
In the Muni Market, Financial Disclosures DO Matter to Investors.

The usefulness of municipal bond issuers' financial disclosures is a source of considerable debate. Our paper, "*The Information Content of Municipal Financial Statements: Large-Sample Evidence*," provides evidence that disclosure matters to municipal bond investors, particularly the retail investors who dominate the market. Using the entire universe of annual financial disclosures from 2009 to 2020, collected by the Municipal Securities Rulemaking Board—412,947 in all—we find that trading activity in the secondary market for municipal bonds increases after disclosures are filed. We find that trading activity increases by 2 percent to 3 percent around filings of annual financial statements, a small but meaningful increase.

Both institutional and retail trades increase around disclosure filing, but the effect is pronounced for retail investors, for whom the reports are more likely to provide new information. Moreover, trading increases more after timelier disclosures, consistent with regulators' views that untimely disclosures are less likely to provide new information. We also examine variation in investors' responsiveness to disclosure, based on the content of the disclosures. In general, disclosures that indicate the bond is risky are associated with a pronounced response.

Our results contrast with earlier research and provide the first large-scale evidence that participants in the U.S. market for municipal bonds perceive financial disclosures to have informational value.

Download the full paper.

The Brookings Institution

by Christine Cuny, Ken Li, Anya Nakhmurina, and Edward Watts

August 23, 2022

MSRB Elects New Board Leadership and Announces New Members for FY 2023 at Quarterly Meeting.

Washington, DC – The municipal market's self-regulatory organization (SRO) met July 27-28, 2022 for its final quarterly Board of Directors meeting of Fiscal Year 2022. The Municipal Securities Rulemaking Board (MSRB) elected new officers and announced four new members who will join the Board in FY 2023.

Also at its meeting, the Board discussed current and forthcoming initiatives to advance its mission of

protecting and strengthening the $4 trillion market that enables access to capital, economic growth, and societal progress in tens of thousands of communities across the country.

“The work of an SRO is never more important than at a time of profound evolution and modernization of financial markets,” said MSRB Chair Patrick Brett. “I am proud and grateful to have served alongside a dedicated Board of experts steeped in the characteristics of our unique market, who have not shied from advancing an ambitious agenda. With engagement from a broad universe of market stakeholders, the MSRB has taken meaningful steps to enhance the efficiency and transparency of municipal market structure, to deepen our own and the broader market’s understanding of how market practices are evolving, and to create opportunities for collaboration that will yield powerful new technology platforms and data analytics capabilities.”

Board Leadership and New Members for FY 2023

Brett’s term as Chair and Board member ends September 30, 2022. The Board announced today that it has elected public member Meredith L. Hathorn, Managing Partner, Foley & Judell, L.L.P. in Baton Rouge, LA, to serve as FY 2023 Chair of the Board. Public member Carol Kostik, the retired former deputy comptroller for public finance for the City of New York, will serve as Vice Chair. Officer terms are one year. The Board also announced the incoming class of four new Board members whose terms will begin October 1, 2022.

Chair-elect Hathorn, the FY 2022 Vice Chair and head of the Board’s Nominating Committee said, “Each year, we cast a wide net to identify a new class of market experts to join us on the Board. We thank each applicant for their willingness to give back to our market, and we could not be more pleased to welcome four new members who each bring a distinct perspective, a wealth of experience and an outstanding commitment to overseeing the execution of the MSRB’s long-term strategic goals.”

New public members joining the MSRB Board in Fiscal Year 2023 are institutional investor representative David F. Belton, Director, American Family Insurance; and municipal issuer representative Horatio Porter, Chief Financial Officer, North Texas Tollway Authority. Joining the Board as regulated members are: bank representative Patrick O. Haskell, Managing Director and Head of Municipal Securities and Co-Head of Fixed Income Retail Capital Markets, Morgan Stanley; and municipal advisor representative Jill Jaworski, Managing Director and Partner, PFM Financial Advisors. The new Board members were selected from more than 70 applicants this year.

For FY 2023, the Board will have 15 members, including eight independent public members and seven members from MSRB-regulated broker-dealers, banks and municipal advisors. The size of the Board was reduced as part of a series of governance enhancements that also tightened standards of independence for public members and established a lifetime service limit for Board members. To implement the transition plan to a smaller Board, the terms of a current public member on the Board, Donna Simonetti, and one regulated member, Francis “Frank” Fairman, have been extended one year. Board member Daniel Kiley’s term also has been extended one year to complete the final year of a vacancy created by the 2021 resignation of a regulated representative on the Board.

Market Regulation

The Board discussed the status of the ongoing retrospective rule review to holistically consider its rules and interpretive guidance and identify opportunities to streamline, update and promote consistency with rules of other regulators. The Board authorized staff to prepare a new request for comment on MSRB Rule G-47 to seek feedback on a proposal to codify interpretive guidance and specify certain additional information that may be material and require time of trade disclosures to

customers. The MSRB plans to engage with stakeholders prior to the release of the request for comment.

In coordination with the Securities and Exchange Commission (SEC) and Financial Industry Regulatory Authority (FINRA), the MSRB is preparing to issue a request for comment in the coming week on proposed amendments to shorten MSRB Rule G-14 ’s time of trade reporting requirements as part of an initiative to enhance post-trade transparency across fixed income markets.

Market Transparency

The Board received a demonstration of continued work to develop the future-state MSRB.org website. The MSRB website is being redesigned to make MSRB rules, compliance resources, educational materials and other information easier and more intuitive to find, and to complement the ongoing work to modernize the Electronic Municipal Market Access (EMMA®) website and related market transparency systems.

Market Structure and Data

The Board continued its ongoing discussions about market structure, including the potential implications for the MSRB’s rules of the SEC’s proposal to bring more Alternative Trading Systems (ATSs) under the regulatory umbrella. Additionally, the Board discussed working with staff to develop coordinated proposals with fellow regulators on the collection of pre-trade data in the fixed income markets. The Board also discussed potential new opportunities to support the market’s use of structured data by leveraging EMMA Labs, the MSRB’s innovation sandbox, to advance transparency and the quality and comparability of data in the municipal securities market.

“A common theme in our long-term strategic plan is the objective of advancing market efficiency, improving price transparency, and enhancing overall market liquidity, especially in light of the opportunities presented by evolving technology and market practices across the fixed income markets,” said MSRB CEO Mark Kim.

Public Trust

The Board approved a $45 million operating budget to fund the operations of the MSRB for FY 2023, beginning October 1, 2022. A budget summary detailing the MSRB’s projected expenses, revenues and reserve levels will be published at the beginning of the fiscal year. The Board recently proposed amendments to its fee setting process to ensure the MSRB collects only the revenue needed to fund its operations without accumulating excess reserves. Based on comments received on its proposal, the MSRB has advanced a revised proposal for filing with the SEC. The proposed amendments will be available for further public comment and would become operative on October 1, 2022.

Additionally, the Board discussed releasing a summary report in the coming weeks on comments received in response to its request for information on environmental, social and governance (ESG) practices in the municipal securities market, published in December 2021.

About the New MSRB Board Members

David Belton is Director at American Family Insurance, where he provides credit research and portfolio management for the company’s municipal bond holdings, both tax-exempt and taxable. Prior to joining American Family, Mr. Belton was Senior Vice President and Head of Municipal Bond Research at Standish Mellon Asset Management, where he was also portfolio manager of several Dreyfus municipal bond funds. Mr. Belton began his career at Van Kampen Merritt and subsequently held positions at Stein Roe & Farnham and Federated Investors. He has been active in the National

Federation of Municipal Analysts at both the local and national levels. Mr. Belton holds a bachelor's degree in political science from Haverford College and an MBA from the University of Chicago. He is a Chartered Financial Analyst.

Patrick O. Haskell *is Managing Director and Head of Municipal Securities and Co-Head of Fixed Income Retail Capital Markets at Morgan Stanley. Prior to this role, Mr. Haskell was Head of Credit Complex Trading, Americas, which included the Securitized Products Group, Corporate Credit and Municipal Securities. Prior to joining Morgan Stanley, Mr. Haskell was Chairman and CEO of diversified water technology company Ecosphere Technologies. Mr. Haskell began his career in municipal bond sales at Credit Suisse First Boston and went on to become Head of U.S. Government Bond Trading before joining HSBC as a Managing Director and Head of North American Rates Sales and Trading. He previously served as Board Chair of Tradeweb and as Chairman of the Primary Dealer Committee of SIFMA. He currently serves as the Board Chair for Boy's Hope/Girl's Hope NYC. Mr. Haskell earned a bachelor's degree in economics from Union College.*

Jill Jaworski is Managing Director and Partner at PFM Financial Advisors, where she manages the Chicago financial advisory practice, serving a range of clients in Chicago and the Midwest, as well as transit and transportation clients nationally with a focus on the South and Mid-Atlantic regions. Ms. Jaworski began her career as an analyst in public finance investment banking at First Albany Capital, eventually rising to Vice President. She also worked at Jefferies & Company prior to joining PFM Financial Advisors. Ms. Jaworski holds a bachelor's degree in political science from the University of Chicago.

Horatio Porter *is Chief Financial Officer and Assistant Executive Director of Finance at the North Texas Tollway Authority, where he is responsible for executing the company's financial strategies. In this role, he leads the accounting, business diversity, procurement and treasury functions. Mr. Porter was previously Chief Financial Officer for the City of Fort Worth and an Assistant Vice President at AmeriCredit, Corp. (now GM Financial). He is a certified public accountant and holds a bachelor's degree in accounting and a master's of business administration in finance from Texas Christian University.*

Date: July 29, 2022

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Jay Powell, Munis, And ETFs.

Robert Teeter, Head of Investment Policy & Strategy Group at Silvercrest Asset Management, discusses market reaction to Jay Powell's speech, the economy, and investing amid inflation. Cleveland Fed President Loretta Mester speaks with Bloomberg's Michael McKee from Jackson Hole about the economy and interest rates. Joe Mysak, Editor of the Bloomberg Brief: Municipal Markets, discusses the latest news from the municipal bond market. Steve Matthews, US Economy Reporter with Bloomberg News, joins the show to discuss Jay Powell's speech at Jackson Hole and outlook for the Fed and its inflation fight. Hosted by Paul Sweeney and Kriti Gupta.

Listen to audio.

Bloomberg

Aug 26, 2022

SEC Staff Identifies Compliance Deficiencies Uncovered in Muni Advisor Examinations: Fried Frank

The SEC Division of Examinations identified common compliance deficiencies found during examinations of municipal advisors.

In a Risk Alert, SEC staff listed deficiencies related to registration, recordkeeping, supervision and disclosures. Highlighted areas included:

- **Registration:** Incomplete, inaccurate filings; failure to amend promptly; failure to pay fees;
- **Recordkeeping:** Failure to keep electronic communications, including emails sent from personal email addresses and text messages; poor financial records; failure to certify compliance as required under MSRB Rule G-44 ("Supervisory and Compliance Obligations of Municipal Advisors"); failure to keep written agreements;
- **Supervision:** Failure to have adequate written supervisory procedures; failure to conduct annual reviews of compliance; and
- **Disclosures:** Inadequate disclosure of conflicts; poor documentation of advisory relationships.

SEC staff said the deficiencies in the report were similar to those identified in its 2017 Risk Alert, a reminder that those areas continue to be the most vulnerable (*see* previous coverage).

The SEC staff encouraged municipal advisors to review the deficiencies identified in the alert and consider implementing programs to improve compliance.

Fried Frank Harris Shriver & Jacobson LLP

August 23 2022

Massachusetts Enacts Important Energy Legislation: Day Pitney

On August 11, Massachusetts Gov. Charlie Baker signed H. 5060, An Act Driving Clean Energy and Offshore Wind (the Act), published as Chapter 179 of the Acts of 2022. The Act is a significant piece of legislation aimed at moving Massachusetts toward its goal of net-zero greenhouse gas (GHG) emissions by 2050 through the promotion of offshore wind and solar power, battery storage, and the electrification of the transportation and building sectors.

Offshore Wind

Much of the Act focuses on offshore wind, with several significant provisions aimed at advancing the offshore wind industry and supporting the procurement of offshore wind energy. First, the Act codifies the goal of procuring 5,600 megawatts (MW) of offshore wind generation no later than June 30, 2027. The Act allows for a solicitation of offshore wind generation to be coordinated and issued jointly with other New England states. Individual solicitations under the Act must seek proposals for at least 400 MW. The Act directs the Department of Energy Resources (DOER) to develop a staggered procurement schedule so that procurements occur within at least two years of each other.

Second, the Act makes offshore wind development more attractive by removing the price cap required for project developers submitting bids in response to solicitations for offshore wind generation. The cap would have required that the price under each offshore wind power purchase agreement be less than the price paid in the preceding procurement.

Continue reading.

Day Pitney Alert

August 18, 2022

Day Pitney Co-author(s) Paul N. Belval, Eric K. Runge, Margaret Czepiel

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BDA National Fixed Income Conference.

Charlotte, NC | Nov. 3-4, 2022

Featured Topics

- Regulation of the US Bond Markets – The Agendas at FINRA and the MSRB, A Fireside Chat with Robert Cook of FINRA and Mark Kim of MSRB
- Mid-Term Elections and the Potential Impact on the Bond Market
- ESG, Climate Disclosure, and the Impact on the Muni Market
- Secondary Market Pricing, Evaluations, and Best Execution
- Covid and the Hybrid Workforce – The Challenges and the Opportunities for Sell-Side Dealers
- Blockchain and the US Bond Markets – a Revolution in Waiting?
- New Liquidity Providers – Market Structure Impact

Click over to the Agenda for more information!

Click here to register.

Hemingway Fans to Get New Concourse at Key West Airport.

Covid relief funds, state grant cover $113 million project
'Sun Also Rises' author called Key West home from 1931 to 1939

Future pilgrims to Ernest Hemingway's home and museum in Key West may find it a little easier to get there thanks to $36.7 million of municipal bonds.

Monroe County, Florida is issuing revenue bonds next week to help finance a new airport terminal at Key West International. The new concourse will be 48,805 square feet, and is scheduled to open in late 2025.

Key West International is recovering now after, like all airports, it was hard-hit by the pandemic. Traffic in April of 2020 was 3% of its level in the same month a year earlier. But business in fiscal 2021 was a-booming there, rising to a record level of 659,321 enplanements, or passengers boarding aircraft.

Continue reading.

Bloomberg

By Joseph Mysak Jr

August 24, 2022

Why Is Chicago's Rail Extension Funding Considered Controversial?

The Chicago Transit Authority is hoping to finally make good on a promise to expand a subway line to the southern edge of the city. First it needs the City Council to agree to a plan for raising billions of dollars to support the project.

By the end of the decade, Chicago's Red Line train could finally extend past its current terminus at 95th Street and into the far South Side, connecting some of the city's poorest communities to its sprawling transit network and fulfilling a mayoral promise made more than half a century ago.

The project, known as the Red Line Extension (RLE), has been in active planning by the Chicago Transit Authority since at least 2006. It would add four new stations and 5.6 miles of elevated and ground-level track to one of the busiest routes on Chicago's "L" system. It's an expansion of urban railway infrastructure on a rare scale in an age of funding crises and shrinking ridership for public transit agencies. But local leaders say it's a long-overdue investment that could cut travel time from the far South Side to the Loop by as much as 30 minutes while providing a host of economic benefits to underserved communities during and after construction.

The CTA completed the environmental review process for the project earlier this month, and is hoping to move into the engineering phase by next year. It's seeking more than $2 billion in federal funds, with the city and CTA required to put up about $1.6 billion of their own. To raise the local funds, the authority is proposing a new twist on an old tool called tax increment financing (TIF), which has been used extensively to fund economic development in Chicago. And despite some concerns about the proposal raised by several of the city's aldermen this summer, the project's planners say they're confident the Red Line Extension will move forward.

Continue reading.

governing.com

Aug. 25, 2022 • Jared Brey

CDFA Update: The Inflation Reduction Act - What You Need to Know

Wednesday, August 31, 2022 | 4:00 PM – 5:00 PM Eastern

Recently, President Biden signed the Inflation Reduction Act of 2022, historic legislation that appropriates billions of dollars for federal loan and grant programs to fight climate change by investing in green resources. Join CDFA and special guest speakers on Wednesday, August 31, from 4:00-5:00 PM, as they discuss how the Act will impact you and the communities you serve!

Click here to learn more and to register.

Fatally Flawed? Illinois Municipal League's Model Streaming Subscription Tax - McDermott Will & Emery

The Illinois Municipal League (IML) represents the interests of 219 home rule municipalities in Illinois.[1] The IML recently released a revised draft model, "Municipal Streaming Tax Ordinance," (the model) for use by the home rule municipalities in imposing an "amusement tax" on, inter alia, music and video streaming services and online gaming.[2] If the subscriber's residential street address is within the corporate limits of the municipality, the subscription fee would be subject to the tax.[3] However, the tax proposed by the model has at least two fatal flaws: it is barred by the Internet Tax Freedom Act (ITFA) as a discriminatory tax on electronic commerce and is an unconstitutional extraterritorial tax under the home rule article of the Illinois Constitution.[4]

NATURE OF THE STREAMING TAX

The model proposes a tax on the privilege of viewing an amusement, including electronic amusements that either "take place within the" municipality or are delivered to subscribers "with a primary place of use within the jurisdictional boundaries of" the municipality.[5] The model incorporates the definition of "place of primary use" from the Illinois Mobile Telecommunications Sourcing Conformity Act.[6] That statute requires sourcing to the subscriber's "residential street address."[7] The streaming tax operates like a familiar sales tax in that it is imposed on the subscriber but collected by the streaming provider and remitted to the municipality.[8] The model tax would also be imposed on "paid television programming" (sat TV), but not paid radio programming (sat radio), transmitted by satellite.[9] The tax is not imposed on transactions that confer "the rights for permanent use of an electronic amusement" on the customer.[10]

Continue reading.

McDermott Will & Emery – Stephen P. Kranz, Mark Nebergall, Catherine A. Battin and Jonathan C. Hague

August 24 2022

- Disclosure Update: GFOA Webinar
- What Does the Inflation Reduction Act Do for State and Local Government?
- Inflation Reduction Act Incentives for Energy Sector.
- Biden Signs Climate Bill With Transformative Changes to Clean Energy Tax Incentives: Latham & Watkins
- Expansion of Clean Energy Loans Is 'Sleeping Giant' of Climate Bill.
- Wayfair: The Sequel – Baker McKenzie
- Potentially disruptive California tax case here.
- And finally, Profoundly Unclear On The Concept is brought to us this week by *In re Application of Icebreaker Windpower, Inc.*, in which the Supreme Court of Ohio demonstrated an astonishing confusion regarding pre-school level geology/hydrology/whatever when it repeatedly stated that the wind farm in question was to be constructed on "submerged land in Lake Erie." How in the

holy name of all that is aquatic could land *in* [emphasis angrily added] Lake Erie be anything other than submerged? Land *on* [super *supra* angry] Lake Erie would be 1) miraculous, and b) ultimately a bleeping island. *Aquaman 3 – Revenge of the Lake Bottom* coming soon to a theater near you.

STATE MANDATES - CALIFORNIA

Coast Community College District v. Commission on State Mandates

Supreme Court of California - August 15, 2022 - P.3d - 2022 WL 3349232

Community college districts petitioned for writ of mandate challenging decision of Commission on State Mandates that funding entitlement regulations did not impose a state mandate under state constitutional provision requiring the State to reimburse local governments for state-mandated new programs or higher level of service.

The Superior Court denied petition and entered judgment. Districts appealed. The Court of Appeal reversed in part. Commissioner petitioned for review.

The Supreme Court held that funding entitlement regulations did not impose a state mandate under a legal compulsion theory.

Regulations specifying various conditions that community college districts were required to satisfy to avoid the possibility of having state aid reduced or withheld did not legally compel districts to comply, and thus regulations did not impose a state mandate under a legal compulsion theory for purposes of a local government's constitutional right to reimbursement for a state-mandated new program or higher level of service; fact that the standards set forth in regulations, including matriculation, hiring of faculty, and selecting curriculum, related to districts' core functions did not in itself establish that districts had a mandatory legal obligation to adopt those standards, and California Community Colleges Chancellor had discretion to pursue remedial measures for any noncompliance.

PUBLIC UTILITIES - FEDERAL

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

United States Court of Appeals, District of Columbia Circuit - August 9, 2022 - F.4th - 2022 WL 3205886

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

After consolidation, the Court of Appeals held that:

- The FERC failed to reasonably explain why a "flow-based" method called the "solution-based distribution-factor analysis" (DFAX), which assigned costs based on how much each utility used a facility over time, was permissible to be used to allocate the costs of the upgrades;
- The "de minimis" threshold used in the DFAX violated the Federal Power Act's cost-causation principle and caused undue discrimination;
- The FERC reasonably explained its decision that netting the flows to each delivery point in a zone

to calculate total flow in a zone did not violate the Federal Power Act's cost-causation principle and did not cause undue discrimination;
- It was reasonable to use a model of the flow of electricity that assumed that each zone was at peak demand;
- The FERC reasonably read the tariff as requiring an appropriate substitute proxy for the DFAX method;
- Responsibility of public utility outside of transmission organization's region to pay costs associated with the upgrades ended upon termination of its power exchange transmission service, or "wheeling," agreement with transmission owner; and
- The FERC reasonably came to and adequately explained conclusion that the overall cost allocation for entities outside the transmission organization's region was not unjust or unreasonable.

When approving regional transmission organization's cost allocations for upgrades to transmission owner's facilities, which upgrades were "non-flow-based" projects, the Federal Energy Regulatory Commission (FERC) failed to reasonably explain why a "flow-based" method called the "solution-based distribution-factor analysis" (DFAX), which assigned costs based on how much each utility used a facility over time, was permissible to be used to allocate the costs of the upgrades; when evaluating a separate project that also conferred non-flow-based benefits, the FERC had determined that using DFAX was not warranted, and although the FERC claimed that the upgrade projects involved resolving short-circuit issues in a way that made those projects like flow-based projects, the FERC conceded that, like the stability issue with the separate project, short-circuit problems were not directly caused by flow overloads on a facility.

When reviewing the Federal Energy Regulatory Commission's (FERC) orders that approved regional transmission organization's cost allocations for upgrades to transmission owner's facilities, the Court of Appeals had jurisdiction to consider argument that the FERC acted arbitrarily in treating the upgrade projects differently from a separate project when determining the appropriateness of the method used to assign costs; even though the protesting utilities failed to raise the argument when applying for rehearing of an initial FERC order, the FERC did not change its position as to the separate project until after the application for rehearing of the initial order, so the protesting utilities had a reasonable ground for failing to raise the argument.

The "de minimis" threshold used in the "flow-based" method called the "solution-based distribution-factor analysis" (DFAX) to allocate costs for upgrades to transmission owner's facilities violated the Federal Power Act's cost-causation principle and caused undue discrimination; under the threshold, if the "distribution factor," which was computed by dividing a zone's use of a facility by the zone's total load, was below 1%, then the zone would be assigned no costs, but such a threshold operated as a too-big-to-pay rule that bordered on the absurd.

Federal Energy Regulatory Commission (FERC) reasonably explained its decision that netting the flows to each delivery point in a zone to calculate total flow in a zone, which was a calculation process done as part of the "flow-based" method called the "solution-based distribution-factor analysis" (DFAX) to allocate costs for upgrades to transmission owner's facilities, did not violate the Federal Power Act's cost-causation principle and did not cause undue discrimination; under "netting," receipt of electricity in a negative direction offset the receipt of electricity in a positive direction, but since counterflows increased capacity, it was reasonable to treat them as benefits that the zones could confer on the facilities.

When deciding on protesting entities' petitions for review of the Federal Energy Regulatory Commission's (FERC) orders that approved regional transmission organization's cost allocations for upgrades to transmission owner's facilities, the Court of Appeals lacked jurisdiction to consider certain arguments as to why netting the flows to each delivery point in a zone to calculate total flow

in a zone violate the Federal Power Act's cost-causation principle and caused undue discrimination; protesting utilities did not raise such argument in their applications for rehearing.

When deciding whether to approve regional transmission organization's cost allocations for upgrades to transmission owner's facilities, it was reasonable for the Federal Energy Regulatory Commission's (FERC) to use a model of the flow of electricity that assumed that each zone was at peak demand; despite argument that the assumption overestimated the merchant transmission facilities' use of the transmission facilities, the assumption was reasonable since transmission owner had to be able to meet peak load to guarantee system reliability.

When deciding whether to approve regional transmission organization's cost allocations for upgrades to transmission owner's facilities, the Federal Energy Regulatory Commission (FERC) reasonably read the tariff as requiring an appropriate substitute proxy for the "solution-based distribution-factor analysis" (DFAX) method to allocate costs of upgrades to transmission owner's facilities only when the modeled flows were not consistent with the normal expected flow results that an engineer would expect to see; despite argument that the tariff required a departure from the DFAX method if it violated the Federal Power Act's cost-causation principle, such an approach did not comport with requirement of FERC that costs be assigned ex ante.

Public utility's responsibility to pay costs associated with upgrades to transmission owner's facilities ended upon termination of its power exchange transmission service, or "wheeling," agreement with transmission owner, and thus transmission organization for region that did not include utility could not allocate such costs to utility after the termination; post-wheeling-agreement settlement that clarified the parties' rights and obligations made clear that utility had no liability for transmission enhancement charges after termination of term of service.

When reviewing Federal Energy Regulatory Commission's (FERC) orders that approved regional transmission organization's cost allocations for upgrades to transmission owner's facilities, the Court of Appeals lacked jurisdiction to consider intervenor's argument that the FERC's decision to allow merchant transmission facility to avoid cost allocations for one of the upgrade projects was arbitrary; such an argument appeared nowhere in intervenor's requests for rehearing before the FERC, which generally challenged the FERC's handling of cost allocation.

When deciding whether to approve regional transmission organization's cost allocations for upgrades to transmission owner's facilities, the Federal Energy Regulatory Commission (FERC) reasonably came to and adequately explained conclusion that the overall cost allocation for entities outside the transmission organization's region was not unjust or unreasonable; the FERC recognized that transmission organization was upgrade project's planner, and the FERC relied on transmission organization's statement that the project would still be needed in region even if there were no flows on the transmission facilities interconnecting the two regions at issue.

CONTRACTS - ILLINOIS

PML Development LLC v. Village of Hawthorn Woods

Appellate Court of Illinois, Second District - June 29, 2022 - N.E.3d - 2022 IL App (2d) 200779 - 2022 WL 2336455

Developer brought breach-of-contract action against village, alleging that village did not comply with agreement under which developer was authorized to fill and grade property in exchange for donating it, after filling and grading, to village. Village counterclaimed, alleging that developer

breached agreement by failing to pay taxes on property.

