Kane’s client after finding that the agreement was unenforceable as a matter of public policy because it provided for contingency fee lobbying in violation of section 8 of the Lobbyist Registration Act (Act) (25 ILCS 170/8) and because enforcement of the contract was barred, recovery under the equitable theory of quantum meruit was also barred.

The appeals court affirmed, finding that the trial court was correct in concluding that Option Care was entitled to summary judgment as to Kane’s breach of contract claim because Kane could not meet the threshold requirement of a valid, enforceable agreement.

POLITICAL SUBDIVISIONS - KANSAS

University of Kansas Hospital Authority v. Board of County Commissioners for Franklin County

Supreme Court of Kansas - September 10, 2021 - P.3d - 2021 WL 4127517

Hospital filed suit against city and county, seeking payment for medical expenses incurred by indigent driver of vehicle who was injured in a crash after fleeing from police.

The District Court granted summary judgment in the hospital’s favor against the city and granted summary judgment in favor of county. City appealed and hospital cross-appealed, and the Court of Appeals affirmed in part, reversed in part, and remanded with directions. Hospital petitioned for review, and city cross-petitioned.

The Supreme Court held that:

- City police officers did not arrest indigent driver, and
- Officers did not otherwise have custody of indigent driver.

City police officers did not arrest indigent patient after he fled from officers in vehicle and was involved in accident, and thus did not have custody of him on that basis at the time the decision was made to obtain medical treatment for him following accident and therefore city was not liable for health care services rendered to patient; while they pursued patient, the pursuit ended without arrest after accident, officer's directive to patient to tell emergency personnel if he was on any drugs was simply a treatment-related directive, officer did not act on that information, did not handcuff the patient, did not give Miranda warning, and did not tell the patient he was under arrest, officers did not follow patient to hospital, and county placed custodial hold on patient and guarded him until his release to county's custody.

City police officers did not have custody of indigent patient at the time the decision was made to obtain medical treatment for him, and thus city was not liable for health care services rendered to patient, who was injured in accident after fleeing police in vehicle, where patient was never arrested by city police officers, and patient was not restrained by the officers pursuant to a court or magistrate order.

BALLOT INITIATIVE - OHIO

[State ex rel. Rhoads v. Hamilton County Board of Elections]

Supreme Court of Ohio - September 16, 2021 - N.E.3d - 2021 WL 4204309 - 2021-Ohi--3209

Relators sought writ of mandamus compelling county board of elections to change ballot language for proposed amendment to city charter.

The Supreme Court held that:

- Board properly summarized amendment language regarding approval of litigation on behalf of city and its officials;
- Board properly summarized amendment language regarding compensation of city-council members;
- Board properly summarized amendment language regarding residency requirements for mayor;
- Board would be directed to use as ballot language the actual text of amendment regarding how vacancies on city council were to be filled;
- Board properly summarized amendment language regarding notice of vacant city-council seats;
- Board properly summarized amendment language regarding personal liability of mayor and city-council members; and
- Board properly summarized amendment language regarding removal of mayor from office.

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REFERENDA - OHIO

[State ex rel. T-Bill Development Company, L.L.C. v. Union County Board of Elections]

Supreme Court of Ohio - October 1, 2021 - N.E.3d - 2021 WL 4487957 - 2021-Ohio-3535

Property owners and land developer brought action against county board of elections, seeking writs of prohibition and mandamus ordering board to remove zoning referendum from upcoming election ballot.

The Supreme Court held that:

- Relators lacked adequate remedy in ordinary course of the law;
- Board did not disregard requirement that referendum petition be accompanied by affected area;
- Referendum petition's summary was not rendered inadequate for including only first page of zoning application;
- Referendum petition's summary was not rendered inadequate by quality of attached maps; and
- Referendum petition's summary was not rendered inadequate for referring signers to zoning-commission office for additional information.

PUBLIC UTILITIES - PENNSYLVANIA

In Re Chester Water Authority Trust

Commonwealth Court of Pennsylvania - September 16, 2021 - A.3d - 2021 WL 4200770

"The narrow issue for our consideration is whether section 5622(a) of the Municipality Authorities Act (MAA), 53 Pa.C.S. § 5622(a), authorizes (or, more appropriately, continues to authorize) a municipality to obtain the assets of a water authority that it created—a water authority that eventually expanded to provide water services outside the borders of the municipality and into other counties—in light of section 1 of Act 73 of 2012,3 which added section 5610(a.1) to the MAA, 53 Pa.C.S. § 5610(a.1.), and transformed the governance structure of such an authority."

"Upon review, we conclude that section 5610(a.1) did not abrogate, supersede, or otherwise alter a municipality's longstanding power under section 5622(a) and its statutory predecessors to unilaterally obtain an authority and/or its assets."

ZONING & PLANNING - PENNSYLVANIA

Pascal v. City of Pittsburgh Zoning Board of Adjustment

Supreme Court of Pennsylvania - September 22, 2021 - A.3d - 2021 WL 4303202

Objectors to nonprofit property owner's application for variances and special exceptions with respect to plan to maintain retail space, remodel and reopen restaurant, and build dwelling units petitioned for review of decision of zoning board of adjustment (ZBA) granting application.