Following a bench trial, the Circuit Court found that both parties had breached, but that village had breached first, and awarded developer much, but not all, of the damages it sought. Village appealed, and developer cross-appealed the damages award.

The Appellate Court held that:

- Trial court's finding that village had materially breached contract was not against the manifest weight of the evidence;
- Village violated its contractual obligation to act in good faith;
- Developer's decision to proceed under contract after village's breach meant that developer was not excused from its contractual obligations by village's breach;
- Village did not prevent developer from performing its contractual obligation to convey property to village;
- Developer's failure to pay taxes on property was misconduct that rendered developer's hands unclean and precluded developer from recovering under doctrine of unjust enrichment; and
- Developer's own material breach of contract, through its failure to pay property taxes, precluded developer's breach-of-contract claim against village.

EMINENT DOMAIN - INDIANA

Nordin v. Town of Syracuse

Court of Appeals of Indiana - July 14, 2022 - N.E.3d - 2022 WL 2721041

Property owners brought action against town for negligence, based on flooding of their cottage when a town worker accidentally turned on a water valve.

The Circuit Court granted summary judgment in favor of town. Property owners appealed.

The Court of Appeals held that:

- The Circuit Court erred in measuring damages based on difference between cottage's pre-flooding and post-flooding market value;
- Evidence supported the Circuit Court's determination as to cottage's pre-flooding market value;
- Genuine issue of material fact existed as to what repairs were necessary to restore cottage; and
- There was no evidence that costs associated with repairing cottage would have exceeded half of cottage's fair market value.

Trial court erred in measuring damages for flooding of a cottage based on difference between cottage's fair market value prior to flooding and after flooding, rather than simply cottage's pre-flooding market value, in property owners' negligence action against town which accidentally caused flooding; cottage could not be repaired and was rendered useless.

Evidence supported trial court's determination as to fair market value of cottage prior to flooding accidentally caused by town, for purposes of ruling on damages in property owners' negligence action; owners contended that town failed to show that pre-flooding property-tax assessment of cottage bore any resemblance to market value, but they cited no authority saying that tax assessment could not be evidence of market value, owners failed to explain how estimated costs of repairing cottage were reflective of pre-flooding market value, and it was undisputed that restored or rebuilt cottage would be significantly nicer and more valuable than old, unoccupied, and

deteriorating structure which owner's purchased.

Genuine issue of material fact existed as to what repairs were necessary to restore cottage which was damaged when town accidentally caused flooding, precluding grant of town's motion for summary judgment on issue of loss of use in property owners' negligence action.

There was no evidence that costs associated with repairing a flooded cottage would have exceeded half of cottage's fair market value, precluding grant of town's motion for summary judgment on issue of loss of use in property owners' negligence action.

MUNICIPAL ORDINANCE - KANSAS

City of Wichita v. Trotter

Supreme Court of Kansas - August 12, 2022 - P.3d - 2022 WL 3330383

City charged defendant with violating municipal ordinances by operating an unlicensed after-hours establishment and operating an unlicensed entertainment establishment.

The Wichita Municipal Court found defendant guilty and ordered defendant to pay $200 fine and serve 12 months on nonreporting probation for after-hours violation, with underlying 90-day jail sentence, and ordered defendant to pay $200 fine for entertainment-licensing violation. Defendant appealed. On de novo review, the District Court dismissed the charges. City appealed. The Court of Appeals reversed and remanded with directions. Defendant petitioned for review, which was granted.

The Supreme Court held that:

- Defendant had standing to assert a First Amendment challenge;
- Defendant lacked standing to assert a Fourth Amendment challenge; and
- Licensing ordinances were overbroad in violation of First Amendment.

City ordinances requiring licenses for operation of after-hours establishments and criminalizing the operation of such establishments without a license were overbroad in violation of First Amendment right of assembly; although city had legitimate government interest in regulating late-night commercial activity, plain language of ordinances intruded into non-commercial gatherings during the hours from midnight until 6 a.m., including the right of assembly inside and around private homes.

ZONING & PLANNING - NORTH CAROLINA

Schooldev East, LLC v. Town of Wake Forest

Court of Appeals of North Carolina - July 19, 2022 - S.E.2d - 2022-NCCOA-494 - 2022 WL 2812335

After town planning board denied applicant's applications for major site plan and major subdivision approval to build a charter school, applicant filed a petition for writ of certiorari.

The Superior Court granted writ and affirmed the board's decision, and applicant appealed.

The Court of Appeals held that:

- Applicant's appeal from superior court's decision was not moot;
- Superior court erroneously exercised the whole record test in determining the preliminary legal question concerning the sufficiency of applicant's evidence;
- Term "street improvements" did not include sidewalk improvements, as that term was used in statute providing that city could only require "street improvements" related to schools that were required for safe ingress and egress to municipal street system;
- Statute providing that city could only require street improvements related to schools that were required for safe ingress and egress to the municipal street system did not prohibit towns from regulating pedestrian and bicycle connectivity; and
- Applicant failed to meet its burden of production to show that it satisfied town ordinance so as to establish prima facie case for entitlement to permits.

Court of Appeals had jurisdiction to address applicant's appeal from superior court's order entered upon review of a quasi-judicial decision by a municipality; town planning board denied applicant's applications for major site plan and major subdivision approval to build a charter school, and after certiorari was granted, superior court affirmed board's decision.

Applicant's appeal from trial court's decision affirming town planning board's denial of applications for major site plan and major subdivision approval to build charter school was not moot, even though applicant had allegedly renounced its legal right to "operate" charter school after filing its notice of appeal; applicant applied only for development permits under town's unified development ordinance (UDO), and it was a separate entity, namely charter school, that sought charter applications which would allow it to "operate" school, the questions originally in controversy between applicant and town were not moot, and decision on the existing controversy would have practical effect on applicant's ability to obtain the required development permits.

Superior court properly applied de novo standard of review in interpreting statute governing limitation on city requirements for street improvements related to schools and in reaching its decision that statute did not prohibit municipalities from regulating pedestrian and bicycle connectivity in relation to proposed new schools.

When reviewing town planning board's denial of applications for major site plan and major subdivision approval to build a charter school, superior court erroneously exercised the whole record test in determining the preliminary legal question concerning the sufficiency of applicant's evidence; instead, superior court should have applied de novo review to determine the initial legal issue of whether applicant had presented competent, material, and substantial evidence in support of its applications.

On review of town zoning board's decision, it was not prejudicial error when superior court erroneously exercised the whole record test, as opposed to de novo review, in determining the preliminary legal question concerning the sufficiency of applicant's evidence in support of its applications for major site plan and major subdivision approval to build a charter school, given that applicant failed to meet its burden of production to show it was entitled to the requested permits.

The Court of Appeals would review de novo whether statute governing limitation on city requirements for street improvements related to schools was properly interpreted in context of applicant's zoning applications for major site plan and major subdivision approval to build a charter school.

Term "street improvements" did not include sidewalk improvements, as that term was used in

statute providing that city could only require “street improvements” related to schools that were required for safe ingress and egress to the municipal street system and that were physically connected to a driveway on the school site.

Statute providing that city could only require “street improvements” related to schools that were required for safe ingress and egress to the municipal street system and that were physically connected to a driveway on the school site did not prohibit towns from regulating pedestrian and bicycle connectivity in relation to proposed new schools; statutory term “street improvements” did not include sidewalk improvements.

Statute providing that charter school’s specific location would not be prescribed or limited by a local board or other authority except a zoning authority did not prevent town from considering community plan policies with respect to schools and corresponding regulations, as town zoning board was acting as a zoning authority when denying applications for major site plan and major subdivision approval to build a charter school.

Town’s community plan policy stating that public school locations should serve to reinforce desirable growth patterns rather than promoting sprawl was solely advisory, and thus, it was irrelevant to applications for major site plan and major subdivision approval to build a charter school and was not a proper basis for town zoning board to deny applicant’s site plan application; community plan policy was a policy statement applicable to the planning of a new school location, and policy was not implemented by a zoning regulation.

Town’s community plan policy providing that school campuses should be designed to allow safe pedestrian access from adjacent neighborhoods was a policy of the town’s comprehensive plan to be implemented by a zoning regulation and could be changed at any time, and standing by itself, community plan policy was only advisory and did not have the force of law; however, the policy was implemented by town’s unified development ordinance (UDO) requiring applicant for school to demonstrate how its plan would achieve walking and bicycle accessibility by schoolchildren to schools.

Applicant’s failure to satisfy town’s unified development ordinance (UDO), requiring applicant for school to demonstrate how its plan would achieve walking and bicycle accessibility by schoolchildren to schools, was a proper basis on which town denied applications for major site plan and major subdivision approval to build charter school.

Town’s unified development ordinance (UDO) that was intended to regulate the development of land to be used for educational uses and required the provision of off-premise sidewalks and multi-use trails or paths to allow for accessibility by students to schools was a subdivision ordinance because it concerned a component of essential infrastructure for an elementary and secondary school within town’s planning jurisdiction, and thus, superior court properly considered the ordinance in denying applicant’s subdivision plan application in connection with charter school.

Applicant failed to show that it was not required to comply with town’s unified development ordinance (UDO) that was intended to regulate the development of land to be used for educational uses in order to satisfy conditions for approval of its applications for major site plan and major subdivision approval to build a charter school.

Town zoning board made ultimate decision as to whether applicant presented competent, material, and substantial evidence in support of its applications for major site plan and major subdivision approval to build a charter school and whether applicant met requirements of town unified ordinance that was intended to regulate the development of land to be used for educational uses.

Applicant failed to meet its burden of production to show that it met town unified development ordinance (UDO) requiring the provision of off-premise sidewalks and multi-use trails or paths to allow for accessibility by students to schools in order to establish a prima facie case for entitlement to permits for major site plan and major subdivision approval to build a charter school; applicant demonstrated that it would provide pedestrian connectivity to only one residential neighborhood through park located to the south of the proposed school.

Town's local zoning ordinances requiring pedestrian connectivity and accessibility for schoolchildren to school were not preempted by statute providing that city could only require street improvements related to schools that were required for safe ingress and egress to the municipal street system and that were physically connected to a driveway on the school site.

EMINENT DOMAIN - NORTH DAKOTA

Northwest Landowners Association v. State

Supreme Court of North Dakota - August 4, 2022 - N.W.2d - 2022 WL 3096724 - 2022 ND 150

Landowners association brought action against State seeking a declaration that senate bill relating to subsurface pore space violated the state and federal takings clauses, and oil and gas company intervened as a defendant.

The District Court granted summary judgment for association. State and company appealed.

The Supreme Court held that:

- Portions of senate bill were a facially unconstitutional per se taking based on physical invasion of property;
- Unconstitutional portions of senate bill were severable from the remainder;
- Trial court acted within its discretion in denying further discovery as to value of pore space before ruling on summary judgment motion; and
- Association was entitled to attorney's fees as prevailing party pursuant to § 1988.

Portions of senate bill relating to subsurface pore space, allowing a third-party oil and gas operator to use subsurface pore space, eliminating the right to compensation for "use of or lost value" to a surface owner's pore space, and stating that injection or migration of substances into pore space for disposal operations, by itself, did not constitute trespass, nuisance, or other tort, constituted a per se taking that facially violated state and federal takings clauses based on physical invasion of property; those portions allowed oil and gas operators to physically invade a landowner's property by injecting substances into the landowner's pore space, restricted landowners from having any control over the timing, extent, or nature of the invasion, and prohibited the right to compensation for use of pore space.

The dominant mineral estate principle, arising from a severance of mineral rights from the surface creating an implied easement in favor of a mineral owner to use the surface estate as reasonably necessary to find and develop minerals, did not save portions of senate bill relating to subsurface pore space from facially violating state and federal takings clauses as a per se taking via physical invasion of property, where portions authorized subsurface disposal of waste by third-party oil and gas operators beyond scope of any implied easement and also barred surface owners from bringing a tort action for a trespass from disposal operations that were beyond scope of any implied easement.

Portions of senate bill relating to subsurface pore space, granting a broad authorization to third-party oil and gas operators to physically occupy landowners' pore space and barring demands for compensation or tort actions to secure rights, was an exercise of the State's police power which was limited by the state and federal takings clauses as a physical invasion of property, despite argument that landowners took title to pore space with an expectation that their title was limited by police power; landowners' takings claims were not premised on a regulation of what they could do with their property, and they did not take title subject to possibility that their property could be actually occupied or taken away without just compensation.

Facially unconstitutional provisions of senate bill relating to subsurface pore space, granting a broad authorization to third-party oil and gas operators to physically occupy landowners' pore space and barring demands for compensation or tort actions to secure rights in violation of state and federal takings clauses, were severable from remaining provisions, which included sections designating use of carbon dioxide as acceptable for enhanced recovery of oil, gas, and other minerals, granting North Dakota Industrial Commission (NDIC) authority to adopt and enforce rules and orders, and limiting application of certain other provisions in the context of existing contracts; remaining provisions were sufficiently distinct to operate independently from the unconstitutional provisions.

Landowners association's failure to expressly plead §§ 1983 and 1988 in its complaint seeking a declaration that a state senate bill relating to subsurface pore space was facially unconstitutional did not preclude an award of attorney fees to association as a prevailing party pursuant to § 1988 upon trial court's determination that the senate bill was a facially unconstitutional taking; attorney's fees could be awarded under § 1988 even if complaint did not expressly plead §§ 1983 and 1988, and complaint alleged a deprivation of a property right in violation of the Fifth and Fourteenth Amendments.

Landowners association that prevailed on its challenge to state senate bill relating to subsurface pore space as being a facially unconstitutional taking was entitled to attorney's fee pursuant to § 1988, despite argument that association lacked standing to assert its members' rights under § 1983; all that was required under § 1988 to award fees was that association prevail on a claim within scope of § 1983.

PUBLIC UTILITIES - OHIO

In re Application of Icebreaker Windpower, Inc.

Supreme Court of Ohio - August 10, 2022 - N.E.3d - 2022 WL 3220040 - 2022-Ohio-2742

Residents sought judicial review of decision of Ohio Power Siting Board granting certificate of environmental compatibility and public need for six-turbine wind-powered electric-generation facility to be built on submerged land in Lake Erie.

The Supreme Court held that:

- Evidence supported Board's determinations as to probable environmental impact on migrating birds and bats and steps for reducing such impact;
- Board properly determined that conditions on its grant of certificate were sufficient to protect birds and bats and ensure that facility represented minimum adverse environmental impact; and
- Board lacked jurisdiction to consider contention that proposed construction of facility violated public-trust doctrine.

Evidence supported Ohio Power Siting Board's determinations as to probable environmental impact with respect to migrating birds and bats and steps for reducing such impact, as relevant to request for certificate of environmental compatibility and public need for six-turbine wind-powered electric-generation facility to be built on submerged land in Lake Erie; Board cited studies that monitored birds and bats flying in vicinity of project site, Board cited evidence showing that small scale of project and location between eight and ten miles offshore severely reduced impact that facility would have on birds and bats, and Board cited radar studies showing that most migrating birds were expected to fly above rotor-swept zone of turbines.

Ohio Power Siting Board properly determined that conditions on its grant of certificate of environmental compatibility and public need for six-turbine wind-powered electric-generation facility to be built on submerged land in Lake Erie were sufficient to protect birds and bats and ensure that facility represented minimum adverse environmental impact; Board found that moving facility farther from shore and small scale of project minimized several potential adverse environmental impacts on wildlife, Board required certificate applicant to submit radar-monitoring plan prior to construction, and Board required applicant to install fully functioning collision-monitoring technology prior to operation.

Ohio Power Siting Board lacked jurisdiction to consider residents' contention that proposed construction of six-turbine wind-powered electric-generation facility to be built on submerged land in Lake Erie violated public-trust doctrine and, therefore, that project would not serve public interest, convenience, and necessity, so as to preclude certificate of environmental compatibility and public need; statutory provision setting forth condition that facility serve public interest, convenience, and necessity did not include language giving Board authority to make public-trust determinations concerning Lake Erie, nor did provision make mention of any obligation of state to hold waters and submerged land of Lake Erie in trust for people of Ohio.

ZONING & PLANNING - PENNSYLVANIA

In re Charlestown Outdoor, LLC

Supreme Court of Pennsylvania - August 16, 2022 - A.3d - 2022 WL 3364248

Property owner appealed decision of township zoning board, which denied property owner's challenge to validity of township's zoning ordinance that permitted construction of billboards in zoning district.

The Court of Common Pleas affirmed the zoning board's decision finding that the ordinance was not de facto exclusionary. Property owner appealed. The Commonwealth Court affirmed. Property owner's petition for allowance of appeal was granted.

The Supreme Court held that:

- Zoning ordinance was not the source of the exclusion, and thus ordinance was not de facto exclusionary, and
- Municipalities have no duty to review and revise zoning ordinances or to rezone for a particular use where a property owner's use is limited by third parties, including through governmental regulations beyond the municipality's control.

Ordinance that permitted billboards in zoning district did not impose conditions that rendered use impossible, rather, following construction of turnpike ramp subsequent to enactment of ordinance, it

was Department of Transportation (PennDOT) regulation that precluded billboards in zoning district, and thus because zoning ordinance was not the source of the exclusion, ordinance was not de facto exclusionary in property owner's challenge to ordinance; ordinance permitted use on land that was rendered unusable for that purpose by intervening actions of a third party, other than setback provision, nothing in ordinance restricted placement of billboards in zoning district, and neither severing ordinance restrictions nor allowing property owner to erect a billboard were available as remedies.

Municipalities have no duty to review and revise their zoning ordinances or to rezone for a particular use where a property owner's use is limited by third parties, including through governmental regulations beyond the municipality's control.

To the extent that a de facto exclusion challenger to a zoning ordinance is successful, that success is limited to obtaining the opportunity to acquire and develop property in the zone where the use is permitted; if the defect asserted cannot be cured by severing restrictive provisions of ordinance, then the case stands in the same posture as one involving de jure exclusion, and the sole remedy is to allow use somewhere, and a successful litigant must receive that benefit in form of at least partial approval of a proposal.

What Does the Inflation Reduction Act Do for State and Local Government?

The most significant climate legislation ever enacted by Congress has become law, without the word "climate" in its title. Here's how it can benefit state and local energy and climate programs.

At a White House ceremony on Tuesday, President Biden signed the Inflation Reduction Act (IRA) into law, fulfilling one of the key promises of his campaign by committing unprecedented federal resources to the fight against climate change.

Biden called it "one of the most significant laws in our history," proof that America's soul is vibrant and its future bright. "The bill I'm about to sign is not just about today," he said. "It's about tomorrow, it's about delivering progress and prosperity to American families." The passage of the bill demonstrates that democracy still works, said Biden, not only for the privileged but for all Americans.

The IRA allocates $369 billion over 10 years for energy security and climate relief, $64 billion for extending the Affordable Care Act and $4 billion to address the water crisis in the western states. It is the largest federal investment in climate action in the country's history.

Continue reading.

governing.com

by Carl Smith

Aug. 17, 2022

U.S. Inflation Reduction Act Emphasizes Affordability; Credit Implications Across Sectors Are Mixed - S&P

View the S&P Report.

18 Aug, 2022

$550M in Federal Preparedness Grants Prioritize Security for State and Local Governments.

The grant programs target six "critical areas," including cybersecurity, information sharing and election security.

The Department of Homeland Security announced final funding allocations for state and local governments to bolster their preparedness, including against cyberattacks.

A total of $550 million will go to seven competitive preparedness programs in Fiscal Year 2022. In a statement, DHS Secretary Alejandro Mayorkas said cybersecurity is one of "six critical areas" prioritized by the grants, alongside protecting soft targets and crowded places, intelligence and information sharing, combating domestic violent extremism, community preparedness and resilience as well as election security.

Included in the funding is $93 million for the Transit Security Grant Program, which provides funds for public transportation agencies to protect themselves from acts of terrorism. In the Notice of Funding Opportunity for the program, DHS and the Federal Emergency Management Agency said the need to enhance cybersecurity is a major area of concern.

Continue reading.

Route Fifty

By Chris Teale

AUGUST 19, 2022

Inflation Reduction Act Incentives for Energy Sector.

President Biden signed the Inflation Reduction Act of 2022 (HR 5376) (the Act) into law on August 16, 2022. This update provides a high level overview of the Act's incentives for the energy sector. We have published a separate update regarding the Act's energy storage incentives.

The Act provides $750 billion for a range of issues, including $400 billion for energy and climate. The Act–a slimmed down version of the Build Back Better bill–also makes substantial policy changes. It should have an immediate effect on the wind and solar industries, as well as other energy projects. The Act contains numerous tax credits, rebates, and other incentives.

Renewable Energy The following incentives are provided (note that the details are particularly

important, because the Investment Tax Credit (ITC) and the Production Tax Credit (PTC) have additional strings attached, as well as bonuses, as further described below).

Continue reading.

Buchalter – Gwenneth O'Hara, Nora Sheriff and Christopher Parker

August 17 2022

Expansion of Clean Energy Loans Is 'Sleeping Giant' of Climate Bill.

The bill President Biden signed into law recently will greatly expand government loans and loan guarantees for clean energy and automotive projects and businesses.

Tucked into the Inflation Reduction Act that President Biden signed last week is a major expansion of federal loan programs that could help the fight against climate change by channeling more money to clean energy and converting plants that run on fossil fuels to nuclear or renewable energy.

The law authorizes as much as $350 billion in additional federal loans and loan guarantees for energy and automotive projects and businesses. The money, which will be disbursed by the Energy Department, is in addition to the better-known provisions of the law that offer incentives for the likes of electric cars, solar panels, batteries and heat pumps.

The aid could breathe life into futuristic technologies that banks might find too risky to lend to or into projects that are just short of the money they need to get going.

Continue reading.

The New York Times

By Ivan Penn

Aug. 22, 2022

Fitch: Inflation Reduction Act May Spur Public Power Renewable Spending.

Fitch Ratings-Austin/New York-16 August 2022: The introduction of direct pay tax credits through the Inflation Reduction Act (IRA) is expected to spur greater direct investment in clean energy projects across the public power sector, Fitch Ratings says. Public power systems steadily added production from renewable energy projects, including wind and solar projects, to their energy mix over the last decade but energy is typically purchased from private developers. The ability to monetize production tax credits pursuant to the IRA will improve the economics of direct ownership and could help reverse a trend of declining investment in the sector.

In recent years, the rate of capital investment lagged historical levels at most of the wholesale public power systems rated by Fitch. Our 2022 US Public Power Peer Review reported that the median ratio of capital investment to depreciation was only 77% in 2021. This marked the sixth time in the last eight years that the ratio was below 100%, indicating that systems are depreciating their assets

faster than they are reinvesting.

Fitch believes that this trend is due, in part, to the inability of tax-exempt enterprises to take direct advantage of production tax credits and other subsidies related to renewable energy projects. Public and cooperatively owned power systems instead added renewable energy to their power supply through purchase power agreements with private developers able to capitalize on tax subsidies. Wind and solar projects accounted for 13.8% of total US generating capacity in 2020 but only 0.9% and 0.5% of the total capacity owned by public power systems and electric cooperatives, respectively, according to the American Public Power Association.

Systems may continue to add new renewable purchase power agreements when economic but direct pay tax credits will lower the cost of alternative ownership, particularly for systems that prefer project design and operating control. When factoring power purchase agreements, wind and solar capacity available to public power systems increased to more than 9,300MWs in 2020 from roughly 1,050MWs.

Higher capital spending will drive increased borrowing but is unlikely to materially weaken credit quality, as Fitch's rating methodology factors purchase power obligations in its financial metrics and analysis, limiting the effect on leverage. This approach improves the comparability between systems that purchase and own resources and buffers the effect of debt-funded capital spending on projects that displace purchase power costs.

The expanded options for project ownership and financing made possible by the IRA are likely to provide the greatest benefit to systems operating in one of the 24 states or US territories that have adopted renewable energy portfolio standards for clean energy goals that apply to publicly- and cooperatively-owned systems. Although new project development is likely to be obstructed in the near term by inflationary pressures and supply chain constraints, delaying the delivery of solar panels and wind turbines, market conditions should improve in time for utilities to meet more stringent goals and targets set to take effect in 2025 through 2030.

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New Semiconductor Law Aims to Create 'Silicon Valleys' Across US.

$10 billion in funding will go to support 20 research hubs with a third of them set to be in small or rural communities.

Little noticed in the bipartisan CHIPS semiconductor bill President Biden signed into law earlier this month are funds aimed at transforming where innovation happens in the U.S. Rather than sending money to traditional technology centers like Silicon Valley in Northern California, Seattle or Boston, the law will create technology hubs in many places, including small and rural places.

Most notably, the $54.2 billion bipartisan bill passed by Congress last month contains $39.4 billion in subsidies to try to restore the nation's standing in the production of chips—which are used in everything from automobiles to washing machines—by encouraging companies to make them in the U.S. The law has bolstered the hopes of cities around the country—like Lafayette, Indiana, and Columbus, Ohio—because it will create jobs in their communities.

But also significant, said Mark Muro, a senior fellow at Brookings Metro, is that the law provides $10 billion over five years to create 20 regional technology and innovation hubs. And, it says they cannot be in places "that are now leading technology centers."

Continue reading.

Route Fifty

By Kery Murakami

AUGUST 19, 2022

ARPA Impact Report: An Analysis of How Counties are Addressing National Issues With Local Investments

America's nearly 40,000 county elected officials and 3.6 million county employees are on the frontlines of the nation's response to the coronavirus pandemic. As the country emerges from the pandemic and grapples with the toll it has taken on our citizens, counties are responding and rebuilding. At the same time, many counties are still confronting significant workforce shortage

pressures at a time with growing, critical resident needs.

With American Rescue Plan funds, counties are strengthening America's workforce, addressing the nation's behavioral health crisis, expanding broadband access, improving housing affordability and building prosperous communities for the next generation.

DOWNLOAD

NATIONAL ASSOCIATION OF COUNTIES

By TERYN ZMUDA, SARAH EDWARDS, JONATHAN HARRIS

Jul. 18, 2022

Sustainable Fitch: Social and Political Issues Increasingly Shape Financial Market Shifts

Fitch Ratings-Hong Kong-15 August 2022: Social, economic and political factors are increasingly driving developments in the sustainable finance market, says Sustainable Fitch in a new report. The expansion of sustainability-focused regulation has also continued, despite rising political resistance in key markets.

Regulatory and policy actions under the Biden Administration in the U.S. to address environmental, social and governance issues, such as the U.S. Securities and Exchange Commission's proposed climate disclosure rule and the U.S. National Action Plan on Business Conduct, have begun to generate scepticism from other stakeholders and in localities where the fossil-fuel sector is still a large employer and economic contributor. However, financial incentives for green technology and clean energy have attracted interest from many of the same regions, indicating that efforts to ease the carbon transition may alleviate political concerns.

Sustainable Fitch's analysis of climate-related credit risk indicates that key sectors, including agriculture, mining and metals, and real estate and property, are likely to face significant demand and regulatory changes by 2050 as a result of the global 'net-zero' carbon emissions transition. Sectors that are less vulnerable to climate transition risks, such as telecommunications and technology, are likely to face greater social risks, such as data privacy and customer welfare.

The Asia-Pacific region saw greater sustainable finance regulatory and policy activity in 2Q22, including the Australian Labor Party's victory in the May federal election. The Party has more ambitious climate policy and carbon emission reduction targets. The government of Singapore also released its green bond framework in May and announced plans to issue its first sovereign green bond by August. Meanwhile, the EU-China Common Ground Taxonomy was updated in June 2022 to identify where countries aligned on green activities to boost the document's usability by market participants.

More details are in the full report "ESG Credit Quarterly: 2Q22" at www.fitchratings.com.

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S&P U.S. State Ratings And Outlooks: Current List

View the current list.

19 Aug, 2022

S&P U.S. Public Finance Rating Activity, July 2022

View the S&P Activity Report.

15 Aug, 2022

How Federal Infrastructure Funds Can Build More Accessible Transit Systems.

COMMENTARY | By taking significant steps towards increasing accessibility, public transit systems will better incorporate equity and social mobility into their operations.

According to the Centers for Disease Control and Prevention, as many as 61 million Americans live with some form of disability. Among those millions, one in five is blind or has a mobility disability. As such, nearly 30 million Americans travel less due to limited mobility, yet they disproportionately rely on public transit to get around.

Too often, investments in public transit have ignored the needs of its wide variety of riders. For example, most cities almost completely ignored wheelchair users until the late 1960s and early ‘70s. After demonstrations by disabled WW II veterans, Congress adopted the Architectural Barriers Act—a precursor to the 1990 Americans with Disabilities Act. Today, ramps and curb cuts are ubiquitous in cities and towns of all sizes—and they benefit a range of users beyond those in a wheelchair like the young, the old, people pushing strollers and the temporarily disabled.

For transit, the bipartisan infrastructure law signed into law by President Biden in November

provides a once-in-a-generation opportunity to right this wrong by funding projects that will improve accessibility to public transit. It's critical that policymakers and transit agencies get it right and prioritize projects that incorporate the concept of universal design to create inherently accessible transit and better serve all riders.

Continue reading.

Route Fifty

By Aline Frantzen

AUGUST 22, 2022

Why Local Governments Trail Private Employers in Hiring.

Slower wage gains and less nimble hiring processes create challenges for many states and municipalities trying to fill job vacancies

U.S. employers have added jobs at a historically robust pace since emerging from the pandemic recession, with a notable exception: state and local governments.

The nation lost about 22 million jobs in March and April 2020, or 14% of the total, when the Covid-19 pandemic first hit the U.S. economy. Total payrolls started growing in May of that year, and by July of this year the overall labor market had more jobs than in February 2020, according to the Labor Department.

Meanwhile, state and local public employers—such as schools, hospitals, libraries and law enforcement agencies—lost about 1.5 million jobs in March through June 2020, or about 7.4% of the total. These payrolls started rising in July that year, and by last month they had 605,000 fewer filled jobs on their payrolls, or 3% less, than in February 2020.

Continue reading.

The Wall Street Journal

By Bryan Mena

Aug. 15, 2022

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

S&P Global Ratings affirmed 17 ratings without revising the outlooks and took eight actions in the U.S. not-for-profit health care sector in July 2022. There were two new sales in July. The eight rating and outlook actions consist of the following:

- Two downgrades on standalone hospitals;
- Two upgrades on standalone hospitals; and
- Four unfavorable outlook revisions on two standalone hospitals and two health systems (all to

negative from stable).

The table below summarizes S&P Global Ratings' monthly bond rating actions for U.S. not-for-profit health care providers in July. 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 and inflationary pressures, economic developments, and investment market volatility.

Continue reading.

11 Aug, 2022

Fitch Ratings Revises U.S. NFP Hospitals Sector Outlook to 'Deteriorating'

Fitch Ratings-Austin/Chicago-16 August 2022: More severe-than-expected macro headwinds have prompted Fitch Ratings to revise its sector outlook for U.S. not-for-profit hospitals and health systems to 'deteriorating', as detailed in Fitch's new report.

The biggest sector impediment has been labor, and broader macro inflationary pressures are rendering the sector even more vulnerable to future stress, according to Senior Director Kevin Holloran. Investment losses have contributed to a rockier 2022 to date than anticipated for hospitals, and operating metrics are down significantly compared to last year.

"While severe volume disruption to operations appears to be waning, elevated expense pressure remains pronounced," said Holloran. "Even if macro inflation cools, labor expenses may be reset at a permanently higher level for the rest of 2022 and likely well beyond."

Where this will be the most felt is nurses, which were already in high demand pre-pandemic with Covid only exacerbating a glaring shortage of nursing staff.

As a result, many NFP health providers will violate debt service coverage covenants in 2022. As to what that scenario means for hospitals in the coming months, "We may be in a period of elevated downgrades and Negative Outlook pressure for the rest of 2022 and into 2023," said Holloran.

"Fitch Ratings 2022 Mid-Year Outlook: U.S. Not-For-Profit Hospitals and Health Systems" is available at www.fitchratings.com.

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Fitch: Deceptively Strong Medians Likely Coming to an End for U.S. NFP Hospitals

Fitch Ratings-Austin-18 August 2022: U.S. not-for-profit hospitals saw another strong year of mostly across the board median improvements, though it appears almost certain to be a high-point for the sector with Fitch Ratings projecting declines for next year and beyond in its latest annual sector report.

2022 medians (using audited 2021 data) showed a 20% increase in cash to adjusted debt to 249% for 'AA' rated hospitals, compared to an 8% increase for 'BBB' health systems to 102%. That said, "the deceptively strong numerical improvements over prior years' medians are less a sign of sector resiliency and more a cautionary calm before the storm," said Senior Director Kevin Holloran. "Additional expenses, primarily labor, have become part of the permanent fabric of hospital operations, that when combined with ongoing incremental challenges will exert tremendous pressure on providers through calendar 2022 and beyond."

Fitch expects to see hospital medians reverse course this time next year due to a conflagration of events, including the very challenged operational start to calendar 2022, additional Omicron sub-variants and inflationary pressures. Staffing, or an adequate lack thereof, is particularly troubling. Clinical and non-clinical shortages will continue into 2023 and likely longer in some markets, with high growth markets being better able to mitigate staffing shortages.

"We are likely two years before some level of "normal" returns to the sector," said Holloran. "For many hospitals, their "value journey" will be on temporary hold until expenses stabilize and become more predictable.'

'2022 Median Ratios: Not-for-Profit Hospitals and Healthcare Systems' is available at 'www.fitchratings.com'.

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Hospital Finances are Deteriorating, Fitch Says.

Rising labor and supply costs will land many nonprofit hospitals in violation of debt covenants to bondholders this year, according to an analysis released Tuesday by Fitch Ratings.

Salaries for nurses are particularly competitive, with Covid-19 driving up demand. Labor costs and other inflation pressures are squeezing budgets at senior-living facilities as well.

Many hospitals are operating with slimmer margins than last year, Fitch found, with lower-rated hospitals hit particularly hard and hospitals rated triple-B, slightly higher than junk-bond status, operating with negative margins. That could lead some institutions to run afoul of promises to bondholders about how much of a financial cushion they will maintain.

Continue reading.

The Wall Street Journal

By Heather Gillers

Aug 16, 2022

Western U.S. Drought: Declining Supply, Rising Challenges - S&P

Prudent supply and demand management, solid financial margins, and rate-setting capacity will be critical to rating stability.

Download the S&P Report.

Aug 16, 2022

Public Finance Impact of the Inflation Reduction Act's New Corporate Alternative Minimum Tax: Holland & Knight

President Joe Biden signed into law the Inflation Reduction Act (the IRA) on Aug. 16, 2022. The IRA (H.R. 5376, 117th Congress) includes a variety of legislation concerning energy, climate change, federal income tax, healthcare and deficit reduction matters. Notably for those in the public finance sector, the IRA includes a new limited corporate alternative minimum tax that is effective for tax years ending after Dec. 31, 2022, which could impact the demand for tax-exempt municipal bonds. The corporate alternative minimum tax had previously been repealed in 2017 as part of the Tax Cuts and Jobs Act.

The IRA creates a new revenue-generating 15 percent corporate alternative minimum tax (the Corporate AMT) (also known as the book minimum tax), which, when effective, applies to an “applicable corporation,” namely, a domestic corporation with average “adjusted financial statement income” (AFSI) in excess of $1 billion over a three-taxable-year period or a foreign-parented corporation with a three-taxable-year average annual AFSI of $100 million or more if they are part of

a foreign-parented multinational group with an average AFSI exceeding $1 billion. An applicable corporation does not include an S Corporation, a real estate investment trust or a regulated investment company. A corporation that is determined not to be an "applicable corporation" will remain exempt from the corporate alternative minimum tax consistent with its repeal in 2017 as part of the Tax Cuts and Jobs Act.

While the Corporate AMT is projected to generate $220 billion of tax revenue over 10 years, it is expected that the Corporate AMT, the applicability of which could be expanded in the future, will have very limited immediate impact in terms of the number of corporate taxpayers affected. The U.S. Congress Joint Committee on Taxation has estimated that 150 companies (most of which are in the manufacturing sector) will be affected by the new Corporate AMT. With regard to the public finance sector, the affected taxpayers are banks, insurance companies, and property and casualty insurers, which are often purchasers of tax-exempt municipal bonds. It is also expected that tax disclosure language in offering statements and tax opinion language will have to be revised in order to account for the enactment of the Corporate AMT. Further, bond purchase agreements should be reviewed to determine whether this change will affect any of the so-called "outs" under such agreements.

Holland & Knight attorneys are working with borrowers, issuers, underwriters and lenders to address the impact of the Corporate AMT. If you have any questions regarding this alert, please contact one of the bond attorneys on Holland & Knight's Public Finance Team.

For an in-depth summary of the full IRA legislation, see Holland & Knight's previous alert, "The Inflation Reduction Act: Summary of the Budget Reconciliation Act," Aug. 8, 2022.

Holland & Knight Alert

by Faust Bowerman | Michael L. Wiener | Vlad Popik

AUGUST 19, 2022

Inflation Reduction Act: Tax Implications for Public Finance Transactions - Kutak Rock

On August 16, 2022, President Biden signed into law the Inflation Reduction Act (H.R. 5376, 117th Congress) (the "IRA"). The enactment of the IRA caps a tumultuous period of many months of negotiations involving the original Build Back Better Act (the "BBBA") on which the IRA is based. The BBBA did not progress beyond approval in the House of Representatives in November 2021. The IRA is considered a "light" version of the BBBA with many original provisions scaled back significantly or removed altogether in an effort to ensure passage. Nevertheless, the IRA represents a significant federal investment to address climate change and curb inflation.

Key provisions of the IRA relate to energy (including tax credits), healthcare, tax reform and deficit reduction. *Unfortunately, the IRA falls short of including any tax-exempt financing tools.* Communities relying on public financing have been requesting, among other things: a provision to protect direct pay subsidy bonds from continued federal sequestration; an expansion of volume cap for exempt facility bonds especially to satisfy the demand for affordable low-income housing; a reduction in the 50% bond financing requirement to unlock 4% low-income housing tax credits; and an update and increase to the $10 million bank qualified provision for small issuers. *The IRA includes none of the requested provisions.*

Relevant to the public finance community, however, is the reintroduction by the IRA of a corporate alternative minimum tax (the "AMT"). As a reminder, the AMT for corporations had been eliminated by the 2017 legislation commonly referred to as the Tax Cuts and Jobs Act. The new corporate AMT imposes a 15% alternative minimum tax on annual adjusted financial statement income of "applicable corporations." Corporations that do not fall within the category of "applicable corporations" will continue to be exempt from the AMT altogether. "Applicable corporations" generally include domestic corporations (including banks but excluding Subchapter S corporations, regulated investment companies, real estate investment trusts, and businesses owned by private equity) with profits of more than $1 billion, and certain foreign-parented multinational corporations with profits of more than $100 million, over a specified three-year period, effective beginning in the 2023 taxable year.

From the perspective of tax-exempt legal documentation, the reintroduction (albeit in limited form) of the corporate AMT may require adjustments to offering statements, tax opinions and tax covenants going forward. We have already been working closely with our clients to discuss the new AMT provision and draft necessary documentation changes, including revised tax disclosure for official statements.

Within Kutak Rock LLP, there are several working groups who are also assisting clients with the application of energy, tax credit and healthcare provisions of the IRA. The firm's National Public Finance Tax Group would be happy to assist with efforts to coordinate with these working groups.

Please also note that in certain cases the use of tax-exempt financing for IRA-assisted projects can impact the availability of IRA tax credits or subsidies for such projects.

Please reach out to any member of the Kutak Rock LLP National Public Finance Tax Group if you have questions about the IRA and its impact on tax exempt bond financings. Questions, comments or corrections to this client alert may be addressed to the attorneys listed below.

This client alert was prepared for the general informational use of the clients and attorneys of Kutak Rock LLP and reflects our understanding of the matters set forth herein as of the time of its release. The views on the topics presented may change as our experience with the matters discussed herein deepens.

August 16, 2022

Tax Implications of the Inflation Reduction Act: Cooley

On August 7, 2022, the US Senate passed the Inflation Reduction Act (House Resolution 5376), which contains tax, climate and healthcare provisions. The legislation is widely expected to be passed by the House of Representatives without changes and signed into law by President Joseph R. Biden shortly thereafter. The Inflation Reduction Act contains a number of revisions to the Internal Revenue Code (the "Code"), including a 15% corporate alternative minimum tax and a 1% excise tax on corporate stock repurchases. Despite earlier proposals, the legislation does not contain any changes to the tax treatment of carried interest or the cap on deductions for state and local taxes.

This alert highlights a few key provisions of the Inflation Reduction Act that may be applicable to Cooley clients.

Corporate alternative minimum tax

In tax years beginning after December 31, 2022, the Inflation Reduction Act imposes a 15% alternative minimum tax (the "Corporate AMT") on US corporations with financial accounting profits exceeding a certain threshold. This provision is expected to impact large corporations that have previously reported high income on their financial statements but have significantly reduced – or even eliminated – their cash tax liability as a result of certain attributes or book-tax differences, such as companies with significant stock-based compensation. Very few corporations are expected to be subject to the Corporate AMT as currently proposed. In an analysis of an earlier version of the proposal, the Joint Committee on Taxation estimated that about 150 taxpayers would be subject to the tax each year.

The Corporate AMT would generally apply to US corporations – excluding S corporations, regulated investment companies and real estate investment trusts – with an average of more than $1 billion of annual adjusted financial statement income (AFSI) during a three-year measurement period. The Corporate AMT would also apply to a US corporation (including, for these purposes, a trade or business engaged in by a foreign corporation within the US) in a foreign-parented multinational group if, over the three-year measurement period, the US corporation's average annual AFSI is at least $100 million and the multinational group's average annual AFSI exceeds $1 billion. A corporation's AFSI is the net income or loss set forth on the corporation's applicable financial statement (generally a Securities and Exchange Commission Form 10-K or other audited financial statement) for the taxable year, subject to certain adjustments to reflect accelerated tax depreciation and certain other items. The provision was amended with the intention that otherwise unrelated companies under common ownership of an investment fund will not have their AFSI aggregated for purposes of the $1 billion threshold.

In some cases, the Corporate AMT may simply accelerate taxes, as payments made under the Corporate AMT can be used as a credit in future years when a corporation's regular tax liability exceeds its liability under the Corporate AMT. In other cases, the Corporate AMT may permanently increase overall tax liability. For example, taxpayers with significant net operating losses from tax years prior to 2020 may realize a permanent increase in tax liability because the Inflation Reduction Act precludes carryforwards for financial statement net operating losses arising in such years.

Excise tax on corporate stock repurchases

For publicly traded US corporations and certain US subsidiaries of publicly traded non-US corporations, the Inflation Reduction Act imposes a 1% excise tax on the fair market value of any stock that is repurchased by the corporation or its "specified affiliate" (generally, corporations or partnerships of which the corporation owns more than 50%) during the tax year. The taxable amount is reduced by the fair market value of any stock issued by the repurchasing corporation during the taxable year, including the fair market value of any stock issued or provided to employees of the corporation or a specified affiliate. The excise tax is subject to several exceptions (the contours of which are uncertain), including carve-outs for repurchases that are part of a tax-free reorganization, contributions to employee retirement or stock ownership plans, repurchases that are treated as dividends, and corporations that repurchase stock with a total value of no more than $1 million during a taxable year. The excise tax applies to repurchases of stock after December 31, 2022.

While the excise tax only applies to repurchases of stock after December 31, 2022, corporations may already have shares outstanding that are subject to repurchase rights, including redeemable preferred stock and stock issued in the initial public offering of special purpose acquisition companies (SPACs). The excise tax could also be triggered in transactions not conventionally viewed as stock repurchases, including:

- Mergers or other reorganizations involving cash payments to the target's shareholders to the

extent that such payments are funded with the target's cash or debt incurred or assumed by the target in the transaction.
- Payments of cash in lieu of fractional shares.
- Payments to dissenters.
- Divisive reorganizations that use a "split-off" structure.

In addition, the Secretary of the Treasury is authorized to define "repurchase" to include "economically similar" transactions. Unless the fair market value of stock treated as repurchased in a tax year is less than the fair market value of stock issued by the covered corporation in that tax year, or another exception applies, such transactions could expose a covered corporation to the excise tax.

Other tax provisions

Other notable tax-related provisions in the Inflation Reduction Act include:

- A two-year extension (to tax years beginning before January 1, 2029) of the loss limitation rules applicable to noncorporate taxpayers under Section 461(l) of the Internal Revenue Code.
- An increase in the research tax credit available to offset the payroll taxes of qualified small businesses under Section 41(h) of the Internal Revenue Code.
- An increase in IRS funding of approximately $80 billion over 10 years, with nearly $46 billion for enforcement efforts such as "digital asset monitoring and compliance activities."
- A new excise tax on drug producers who fail to comply with new drug pricing requirements.
- The reinstatement of a Superfund excise tax on crude oil and certain imported petroleum products at a rate of 16.4 cents per barrel (indexed to inflation) beginning January 1, 2023.
- The permanent extension of an excise tax on coal from US mines.
- Climate- and energy-related taxes, tax credits and other incentives.

Cooley Alert

August 11, 2022

ESG Fixed Income Space Evolving, Maturing.

It's been a rough year for fixed income investors, but there are some bright spots in the world of exchange traded funds, including ongoing adoption and maturation of bond ETFs.

That includes bond ETFs focusing on environmental, social, and governance (ESG) investing — a space long viewed as fertile growth territory for fund issuers. Broadly speaking, inflows to ESG ETFs are decent this year, though well off their prior highs, and that's impressive when considering that these funds are usually heavy on growth stocks, which struggled in the first half of the year.

Regarding ESG bond ETFs, there's still plenty of room for growth, but these products come with some advantages relative to actively managed rivals that could propel long-term adoption.

"US-listed fixed income ETFs have a median expense ratio of 0.29%, versus mutual funds' 0.61%. While many ETFs are index based, this lower-cost profile carries over to actively managed ETFs that have a median expense ratio of 0.40%, versus 0.63% for actively managed bond mutual fund strategies," noted State Street Global Advisors (SSGA).

There are other benefits associated with fixed income ETFs, ESG and otherwise.

“ETFs offer structural advantages, compared to a single security or individual bond exposure. With individual bonds, broker-dealers collect commissions on bonds they sell or buy through markups and markdowns, which are bundled into the quoted price to investors on both sides of the transaction,” added SSGA.

Those benefits are particularly meaningful for investors looking for the combination of ESG and fixed income exposure because owing to the still-nascent status of this asset class, looking for individual bonds with adequate ESG standing can be a taxing endeavor for many advisors and investors. Fixed income ETFs ease that burden and can provide much needed liquidity, too.

“ETFs’ robust secondary market allows investors to tap into market liquidity more easily than they can with single-CUSIP bond holdings,” concluded SSGA. “This enables them to reallocate portfolios quickly across asset classes or meet investor redemptions by selling an ETF position into the market without having to sell single-CUSIP bonds. Fixed income ETFs are also more liquid than mutual funds, as ETFs trade intraday and mutual funds are typically transacted end of day.”

For investors seeking the marriage of ESG and municipal bonds with the ETF wrapper, the SPDR Nuveen Municipal Bond ESG ETF (MBNE) is an idea to consider. Those desiring a bit more income by way of corporate bond exposure can evaluate the SPDR Bloomberg SASB Corporate Bond ESG Select ETF (RBND).

ETF Trends

editor@etftrends.com

AUG 17, 2022

Corporate and Municipal CUSIP Request Volumes Sink in July.

NORWALK, Conn., Aug. 18, 2022 (GLOBE NEWSWIRE) — CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for July 2022. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity over the next quarter, found a significant monthly decrease in request volume for new corporate and municipal identifiers.

North American corporate requests totaled 5,253 in July 2022, which is down 9.6% on a monthly basis. On a year-over-year basis, corporate requests were up 8.5%. July volumes were driven by an 11.7% decrease in requests for new U.S. corporate equity identifiers and a 33.3% decline in request volume for new U.S. corporate debt identifiers. Short-term certificates of deposit (CDs) identifiers continued their seven-month growth streak, rising 1.9% in July. Longer-term CDs, with maturities of one year or longer, saw an 8.0% decline in new CUSIP request volume this month.

Municipal request volume also declined in July. The aggregate total of identifier requests for new municipal securities – including municipal bonds, long-term and short-term notes, and commercial paper – fell 23.6% versus June totals. On a year-over-year basis, overall municipal volumes were down 17.3%. New York led state-level municipal request volume with a total of 164 new CUSIP requests in July, followed by Texas with 144 and California with 65.

“We’re seeing a combination of rising interest rates and the seasonality of new security issuance rear their heads this month’s CUSIP Issuance Trends report,” said Gerard Faulkner, Director of Operations for CGS. “July is a notoriously slow month for new issuance – particularly in the municipal and equity space – and that is definitely a factor in this month’s numbers, but it’s likely not the only factor. As the 7-month growth trend we’ve been seeing in long-term CDs will attest, interest rates do have an effect on new issuance volumes.”

Requests for international equity and debt CUSIPs were also down in July. Requests for international equity CUSIPs fell 33.7% this month, while international debt CUSIP requests fell 20.0%. On an annualized basis, international equity CUSIP requests were down 40.9% and international debt CUSIP requests were down 30.3%.

To view the full CUSIP Issuance Trends report for July, click here.

Municipal Borrowing at Three-Year Low.

State and local governments are pulling back on bond sales, issuing $250 billion so far this year compared to $287 billion during the same period last year, according to a report by Citigroup.

The biggest reason? Rising interest rates have discouraged refinancing, cutting year-to-date taxable debt issuance to $44 billion from $79 billion last year. (Most municipal bonds pay tax-exempt interest, but early refinancings are not eligible for a federal tax exemption.)

One example: New York state is planning to sell $8.6 billion in bonds in its current fiscal year, down from $11.8 billion last year, according to state documents.

Tax-exempt bond issuance is down slightly this year too. Many cities and counties already flush with stimulus cash may have less need for borrowing. Others, facing rising costs from inflation, may be scaling back their ambitions.

The Wall Street Journal

By Heather Gillers

Aug 15, 2022

Summer 2022 MSRB Update.

The MSRB discusses market perspectives on ESG, new board leadership and members plus more in the latest MSRB Update.

View the MSRB Update.

The Muni Markets In 2022 (Bloomberg Audio)

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

Listen to audio.

Bloomberg

Aug 19, 2022

Yields 'Definitely' Going Higher: Kayne's Friedricks

Kim Friedricks, Kayne Anderson Rudnick managing director of fixed income, discusses the outlook for Federal Reserve monetary policy and its potential impact on the muni market with Taylor Riggs and Sonali Basak on “Bloomberg Markets: The Close.”

Watch video.

Bloomberg Markets: The Close

August 17th, 2022

Fortress-Backed Brightline Rail Sells $770 Million of Debt at Steep Yields.

- **Brightline needs funds to finish critical extension to Orlando**
- **Debt backed by government payments still to be finalized**

Brightline Holdings, the rail company backed by Fortress Investment Group, sold $770 million of unrated tax-free debt with hefty premiums for investors as it raises cash critical for the expansion of its underperforming Florida system.

The securities, subject to a mandatory put in October 2023, priced with a 7.25% coupon at 98 cents on the dollar, according to pricing wires viewed by Bloomberg. The primary collateral is funds from Miami-Dade and Broward counties in exchange for using the rail line for their commuter services. Those agreements are expected to be finalized next year.

Continue reading.

Bloomberg

By Romy Varghese

August 17, 2022

Mesirow’s First Female CEO Is Keen to Grow Muni-Bond Business.

- **The firm is the 24th-biggest muni underwriter so far this year**

- **Banks are reckoning with a drop in state and local debt sales**

Natalie Brown, the new chief executive officer of Mesirow Financial Holdings Inc., said the firm is looking to expand its presence in the $4 trillion municipal-bond market.

The Chicago-based financial services firm has hired seven municipal-market specialists since 2021, including four bankers. It is ranked as the 24th-biggest underwriter of long-term state and local debt so far in 2022, up one slot from last year, according to data compiled by Bloomberg.

“We will certainly continue to strategically add headcount in public finance, and in municipal sales and trading,” she said in an interview on Bloomberg Intelligence’s muni podcast hosted by Eric Kazatsky.

Continue reading.

Bloomberg Markets

By Amanda Albright

August 15, 2022

College of Business Professor Presents Paper on Discrimination in Municipal Borrowing at Brookings Institute Conference

Matthew Wynter, a research professor in the Stony Brook University College of Business, presented his paper, “Black Tax: Evidence of Racial Discrimination in Municipal Borrowing Costs,” at the Brookings Institute 2022 Municipal Finance Conference, held online July 18-20.

The paper, co-authored with Ashleigh Eldemire Poindexter of the University of Tennessee and Kimberly Luchtenberg of American University, shows that municipalities with higher proportions of Black residents pay higher borrowing costs to issue rated bonds compared to other cities and counties that issue within the same state and year. These higher costs are unexplained by credit risk, more pronounced in states with higher levels of racial resentment, and robust to state-tax incentives to hold municipal bonds.