The Court of Common Pleas affirmed grant of application, and objectors appealed. The Commonwealth Court affirmed. Objectors' petition for discretionary review was allowed.

The Supreme Court held that:

- Application was not deemed denied 45 days after hearing on application without decision, and
- As matter of first impression, member of ZBA that voted in favor of granting application, who held position on applicant's board of directors, was acting under conflict of interest, in violation of objectors' due process right to impartial tribunal, disapproving Borough of *Youngsville v. Zoning Hearing Bd. of Youngsville, 69 Pa.Cmwlth*. 282, 450 A.2d 1086.

IMMUNITY - TEXAS

Texas Southern University v. Pepper Lawson Horizon International Group,

LLC

Court of Appeals of Texas, Houston (1st Dist.) - September 28, 2021 - S.W.3d - 2021 WL 4432525

Construction company brought action against state university, alleging breach of contract under Texas Civil Practice and Remedies Code Chapter 114 and violations of Texas Prompt Payment Act (PPA) related to university's alleged failure to grant company an extension and alleged failure to pay bills incurred pursuant to construction contract.

University filed plea to the jurisdiction, which the 157th District Court denied. University appealed.

The Court of Appeals held that:

- University's sovereign immunity was not waived by PPA, and
- Allegations in complaint did not constitute express violations of construction contract, as required to waive university's sovereign immunity from breach of contract action.

State university's sovereign immunity was not waived by Texas Prompt Payment Act (PPA), as required to establish trial court's jurisdiction over construction company's action, alleging university failed to pay company's final bills under construction contract; company did not identify a separate statutory source outside of PPA that allowed a waiver of sovereign immunity for its claim.

Allegations in construction company's complaint, that state university breached parties' contract by failing to extend construction schedule, did not constitute a violation of modification provisions of construction contract, which permitted parties to equitably adjust contract time for weather delays and other delays within university's reasonable control, as required to waive university's sovereign immunity from construction company's breach of contract action brought under Texas Civil Practice and Remedies Code; modification provisions set forth procedures for obtaining time extensions, but company did not allege that university failed to comply with such procedures, but rather, company merely disputed the results.

Allegations in construction company's complaint, that state university failed to grant company power and access to project site by a specific date, provided inaccurate design documents, and failed to refrain from performing other activities at project site during construction, did not constitute express violations of construction contract, as required to waive university's sovereign immunity from company's breach of contract action brought under Texas Civil Practice and Remedies Code; contract stated that university made no representation as to accuracy of design documents and that it was not responsible for company's interpretations of documents, and that university was not responsible for delay or hindrances to work caused by any act or omission of university.

Allegations in construction company's complaint, that state university breached parties' contract by failing to make payment of contract and change order balance, did not constitute a violation of bill pay provision of contract, which required company to promptly pay bills and allowed university to audit company's bills and withhold payments in various circumstances, as required to waive university's sovereign immunity from construction company's breach of contract action brought under Texas Civil Practice and Remedies Code; contract expressly limited circumstances in which university had a duty to pay company to when university received a complete application for payment, an updated work progress schedule, and confirmation that project documentation was kept current.

Fitch: U.S. Public Finance Strengthening Despite Uptick in 3Q Downgrades

Fitch Ratings-New York-11 October 2021: U.S. public finance sectors hit hard by the coronavirus pandemic continued to move away from the pandemic's fallout last quarter, according to Fitch Ratings in its latest quarterly rating actions report.

Fitch upgraded 26 U.S. public finance ratings and downgraded 30 in third-quarter 2021 (3Q21) compared with 28 and 18, respectively, in 2Q21. The uptick in downgrades last quarter was partly driven by unusual downgrade activity in the public power sector, namely among Texas public power and electric cooperatives.

The uptick in downgrades was driven in part by changes Fitch made to its criteria for U.S. life plan communities (LPC) earlier this year; subsequent review of credits placed 'Under Criteria Observation' contributed modestly to the number of downgrades. Overall, about 87% of U.S. public finance ratings carry a Stable Rating Outlook.

The fiscal turnaround continues for U.S. states with Fitch revising its Rating Outlooks for New Jersey and Nevada to Stable from Negative and Ohio's Rating Outlook to Positive from Stable last quarter. Updated revenue forecasts for fiscal years 2021 and 2022 generally reflect improved economic performance and outlooks. However, 'caution is warranted for some states around the tax revenue effects if services spending rebounds while goods spending weakens,' according to Arlene Bohner, Fitch's Head of U.S. Public Finance.

Fortunes also continue to improve more broadly for not-for-profit hospitals with most providers well positioned to absorb future coronavirus aftershocks, even with cases on the rise again. Colleges and universities are also seeing improvement with no downgrades in 3Q21, one upgrade and six favorable Outlook revisions thanks to better-than-anticipated enrollment and favorable operating performance. That said, net tuition revenue growth will remain stagnant through both this academic year and the next.

'U.S. Public Finance Rating Actions Report and Sector Updates: Third-Quarter 2021' is available at 'www.fitchratings.com'.

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