In time-series tests using political election periods during which racial resentment has been shown to intensify, the research finds that the differences in borrowing costs also increase. Collectively, the findings illustrate that racial bias can increase borrowing costs, especially where racial resentment is severe.

The Brookings conference is considered the best municipal finance conference in the field, is highly selective, and attended by academics, policy makers, and market participants.

Wynter also had another paper on minority and low-income homeownership accepted by the Review of Corporate Finance Studies. “Does homeownership reduce wealth disparities for low-income and minority households?” uses restricted data from the U.S. Department of Housing and Urban Development’s (HUD) Housing Choice Voucher (HCV) program to study the wealth effects of homeownership for low-income households.

The paper looks at whether becoming a homeowner effects the wealth of low-income White and

minority households differently. HUD's HCV program provides low-income households with housing assistance for rental and mortgage payments. To identify whether homeownership affects wealth, the paper compares a household's wealth as a renter to its own wealth of as homeowner, and uses variation in the wealth outcomes amongst households to measure the effect of homeownership on racial disparities in wealth. In using this differences-in-differences approach, the research controls for the many unobservable and confounding differences within households that are likely to affect wealth accumulation, while also allowing wealth outcomes to vary by race.

Using this empirical approach, the paper establishes that low-income households that receive assistance in owning a home experience increased wealth relative to their tenure as renters. However, these wealth gains are not present among low-income minority households. The findings provide evidence that homeownership is a driver of wealth formation for low-income households and that homeownership does not inherently reduce racial disparities in wealth.

Wynter conducts research that focuses on behavioral and international finance. His research has been presented at finance and economics conferences around the world, including the Brookings Institution, the American Economic Association, and the China International Conference in Finance. His research has been published in the Review of Corporate Finance Studies, World Economy, and the Journal of Management, Policy, and Practice.

August 19, 2022

Pension Veteran Tears Into Public Funds for 'Bogus Benchmarking'

- **Fund managers benefit as public employees, taxpayers foot bill**
- **Critic says public pensions underperform by $60 billion a year**

Richard Ennis knows a thing or two about how US public pension systems work. For half a century, he's managed money for some funds and advised untold others at EnnisKnupp, a consulting firm he co-founded. He's also the former editor of the Financial Analysts Journal and recipient of lifetime achievement awards for his work.

Now semi-retired, Ennis doesn't pull punches: To him, the benchmarks that many public funds use to grade their investment performance raise questions about their integrity. "Bogus benchmarking is the single biggest problem in the field of institutional investing," he said.

In his most recent broadside, in the April issue of the Journal of Portfolio Management, Ennis wrote that the public officials who manage $4 trillion for 26 million working and retired teachers, cops, and other public employees routinely set their benchmarks too low and in many cases receive bonuses for their accomplishments.

Continue reading.

Bloomberg Businessweek

By Neil Weinberg

August 17, 2022

Biden Signs Climate Bill With Transformative Changes to Clean Energy Tax Incentives: Latham & Watkins

Key Points:

- Wind and solar tax credits receive a multi-year extension at full rates, and solar projects are eligible for the production tax credit.
- New tax credits are available for emerging technologies, including energy storage and clean hydrogen.
- Carbon capture tax credit rules are simplified and expanded.
- New manufacturing tax credits are available to support and grow the clean energy supply chain in the US.
- Most tax credits may be converted to cash payments from the Treasury Department under a new direct pay program or sold in the market under new tax credit transfer procedures.

Continue reading.

Latham & Watkins LLP – James H. Cole, Enrique Rene de Vera, Eli M. Katz, Ben A. Cheatham, Andrea Herman, Michael J. Rowe and Michael Syku

August 16 2022

Wayfair: The Sequel - Baker McKenzie

A new lawsuit filed by Wayfair, LLC in Jefferson County Court (Colorado) seeks to address a question left open by the U.S. Supreme Court's landmark 2018 *Wayfair* decision that permits states to impose a sales or use tax collection obligation based on an economic nexus threshold: Does this decision apply to locally-administered sales or use taxes? While many localities have asserted that the same economic nexus standards should apply at the state and local levels, the devil is in the details as there are thousands of local taxing jurisdictions, many of which do not have uniform laws or centralized administration.

To briefly recap the *Wayfair* landscape, the U.S. Supreme Court blessed the brightline economic nexus standard used by South Dakota, stating that a tax "will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018). In concluding that South Dakota's law did not impose an undue burden on interstate commerce, the Court cited to three key features of the South Dakota tax system: (1) the economic nexus standard at issue included a safe harbor that required considerable business in the state; (2) the economic nexus standard was not applied retroactively; and (3) most notably, South Dakota had adopted the Streamlined Sales and Use Tax Agreement ("SSUTA"), which requires a single point of state-level administration for all state and local sales and use taxes along with other simplification measures. In this most recent Wayfair filing, Wayfair asks the court whether the City of Lakewood's locally administered sales tax should be invalidated because of its excessive burdens.

The taxpayer alleges that the City of Lakewood improperly assessed it roughly $600,000 in sales tax for the period May 2018 through June 2021, along with penalties and interest. As discussed in an earlier SALT Savvy blog post, Colorado state law provides for the local administration of local sales

taxes in over 70 home-rule counties and municipalities. Further exacerbating the issue, the state has done little to require the simplification of theses local taxes. While the state offers a centralized single remittance portal that home-rule localities may use, the portal is optional and the City of Lakewood is not yet part of the program, though they have taken the preliminary step of signing the agreement to join the program. Due to this inaction, Wayfair's lawsuit also includes an affirmative claim against the Executive Director of the Colorado Department of Revenue alleging that the state failed to provide adequate safeguards and support to mitigate the burdens of Colorado's local tax system on out-of-state businesses.

Some within Colorado's state and local governments appear to recognize the compliance burdens and the concomitant litigation risk that could arise from them. For example, the Colorado Municipal League ("CML"), a non-profit, nonpartisan organization representing the cities and towns of Colorado stated that "part of the reason South Dakota did not overburden interstate commerce was due to an easy way for businesses to remit to all taxing jurisdictions." In response, the CML developed a Model Ordinance on Economic Nexus and Marketplace Facilitators ("Model Ordinance") with standardized definitions "as part of a sales tax simplification effort," because the CML acknowledged that "various home rule municipalities giving the same term different meanings is a source of complexity in our tax system for businesses that operate in multiple municipalities." However this standardized statutory language has not been adopted by all home rule jurisdictions in the state. As of the writing of this publication, 270 cities and towns of Colorado are members of the CML, out of a total of 272, indicating widespread local support for the organization's purpose. But as of 2021, only about 43 out of the 70 home rule jurisdictions had adopted the Model Ordinance.

As noted above, Colorado itself also established an optional single point of remittance portal with a uniform remittance form for use by home rule localities. Additionally, in April the state enacted a law that prohibits localities from imposing local license fees on retailers without a physical presence or with only an incidental physical presence within the locality as long as the retailer has a standard state retail license. Moreover, the bill summary states, "[t]he department is required to consult with local taxing jurisdictions when determining what information to collect and how to make the information collected available to local taxing jurisdictions and making and testing modifications. The department is also required to consult with retailers and address any reasonable concerns they may have." It remains to be seen if this positive step in the right direction will lead to changes sufficient to overcome the serious Commerce Clause concerns with respect to the administration and collection of local taxes in Colorado.

The situation in Colorado is analogous to the situation in Louisiana. In a November 2021 suit filed by Halstead Bead Inc. in the Eastern District of Louisiana, the taxpayer likewise alleged that Louisiana's decentralized sales tax system violates the Commerce Clause of the U.S. Constitution. However, that case was dismissed on procedural grounds.

As illustrated in prior U.S. Supreme Court precedent, *Pike v. Bruce Church*, and reaffirmed by the Court in *Wayfair*, navigating such complex, overlapping, and competing obligations between and amongst local jurisdictions can create an undue burden on and discriminates against interstate commerce, thereby violating the Commerce Clause of the U.S. Constitution. *Pike v. Bruce Church*, 90 S. Ct. 844 (1970). The Colorado complaint alleges that neither Lakewood, nor the Colorado Department of Revenue, took reasonable steps to mitigate such burdens and that therefore requiring Wayfair to collect and remit the local tax is unconstitutional.

The problems of decentralized tax collection are not unique to Colorado and Louisiana. Other states have recently placed themselves in similar situations through their economic nexus and/or marketplace facilitator laws that apply to general sales and use taxes or other locally administered taxes (e.g., hotel occupancy taxes). For example, North Carolina, West Virginia, and Wisconsin

require marketplace facilitators to individually register with each locality in the state for certain tax types once that marketplace facilitator has met or exceeded the state-level economic nexus threshold. These requirements are subject to the same balancing test that will be reviewed in Colorado.

We will continue to monitor this lawsuit and further developments on this issue.

Baker McKenzie – Lindsay LaCava, Mike Shaikh, David Pope and Rob Galloway

August 16 2022

Collateral Damage: Inaccurate US Tax Reporting Can Give Rise to Customer Damages: Mayer Brown

Financial institutions, corporations, and other payors of income are keenly aware that the Internal Revenue Service ("IRS") will impose tax penalties on them if they issue inaccurate tax information returns to either the IRS or customers. A recent case, however, points out that inaccurate reporting may have another, less obvious, downside: liability to the customer who received the inaccurate information. On June 30, 2022, a United States district court in New Jersey allowed a brokerage customer to proceed to seek damages from a brokerage that provided inaccurate tax reporting to the customer.1 While the opinion did not decide whether the brokerage was liable for damages, it has allowed the customer to continue its lawsuit.

In Goodman, the brokerage customer (the "plaintiff") purchased a number of taxable municipal bonds at a premium to the face amount of the bonds. The plaintiff held the bonds in a brokerage account. When a taxpayer purchases bonds for an amount greater than their face value (i.e., at a premium), U.S. tax law permits the taxpayer to amortize the premium over the remaining life of the bond. The premium amortization reduces the taxpayer's taxable income.2 Treasury Regulations contain certain presumption rules relating to a broker's IRS Form 1099 reporting obligations when a customer holds instruments that were purchased at a premium in an account with that broker.3 In Goodman, the plaintiff alleged that the broker incorrectly reported the amount of amortized bond premium on the plaintiff's IRS Forms 1099 for tax years 2015 – 2018. The plaintiff alleged that the misreporting caused the plaintiff to overpay U.S. federal income taxes in those years. The plaintiff brought contract and tort claims on behalf of himself and similarly situated individuals. In response, the broker filed a motion to dismiss.

The court looked to the underlying agreements governing the relationship between the plaintiff and broker in determining whether the plaintiff had a claim against the broker. While nothing in the account agreements specifically addressed the broker's tax reporting policies related to municipal bonds, the agreements did contain provisions relating to specific tax forms, including, for example, the electronic delivery of IRS Forms 1099. The court further noted that the broker also has a Form 1099 guide that it provides to clients. The guide, consistent with the Treasury Regulations, stated that the broker would report a gross amount for both the interest paid to the holder and the premium amortization for the year unless a holder requests otherwise.

The broker sought to have the litigation dismissed. The court denied the broker's motion to dismiss based on the possibility that the client had two potentially viable claims: (i) breach of contract and (ii) negligence. The court found it plausible that the broker violated implied terms of the agreements, providing the plaintiff a breach of contract claim. The court held that the agreements clearly contemplate that the broker would provide the plaintiff with tax forms, including IRS Form 1099. The court explained a promise to provide the client with tax forms, to be meaningful, implies that the forms be accurate to the best of the broker's knowledge. Second, it implies the broker would follow its own stated policies (i.e., the Form 1099 guide) when providing tax forms, even if those stated policies were not themselves part of the account agreements.4

The court held, with respect to the negligence claim, the threshold question is whether the broker had a state law duty to accurately report tax information on the forms it provided to the plaintiff. The court, recognizing this is a fact-intensive inquiry, denied the broker's motion to dismiss and found it appropriate to allow the parties to proceed to discovery. (We note that this claim could be rejected in a future motion for summary judgment made by the broker.)

Takeaways

Tax reporting has never been as complicated as it is today. Basis reporting, wash sale reporting, and a host of other relatively new reporting requirements substantially increase the likelihood that payors inadvertently misreport information. The Goodman opinion highlights the need to carefully review existing client/customer documentation to see what, if anything, is agreed or promised to clients, customers, or payees in terms of information reporting. At the very least, taxpayers should consider whether such documentation should contain an acknowledgement by the client/customer/payee that the broker is not liable for inadvertent tax reporting errors.

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1 Goodman v. UBS Fin. Servs., Inc., No. Civ. No. 21-18123 (KM) (MAH), 2022 BL 228030 (D.N.J. June 30, 2022).

2 See Internal Revenue Code section 171.

3 Treasury Regulation section 1.6045-1(n)(5).

4 The court's opinion provided the following: "A client who wonders how his or her income will be reported would naturally look for answers in the materials provided by [the broker] and would expect [the broker] to follow those policies. Here, [the broker] 1099 Guide stated 'unless you notified [the broker] in writing in accordance with Regulations section 1.6045-1(n)(5) that you did not want to amortize the premium under section 171, we will report a gross amount for both the interest paid to you and the premium amortization for the year.' The contract implies, therefore, that the Form 1099 that [the broker] was contractually and legally obligated to provide to clients such as [the plaintiff] would 'report a gross amount for both the interest paid to you and the premium amortization for the year.' [The plaintiff] alleges that the Form 1099s provided to him did not report the premium amortization for that year and therefore has plausibly alleged a breach of contract."

Mayer Brown – Jared B. Goldberger, Mark H. Leeds and Amit S. Neuman

August 15 2022

TAX - CALIFORNIA

Zolly v. City of Oakland

Supreme Court of California - August 11, 2022 - P.3d - 2022 WL 3270058

Solid waste disposal customers brought action to challenge constitutionality of franchise fees which city charged waste management entities, a portion of which was redesignated as a solid waste management fee.

The Superior Court sustained city's demurrer, and taxpayers appealed. The First District Court of Appeal affirmed in part and reversed in part, holding, among other things, that customers adequately alleged city's challenged fees did not bear reasonable relationship to franchises' values. The Supreme Court granted city's petition for review.

The Supreme Court held that:

- Customers alleged adequate injury-in-fact to support standing;
- Voluntary franchise fees were levies, charges, or exactions "imposed by" city within meaning of constitutional definition of "tax";
- Customers adequately alleged that waste disposal franchise did not constitute local government property; and
- Customers adequately alleged that franchise fees did not constitute charges imposed for use of local government property.

Alleged economic injury caused to solid waste disposal customers by franchise fees which city charged to waste management entities constituted injury-in-fact that conferred standing upon customers to challenge city's fees under constitutional provision governing taxes, even though customers were not obligated to pay charges related to franchise fees directly to city, where customers alleged that fees caused their waste collection rates to increase every month.

Fees that city required waste management entities to pay in exchange for waste disposal franchise rights within city, pursuant to contractual negotiations, were levies, charges, or exactions imposed by local government, as necessary to constitute "tax" within meaning of California Constitution, even if negotiations were voluntary rather than coerced; term "impose" meant "establish," without any coercive connotation, as indicated by constitutional provision's use of term "imposed" in context of voluntary charges.

Waste disposal customers adequately alleged that solid waste disposal franchise did not constitute "local government property" within meaning of constitutional exemption from definition of "tax" for charges imposed to enter or use local government property or to purchase, rent, or lease local government property, supporting customers' claim against city for violation of constitutional requirements for approval of taxes; term "local government property" in constitutional article governing voter approval of local tax levies referred to physical objects under control of local government, such as streets, franchise did not exist as local government's property before it vested in franchise owner, and fees were not paid for city's property interest in antecedent right to grant franchise.

Waste disposal customers adequately alleged that fees franchisees paid to city for waste disposal franchises did not constitute "charges imposed for use of local government property" within meaning of Constitution's exemption of such charges from definition of "tax," as necessary to support customers' claim against city for violation of constitutional requirements for voter approval

of special taxes, even though ordinances stated franchises included right to use public streets or other public places; entities did not pay fees in exchange for specific use of government property that they would not have otherwise enjoyed, and provision exempted only fees paid as consideration for specific use of government property, such as park entrance fee, as indicated by statutory language “imposed for.”

Wells Fargo Issues $2 Billion Inclusive Communities and Climate Bond.

Wells Fargo has announced the issuance of its second Inclusive Communities and Climate Bond, a $2 billion bond that will finance projects and programs supporting housing affordability, economic opportunity, renewable energy, and clean transportation.

Five broker-dealers whose owners include people of color, women, and service-disabled veterans joined Wells Fargo Securities, LLC to serve as bookrunners for the issuance. They, along with 19 additional broker-dealers whose owners are also from underrepresented groups, will receive 75% of the underwriting fees from the transaction. BurgherGray LLP, a minority-owned law firm, was retained as issuer’s co-counsel for the offering, together with Faegre Drinker Biddle & Reath LLP. Gibson, Dunn & Crutcher LLP served as underwriters’ counsel.

The transaction priced on Aug. 8, 2022. Unless redeemed, the notes will pay interest semi-annually at a fixed rate of 4.54% until Aug. 15, 2025, and then pay quarterly interest based on SOFR + 1.56% until the stated maturity date of Aug. 15, 2026.

Continue reading.

ENVIRONMENTAL + ENERGY LEADER

BY EMILY HOLBROOK

AUGUST 16, 2022

S&P: California’s Structural Balance Hinges On The State's Ability To Restrain Ongoing Expenses

Key Takeaways

- California’s adopted fiscal 2023 budget projects long-term structural balance by using an expected multibillion-dollar surge in one-time revenues primarily for one-time expenditures.
- The state’s multiyear forecast anticipates maintaining what we view as very strong reserves.
- Worry that the Gann expenditure limitation would hamstring state budget balance is temporarily alleviated by statutory definition changes as to what the limit includes and recent high inflation, which provides greater cap room under the formula.
- The state’s true financial picture is somewhat obscured by lack of a fiscal 2021 financial audit.

Continue reading.

11 Aug, 2022

Fitch Ratings Adds Several New Analysts to its U.S. Public Finance Group.

Fitch Ratings-New York-16 August 2022: Fitch Ratings has announced the appointment of several new analysts in its U.S. Public Finance group. The new analysts will be based in different Fitch offices throughout the country covering various municipal sub-sectors.

Joining Fitch's San Francisco office are Senior Directors Pascal St. Gerard, Fitch's new Western Regional Manager, and Karen Fitzgerald, who becomes Fitch's new Sector Head for Community Development & Social Lending. St. Gerard comes to Fitch following a 13-year stint with Charles Schwab as a Senior Municipal Analyst and has also been with Moody's during his career. Fitzgerald spent over two decades with S&P Global Ratings, including time as an Analytical Leader in the U.S. Public Finance Housing and Structured Securities group.

Directors Akiko Mitsui (U.S. Education & Non-Profits) and Tammy Gamerman (U.S. State Governments) will be based in Fitch's New York office. Mitsui's 20-plus year career includes 16 years with Vanguard and prior experience with Harvard Business School and Fuji Bank. Prior to Fitch, Tammy monitored and analyzed New York City finances as the Director of Budget Research for the Office of the New York City Comptroller.

Lastly, Fitch adds to its Austin office Directors Brian Williamson (Not-for-Profit Healthcare Team) and Lauren Wynn (U.S. local government ratings group). Williamson's career includes time at S&P Global Ratings while Wynn joins Fitch from the City of Austin, where she most recently served as a manager of the city's capital improvement and bond program.

'Rating agency credit analysis and thought leadership are highly valued by market participants within U.S. public finance,' said Ann Flynn, Fitch's Global Business Development Head for Public Finance and Infrastructure. 'We're pleased to enhance our team's capabilities with these experienced analysts who will provide valued credit analysis and perspectives,' said Arlene Bohner, Fitch's Analytical Head of U.S. Public Finance.

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Additional information is available on www.fitchratings.com

Outflows Slow From Municipal Bond Funds.

Investors are slowing down after dumping muni bond holdings at record speeds in the first half of 2022.

Outflows from municipal bond flows fell to $229 million for the week ended Wednesday from $635 million last week, according to data from Refinitiv Lipper. Mutual and exchange traded funds have had a couple of weeks since the beginning of June when they received more than $1 billion in inflows. Earlier this year, these funds lost more than $30B over 15 consecutive weeks of outflows as rising rates drove down the market value of their portfolios.

Those investors may view the Fed minutes released Thursday as more reason to chill, with expectations of a smaller rate increase rising and predictions of a bigger rate increase falling after

the release.

The Wall Street Journal

By Heather Gillers

Aug 19, 2022

Disclosure Update: GFOA Webinar

September 23, 2022 | 1-3 p.m. ET

Issuers of municipal securities have numerous disclosure responsibilities related to their bond transactions. This includes mandated filings of annual financial information and material event notices in the MSRB's EMMA system, and other types of voluntary disclosures. Industry experts will discuss these issues as well as recent SEC activities related to disclosure. A review of GFOA's best practices and the importance of developing and maintaining disclosure policies and procedures will also be addressed.

Click here to learn more and to register.

Future Returns: Finding an Inflation Hedge in Municipal Bonds

For wealthy investors, municipal bonds issued to build hospitals, roads, and schools, have often been a no-brainer, offering good yields free of taxes.

But the market backdrop for muni bonds "hasn't been as attractive as investors would have liked for the better part of 10 years," says Jonathan Mondillo, head of North American fixed income for abrdn, a U.K.-based investment firm. Interest rates kept falling during that period and yield spreads between municipals and other types of fixed-income securities compressed, providing fewer advantages.

With the Federal Reserve sharply raising short-term rates to combat inflation (the latest was a 0.75 percentage point increase in July), yields on municipal bonds are two to two-and-a-half percentage points higher, in general, than at the beginning of the year, and investors are starting to tip-toe back into the sector. Cash flows into municipal bond funds and ETFs have been turning slightly positive in August after experiencing outflows all year, according to Refinitiv, which tracks fund flows.

Continue reading.

Barron's

By Abby Schultz

Aug. 16, 2022

Puerto Rico's Bankruptcy: Where Do Things Stand Today?

In 2016, Congress passed the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), which created the Puerto Rico Financial Oversight and Management Board to restructure the Commonwealth's unsustainable burden of more than $72 billion in debt and more than $55 billion in unfunded pension liabilities. The board oversaw a bankruptcy process that culminated in March 2022, when a federal court confirmed a plan that reduced Puerto Rico's debt by 80%. Still, the work of putting the Commonwealth on a sustainable fiscal path remains incomplete. At our annual Municipal Finance Conference in July 2022, four experts weighed in on the effects of PROMESA and the challenges that remain: Natalie Jaresko, former executive director of the oversight board; Sergio Marxuach, policy director at the Center for a New Economy; David Skeel, chairman of the oversight board and professor of corporate law at the University of Pennsylvania Carey Law School; and John Ceffalio, senior research analyst for Municipals at CreditSights. The panel was moderated by Michelle Kaske of Bloomberg.

You can watch a video of the panel here. Here are a few highlights.

Continue reading.

The Brookings Institution

by Lorae Stojanovic and David Wessel

August 17, 2022

Buy These 3 Municipal Bond Funds for Steady Returns.

Municipal bonds, or "muni bonds," comprises debt securities issued by various states, cities, counties and other governmental entities to raise money to build roads, schools and a host of other projects for the public good. These municipal securities regularly pay interest payments, usually semi-annually, and pay the original investment or principal amount at the time of maturity. Interest paid on such bonds is generally exempted from federal taxes making them especially attractive to people in higher income tax brackets.

Thus, risk-averse investors looking to earn a regular tax-free income may consider municipal bonds mutual funds. These mutual funds are believed to provide regular income while protecting the capital invested. While mutual funds from this category seek to provide dividends more frequently than other bonds, they offer greater stability than those primarily focusing on equity and alternative securities.

Continue reading.

Zacks Equity Research

August 18, 2022

- MSRB Publishes Summary of Responses to its Request for Information on ESG Practices in the Municipal Securities Market.
- Cases concerning the taxation of commercial wind facilities here and here.
- Interesting case concerning special assessments for shoreline fortification project here.
- CDFA Federal Financing Webinar Series: Funding Community Energy Needs with the Department of Energy.
- Jefferies' Pitch on Big Texas Muni Deal: No Gun, Oil Policies That Raise GOP Ire.
- And finally, Setting The Scene is brought to us this week by *Nunez v. City of Redondo Beach*, in which Monica Nunez went kersplat after tripping on a minor sidewalk defect. In the ensuing litigation, "Nunez's deposition established that when she fell it was sunny, not dark or gloomy, she had nothing in her hands and was 'normal walking, … looking ahead.'" Gloomy? Have you been to Redondo Beach? Gloom thin on the ground. Gloom thin in the air. Not just thin, downright anorexic, the gloom. And what the hell is "normal walking?" Is there an *ab*normal walking? Might there be a Ministry of such walks?

SPECIAL ASSESSMENTS - CALIFORNIA

Broad Beach Geologic Hazard Abatement District v. 31506 Victoria Point LLC

Court of Appeal, Second District, Division 4, California - August 2, 2022 - Cal.Rptr.3d - 2022 WL 3053306

Property owners, including trust, filed petition for writ of mandate, seeking to set aside special assessment to fund shoreline fortification project as violative of state constitutional limitations on assessments.

The Superior Court entered judgment invalidating assessment, but subsequently denied property owners' motions for attorney fees under private attorney general statute. District appealed from judgment and property owners appealed from order denying attorney fees.

The Court of Appeal held that:

- Project would create general benefit of improved public beach;
- State agency's requirement that city district ensure public access to beach did not render beach cost of project rather than general benefit;
- District was required to apportion special benefits that revetment would confer on parcels behind it;
- District was required to assess county-owned parcels specially benefited by project;
- Possibility of new assessment in future did not render financial benefits from litigation so uncertain as to warrant attorney fees;
- Trial court properly considered litigation benefits to property owners who joined litigation after petition was first filed in considering attorney fee award; and
- Trust had adequate financial motivation to participate in litigation absent award of attorney fees.

Shore fortification project would create wider, sandy beach that would benefit public in general, and, thus, constitutional provision governing assessments required city district to separate project's special benefits to certain parcels from general benefit, including beach, and include only portion of cost of project representing special benefits in special assessment used to fund project, even if general benefits did not impose additional costs and district did not subjectively intend to widen

beach for recreational purposes; allowing any special benefit that also provided general benefits to support assessment for entire cost of project would be inconsistent with constitutional separation and quantification requirements, which depended on real-world effects rather than agency intent.

Coastal Commission's requirement that city district ensure public access to beach that would be enlarged and enhanced as a result of shore fortification project did not render enhanced public beach a cost of such project rather than general benefit, and, thus, did not exempt district from constitutional requirement of separating such general benefit from project's special benefit of protecting particular properties and include only costs attributable to special benefit when imposing special assessment on those properties; provision of wide, sandy beach was central to revetment project, not mere condition for approval or required consideration by agency, and Commission's action to ensure project would not cut off public's beach access did not transform project's general benefits into costs.

Revetment was integral part of city district's proposed shoreline fortification project, and, thus, constitutional article governing assessments required district, when imposing assessment to fund project, to apportion special benefits that revetment would confer by providing additional protection to parcels behind it so that assessment would be proportional to those parcels' relative special benefits, even though property owners constructed existing, temporary revetment and agreed to fund its relocation; State Lands Commission required district to pay for existing revetment's unauthorized use of state lands, district persuaded Coastal Commission to keep revetment, and Coastal Commission's conditions of approval required district to relocate revetment and mitigate its environmental impact.

Shoreline fortification project would provide special benefit of protection to county-owned parcels that contained stairs providing public access to beach, and, thus, constitutional article governing special assessments required city district to impose project-funding assessment against such parcels, even if project would not change stairs' function; project would protect shoreline, including stairs and parcels, by adding sand and maintaining revetment, each parcel encompassed large area, and constitution did not permit district to treat county parcels more favorably than it did privately-owned parcels that also received special benefit from project, such as by exempting county parcels from assessment or funding benefits to county parcels through in-kind contributions from homeowners.

LIABILITY - CALIFORNIA

Nunez v. City of Redondo Beach

Court of Appeal, Second District, Division 3, California - July 27, 2022 - Cal.Rptr.3d - 2022 WL 2965453 - 2022 Daily Journal D.A.R. 8078

Pedestrian filed a negligence lawsuit against city after she tripped on an elevated sidewalk slab and injured her left knee and right arm.

The Superior Court granted city summary judgment and pedestrian appealed.

The Court of Appeal held that city's policy to repair sidewalk tripping hazards greater than a half-inch did not create a triable issue of fact as to the triviality of sidewalk offset.

City's policy to repair sidewalk tripping hazards greater than a half-inch did not create a triable issue of fact as to the triviality of sidewalk offset, in pedestrian's negligence lawsuit against city

after she tripped on an elevated sidewalk slab; minor defects to the alignment of city's sidewalk inevitably occur, and the continued existence of such nonalignments without warning or repair was not unreasonable and did not preclude the trial court from finding the sidewalk defect was trivial.

SCHOOL FINANCE - MISSISSIPPI

Wayne County School District v. Quitman School District

Supreme Court of Mississippi - July 28, 2022 - So.3d - 2022 WL 2980866

School district filed suit against neighboring school district seeking to recover pro rata distribution of funds arising from their shared trust property.

The Chancery Court entered judgment for plaintiff school district. Both sides appealed.

The Supreme Court, en banc, held that statute governing schools' division of revenue collected from shared townships was a condition precedent, not a statute of limitations.

Statute governing the manner in which revenue from shared townships was to be administered to school districts, which stated that "any school district failing to timely provide the list to the superintendent of the custodial school district shall forfeit its right to such funds" was not a statute of limitations that established a time limit for bringing a lawsuit; rather, it was a condition precedent school districts were required to fulfill.

EMINENT DOMAIN - NORTH CAROLINA

County of Moore v. Acres

Court of Appeals of North Carolina - July 5, 2022 - S.E.2d - 2022-NCCOA-446 - 2022 WL 2432952

County brought action against landowners, alleging that landowners had encroached on county's purported easement to access sewer and water mains on property by constructing fence and planting trees in easement area, and seeking injunctive and declaratory relief.

The Superior Court granted landowners' motion for summary judgment, and denied county's cross-motion for partial summary judgment on the issue of the county's ownership of the lines and easement. County appealed.

The Court of Appeals held that:

- Any inverse condemnation claim by landowners was untimely, and
- County held title to an easement along the surface of the property.

County held title to sewer and water mains under landowners' property, and thus held title to an easement along the surface of the property to service, maintain, and repair the utility mains, where county took possession of the lines more than two decades earlier and had continuously used and operated the lines for a public purpose.

PUBLIC UTILITIES - SOUTH DAKOTA

Matter of Ehlebracht

Supreme Court of South Dakota - August 3, 2022 - N.W.2d - 2022 WL 3097464 - 2022 S.D. 46

Intervenors impacted by potential wind energy farm appealed Public Utilities Commission's (PUC) approval of siting permit for wind energy farm.

The Circuit Court affirmed, and intervenors appealed.

The Supreme Court held that:

- PUC correctly applied legal standard requiring an applicant to comply with all applicable laws and rules;
- Application adequately complied with requirement that it include a "forecast" of the impact that the facility would have on solid waste management facilities;
- Adoption of noise levels set forth in amended county ordinance did not pose any danger to the health, safety, or welfare of the inhabitants living near the project;
- Applicant's failure to commission a field study to measure the ambient sound that existed naturally in area of proposed wind energy farm prior to construction did not indicate that applicant failed to meet its burden to show that the facility would not substantially impair the health, safety or welfare of the inhabitants;
- Applicant met its burden to show that the facility would not substantially impair the health, safety or welfare of the inhabitants as it related to the topic of infrasound; and
- Applicant was not required to submit an air quality study.

CHARTER SCHOOLS - TEXAS

KIPP Texas, Inc. v. Doe #1

Court of Appeals of Texas, Houston (1st Dist.) - June 30, 2022 - S.W.3d - 2022 WL 2347906

Parents of students sexually abused by counselor at charter school brought action against school's corporate operator, alleging claims for assault and negligence.

The District Court denied operator's plea to the jurisdiction, which asserted immunity from suit and liability. Operator appealed.

The Court of Appeals held that:

- Operator had governmental immunity from parents' suit;
- Open-courts provision of the State Constitution did not apply to preclude operator's governmental immunity; and
- Uncontroverted affidavit established operator's status as an open-enrollment charter school.

Operator of open-enrollment charter school had governmental immunity from claims for assault and negligence brought by parents of students sexually abused by a counselor employed by operator at school, since a public school district would be immune from such claims.

Open-enrollment charter school had governmental immunity as a matter of common-law interpretation, rather than on the basis of statute, and thus open-courts provision of the State

Constitution did not apply to preclude such immunity, so as to confer subject-matter jurisdiction over action against operator of open-enrollment charter school, brought by parents of children sexually abused by counselor, and asserting claims for assault and negligence; although the legislature enacted a statute granting governmental immunity to open-enrollment charter schools, the Supreme Court as a whole did not defer to such enactment in holding that open-enrollment charter schools have immunity.

Uncontroverted affidavit established operator of school as an open-enrollment charter school, as required for school's governmental immunity from suit brought by parents of students sexually abused by school counselor, where parents did not object to the affidavit, did not file any evidence controverting the school's status as an open-enrollment charter school, and sought a declaration that a certain statutory provision applicable only to open-enrollment charter schools violated the open-courts provision of the Texas Constitution, which was tantamount to a judicial admission of the school's status as an open-enrollment charter school.

EMINENT DOMAIN - WASHINNGTON

Maslonka v. Public Utility District No. 1 of Pend Oreille County

Court of Appeals of Washington, Division 3 - August 2, 2022 - P.3d - 2022 WL 3037184

Landowners brought action against county public utility district, an operator of river dam that caused occasional flooding, seeking injunctive relief and asserting claims of inverse condemnation, trespass, nuisance, and negligence arising from flooding of their agricultural property.

Utility district counterclaimed for declaration of prescriptive easement to flood at water levels above those set forth in express easement.

On summary judgment, the Superior Court declared a prescriptive easement in favor of utility district and dismissed landowners' claims. Landowners appealed.

The Court of Appeals held that:

- Continuous and uninterrupted use, as element of prescriptive easement, can be decided on summary judgment;
- As matter of first impression, a party asserting a prescriptive easement must prove each element by clear and convincing evidence;
- Factual issues precluded summary judgment on prescriptive easement claim;
- Factual issue as to applicability of subsequent purchaser rule precluded summary judgment on inverse condemnation claims as to riverfront parcel;
- Trespass and nuisance claims for riverfront parcel were not subsumed by inverse condemnation claims; and
- Utility district did not cause injury to inland agricultural parcel that allegedly flooded due to defect in diking improvements.

Fitch: U.S. State Budgets Brace for Macro Uncertainties Ahead

Fitch Ratings-New York-08 August 2022: State budgets are in a much better position coming into fiscal 2023 and are structured to combat inflationary and macro pressures over the next several

months, according to Fitch Ratings in a new report.

All 50 states have enacted budgets as fiscal 2023 gets underway, an improvement from pre-COVID dynamics thanks largely to a second year of surging revenues. “Enacted budgets have effectively moved from restoring cuts taken during the brief but severe downturn to programmatic spending, while also adding to reserves and reducing taxes,” said Senior Director Karen Krop.

Slower economic growth and rising inflation do pose some downside risk. The enacted budgets consider potential economic and geopolitical headwinds. After historically strong US GDP growth of 5.7% in 2021, Fitch expects growth to slow sharply in 2022 to 2.9% and then further to 1.5% in 2023, due to rapidly rising interest rates.

“States are well positioned for slower growth, as a result of generally prudent fiscal choices made over the last two fiscal years,” said Krop. The budgetary safeguards states are enacting include making sizeable deposits to rainy day funds (many of which are now considered fully funded), creating new reserves to address future uncertainty and reducing long-term liabilities.

Strong labor markets, while integral to state revenue strength, also pose a challenge to government and school district in recruiting and retaining employees. In response, states are providing additional funding for school districts and higher education, allotting some of that funding to increase salaries and sweeten compensation packages to retain employees.

“U.S. State Budgets Balanced in 2023” is available at www.fitchratings.com.

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How FY2022 Investment Returns Are Adding to the Pension Obligation Burden for Local Governments.

In FY2022, from July 2021 to June2022, tumultuous financial markets played a key role in many pension funds registering negative investment returns. Since these pension funds invest in a wide array of investment sectors, everything from public and private equity to real estate investments, both domestic and global events adversely impacted these pension fund performances.

These pension fund performances ultimately determine the funding levels of pension obligations for all state and local governments that take part in pension funds for their employees. In addition, when pension funds calculate the pension burden for each participating agency, they use a discount rate to calculate the present value of obligations for a future pension payout. This discount value will typically be adjusted based on the investment performance of the pension fund.

In this article, we will take a closer look at how market investment returns are shaping the future of pension obligations for many local governments in the United States.

Continue reading.

municipalbonds.com

by Jayden Sangha

Aug 10, 2022

Why Municipal Bonds Are Emerging as a Key ESG Investment.

The municipal bonds market is ripe for sustainable investing. These bonds are often tied to ESG projects without a premium price—at least for now.

When investors think about sustainable investing, they often focus on broad themes—such as water scarcity or clean energy—or individual companies that are leaders in environmental, social and governance (ESG) practices.

But those looking to build their ESG portfolios could also tap into municipal bonds. Increasingly issued by state and local governments to fund public projects that can have a positive social or environmental impact—from schools in underserved areas to infrastructure for zero-emission transportation—muni bonds can clearly align with sustainability goals.

What makes them potentially alluring right now? New analysis from Morgan Stanley Research finds that muni bond valuations are still driven largely by the issuer's credit rating, and not according to their ability to address ESG-related risks—a pricing advantage that may soon change.

Continue reading.

Morgan Stanley

Aug 9, 2022

Green Bond Sales Drop to 19-Month Low on Tight Issuance Windows.

- **July is typically a slow month for global green bond sales**
- **BloombergNEF sees issuance slowing under greenwashing scrutiny**

Global sales of green bonds, the largest category of sustainable debt by amount issued, plunged to a 19-month low in July amid a typical summer lull and as opportunistic borrowers preferred traditional

bond offerings that are faster to complete.

Sales of green bonds fell to about $24 billion last month from over $45 billion the previous month, data compiled by Bloomberg show. That's the lowest since December 2020, when companies and governments issued about $7.7 billion of green debt.

July, August and December are historically three of the slowest issuance months for green bonds. And while global bond issuance is picking up after a rough first half, borrowers find it harder to accelerate a sustainable transaction when market conditions are favorable because these transactions require more work leading up to the sale, according to top underwriters of the debt.

Continue reading.

Bloomberg Green

By David Caleb Mutua

August 9, 2022

S&P: CDFIs Demonstrate Strengths Post-Pandemic, But Are Equity Increases Only Temporary?

Key Takeaways

- We expect ratings to remain stable or improve over the next two years as rated CDFIs take steps to mitigate risks from inflationary pressure and rising interest rates.
- Some higher equity ratios in 2021 may prove temporary, and thus may not be the sole factors in potential near-term rating actions.
- On lending their recent influx of capital, we expect some CDFIs' equity to decrease relative to assets over time.
- Other credit factors such as asset quality and liquidity are likely to remain strong.

Continue reading.

10 Aug, 2022

The Revival of Supplemental Environmental Projects and How It May Impact Settlement Agreements Moving Forward - Squire Patton Boggs

As the US Department of Justice (DOJ) begins to revive the use of Supplemental Environmental Projects (SEPs), it is likely that they will appear again with increasing frequency in settlement agreements moving forward. DOJ received comments through July 11, 2022 on its interim final rule to revoke the Trump-era regulation that prohibited payments to non-governmental, third-party organizations who are not parties to an enforcement action—the regulation that effectively prohibited SEPs in settlement agreements. This post will provide an overview of SEPs, regulations surrounding SEPs, comments received pertaining to the revival of SEPs, and the likely use of SEPs moving forward.

Continue Reading

By Katherine Wenner on August 4, 2022

Squire Patton Boggs

Four Questions (and Answers) About the Infrastructure Investment and Jobs Act.

The Infrastructure Investment and Jobs Act (IIJA), also known as the bipartisan infrastructure bill, will increase federal spending on infrastructure by about $550 billion over the next decade, nearly all through grants to state and local governments, which own much of the nation's infrastructure. At our annual Municipal Finance Conference in July 2022, four experts addressed several questions about the IIJA: Ryan Berni, senior advisor to Mitch Landrieu, the infrastructure implementation coordinator in the White House; D.J. Gribbin, former special assistant to President Trump for infrastructure; Shoshana Lew, executive director of the Colorado Department of Transportation; and Eden Perry, head of the U.S. Public Finance Operation and S&P Global Ratings.

A video of the panel is posted here. Here are some highlights.

Continue reading.

The Brookings Institution

by Nasiha Salwati and David Wessel

Monday, August 8, 2022

How the American Rescue Plan Is Backstopping the 'Submerged State'

The Prospect interviewed researchers Amanda Kass and Philip Rocco on the American Rescue Plan, an unprecedented fiscal outlay for local governments that remains widely unknown.

In March of last year, the American Rescue Plan put $350 billion toward a fiscal recovery fund for state and local governments. Lately, ARPA only seems to get media attention when the center-left complains that it funded tax cuts or set off inflation. Critics who say it was overkill grumble that it was "fighting the last war"—that ARPA overshot in its attempt to avoid the austerity of the Great Recession.

But ARPA is unrivaled in recent history as a flexible, open-ended public-funding package. A multipurpose fund available to tens of thousands of governments nationwide, ARPA is the largest broad-based aid transfer in 50 years, since the General Revenue Sharing program President Nixon enacted in 1972, which ended in 1986. ARPA is also bigger than its $150 billion predecessor, the CARES Act's Coronavirus Relief Fund, which only went to larger state governments, cities, and counties. That makes it a great trove of information for researchers studying public investment.

Amanda Kass, the associate director of the Government Finance Research Center at the University

of Illinois at Chicago, and Philip Rocco, a political scientist at Marquette University, have broken down expenditures by local governments. The Prospect interviewed the researchers about their findings as part of our Twitter Spaces series. The audio is embedded below.

Listen to podcast.

THE AMERICAN PROSPECT

BY PROSPECT STAFF

AUGUST 10, 2022

Farebox Shortfalls Soon to Create 'Sizable' Transit Budget Gaps.

The problem is looming for big city transit agencies in places like New York and San Francisco, with ridership unlikely to recover before federal pandemic aid dries up, Fitch Ratings warns.

Some of the country's busiest transit systems will face big budget pressures in the coming years, because their post-pandemic ridership is not likely to recover before federal stimulus funds run out, a major bond ratings agency warned this week.

Fitch Ratings, one of the three dominant ratings companies, said in a report released Wednesday that transit agencies that relied the most on fare revenues—rather than local sales taxes or other income streams—are "expected to face sizable budget gaps" when the federal aid dries up, Fitch analysts warned.

"Transit agencies and governments have the tools to adjust to volume declines. However, the usual tweaks to spending, service levels and fares will not be enough for the nation's most economically important urban transit agencies, which rely heavily on fares," they wrote in their report.

Continue reading.

Route Fifty

By Daniel C. Vock

AUGUST 11, 2022

Fitch: US Public Transit Faces Multi-Year Recovery

Fitch Ratings-Chicago/New York-10 August 2022: The pandemic was a severe blow to US public transit systems, resulting in durable declines in ridership and pressures on operating budgets, Fitch Ratings says in its report U.S. Public Transit Faces Multi-Year Recovery. Hybrid and remote work fundamentally changed demand, with ridership facing a long recovery to a new normal that will require new sources of revenue or service reductions at the most fare-dependent agencies.

Public transit ridership was trending lower before the precipitous declines of the pandemic. Overall

US ridership subsequently plummeted 53% in 2020 and remains around 50% below pre-pandemic levels.

The nation's largest transit agencies previously were able to employ pricing power based on commuter demand for transportation to urban job centers but commuter volumes are unlikely to return to pre-pandemic levels. Our base case assumes ridership does not fully recover, although some agencies may exceed this expectation. Major fare-dependent agencies estimate ridership will recover to 70%–90% of pre-pandemic levels.

Continue reading.

Fitch: US Public Transit Faces Multi-Year Recovery

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Transit agency financial performance in the pandemic and recovery varies by revenue structure. Transit systems that rely heavily on tax revenue experienced steady revenue growth, even with declines in ridership, primarily reflecting the growth in sales tax revenue and federal aid during the pandemic. Fare-dependent agencies, such as New York's Metropolitan Transportation Authority (MTA) and Bay Area Rapid Transit (BART), lag sales tax-dependent agencies, such as Los Angeles County Metropolitan Transportation Authority (LA Metro).

Extraordinary federal aid as part of federal pandemic relief measures helped compensate for lost fare revenue, particularly at the most fare-dependent agencies. These agencies will face sizeable budget gaps when this aid runs out in the next few years unless they are able to adjust budgets based on new baseline levels of demand and fare revenue.

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Municipal Bonds And Public Transport (Audio)

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

Listen to audio.

Bloomberg Markets

Aug 12, 2022

Extreme Weather Is Only Getting Worse. Can Cities Protect Public Transit?

Climate-resilient public transportation is crucial to meeting our climate goals and ensuring mobility for vulnerable communities.

Last September, New York City was so thoroughly inundated by Hurricane Ida that some commuters waded through water up to their waists just to get in and out of the subway station. Across the country, extreme heat battered the West Coast, melting Portland's streetcar power cables. This summer is seeing similar headlines, with heatwaves warping the BART train tracks in San Francisco and sudden rainfall interrupting Northeastern commutes.

These extreme weather events, which are increasing in severity and frequency due to climate change, pose a problem to the millions of Americans who rely on public transit to get to and from

work, school, the grocery store, the hospital and social events. According to Maria Sipin, a former Transportation Justice Fellow at the National Association of City Transportation Officials (NACTO), public transit is a "lifeline" for many groups of people that already face disproportionate challenges due to historic discrimination or marginalization — think disabled individuals, low-income communities where private car ownership is rare, and Black and Brown communities that are less likely to have access to a car and more likely to live further from their jobs and rely on public transit for their commutes (thanks in part to the legacy of redlining and ongoing disinvestment in minority neighborhoods). When extreme weather impacts public transit, it has the potential to deepen existing inequalities.

It also threatens the country's ability to meet climate goals: Transportation is responsible for 27% of U.S. carbon pollution, and public transit is a key tool for bringing those emissions down. If train and bus service is disrupted by extreme weather, people may turn to more emissions-intensive ways of getting around, creating a negative feedback loop that fuels the global temperature rise that caused the disruptions in the first place.

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NEXT CITY

WHITNEY BAUCK

AUGUST 12, 2022

TAX - CONNECTICUT

Wind Colebrook South, LLC v. Town of Colebrook

Supreme Court of Connecticut - August 2, 2022 - A.3d - 344 Conn. 150 - 2022 WL 3048353

Taxpayer, which was a limited-liability company (LLC) that owned and operated a wind turbine facility, commenced a municipal property tax appeal after town board of assessment denied taxpayer's appeal of town's classification of the wind turbines and their associated equipment as real property for purposes of taxation.

The Superior Court entered judgment for taxpayer on claim that a late-filing penalty was improper but entered judgment for town in all other respects. Taxpayer appealed.

The Supreme Court held that:

- The turbines were "buildings" under statute on taxation of real property;
- The turbines were "structures" under statute on taxation of real property;
- Statute on equalization of assessments did not preclude classifying commercial wind turbines as real property for property-tax purposes;
- The turbines were not "fixtures" of an electric company pursuant to definition of personal property in statute on filing of declarations for personal property; but
- The equipment associated with the turbines constituted "fixtures" of an electric company pursuant to definition of personal property in statute on filing of declarations for personal property.

Commercial wind turbines used for the generation of electricity were "structures" under statute on taxation of real property and thus were taxable as "real property" rather than "personal property"; turbines were virtually permanent and were suitable for occupancy or storage.

Commercial wind turbines used for the generation of electricity were not "machines" so as to be taxable as "personal property"; even if the turbines had characteristics of machines, they did not constitute "machinery used in mills and factories," which the statute on filing tax declarations for personal property included in its definition of personal property.

Statute on equalization of assessments did not preclude classifying commercial wind turbines as real property for property-tax purposes, despite argument that the only other commercial wind turbine in the state was assessed as personal property; other turbine was in a different municipality, and statute required only that assessors equalize the assessments of property in the town.

Different property-tax classification of hydroelectricity generating turbine did not preclude classifying commercial wind turbines in different municipality as real property for property-tax purposes; unlike the wind turbines, the hydroelectric generating turbine was moveable and removed when not in use.

Commercial wind turbines were not "fixtures" of an electric company pursuant to definition of personal property in statute on filing of declarations for personal property, and thus such an alleged status could not warrant classifying turbines as personal property as opposed to real property; unlike other articles that had been found to be fixtures, the turbines, as constructed, were not once chattels that only became real property through physical annexation to the land.

Equipment associated with commercial wind turbines constituted "fixtures" of an electric company pursuant to definition of personal property in statute on filing of declarations for personal property, and thus equipment was "personal property" for property-tax purposes.

Statute on remedy for wrongful assessment of property was not a basis on which taxpayer, which was a limited-liability company (LLC) that owned and operated a wind turbine facility, could be entitled to relief in property-tax appeal of assessment of wind turbines and association equipment; although the equipment associated with the turbines was improperly was classified as real property, relief was not available under that statute in the absence of evidence of misfeasance or malfeasance.

TAX - COLORADO

Chronos Builders, LLC v. Department of Labor and Employment, Division of Family and Medical Leave Insurance

Supreme Court of Colorado - June 21, 2022 - 512 P.3d 101 - 2022 CO 29

Employer brought action challenging the constitutionality of collection of premiums from employers to fund the Paid Family and Medical Leave Insurance Act.

The District Court dismissed the action. Employer appealed. On parties' joint petition, certiorari review was granted.

The Supreme Court, as matter of apparent first impression, held that premiums collected to fund paid leave under Paid Family and Medical Leave Insurance Act did not amount to "added tax or surcharge" pertaining to income tax law.

Premiums collected from employers and employees to fund paid leave from employment under the Paid Family and Medical Leave Insurance Act did not amount to "added tax or surcharge" pertaining to income tax law that would be prohibited under State Constitution's Taxpayer's Bill of Rights (TABOR); unlike taxes, which were designed to raise revenues to defray general governmental

expenses, the premiums were fees used “to defray the cost” of providing paid family and medical leave to employees.

TAX - MISSOURI

Johnson v. Springfield Solar 1, LLC

Supreme Court of Missouri, en banc - August 9, 2022 - S.W.3d - 2022 WL 3219292

County assessor filed petition seeking review of Missouri State Tax Commission’s decision that solar energy system was exempt from property taxes as a solar energy system not held for resale, or alternatively, for declaratory judgment that statute exempting solar energy systems not held for resale from property taxes violated constitutional provision limiting tax exemption to specifically-enumerated property.

County was joined as a plaintiff. Taxpayer filed counterclaim seeking declaratory judgment that prior tax assessments were void. The Circuit Court dismissed claim seeking judicial review of Commissioner’s decision, and entered declaratory judgment that exemption was constitutional and prior assessments were void. County and county assessor appealed.

The Supreme Court held that legislature did not have authority to enact statute exempting solar energy systems not held for resale from property taxes.

Constitutional provisions granting legislature authority to create subclasses of tangible personal property and fix tax rates for such subclasses did not implicitly permit legislature to enact statute exempting solar energy systems not held for resale from property taxes, since separate constitutional provision limited tax exemptions to specifically-enumerated property and explicitly stated that all non-enumerated exemptions were void, solar energy systems did not fall within any category of enumerated property, and permitting legislature to use its authority to fix tax rates to set 0% tax rate for any type of real or personal property would effectively create backdoor for tax exemptions not enumerated in constitution.

Jefferies’ Pitch on Big Texas Muni Deal: No Gun, Oil Policies That Raise GOP Ire.

- **Proposal to win $3.4 billion deal touted securitization record**
- **Bank now No. 2 Texas muni underwriter in wake of new GOP laws**

Jefferies Financial Group Inc. may not seem the obvious choice to handle what is poised to be the biggest municipal-bond deal ever in Texas.

It’s not one of the largest Wall Street banks, nor is it a top-five player in the nationwide muni market. What’s more, the nearly $13 million fee that Jefferies proposed for handling the $3.4 billion offering wasn’t even the lowest. Several larger banks, including Morgan Stanley and UBS Group AG, asked for a smaller payment.

But Jefferies’ ultimately successful pitch to win the deal — which also touted its deep expertise in complicated bond structures — contained a point that many other large, national banks couldn’t put in their proposals: It has never run afoul of new, Republican-backed state laws seeking to punish

Wall Street for limiting its work with the fossil fuels and firearms industries.

Continue reading.

Bloomberg Markets

By Amanda Albright and Danielle Moran

August 11, 2022

Fundamentals for Municipal Bonds Remain Healthy.

It's been a six-month slog for municipal bonds as inflation fears have racked one of the bond markets with some of the best investment-grade and yield options. Nonetheless, for investors who are still wary of municipal bonds, there's solace in knowing that fundamentally, munis remain healthy.

"It's hard to believe: Municipal bonds have suffered through one of the worst six-month stretches in their history, yet few marketwide credit concerns are on the horizon," Vanguard noted in its latest fixed income perspective. "State and local tax collections have been strong in correlation with the robust economic growth of 2021. Credit fundamentals are as healthy as they have been in decades."

One of the determinants of how healthy those credit levels stay is how local governments handle their surpluses, according to Vanguard. Those flush with cash will be best suited to handle a recession, should one occur.

"Maintaining that credit profile over the long term will be directly tied to how municipal fiscal surpluses are spent," Vanguard added. "State and local governments that established or bolstered rainy day funds and resisted the temptation to use temporary surpluses to create enduring programs will be best positioned for future downturns."

Continue reading.

ETF TRENDS

by BEN HERNANDEZ

AUGUST 11, 2022

Municipals Shine Amid Seasonal Summer Strength.

Summary

- Municipals posted strong total returns and outperformed comparable U.S. Treasuries in July.
- Light issuance and improved fund flows provided a favorable technical tailwind.
- Supply-and-demand dynamics are expected to remain supportive in August.

Continue reading.

Seeking Alpha

by Peter Hayes

Aug. 09, 2022

The Municipal Bond Opportunity in Three Charts.

Three key trends that signal a positive backdrop for municipal bonds.

Municipal bond market volatility has been high this year. Headwinds, such as rising interest rates, slowing U.S. economic growth, and the uncertainty over the persistence of inflation, weighed on investors' concerns, prompting historically large outflows from municipal bond (muni) funds. But these key trends may suggest a more positive outlook for municipal bonds lies ahead:

1) Resilient municipal bond credit strength and negligible defaults

2) State government issuers in a position of historic fiscal strength

3) Low new issue supply combining with improving demand

Let's examine each of these trends, illustrated by a telling visual.

Continue reading.

Lord Abbett

By Sean Carroll
Product Consultant

Aug 9, 2022

High Yield Bond ETFs Find Favor Once More.

To celebrate the 20th anniversary of the first bond ETFs, investors flocked to the asset class, pouring in $28 billion in July, double the amount that flowed into equity ETFs during a strong month for the U.S. stock market. Demand was widespread, with 46 products gathering at least $100 million last month. While two credit-risk-averse bond ETFs, the iShares U.S. Treasury ETF (GOVT A) and the iShares 20+ Year Treasury Bond ETF (TLT B+), led the charge with a combined $8.5 billion of net inflows, we are particularly pleased to see many high yield ETFs also gain traction.

In mid-July, we highlighted a survey that VettaFi conducted with advisors during a webcast with State Street Global Advisors where high yield credit/senior loans were the bond investment style most appealing to add to client portfolios, ahead of ultra-short bonds, investment-grade credit, long-term Treasuries, and municipal bonds. Both the poll and the article occurred before the Federal Reserve hiked interest rates by 75 basis points in late July and Chair Powell said the U.S. was not in a recession. During July, the yield on the 10-year Treasury note narrowed by 33 basis points to

2.64%, and investors were willing to take on credit risk to receive higher yields. Indeed, six large high yield corporate bond ETFs managing $44 billion pulled in $5.2 billion in July alone.

The iShares iBoxx $ High Yield Corporate Bond ETF (HYG B+) received $1.9 billion of new money in July, shrinking its year-to-date net outflows to $4.6 billion and pushing its asset base back to $15 billion. Demand was also strong for the SPDR Bloomberg High Yield Bond ETF (JNK A-) and the iShares Broad USD High Yield Corporate Bond ETF (USHY A), which gathered $1.7 billion and $1.1 billion, respectively. USHY remained modestly larger than JNK with $8.1 billion in assets ($8.0 billion for JNK). Among the three largest high yield ETFs, USHY has the lowest expense ratio at 0.15%.

Continue reading.

etfdb.com

by Todd Rosenbluth

Aug 08, 2022

After a Quick Run Up, Muni Bond ETFs May Look Pricey.

Municipal bonds have rebounded off their lows, but the munis segment may have bounced back too quickly and could be overpriced relative to Treasuries and other government-related exchange traded funds.

Over the past month, the iShares National Muni Bond ETF (NYSEArca: MUB) rose 1.1% while the iShares 7-10 Year Treasury Bond ETF (IEF) gained 0.1%.

The municipal bond market just marked its best monthly gain in July in over two years, and this segment did not pull back as heavily as U.S. Treasuries after Friday's unexpectedly strong labor market update, which triggered warnings that the Federal Reserve could have more leeway to enact aggressive interest rate hikes, Bloomberg reports.

Consequently, some market observers have warned that munis are now trading at their costliest level since early 2022 relative to U.S. Treasuries. Yields on 10-year tax-exempt munis were hovering around 2.25%, or 80% of the level on similar-maturity Treasuries, according to Bloomberg data. This ratio, which reflects relative value, is near its lowest since February after the outperformance in munis.

"Municipal valuations are completely unattractive at current levels — the muni market simply went too far, too fast in July and early August," municipal strategists at Barclays Plc led by Mikhail Foux said in a recent research note. "Investors should lighten up going into September, and should look for a better entry point in the fall."

Municipal bonds have increased 2.5% so far in the new quarter, outperforming Treasuries by almost two percentage points.

"People either really love munis or they really hate them, we're coming off a period where they love them and it's harder to get allotments of deals," John Flahive, head of fixed-income investments at BNY Mellon Wealth Management, told Bloomberg.

“The front end of the curve is very rich,” Flahive added. “It doesn’t make a lot of sense to own at these levels – you should start looking at Treasuries, T-bills with more liquidity.”

ETF TRENDS

by MAX CHEN

AUGUST 8, 2022

MSRB Publishes Summary of Responses to its Request for Information on ESG Practices in the Municipal Securities Market.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today published a summary of comments received on its request for information (RFI) to solicit public input on environmental, social and governance (ESG) practices in the municipal securities market.

The MSRB issued the RFI in December 2021 to further understanding of how ESG practices are being integrated in the municipal securities market and to engage in information-gathering to fulfill its statutory mandate to protect investors, issuers and the public interest. The summary synthesizes the diversity of viewpoints expressed by the 52 commenters according to three broad themes:

- The evolving nature of ESG practices in the municipal securities market
- Challenges associated with ESG integration in the municipal securities market
- Opportunities to improve market transparency through the MSRB’s Electronic Municipal Market Access (EMMA®) website.

“The MSRB acknowledges and appreciates the robust level of stakeholder engagement from across the municipal market,” said MSRB CEO Mark Kim. “The 52 commenters provided a broad range of perspectives on ESG that achieved our goal of advancing our own and the broader market’s understanding of the current challenges and opportunities presented by two distinct and evolving market trends: disclosure of ESG-related information and the marketing of municipal securities with ESG designations.”

The MSRB will continue to monitor and engage with the broader market on understanding emerging ESG practices and their implications for market fairness, efficiency and transparency.

All comment letters are available to read in full on the MSRB’s website here.

Date: August 9, 2022

Contact: Leah Szarek, Chief External Relations Officer
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A Wealthy Suburb’s Bid to Secede From Baton Rouge.

Earlier this year, a judge halted the formation of a new city from unincorporated neighborhoods in the southeast corner of Louisiana’s East Baton Rouge Parish, ruling that it was “unreasonable.”

Campaign organizers had argued cityhood would give their residents more control over the spending of their tax dollars. But the judge ruled that the proposed City of St. George — whose residents would have been disproportionately white and wealthy — would take away revenue from the parish and the city of Baton Rouge, forcing them to make serious budget cuts, including to the sheriff's and fire departments.

The case against St. George stands to have implications beyond Louisiana, writes Brentin Mock: Like other municipal breakaway attempts, the campaign aims to transfer revenue from an under-resourced government to communities that are already flush.

Bloomberg CityLab

By Angel Adegbesan

August 10, 2022

The Baton Rouge Secession Attempt That Could Defund the Police.

An affluent corner of East Baton Rouge Parish is trying to incorporate as a new city called St. George. But leaders of the Louisiana capital warn of budget consequences.

Ten years ago, a group of residents in the southeast corner of East Baton Rouge Parish, Louisiana, began organizing around the idea of turning their unincorporated neighborhoods into a city. In 2019, the group succeeded in winning a ballot referendum, with 54% of the voters in those neighborhoods electing to form the City of St. George.

But less than two weeks after voters approved the measure, the mayor-president of Baton Rouge, Sharon Weston Broome, sued to stop the effort from proceeding. And on May 31, a judge rejected St. George's cityhood, saying that its formation was "unreasonable" and that it would cause fiscal harm to the parish and the city of Baton Rouge, which have one combined government. (A parish is Louisiana's equivalent to a county.)

Judge Martin Coady ruled that the revenue loss from St. George's departure would have forced the city and parish to make serious budget cuts. "This will have a significant decrease in services to citizens of Baton Rouge," reads the ruling, "including the Sheriff and the operation of the city government."

Continue reading.

Bloomberg CityLab

By Brentin Mock

August 9, 2022

Chicago Budget Gap Narrows to $128 Million as Revenue Rebounds.

- **Deficit smaller than 2022, bolstered by stronger revenues**

- **Mayor says 2023 budget gap is “lowest in recent memory”**

Chicago faces a $127.9 million budget deficit in fiscal 2023, a gap smaller than in the previous year given a rebounding economy and stronger-than-expected revenue picture.

The city is “starting on a true road to financial stability and recovery,” Mayor Lori Lightfoot said during a budget address on Wednesday, when she shared her preliminary deficit estimate for the next fiscal year. She called the budget gap “the lowest in recent memory.”

The third-largest US city closed a $733 million hole in 2022 and a $1.2 billion gap in 2021 within its corporate fund. That’s the main operating fund from which the city pays for services ranging from policing to tree trimming, through a combination of tax increases, cost cuts and other revenue. Rising pension contributions have been a key reason for higher city expenditures.

The city’s spending is increasing about $228.2 million over what was budgeted in 2022, led by $100.8 million in additional personnel costs and $66.6 million of pension spending. Revenues are expected to be $100.3 million more than this year’s budget, a city document outlined.

Like many other municipalities, the city has benefited as revenue increased since the depths of the pandemic, helped by a broader economic recovery. Large events such as Lollapalooza in recent weeks have contributed to an uptick in leisure travelers, and office workers have been trickling back to a once-shuttered downtown.

Lightfoot also touted the new Chicago casino, which she said will generate $2 billion of new value for the city, creating 3,000 permanent jobs and 3,000 construction jobs.

“The Chicago Casino also features a $40 million upfront payment from Bally’s, which we already received and has gone entirely towards the City’s annual required pension contribution,” she said.

The city’s outstanding debt is expected to be reduced by $866 million by the 2023 fiscal year, expanding infrastructure funding capacity, Lightfoot said.

Federal stimulus, including almost $1.9 billion from the American Rescue Plan Act earmarked for the city, has helped Chicago recover some of the revenue lost when the spread of Covid-19 closed businesses and kept residents at home. Affordable housing and homelessness support, family assistance and community development are some of the city’s top priorities for the aid money, as outlined in the Chicago Recovery Plan.

Lightfoot called the federal stimulus money a “once in a generation” resource. “We will be making opportunities created by the American Rescue Plan permanent and tangible,” she said.

In the coming months, the mayor will release her formal 2023 budget proposal, and the Chicago City Council will deliberate and vote on it before the end of this year.

Bloomberg

By Mackenzie Hawkins and Shruti Singh

August 10, 2022

Munis Now 'Completely Unattractive' as Debt Outpaces Treasuries.

- **Some maturities are priciest since early 2022 in comparison**
- **'Investors should lighten up going into September': Barclays**

Municipal bonds have become the costliest since early 2022 relative to Treasuries after a furious rally in recent weeks, spurring some strategists to recommend that investors seek alternatives.

US state and city debt surged in July by the most in more than two years and hasn't sold off as dramatically as Treasuries in the wake of Friday's unexpectedly strong labor data, which roiled bond markets as it spurred bets on further aggressive Federal Reserve interest-rate hikes.

Benchmark 10-year tax-exempts yield 2.25%, which is about 80% of the level on similar-maturity Treasuries, data compiled by Bloomberg show. That ratio, a key gauge of relative value, is close to the lowest since February, and compares with an average of 90% in the five years before the pandemic. The muni outperformance is even more glaring in shorter maturities.

"Municipal valuations are completely unattractive at current levels — the muni market simply went too far, too fast in July and early August," municipal strategists at Barclays Plc led by Mikhail Foux wrote in an Aug. 5 research note. "Investors should lighten up going into September, and should look for a better entry point in the fall."

Munis have gained 2.5% this quarter through Friday, beating Treasuries by almost two percentage points, according to Bloomberg index data. To be sure, on Monday, city and state debt was trailing, showing little movement while Treasuries gained, paring some of Friday's big decline. But the bigger picture is that munis have been on a roll in comparative terms.

The tax-exempt market has been buoyed of late by cash flowing back to investors through maturing bonds, redemptions and coupon payments, while offerings of new debt have been lackluster. Since the start of June, new long-term muni sales have dropped by nearly 30%, according to data compiled by Bloomberg.

That's made it difficult for buyers to get bonds and caused the securities to grow more expensive, said John Flahive, head of fixed-income investments at BNY Mellon Wealth Management.

"People either really love munis or they really hate them, we're coming off a period where they love them and it's harder to get allotments of deals," he said in an interview.

For him, shorter maturities in particular are costly.

"The front end of the curve is very rich," he said. "It doesn't make a lot of sense to own at these levels — you should start looking at Treasuries, T-bills with more liquidity."

Bloomberg Markets

By Danielle Moran

August 8, 2022

— With assistance by Amanda Albright

Fortress-Backed Florida Train Gets Okay to Sell $1 Billion of Debt.

- **Brightline needs more cash to finish expansion to Orlando**
- **Expects revenue surge after delayed station comes on line**

Brightline Holdings, the rail company backed by Fortress Investment Group, got the go-ahead to sell up to $1 billion of tax-free debt to finance an expansion of its Florida system that's key to meeting its revenue targets.

Brightline is building a 168-mile extension to Orlando International Airport to boost ridership for its three-station line, currently running only between Miami and West Palm Beach. The company needs the bond proceeds to finance the project until next year, when it expects to get revenue from sharing its line with area governments.

The board of the Florida Development Finance Corp., the municipal agency that gives private entities access to low-cost debt financing, in a split vote Monday cleared the way for Brightline to issue the bonds. The company expects to issue $785 million of short-term debt but could sell $1 billion, said Brent Wilder, managing director at PFM Financial Advisors LLC, before the vote.

The latest financing plan, which also calls for $300 million in additional equity, is a "positive development" that would ensure the completion of the Orlando construction, said John Miller, head of municipals at Nuveen, the biggest holder of Brightline debt.

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. Brightline's adding two more stations and working on commuter rail initiatives with Miami-Dade and Broward counties to increase ridership and revenue.

Brightline recently pushed back to next year the expected completion of the Orlando stop, the "most critical component of our business model," as Chief Financial Officer Jeff Swiatek said during the meeting before the vote. Brightline expects 2025 to end with 7.9 million passengers and $733 million in total revenue, according to a PFM memo. That's a massive surge from the 1.29 million passengers and $39 million in total revenue expected at the end of this year.

The company also says its short-distance line will be more lucrative than it is now with the addition of two new stations between Miami and West Palm Beach later this year. It projects the 2025 fare to average $29.30. That's a 58% jump from the average fare in June among the existing three stations.

The latest issuance will come as short-term escrowed debt, a less risky type of security. When remarketed into long-term debt, payments from Miami-Dade and Broward counties in exchange for using the line for their commuter services would help back some of the debt payments.

Moshe Popack, a board member of the Florida agency, unsuccessfully voted against the debt authorization, saying he didn't believe there was enough collateral for the issue.

The company had earlier used the tactic of issuing short-term debt as it finalizes details of its project's financing. In June, the company rolled over some short-term securities instead of issuing long-term debt because it couldn't find enough of such investors amid market turmoil.

"We've made tremendous progress, achieving more than 80% completion on Brightline's Orlando extension," said Brightline spokesperson Ben Porritt in an emailed statement. "We appreciate the

support of the FDFC board as we complete funding, as originally planned, for the remaining elements of the project."

Brightline had already sold $3.2 billion of tax-exempt debt for the project. A bond due in 2049 traded Aug. 5 at an average yield of 7.88%, a record high, according to data compiled by Bloomberg.

The company's line will ultimately extend to Tampa from Miami for a total of 320 miles (515 kilometers). Brightline is also planning a line connecting Las Vegas to southern California.

Bloomberg Markets

By Romy Varghese

August 8, 2022

2022 California Economic Summit.

The 2022 California Economic Summit is coming to Bakersfield on **October 27-28**.

The Summit's bipartisan network of business, equity, environmental and civic organizations is unique in championing solutions that meet the triple bottom line — balancing equity, environmental sustainability and economic growth.

THE EVENT

Produced by California Forward in partnership with the California Stewardship Network, the Summit influences CA FWD's ongoing movement to make the government and economy work for everyone. The two-day Summit is designed to create a shared economic agenda known as the Roadmap to Shared Prosperity and strengthen the Summit network, setting the stage for collective action in 2023.

OCTOBER 27, 2022

Interactive in-person plenary and work group sessions to advance Summit goals — along with receptions, regional tours and artistic performances

OCTOBER 28, 2022

Dynamic plenary sessions featuring keynote speakers, state policy leaders, regional business and civic leaders on critical issues facing California

Click here to learn more and to register.

CDFA Federal Financing Webinar Series: Funding Community Energy Needs with the Department of Energy.

Tuesday, August 23, 2022 – 2:00 PM – 3:30 PM Eastern

The CDFA Federal Financing Webinar Series is an exclusive, six-part online offering that will convene finance experts from several federal agencies to discuss the variety of federal programs available to restore local economies, preserve small businesses, invest in our communities, and protect our environment.

In the last year, two major pieces of legislation have changed the federal funding landscape with new programs being created through the American Rescue Plan and the Investment in Infrastructure Jobs Act. During each webinar, CDFA will feature timely and in-depth conversations with federal financing experts discussing new programs, updates to existing programs, and the latest strategies for applying and deploying funding. Representatives from various agencies, including DOC, EDA, NIST, HUD, EPA, DOE, USDA, Treasury, and SBA will join us for these discussions.

This series complements the information featured in the CDFA Federal Financing Clearinghouse, provides an in-depth discussion about key federal programs, and offers new and innovative ideas for how communities can utilize federal financing programs. As new programs emerge, they will be highlighted throughout the series.

CDFA maintains strong relationships with federal agencies, giving attendees unprecedented access to the inner-workings of the government's economic development finance activities. We leverage these relationships to offer insider access to the newest initiatives from every agency and help communities prepare for funding and submit applications.

To participate, register for a single webinar or the entire series, and CDFA will send you reminders for each webinar as they are hosted. All webinars will be recorded and presentation materials will be shared with the attendees for long-term viewing.

Click here to learn more and to register.

CDFA Ohio Financing Roundtable.

September 14, 2022 – Columbus, OH

We are excited to bring back the CDFA Ohio Financing Roundtable on September 14, 2022! During this special one-day conference, we will share knowledge of best practices within the state's development finance industry. This event will feature economic development finance experts from around the state discussing the latest and most innovative development finance tools, authorities, resources, and approaches, and how these can affect the Ohio economy going forward. After what seems like an eternity apart, we are ready to get back together in-person for the networking opportunities we have all been missing. Space is limited, so be sure to register soon and grab your seat at the roundtable. See you there!

Click here to learn more and to register.

Los Angeles's Transit Oriented Communities Program Sees Its Wings Clipped ... Somewhat - Holland & Knight

Highlights

- In *Fix the City, Inc. v. City of Los Angeles*, the Los Angeles Superior Court ruled that conflicts between qualifying Transit Oriented Communities (TOC) Guidelines and specific plan requirements should be resolved in favor of a specific plan.
- The incentives provided by the TOC Guidelines do not carry legislative authority, while the Westwood Specific Plan was created by ordinance, and the TOC Guidelines therefore lack the requisite authority to override the Specific Plan.
- Developers should use caution when seeking to deploy TOC Program incentives in the face of more stringent, conflicting regulations within a local specific plan.

Continue reading.

Holland & Knight LLP – Andrew J. Starrels and Luca Trumbull

August 11 2022

Mets' Casino Gamble Could Crap Out in Parking Lot.

State law and a complicated bond financing deal stand in the way of bringing legal betting to Citi Field area

The owner of the Mets has spent hundreds of thousands of dollars lobbying city officials in connection with his push to build a casino near Citi Field — but there could be multiple legal hurdles to bring the slots to Queens.

Both state law and the team's own lease agreement with the city stand in the way, in particular a financing deal tied to the parking spaces, and rules about building on park land.

Owner Steve Cohen's dream of turning Willets Point into a gambling hub materialized earlier this year when Gov. Kathy Hochul proposed creating three more downstate casino operator licenses.

Continue reading.

THECITY.NYC

BY KATIE HONAN

AUG 15, 2022

Summer Buying Could Kick-Start Muni Bond Rebound.

Municipal bonds, like the bulk of the fixed income space, are being adversely affected by the Federal Reserve's aggressive interest rate hikes — more of which could be on the way due to persistently high inflation.

However, some market observers believe that the worst is behind munis and that the summer could stoke fresh buying of these bonds among professional investors. That could be a boon for exchange

traded funds such as the Franklin Dynamic Municipal Bond ETF (NYSEArca: FLMI).

“Municipal bonds rebounded in July and posted their strongest total returns since the COVID-19 performance snapback experienced in May 2020. Falling interest rates provided positive direction as recession fears intensified amid a backdrop of elevated inflation and continued U.S.,” according to BlackRock research.

That bodes well for the near-term outlook for municipal bonds, but FLMI offers investors the goods to capitalize on a more substantial rebound. For example, FLMI is actively managed, meaning the fund’s managers can potentially capitalize on a variety of market settings. That’s an important point at a time when things are changing on a dime.

“Favorable supply-and-demand technicals surpassed already lofty seasonal expectations and provided a strong tailwind in July. Issuance underwhelmed historical norms at just $26 billion, 20% below the five-year average. Reinvestment income from maturities, calls, and coupons outpaced issuance by $23 billion and made July the largest net-negative supply month since December 2016,” added BlackRock.

Further enhancing the allure of FLMI’s status as an actively managed fund is the point that an active muni bond ETF can more readily capitalize on credit opportunities while searching for value across the municipal debt spectrum. FLMI’s index-based rivals generally don’t offer such advantages.

Something else to consider with FLMI is that state finances are mostly healthy at the moment, indicating that if a standard recession comes to pass in the U.S., the bulk of the fund’s holdings should be in decent shape.

“With reserves at historically high levels, states are well positioned to weather an economic downturn. According to the National Association of State Budget Officers’ recent Fiscal Survey of States, total fund balances for the 50 states reached $234.7 billion, or 25.4% of general fund (GF) expenditures at the end of fiscal year (FY) 2021, the highest level since at least 1979,” concluded BlackRock.

Illinois, Florida, and California are the largest state allocations in FLMI, combining for about 41% of the fund’s roster.

ETF Trends

AUG 11, 2022

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3 Advantages to Getting Municipal Bond Exposure.

Getting core bond exposure to investment-grade debt holdings might be the default move for investors who want to simply diversify their portfolios of equities, but municipal bond exposure offers its own benefits that investors should also consider. U.S. News offered three advantages to municipal bonds that investors may not be aware of.

With investors already knee-deep into 2022, it’s hard to believe that the year will soon be coming to a close. As such, it’s never too late to try to minimize the year’s tax burden when April 2023 is around the corner.

Municipal bonds can provide tax-free income, making it an ideal source of cash flow for high net worth individuals. Its relative safety compared to other riskier assets also make it an ideal option for retirees.

“Investing in municipal bonds doesn’t incur federal income tax and, in certain cases, state and local income taxes,” the article noted.

Continue reading.

ETF TRENDS

by BEN HERNANDEZ

AUGUST 12, 2022

- US Regulators Move on Plan to Cut Bond Reporting to 1 Minute.
- SIFMA Playbook for the Move to T+1
- MSRB Seeks Comment on Potential Benefits and Challenges of Shortening Trade Reporting to Within One Minute.
- Mintz: Inflation Reduction Act Includes Expansive Tax Incentives for Clean Energy Investors and Developers
- Update: The Growing Trend of Anti-Boycott Laws and the Effect on Public Finance – Is Arkansas Next?
- CDFA Advanced Tax Credit Finance WebCourse.
- *Soares v. Barnet Fire District #2* – Supreme Court of Vermont holds that defects in procedure which fire district used to obtain approval for municipal bond for loan to acquire fire district’s private water system and secure state funding for its rehabilitation, including failing to properly adopt a necessity resolution at a meeting before the bond vote and adopting warning and proposal for a bond vote at a districtwide meeting rather than at a prudential committee meeting, were the result of oversight, inadvertence, and mistake which were subsequently cured by the committee’s validation resolution.
- And finally, Great Moments In Pedagogy is brought to us this week by *Doe v. Beaumont Independent School District*, in which the District Court looked askance at school district’s “pass the trash” policy in which “teachers are hired without being adequately screened for sexual and criminal misconduct involving minors, and when they are credibly accused of sexual abuse or harassment, the district transfers the perpetrators from one campus to another.” Good god. We’re going to take a bold stance on this one and officially declare this policy and practice totally uncool. Speaks well for the state of public education that we instinctively assumed that “pass the trash” referred to the manner in which your editor was escorted through high school.

ADR - CALIFORNIA

People v. Maplebear Inc.

Court of Appeal, Fourth District, Division 1, California - July 28, 2022 - Cal.Rptr.3d - 2022 WL 2981169

City attorney brought an enforcement action under the Unfair Competition Law (UCL), on behalf of People, against operator of website and smart-phone application used to facilitate same-day, on-demand grocery shopping and delivery services, alleging that operator unlawfully misclassified its employees as independent contractors in order to deny them worker protections, harming its alleged employees and the public at large through a loss of significant payroll tax revenue, and giving operator unfair advantage against its competitors.

Operator moved to compel arbitration concerning city attorney's requests for injunctive relief and restitution. The Superior Court denied motion. Operator appealed.

The Court of Appeal held that city attorney was not bound by arbitration provisions of agreements between operator and its employees.

City, which brought action for restitution and injunctive relief under Unfair Competition Law (UCL) against operator of grocery-shopping and delivery smart-phone application, alleging that operator unlawfully misclassified its employees as independent contractors, was not bound by arbitration provisions of agreements between operator and its employees, where city was acting in its own law-enforcement capacity to seek civil penalties for labor violations traditionally prosecuted by state, city was indisputably not party to any arbitration agreement with operator, no individual employee had control over litigation and city did not need any individual employee's consent to bring action, and city's claims sought to vindicate public harms.

An action under the Unfair Competition Law (UCL) seeking injunctive relief and civil penalties filed by a public prosecutor on behalf of the People is not primarily concerned with restoring property or benefiting private parties; it is fundamentally a law-enforcement action with a public, penal objective.

Under the Broughton-Cruz rule, 988 P.2d 67, 66 P.3d 1157, agreements to arbitrate claims for public injunctive relief under the Consumers Legal Remedies Act (CLRA), the Unfair Competition Law, or the false advertising law are not enforceable in California; the central premise of the rule is that the judicial forum has significant institutional advantages over arbitration in administering a public injunctive remedy, which as a consequence will likely lead to the diminution or frustration of the public benefit if the remedy is entrusted to arbitrators.

EMINENT DOMAIN - INDIANA

701 Niles, LLC v. AEP Indiana Michigan Transmission Company, Inc.

Court of Appeals of Indiana - July 7, 2022 - N.E.3d - 2022 WL 2517441

Publicly-regulated utility company brought condemnation action against limited-liability corporation (LLC), seeking to obtain easements by eminent domain for an underground electric-transmission line.

The Circuit Court denied LLC's motion for preliminary injunction seeking to enjoin utility company from using the land for placement of a separate private transmission line for third-party private university. LLC filed interlocutory appeal.

The Court of Appeals held that:

- LLC did not knowingly waive any objections to use of the land for a wholly private purpose by third-party;

- Third-party could not be allowed to obtain easements for private use through utility company's condemnation action against LLC; and
- Placement of third-party's private electric-transmission line constituted a constitutionally-impermissible taking of a separate property right from LLC and therefore warranted injunctive relief.

Limited-liability corporation (LLC), which had been negotiating with publicly-regulated utility company regarding easements for an underground electric-transmission line across LLC's land, did not knowingly waive any objections to use of the land for a wholly private purpose by third-party university, in utility company's condemnation action against LLC, since utility company's condemnation complaint did not put LLC on notice of any intended use of the land by a private party, utility company only asserted a public use to which LLC had no objection, and utility company concealed its memorandum of understanding with university to allow the university to concurrently occupy the underground duct bank with the placement of a separate private transmission line.

Private university, as third-party, could not obtain easements for private use through publicly-regulated utility company's condemnation action against limited liability corporation (LLC), which sought to obtain easements on LLC's land by eminent domain for public use of underground electric-transmission line; private and public uses would not have been concurrent, separate line would have been installed and would separately need to be maintained for the university's sole private use, utility company acknowledged that arrangement with university to install separate line did not in any way further mission of transferring electric services to customers, and university's private line required extra construction materials and installation of additional manholes.

Placement of private electric-transmission line for sole use by private university, as third-party, on or through land owned by limited-liability corporation (LLC), which had negotiated with publicly-regulated utility company regarding placement of a transmission line intended only for public use, constituted a constitutionally-impermissible taking of a separate property right from LLC and therefore warranted injunctive relief enjoining utility company from installing the university's line to the duct bank without LLC's express consent, in utility company's condemnation action against LLC seeking to obtain easements by eminent domain, since the university's private line was separate and distinct from the line for public use sought by utility company.

ZONING & PLANNING - MARYLAND

Town of Upper Marlboro v. Prince George's County Council

Court of Appeals of Maryland - August 1, 2022 - A.3d - 2022 WL 3025099

Town filed petition for review of county council's adoption of minor amendment to remove schoolhouses from county historic sites and districts plan.

The Circuit Court denied petition, and town appealed. The Court of Special Appeals affirmed. Certiorari was granted.

The Court of Appeals held that:

- Council's initiating resolution was not final agency action subject to judicial review;
- Council's adoption of minor amendment was judicially reviewable final agency action;
- Town could challenge council's passage of minor amendment by alleging procedural deficiencies in initiating resolution;

- Council's decision to adopt minor amendment was legislative action;
- County code provision stating that minor amendment process "may" be utilized for two specific purposes did not require minor amendment to fulfill either purpose;
- Council's initiating resolution adequately set forth minor amendment's purpose; and
- Initiating resolution adequately set forth minor amendment's scope.

HOSPITALS - MISSISSIPPI

SRHS Ambulatory Services, Inc. v. Pinehaven Group, LLC

Supreme Court of Mississippi - July 21, 2022 - So.3d - 2022 WL 2841696

Nonprofit corporation formed by county-owned community hospital, which entered into purchase agreement for property, filed action against vendor and title insurer, seeking declaration that the purchase of the property was void for lack of ratification by county board of supervisors, benefits under title insurance policy, and damages for title insurer's negligence.

Vendor counterclaimed for declaration of parties' rights under disputed purchase contract. The Circuit Court denied nonprofit's motion for summary judgment and granted vendor's motion for declaratory judgment. Nonprofit appealed.

The Supreme Court held that purchase was valid without ratification by county board of supervisors.

Purchase of property by nonprofit corporation formed by county-owned community hospital was valid without ratification by county board of trustees under statute governing operations of boards of trustee of community hospitals, which mandated owners' approval of real estate transactions when board acquired property; hospital board of trustees was not acquiring the property, hospital's board approved and financed nonprofit's acquisition of the property, nonprofit's board of directors voted to enter into contract with vendor for purchase, hospital board agreed in its meeting minutes to provide financial services to corporation, and hospital board approved in its resolutions the initial price needed to secure the property and the final price to complete the purchase.

EMINENT DOMAIN - TEXAS

State by and Through Texas Transportation Commission v. Suleiman

Court of Appeals of Texas, Houston (14th Dist.) - June 30, 2022 - S.W.3d - 2022 WL 2350048

Landowner and its registered agent brought action against State seeking declaration that prior settlement between registered agent, who owned adjacent parcel, and State precluded State from condemning landowner's property, and seeking injunction prohibiting State from taking landowner's property.

The District Court denied the State's motion to dismiss for lack of jurisdiction, and motion to abate the case. State brought interlocutory appeal challenging denial of motion to dismiss, and petitioned for writ of mandamus challenging denial of motion to abate.

The Court of Appeals held that county court had exclusive jurisdiction to determine issues raised in objections to condemnation award, and thus district court lacked subject matter jurisdiction over proceeding.

Landowner's filing of objections to special commissioners' award provided county court with exclusive jurisdiction to determine issues raised in objections, including landowner's contention that condemnation violated settlement agreement between State and landowner's registered agent concerning State's condemnation of adjoining parcel owned by agent, and thus district court lacked subject matter jurisdiction over proceeding brought by landowner and registered agent to enjoin State from condemning landowner's property based upon alleged violation of settlement agreement; request to enjoin state from violating settlement was not materially different from asking district court to enjoin condemnation proceeding, over which county court had exclusive jurisdiction.

LIABILITY - TEXAS

Doe v. Beaumont Independent School District

United States District Court, E.D. Texas, Beaumont Division - July 14, 2022 - F.Supp.3d - 2022 WL 2783047

Female public middle school students brought § 1983 action against school district and male former teacher, alleging violation of the Due Process Clause, for the deprivation of their rights of personal safety, security, and bodily integrity, and violations of the Equal Protection Clause in connection with relationship between former teacher and students and allegations of sexually abusive contact, and seeking damages and declaratory relief under Title IX.

School district moved to dismiss, and plaintiffs moved for protective and sealing orders.

The District Court held that:

- Student stated claim for the denial of substantive due process right to bodily integrity;
- Plaintiffs sufficiently alleged that school district's "pass the trash" policy created a breeding ground for sexual predators to exploit vulnerable schoolchildren so as to constitute a deprivation of the right to equal protection;
- Plaintiffs sufficiently alleged that school district's policy uniquely affected minor female students;
- Plaintiffs' irreparable injures had been caused as a result of policy so as to constitute a deprivation of the right to equal protection;
- Students sufficiently alleged existence widespread practice so as to state § 1983 *Monell* claim;
- Plaintiffs sufficiently alleged causal link between policy, *Monell's* scienter requirement, and students' injuries so as to establish deliberate indifference for purposes of "moving force" element of § 1983 *Monell* claim; and
- Plaintiffs sufficiently pled actual notice to an appropriate person of employee-on-student sexual harassment and abuse to state Title IX claim.

BOND VALIDATION - VERMONT

Soares v. Barnet Fire District #2

Supreme Court of Vermont - July 22, 2022 - A.3d - 2022 WL 2898896 - 2022 VT 34

Plaintiff brought action against fire district and municipal bond bank, challenging approval of municipal bond for loan to acquire fire district's private water system and secure state funding for its rehabilitation.

The Superior Court ruled on partial summary judgment and, following two-day trial, entered

declaratory judgment for plaintiff but denied request to invalidate the bond vote, denied motion for reconsideration, and denied motion for attorney's fees. Plaintiff appealed.

The Supreme Court held that:

- Defects in bond approval procedure were subsequently cured by the committee's validation resolution;
- Open Meeting Law provision allowing attorney's fees did not apply retroactively; and
- Committee had authority to charge curb-stop fee.

Defects in procedure which fire district used to obtain approval for municipal bond for loan to acquire fire district's private water system and secure state funding for its rehabilitation, including failing to properly adopt a necessity resolution at a meeting before the bond vote and adopting warning and proposal for a bond vote at a districtwide meeting rather than at a prudential committee meeting, were the result of oversight, inadvertence, and mistake which were subsequently cured by the committee's validation resolution; committee consistently attempted to promote the interests underlying the Open Meeting Law and it acted in a transparent way throughout the process, and validation statute did not contain any exception for Open Meeting Law violations.

Plaintiff failed to establish on appeal that trial court, in action challenging approval of municipal bond, erred by failing to explicitly address his request for a new trial, in which he sought admit into evidence an exhibit and related testimony that was offered at trial as proof of the harm caused to him and the fire district community by violations of the Open Meeting Law; while plaintiff referenced evidence and testimony that the trial court apparently excluded at trial, he provided no transcript of the proceedings below and the Supreme Court had no record on which to evaluate his claim that the trial court should have admitted such evidence.

Open Meeting Law provision allowing attorney's fees did not apply retroactively to fire district committee's violation of the Law while approving municipal bond; provision was not solely remedial or procedural, but created a substantive change in the law by setting forth a process by which municipalities could become obligated to pay attorney's fees for violations of the Open Meeting Law where they had no such exposure before, and including a process by which municipalities could avoid such obligations, and it would be unfair to apply it to support an award of attorney's fees when committee had no ability to take the steps to avoid liability under the statute.

Fire district's prudential committee had authority, when approving municipal bond for loan to acquire fire district's private water system and secure state funding for its rehabilitation, to charge curb-stop fee; statutory authority to require existing customers to remain connected to the municipal water system necessarily encompassed the power to charge a fee to those who seek to leave that system.

Senate Approves Democrats' Sweeping Climate and Health Bill.

The legislation would unlock billions in new grants for states and local governments. But some lament its lack of help on housing and other issues. It will next go to the House.

Democrats' multi-billion dollar climate, health care and tax package cleared a major hurdle on Sunday after the Senate passed the measure in a strictly party-line 51-50 vote, with Vice President Kamala Harris breaking the tie.

The bill, which includes around $370 billion for climate and energy programs, is expected to get a vote in the Democratic-controlled House on Friday. If approved there, it would go to President Biden for his signature. The legislation would send billions in climate funding to states and local governments—notably $4.75 billion to reduce greenhouse gas air pollution.

A smiling Senate Majority Leader Chuck Schumer, of New York, stepped off the floor after the vote giving reporters a big thumbs up.

Continue reading.

Route Fifty

By Kery Murakami

AUGUST 7, 2022

Update: The Growing Trend of Anti-Boycott Laws and the Effect on Public Finance – Is Arkansas Next?

In our previous blog post we noted the emerging trend of anti-boycott and anti-discrimination laws in multiple states and discussed potential effects on the public finance market, particularly in Arkansas.

Potential Costs:

One of the potential effects we noted was that by limiting potential underwriting (or direct purchaser) options, bond issuers may see increased borrowing costs. This possibility was examined in great detail in a recent paper authored by Daniel G. Garett of the University of Pennsylvania, Wharton and Ivan T. Ivanov of the Federal Reserve Board. The paper, titled *"Gas, Guns, and Governments: Financial Costs of Anti-ESG Policies,"* focused on the recent anti-boycott and anti-discrimination laws passed in Texas that addressed the energy (in particular, oil and gas) and firearms and ammunition industries. The paper makes note of the exit of some of the largest municipal bond underwriters from the Texas market and estimates that this reduction in underwriting options could result in substantial increases in interest costs for municipal issuers across the state.

The paper was presented at the Brookings Institution's 11th annual Municipal Finance Conference in July. The full paper is available from the conference's website and may be accessed here.

West Virginia:

Last week, the West Virginia state treasurer, Riley Moore, announced that the state was barring Goldman Sachs, JPMorgan, Morgan Stanley, Wells Fargo and BlockRock from doing business with the state due to their policies regarding the coal industry. This action was undertaken pursuant to a law passed this year that provides the treasurer with the authority to ban financial institutions from state business if the institutions are determined to have policies boycotting fossil fuels. The immediate focus of the impact of this decision is on depository relationships with the state, but this decision will likely have significant impacts on municipal bond underwritings, as well.

Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

August 8, 2022

S&P U.S. Public Finance Housing Rating Actions, Second-Quarter 2022.

View the Rating Actions.

1 Aug, 2022

S&P: Oil And Gas Prices Fuel U.S. Mineral-Producing States' Coffers As Economic Momentum Slows

Key Takeaways

- On the tail of elevated oil and natural gas prices, mineral-producing states' severance taxes and mineral royalties are surging, although the inflationary pressures they have in part caused could stymie broader economic momentum across other sectors.
- Oil and gas-producing states are poised to lead economic (real gross state product [GSP]) growth in calendar 2023, with seven ranking among the top-15 for real GSP growth nationally after a sluggish 2022.
- Among the eight states surveyed, forecast median GSP growth is 75 basis points (bps) and 16 bps higher than the median growth rate for all states in 2023 and 2024, respectively.
- Mining sector employment remains well below levels from a decade ago despite an uptick in mining activities following the onset of the pandemic. Regional economies that rely more heavily on mining activities will likely experience the most benefit from increased production and high prices, though sector concentration poses longer-term credit risks when boom cycles turn to bust.

Continue reading.

2 Aug, 2022

Inflation Reduction Bill Uses Public Finance to Stoke Energy Investment.

Billions in public financing would keep investment flowing into energy sector despite interest rate hikes.

A surprise deal by Democrats on tax reform, climate investments, and health care features new ways of using public finance for clean energy.

The Inflation Reduction Act (IRA) breathed new life last week into President Joe Biden's climate agenda, which had been pronounced dead earlier in July. A variety of tax credits would help consumers buy technologies that are less prone to price spikes. One set of rebates would encourage drivers to buy electric cars. Another would help households install heat pumps, as Japan did after the 1970s oil crisis.

Beyond tax incentives, the bill directs new streams of public finance to rally private energy

investment. It gives authority to the Department of Energy to issue up to $250 billion in loans, and creates a $27 billion national green bank.

Continue reading.

THE AMERICAN PROSPECT

BY LEE HARRIS

AUGUST 2, 2022

Senate Package Has $3B for Communities Cut Apart by Highways.

The "neighborhood access and equity grants" would supplement earlier funding in the infrastructure law and could go towards a range of projects. About a third of the money is earmarked for lower-income areas.

More help could be coming from Washington for neighborhoods that have long been cleaved apart by highways and other infrastructure, if a major spending bill now before Congress becomes law.

The legislation would set aside $3 billion for reconnecting the divided communities, through a new program called Neighborhood Access and Equity Grants. The program would greatly expand similar efforts contained in the federal infrastructure law that passed last year, both in terms of the amount of money available and the scope of projects that would qualify.

The new neighborhood grants are included in the Inflation Reduction Act, a spending measure backed by Democrats, which the Senate approved on Sunday in a party-line vote. The sweeping proposal—which includes around $370 billion for climate and energy programs, as well as health care and tax provisions—surprised advocates and just about everyone around Capitol Hill, who had assumed negotiations on the bill had stalled.

Continue reading.

Route Fifty

By Daniel C. Vock

AUGUST 5, 2022

How Do You Implement an Infrastructure Bill?

Passed in November, the $1.2 trillion infrastructure plan is the country's largest in decades

Last November, President Joe Biden ushered in a bipartisan agreement that launched the most comprehensive infrastructure plan that United States has seen in more than half a century.

The $1.2 trillion Infrastructure Investment and Jobs Act—the largest infrastructure plan since

President Dwight Eisenhower authorized the $25 billion Federal-Aid Highway Act of 1956—includes $110 billion to repair roads and bridges and support what the White House calls “major, transformational projects.”

The plan also allots $39 billion for public transit; $25 billion for airport improvements; and $17 billion for port infrastructure and waterways. In addition, it calls for spending $55 billion to expand water access and clean drinking water, and $65 billion to improve broadband internet access, particularly in rural areas.

Continue reading.

UChicago News

By Ted Gregory

Aug 8, 2022

SIFMA Playbook for the Move to T+1

In 2024, the current trade settlement timeframe will be halved, moving from the current trade date plus two days (T+2) to trade date plus one day (T+1). Taking 24 hours out of the settlement cycle will require a myriad of significant changes. The list of impacted areas is long: global settlements, documentation, corporate actions, securities issuance, and coordination for mutual fund portfolio securities and investor shares. Some areas—allocations, affirmation and disaffirmation processes, clearinghouse process timelines, and securities lending—will require fundamental changes. Other areas that will require significant change include prime brokerage, delivery of investor documentation, foreign currency exchange (FX), global movement of securities and currency, batch cycle timing, and exchange-traded fund (ETF) creation and redemption. It will also be imperative to analyze current settlements to identify the reasons behind settlement errors and fails and ensure that the error and fail rates do not increase under a newly compressed timeline.

How will the industry prepare for such a significant change?

To assist market participants in the move to T+1, SIFMA, the Investment Company Institute (ICI), and The Depository Trust & Clearing Corporation (DTCC), together with Deloitte LLP (Deloitte), have published The T+1 Securities Settlement Industry Implementation Playbook. This guide outlines a detailed approach to identifying the implementation activities, timelines, dependencies, and risk impacts that market participants should consider as they prepare for the transition to T+1 settlement.

SIFMA, DTCC and ICI are committed to leading the industry’s collaboration on accelerating the settlement cycle. We know from our work together on the move from T+3 to T+2 in 2017 that this undertaking pulls in each sector of the industry and spans multiple operations, functions, and regulations. Unlike the move to T+2, the move to T+1 is a wholesale change to the processes which take place between execution and settlement.

What is the Playbook designed to do?

The Playbook was developed as a guide for market participants to identify areas impacted by shortening the settlement cycle and considerations that should be addressed. Every firm has

different infrastructure, businesses, and clients, as well as operational processes and geographies that need to be taken into account. It is important to note that, because the SEC's proposal to shorten the settlement cycle is not yet final, the Playbook serves as a guide to assist with the many complex steps involved in the move to T+1. The Playbook assumes a third quarter 2024 transition date to a T+1 settlement cycle, subject to final regulatory approval, and it may be updated at a later time should regulators select a different transition date.

It consists of 14 sections. Two sections provide overviews of the previous move to a T+2 settlement cycle and the approach being taken with the move to T+1. Eight sections explore specific areas of the trade lifecycle, including Trade Processing, Asset Servicing, Documentation, Securities Lending, Prime Brokerage, and Funding and Liquidity Considerations. The remaining sections outline matters related to Regulatory Changes, Global Impacts, Primary Offerings, Buy-Side Considerations, Industry Testing and Migration Plans, as well as the associated resources needed for market participants to prepare for the transition to T+1.

What other considerations are there as we move to T+1?

The move to T+1 requires changes to securities regulations. The Securities and Exchange Commission (SEC) issued a proposal to adopt rules and rule amendments to shorten the standard settlement cycle earlier this year. In a comment letter on the proposal, SIFMA supported the SEC providing regulatory clarity on SEC Rule 15c6-1, the rule that covers T+1 settlement and outlined recommendations and comments with respect to the proposal which would foster the policy goals of the proposal while reducing potential adverse consequences. SIFMA also noted the proposal reflects many of the recommendations included in the report, "Accelerating the U.S. Securities Settlement Cycle to T+1," which SIFMA drafted in partnership with DTCC, ICI, and Deloitte in December 2021.

To expedite delivery of required documentation to better align with T+1 settlement, SIFMA strongly believes e-Delivery should be the default mechanism for prospectus and confirmation delivery. In an E-delivery default world, retail investors will receive their trade confirmations on the trade date as opposed to the typical mail delivery of 3-5 days post settlement. This will allow retail investors the opportunity to review the terms of the trade before settlement and manage any discrepancies in the trade details before the trade is finalized. Overall, e-Delivery systems allow for improved methods of communication with investors and a more efficient process for delivering confirmations for broker-dealers in accordance with their obligations under Rule 10b-10. SIFMA recently sent a letter encouraging the SEC to modernize its rules to make e-delivery the default mechanism for transmitting investor communications and disclosures.

What's next in the move to T+1?

We encourage all impacted market participants to start using the Playbook to put the foundations of their programs in place. The Playbook is a user-friendly, living document and users can expect updates throughout the process of shortening the settlement cycle, especially as it relates to the final SEC rule.

Tom Price is a managing director and head of technology, operations, and business continuity for SIFMA.

August 4, 2022

US Regulators Move on Plan to Cut Bond Reporting to 1 Minute.

- **Current reporting window for transactions is 15 minutes**
- **Reduction had been suggested by SEC Chair Gensler in April**

US financial regulators are moving ahead with a plan that could slash the amount of time that traders have to report many bond transactions to just one minute.

The Financial Industry Regulatory Authority and the Municipal Securities Rulemaking Board sought comments on the possible reduction from the current time frame of 15 minutes. It's an initial step in a lengthy rule-change process that also involves the Securities and Exchange Commission.

Finra, which oversees brokerages and dealers, said the plan would apply to trading in corporate bonds, asset-backed securities and certain mortgage-backed securities. The industry-backed regulator said it would create "a qualitative increase in market transparency."

Continue reading.

Bloomberg Markets

By Lydia Beyoud and Jack Pitcher

August 2, 2022

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e-Delivery in a T+1 Environment: SIFMA Comment Letter

SUMMARY

SIFMA provided comments to the U.S. Securities and Exchange Commission (SEC) on the need to modernize its rules to make e-delivery the default mechanism for transmitting investor communications and disclosures in a T+1 environment.

View the comment letter.

MSRB Seeks Comment on Potential Benefits and Challenges of Shortening Trade Reporting to Within One Minute.

Washington, D.C. – The Municipal Securities Rulemaking Board (MSRB) today opened a 60-day comment period to re-examine time of trade reporting requirements first established in 2005 and last considered in 2013. The MSRB's request for comment, released in coordination with a parallel proposal by the Financial Industry Regulatory Authority (FINRA), is part of the MSRB's broad retrospective review of the entire body of MSRB rules and interpretive guidance to identify opportunities to modernize the rule book in light of evolving market practices and to align its rules, as appropriate, with those of other regulators.

Specifically, the MSRB is seeking public comment on the potential benefits and challenges of a proposed amendment to MSRB Rule G-14 to generally require that transactions in municipal securities are reported as soon as practicable, but no later than within one minute of the time of

trade, down from the long-standing 15-minute reporting requirement. Trades reported to the MSRB through its Real-Time Transaction Reporting System (RTRS) are made transparent to the public on the free Electronic Municipal Market Access (EMMA®) website, providing investors, dealers, municipal advisors and other market participants with the information they need to make informed decisions about the pricing of municipal securities.

“In the 17 years since the 15-minute trade reporting timeframe was first established, our market has seen significant advances in technology and an evolution of market structure that includes electronic trading venues,” said MSRB CEO Mark Kim. “Although the majority of trades are already being reported within one minute today, it is also clear from the data that certain types of trades are taking longer to be reported. The Board is requesting information from market participants to inform our thinking on the path forward to modernize Rule G-14.”

In developing the proposed amendments and framing the questions in the request for comment, MSRB staff analyzed current trade data to compare the time of trade execution to the time the trade was reported to the MSRB. This analysis is included in the request for comment.

“Although 77% of trades required to be reported in 15 minutes were reported within one minute, this only represented 44% of the par amount reported,” said MSRB Chief Market Structure Officer John Bagley. “Coupled with our analysis of same-day trade activity for individual securities, we believe a significant volume of trades could have had the benefit of additional information if trades were required to be reported within one minute.”

Comments should be submitted no later than October 3, 2022.

Read the request for comment.

Date: August 2, 2022

Contact: Leah Szarek, Chief External Relations Officer
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MSRB Publishes ATS Research Paper.

MSRB data shows a significant and relatively steady increase in customer transactions with ATSs since 2016, with a dramatic acceleration in the first half of 2022.

Read the paper.

Muni Market Transaction Costs Remain High, Despite Customer Protection Rules, Study Says.

Researchers find dealers mark up prices when customers are less likely notice

Municipal bond dealers set prices well above what they pay for the securities, reaping windfalls at the expense of individual investors despite recent regulation aimed at curbing so-called markups,

according to an academic study of trading data released Thursday.

“Dealers appear to use their pricing discretion to charge higher markups to small customers when investors are less likely to notice,” wrote the study’s authors, John Griffin and Samuel Kruger of the University of Texas at Austin, and Nicholas Hirschey of the Universidade NOVA de Lisboa.

State and local governments sell bonds in the roughly $4 trillion municipal market to finance infrastructure such as roads, sewers and high schools. Most of the debt is held by households, either directly or through mutual or exchange-traded funds. The interest is typically exempt from federal and often state taxes, attracting high net worth individual investors.

Continue reading.

The Wall Street Journal

By Heather Gillers

Aug. 4, 2022

State and Local Pensions Post Worst Losses Since Great Recession.

The public sector retirement plans are in better overall shape than they were back in 2008. But some are still badly underfunded and many are gambling on riskier investments.

Welcome back to another edition of *Route Fifty’s Public Finance Update*! I’m Liz Farmer and this week, I’m looking at public pension plans, which just wrapped up their worst year of investment losses since the financial crash in 2008. But—as if we needed any reminder—it’s a very different world today than it was in the late 2000s. This year’s damage hurts, but it isn’t sending people running for the hills. I’ll explain why.

The predictions of just how poorly public pension plans performed in the year ending June 30 range from average losses of 7% to more than 10%. But the bottom line is that the stock market has fallen by more than 20% in value over the past six months and investment losses from that will wipe out all the historic gains pensions made in 2021.

It means that pension funding levels, the share of assets plans have on hand to meet all their promised obligations to current employees and retirees, are likely to dip back down to an average of 72%, according to S&P Global Ratings.

Continue reading.

Route Fifty

By Liz Farmer

AUGUST 2, 2022

S&P: Market Swings Could Signal Contribution Volatility For U.S. State Pensions And OPEBs

Key Takeaways

- The average U.S. state pension funded ratio rose significantly in fiscal 2021–to 81.7%, from 68.9% in fiscal 2020–due to extraordinary investment returns. However, we expect most of these funding gains will be undone in fiscal 2022.
- 16 U.S. states met our minimum funding progress metric for pensions, indicating they made meaningful contributions toward full funding in fiscal 2021.
- We expect fixed rate funding and actuarial smoothing techniques will keep short-term contributions mostly consistent, but there could be longer-term fallout from market volatility.
- Retiree health care plans remain substantially underfunded because most states direct limited resources to other priorities.

Continue reading.

3 Aug, 2022

Market Rout Sends State and City Pension Funds to Worst Year Since 2009.

Simultaneous declines in stocks and bonds hammered the funds in the year ended in June, adding to pressure on government finances

Public pension plans lost a median 7.9% in the year ended June 30, according to Wilshire Trust Universe Comparison Service data released Tuesday, their worst annual performance since 2009 and a fresh sign of the chronic financial stress facing governments and retirement savers.

Much of the damage occurred in April, May and June, when global markets came under intense pressure driven by concerns about inflation, high stock valuations and a broad retreat from speculative investments including cryptocurrencies. Funds that manage the retirement savings of teachers, firefighters and police officers returned a median minus 8.9% for that three-month period, their worst quarterly performance since the early months of the global pandemic.

“It was a really, really bad quarter for investing, there’s no way around it,” said Michael Rush, a senior vice president at Wilshire.

Continue reading.

The Wall Street Journal

By Heather Gillers

Aug. 9, 2022

Mintz: Inflation Reduction Act Includes Expansive Tax Incentives for Clean

Energy Investors and Developers

On July 27, 2022, Senator Joe Manchin and Senate Majority Leader Chuck Schumer reached an agreement on a budget reconciliation bill and released the "Inflation Reduction Act of 2022" (the "Act"). A significant part of the Act focuses on energy tax changes aimed at fighting climate change and promoting domestic energy security. To those ends, the Act extends and expands existing tax credits and adds several new energy tax credits for clean energy projects. The benefits of this historic legislation for investors and developers in the clean energy infrastructure space cannot be overstated.

Here are key highlights.[1]

- Extension of the production tax credit under I.R.C. Section 45 (the "PTC")[2] for eligible wind, solar, geothermal, biomass, hydropower, municipal waste, and marine and hydrokinetic projects that start construction before January 1, 2025. The extension includes a renewal of the PTC for solar, which had previously expired.
- Extension of the Section 48 energy investment tax credit (the "ITC") for solar, combined heat and power, qualified fuel cell, microturbine, waste energy, small wind, biogas, storage technology, and microgrid controllers projects that start construction before January 1, 2025.
- For geothermal, the Act extends the ITC for projects that start construction before January 1, 2035.
- Significantly, the Act makes stand-alone storage eligible for the ITC. The inclusion of biogas and microgrid controllers as ITC-eligible property is also new. Further, for installations of energy property with a maximum net output not greater than 5 megawatts, the Act permits the ITC-eligible basis to include certain expenditures on upgrades to a utility's interconnection system.
- Subject to a new two-tier rate structure (discussed below), the Act restores the full ITC rate of 30 percent and full PTC rate of 1.5 cents per kWh (subject to inflationary adjustments).
- The Act, in effect, extends the ITC and PTC at full rates under new tax credits available for electricity produced by zero-emissions projects placed in service in 2025 or later, which start construction before 2033.
- Extension of the Section 45Q carbon capture credit for projects that start construction before January 1, 2033. In addition, the Act reduces the minimum carbon capture requirement and includes an enhanced credit for certain direct air capture facilities.
- The Act adds a new production tax credit for clean hydrogen produced after December 31, 2022 at a qualifying facility that starts construction before January 1, 2033. Taxpayers also have the option to elect to claim the ITC in lieu of the new production tax credit.
- The Act adds a new tax credit (the Advanced Manufacturing Production Credit) to incentivize domestic production and sale of components used in solar, wind, and storage projects (e.g., solar modules, solar-grade polysilicon, inverters, battery cells, blades, and towers) and critical minerals.
- The Act expands the Section 48C credit to include facilities that equip or expand certain manufacturing facilities in the clean energy sector.
- The Act also includes new tax credits for zero-emissions nuclear power production and transportation fuels with lower emissions rates.
- Under a new two-tier rate structure, the Act only permits projects that satisfy prevailing wage and apprenticeship requirements to claim the full credit. Otherwise, the credit rate is 20 percent of the full rate. For example, if an eligible solar project does not satisfy the requirements, the ITC rate would be 6 percent rather than 30 percent. The full rate applies until 60 days after the Secretary publishes regulations. This rate structure applies to the ITC, PTC, and most other energy tax credits.
- The Act makes available a 10 percent bonus credit when domestic content requirements are satisfied. In some cases, the Act provides a separate 10 percent bonus credit for qualifying

facilities located in enhanced energy or low-income communities.
- Other positive changes for promoting clean energy include (i) transferability of most energy tax credits; (ii) a direct pay option generally available only to governmental agencies and certain other tax-exempt entities; and (iii) a 3-year carryback period for energy credits.

The Senate is expected to vote on the Act during the first week in August, just before its scheduled August recess. If passed by the Senate, the legislation would then go to the House for approval. The House is currently in recess.

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[1] These highlights do not address any tax incentives for individuals, residential properties, agriculture, or electric vehicles and charging stations.

[2] Unless otherwise stated, all capitalized Section references are to the Internal Revenue Code of 1986, as amended.

Mintz – Anne S. Levin-Nussbaum

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Puerto Rico’s Bankruptcy Fees Seen Hitting $1.6 Billion.

- **Oversight Board provides fee update in annual report**
- **Through July 2022, professional fees stand at $1.2 billion**

Fees and expenses related to the restructuring of Puerto Rico’s debt — exacerbated by natural disasters and the pandemic — are forecast to reach $1.6 billion by fiscal year 2026, cementing the island’s status as the most expensive municipal bankruptcy in US history.

“Uncertainty stemming from the series of recent natural disasters and the ongoing Covid-19 pandemic has resulted in an extended restructuring process contributing to the overall estimate,” the Puerto Rico Financial Oversight and Management Board, or FOMB, which is shepherding the island through bankruptcy, said in its annual report released late Sunday.

Prior to Puerto Rico, Detroit held the title of the largest municipal bankruptcy. According to board figures, Detroit’s bankruptcy process took 17 months and cost $178 million, while Puerto Rico’s lasted nearly five years and was stalled by hurricanes, earthquakes and the global pandemic.

While the US commonwealth emerged from bankruptcy earlier this year, litigation fees and costs

related to implementing the deal continue, the board said. There's also more debt to churn through. Puerto Rico's Electric Power Authority is seeking to reduce $9 billion through its bankruptcy while its Highways and Transportation Authority is restructuring $4 billion.

The FOMB's forecast, which runs from fiscal year 2018 through fiscal year 2026, includes fees and expenses for the Unsecured Creditors' Committee, the Retiree Committee, the government of Puerto Rico and the Oversight Board. Through July 2022 professional fees and expenses have tallied some $1.2 billion, the board said. Of that, some $660 million belongs to the board and special claims committees, and $373 million will go to the government of Puerto Rico.

When the US territory of 3.2 million people went into bankruptcy in 2017, the government and its agencies had some $74 billion in debt. During the bankruptcy process it restructured more than half of that debt, including cutting $22 billion of bonds tied to the commonwealth down to $7.4 billion.

Bloomberg Markets

By Jim Wyss

August 1, 2022

— *With assistance by Michelle Kaske*

CDFA Advanced Tax Credit Finance WebCourse.

September 21-22, 2022 | Daily: 12:00 – 5:00 PM Eastern

Overview

The Advanced Tax Credit Course will take a deeper dive into the use and applicability of tax credits. Building on the basic structure of tax credits covered in the Intro to Tax Credit Course expert speakers will discuss details of New Markets Tax Credits (NMTC) and Low- Income Housing Tax Credits (LIHTC) through the lens of all parties and how they come together on a given transaction. Case studies will be presented to illustrate on how tax credits work with other economic development tools such as bonds or loans.

This course will qualify for the CDFA Training Institute's Development Finance Certified Professional (DFCP) Program. Join us online, and start down the road to personal and professional advancement today.

Click here to learn more and to register.

TAX - NEW YORK

DP Fuller Family LP v. City of Canandaigua

Supreme Court, Appellate Division, Fourth Department, New York - July 8, 2022 - N.Y.S.3d - 2022 WL 2574326 - 2022 N.Y. Slip Op. 04497

Taxpayer, the owner of commercial property that was located within nonparty city school district, petitioned for review of taxing authorities' real property tax assessments for three different years.

The Supreme Court granted defendants' motion to dismiss and dismissed the petitions. Taxpayer appealed.

The Supreme Court, Appellate Division, held that:

- Taxing authorities had standing to seek dismissal of petitions for taxpayer's failure to comply with notice requirements;
- Motions to dismiss for taxpayer's failure to comply with notice requirements complied with amended scheduling order, and timing of motions was well within range of when such motions were routinely brought and entertained;
- Fact that taxpayer failed to adhere to notice requirements, proceeded with obtaining an appraisal anyway, and later faced appropriate motions to dismiss for failure to comply with notice requirements did not support denial of motions; and
- Taxpayer failed to establish good cause to excuse its failure to comply with notice requirements.

Taxpayer failed to establish good cause to excuse its failure to comply with requirement to provide notice of tax certiorari proceeding to school district and treasurer, even if taxpayer made a good faith effort to comply but simply made a mistake, and regardless of absence of prejudice to school district.

Mistake or omission of taxpayer's attorney, including a factual mistake during an attempt to provide notice of tax certiorari proceeding to school district or treasurer, does not constitute good cause shown so as to excuse a taxpayer's failure to comply with notice requirement.

NJ Tax Court Clarifies Exemption from Non-Residential Development Fee: Day Pitney

New Jersey's Non-Residential Development Fee (NRDF) is a fee paid by non-residential developers toward a municipality's affordable housing obligation. The fee can be substantial, but certain types of projects are exempt from payment of the NRDF under N.J.S.A. 40:55D-8.4(b). In a decision reported on July 29, the New Jersey Tax Court clarified the exemption provided for payment of the NRDF for projects located within a specifically delineated urban transit hub pursuant to N.J.S.A. 40:55D-8.4(b)(4).

In *Jaguar Land Rover North America v. Director, Division of Taxation et al.*, the Tax Court affirmed the director's denial of an exemption from the NRDF, holding that to be exempt from the NRDF, a project must be within a specifically delineated urban transit hub and must be located within a one-half-mile radius surrounding the midpoint of a New Jersey Transit Corp., Port Authority Transit Corp. or Port Authority Trans-Hudson Corp. rail station platform area. The taxpayer claimed that because the subject property was within one-half mile of a New Jersey Transit rail station platform (in Suffern, New York), it was exempt from payment of the NRDF on its project. The director ruled that it was not sufficient that the project be within a one-half-mile radius of a train station of one of the transit entities, but the project also had to be in an area that the New Jersey Economic Development Authority (NJEDA) named as an urban transit hub under the authority granted by N.J.S.A. 34:1B-209(e)(1). The taxpayer appealed, claiming the project could meet either one of these requirements to qualify for the exemption. The taxpayer conceded for purposes of the case that the municipality where the project was located was not a specifically delineated urban transit hub designated by the NJEDA. The Tax Court found that the plain language of N.J.S.A. 34:1B-208 (defining an urban transit hub) was unambiguous and that to meet the definition of an urban transit

hub, a project needed to be both within a one-half-mile radius of a transit corporation rail platform and delineated by the NJEDA. The Tax Court therefore held that although the project was within a one-half-mile radius of the New Jersey Transit Corp. Suffern Station, it had not been specifically delineated by the NJEDA as an urban transit hub, and therefore it was not exempt from the NRDF. The Tax Court noted that the NJEDA provided a list of 10 large, urban New Jersey municipalities eligible for urban transit hub classification on its website, although the Tax Court indicated that the statutory definition under N.J.S.A. 34:1B-208 might include other municipalities.

The upshot of the Tax Court's decision is that a developer should not assume, simply because a project is being developed within one-half mile of a rail transit platform, that it will be exempt from payment of the NRDF. Further investigation at the municipal and the NJEDA levels is necessary to determine if a particular municipality in which a project is located has been designated as an urban transit hub pursuant to N.J.S.A. 34:1B-209(e)(1).

Day Pitney LLP – Christopher John Stracco and Katharine A. Coffey

August 3 2022

Local Preemption and Wetlands in Massachusetts: An Update - Greenberg Traurig

The Massachusetts Supreme Judicial Court (SJC) decided a case this week clarifying the limitation on a municipality's ability to regulate wetlands and waterway construction more stringently than would the Department of Environmental Protection. *City of Boston v. Conservation Comm'n of Quincy*, No. SJC-13244 (Mass. July 25, 2022). Interestingly, this decision follows closely on the heels of *Armstrong v. Sec'y Energy & Envtl. Affairs*, No. SJC-13210 (Mass. July 12, 2022), which limited municipalities' ability to be less restrictive than DEP about waterfront development. See DEP's Municipal Harbor Plan Regulations Invalid.

Massachusetts requires an "order of conditions" under the Wetlands Protection Act, Mass. Gen. L. ch. 131, § 40, before anyone can do work affecting wetlands or nearby areas. The local conservation commission typically issues that order of conditions, but a disappointed applicant may seek a superseding order from the Department of Environmental Protection. The DEP order preempts the local conservation commission decision unless the more restrictive local order is based on a local ordinance that is more stringent than the Wetlands Protection Act. We addressed this scheme in Local Preemption and Wetlands in Massachusetts.

But how does one know that the local ordinance is more stringent than the Wetlands Protection Act and that that enhanced stringency is the basis for a local decision either to deny an order of conditions or to issue an order with more restrictive conditions than DEP would impose?

In *City of Boston*, the SJC held that the City of Quincy Conservation Commission's denial of an order of conditions was preempted by DEP's superseding order of conditions even though the local ordinance was arguably more stringent, because the commission did not explain in its decision or in any briefing in the case why the denial was required by more stringent local provisions. Boston sought to reconstruct a bridge in Boston Harbor that was located partially in Quincy. The Quincy Conservation Commission refused to issue an order of conditions, thus prohibiting the project. Boston sought, and DEP granted, a superseding order of conditions that permitted the construction Boston planned. The Quincy Conservation Commission appealed the issuance of the superseding

order, arguing that its denial should be enforced since it was based on more stringent local provisions. But the language in the denial to which the Commission pointed did not clearly support the more stringent conditions.

This outcome puts a thumb on the scale in favor of preemption. However, the weight of that thumb depends critically on the local provisions, the details of the administrative record, and the local conservation commission decision. Will this lead to more and messier litigation, requiring courts to parse local provisions and determine their stringency vis-à-vis the Wetlands Protection Act, or will the thumb itself cause more local conservation commissions to acquiesce in DEP superseding orders of conditions? Stay tuned.

Greenberg Traurig LLP – David G. Mandelbaum, Edward S. Hershfield and Lauren A. Liss

July 28 2022

American Dream Mall Misses Payment on N.J. Grant-Backed Debt.

- **New Jersey must approve documents to release cash for debt**
- **Missed payment isn't a default under the bond covenant**

American Dream, the $5 billion mall and entertainment complex in New Jersey's Meadowlands, failed to make an interest payment that was due Monday on municipal bonds sold to help finance the venture.

The more than 3 million-square-foot destination mall, which features an indoor ski slope, amusement park and water park, didn't make an $8.8 million payment, according to a regulatory filing.

"The trustee has not received any revenues for payment of the August 1 debt service, and the reserve account does not have sufficient funds to make such payment," the filing said.

Continue reading.

Bloomberg Markets

By Amanda Albright, Martin Z Braun, and Elise Young

August 1, 2022

Western Senators Secure $4 Billion for Drought in Spending Bill.

A group of US senators from western states said Friday they have secured $4 billion in drought-relief funding as part of the Democrats' climate spending and tax bill slated for the Senate floor this weekend.

Funding for the assistance through the Interior Department's Bureau of Reclamation was one of the demands made by Senator Kyrsten Sinema, an Arizona Democrat, who was a key holdout on the $433 billion spending package.

The funding deal was announced by Democratic Senators Mark Kelly, also of Arizona, Catherine Cortez Masto of Nevada and Michael Bennet of Colorado. All three are up for re-election in November in states where water politics loom large.

Senate Majority Leader Chuck Schumer's office confirmed that the funding will be in the final bill.

The Southwest US is in the grips of its worst drought in 1,200 years. Some of the massive reservoirs along the Colorado River such as Lake Powell are in danger of no longer being able to produce power at their hydroelectric dams. The Bureau of Reclamation, the federal agency responsible for managing the dams on the Colorado, warns there's a risk the power there could switch off as soon as next summer.

The funding would be used to buy private water rights and help municipalities with conservation projects to increase the level of water in the Colorado River system, according to a Senate aide.

The $4 billion is new spending in the bill, according to two people familiar with the matter.

"The Western United States is experiencing an unprecedented drought, and it is essential that we have the resources we need to support our states' efforts to combat climate change, conserve water resources, and protect the Colorado River Basin," Kelly, Cortez Masto and Bennet said in a statement Friday.

Bloomberg Markets

By Ari Natter

August 5, 2022

— With assistance by Erik Wasson, and Brian K Sullivan

Group Opposes New Chicago Bears Stadium Using Taxpayer Funds.

As the Chicago Bears appear to be headed for greener pastures outside of the city, one organization is telling the team to build a new stadium without taxpayer assistance.

The team has purchased the former Arlington Racecourse property for a possible new home.

Americans for Prosperity is urging members of the Arlington Heights Village Board to adopt an "anti-corporate welfare" ordinance and reject proposals that would build a new Chicago Bears stadium with taxpayer money.

"They absolutely can build this on their own without having the taxpayers finance parts of the stadium or the infrastructure around the stadium," Americans for Prosperity Illinois State Director Brain Costin said.

The group is collecting signatures and intends to present the ordinance to the village board, which includes the following language:

"1. BAN OF CORPORATE WELFARE PROGRAMS. The Village of Arlington Heights is prohibited from offering or extending any financial incentive to any business or corporation to operate in the village.

2. DEFINITIONS. For use in this ordinance, “incentive” means any economic, financial benefit, or other incentives, including, but not limited to, those authorized under the Property Tax Code, the Counties Code, the Illinois Municipal Code (including, but not limited to, the Tax Increment Allocation Redevelopment Act), or any other provision of law authorizing abatements, credits, loans or tax or fee reductions.”

Chicago officials have offered to make renovations to Soldier Field in an effort to prevent the Bears from leaving town, but so far, team officials said they are not interested.

The Bears previously discussed the possibility of building a stadium in Arlington Heights about 50 years ago, but instead renovated Soldier Field with the state of Illinois raising funds to help the team do so. The stadium also underwent a major renovation in 2002.

Several NFL teams have used public financing to pay for new stadiums, including a 45% share of the Minnesota Vikings stadium, and an enormous 86% share in Indianapolis for the Colts stadium.

“By enacting an anti-corporate welfare ordinance, Arlington Heights would declare an end to economically destructive and corrupt policies of corporate welfare,” Costin said. “When select corporations get special tax breaks, subsidies, and loopholes other businesses and residents have to pay more in taxes to make up for it.”

By Kevin Bessler | The Center Square

Aug 3, 2022

- Cyber Insurance Price Hike Hits Local Governments Hard.
- *Galloway Education, LLC v. Township of Galloway* – After taxpayer – the named landlord of property leased to charter school – sought an exemption from property taxes as a not-for-profit entity, the Tax Court denied the exemption due to the fact that the Bondholder Representative was the de facto landlord of the property purchased via the bond issuance and exercised significant control over the property and the operations of the school.
- *In re Financial Oversight and Management Board* – Court of Appeals holds, as a matter of first impression, that Fifth Amendment precluded impairment or discharge of prepetition claims for just compensation in bankruptcy under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA)
- Substantive land use case from the Michigan Supreme Court here.
- Summary of Texas Government Code Chapter 809: Baker McKenzie
- West Virginia Penalizes Banks Including JPMorgan, Goldman for Coal ‘Boycotts’
- And finally, Oh, The Irony – Midwest Hellhole Edition is brought to us this week by *City of Gary v. Nicholson*, in which the standard-issue xenophobes crawled out of their holes to object to a symbolic city ordinance welcoming immigrants. We were about to launch into our standard-issue outrage at this (very, very unisolated) incidence of intolerance until we took a closer look. Gary? Gary, Indiana? The Most Miserable City in America Gary? We’re gonna go ahead and second the motion that absolutely no one – immigrant or otherwise – should be welcomed to Gary. And finally, finally, we’ll be leaving you – purposefully shorn of context – with this glorious quote from this week’s *Vess v. City of Dallas*, “resident was seized when employee kicked him in the head.” Cheers.

PUBLIC RECORDS - CALIFORNIA

Essick v. County of Sonoma

Court of Appeal, First District, Division 4, California - June 29, 2022 - Cal.Rptr.3d - 80 Cal.App.5th 562 - 2022 WL 2339453

Elected county sheriff, against whom harassment complaint had been filed with county, moved for preliminary injunction to bar county's release of complaint, as well as report and related documents prepared by independent investigator, after local newspaper requested such release pursuant to California Public Records Act (CPRA).

The Superior Court denied motion. Sheriff appealed.

The Court of Appeal held that:

- County was not sheriff's employing agency;
- County did not take on role of sheriff's employer; and
- County's agreement that investigation would comply with Public Safety Officers Procedural Bill of Rights Act (POBRA) did not estop county from disclosing complaint, report, and related documents.

County, with which harassment complaint had been filed regarding county sheriff, was not sheriff's "employing agency," and thus complaint, as well as report and documents prepared by investigator, were not personnel records, as used in statute that protected as confidential information obtained from peace officers' personnel records, or confidential files related to investigation of complaint by member of public, for purposes of provision of California Public Records Act (CPRA) that protected from disclosure records the disclosure of which was prohibited by law, even though county paid sheriff; sheriff was public official elected by county voters, county board of supervisors, which had oversight responsibility over sheriff, lacked power to hire, fire, or discipline him, and complaint, report, and documents had no consequence for sheriff's duties or compensation.

County, by commissioning investigatory report after member of public filed harassment complaint against elected county sheriff, did not take on role of county sheriff's employer, for purposes of statutes that protected as confidential information obtained from peace officers' personnel records and confidential files related to investigation of complaint by member of public, and thus provision of California Public Records Act (CPRA) that protected from disclosure records the disclosure of which was prohibited by law did not apply.

County's agreement that investigation into harassment complaint filed against elected county sheriff would comply with Public Safety Officers Procedural Bill of Rights Act (POBRA) did not estop county from disclosing complaint, or subsequent investigatory report and related documents, pursuant to California Public Records Act (CPRA), even though sheriff argued such agreement created enforceable legal promise that records would be confidential; nothing in POBRA statutory scheme explicitly granted or mentioned confidentiality from CPRA requests, such that there was no misrepresentation or concealment of material facts, and if report and findings were to be treated as confidential, only protection came outside of POBRA, from penal code provisions related to disclosure of documents.

EMINENT DOMAIN - FLORIDA

Lemon Bay Cove, LLC v. United States

United States Court of Federal Claims - July 15, 2022 - Fed.Cl. - 2022 WL 2793949

Owner of wetlands comprised of submerged land and mangroves filed suit against United States, claiming that Army Corps of Engineers effected taking by denying owner Clean Water Act (CWA) permit to fill property in order to build 12-unit residential development on property.

Bench trial was held.

The Court of Federal Claims held that:

- Corps' denial of permit did not effect categorical taking, and
- Corps' denial of permit did not effect regulatory taking under *Penn Central*.

Army Corps of Engineers' denial of Clean Water Act (CWA) permit to fill 2.08 acres and to build 12-unit residential project on owner's wetlands comprised of submerged land and mangroves did not constitute categorical taking requiring just compensation, under Fifth Amendment; Corps' denial of permit did not deprive property of all economic value, as owner's persistence in pursuing development of 12-unit footprint for its own financial reasons, rather than considering smaller footprint, prevented Corps' consideration of any other economically viable uses of property.

Owner of wetlands comprised of submerged land and mangroves lacked reasonable investment-backed expectations sufficient to satisfy *Penn Central* regulatory taking requirements, based on Army Corps of Engineers' denial of Clean Water Act (CWA) permit for owner to fill 2.08 acres of property and build 12-unit residential project, where owner was aware at time of purchase that Corps' requirement of obtaining permit was longstanding regulatory restraint impacting potential development of owner's property.

MUNICIPAL ORDINANCE - INDIANA

City of Gary v. Nicholson

Supreme Court of Indiana - July 21, 2022 - N.E.3d - 2022 WL 2841364

State residents filed action seeking declaratory judgment that city's "welcoming ordinance" establishing commitment to protecting rights of immigrants violated state law and injunction preventing city from enforcing it.

Parties filed cross-motions for summary judgment, and the State intervened. The Superior Court entered summary judgment in favor of residents and entered injunction. City appealed. The Court of Appeals affirmed in part, reversed in part, and remanded with instructions.

On petition to transfer, the Supreme Court held that:

- Statute providing private right of action to compel enforcement with immigration laws did not confer standing;
- Residents lacked standing under public-standing doctrine; and
- State's intervention did not preclude dismissal based on residents' lack of standing.

Statute providing that, if a governmental body violates laws relating to citizen and immigration status information and enforcement of federal immigration laws, a person lawfully domiciled in Indiana may bring an action to compel the governmental body to comply with the laws, creates a

private right of action, but it does not confer standing to bring such an action because it lacks an injury requirement; thus, a person lawfully domiciled in Indiana may have a statutory cause of action, but that does not mean the person has necessarily sustained an injury essential to obtaining judicial relief.

Indiana residents lacked standing under public-standing doctrine to bring action seeking declaratory judgment that city's "welcoming ordinance" establishing commitment to protecting rights of immigrants violated state law and injunction preventing city from enforcing it, in absence of allegations that they were injured.

State's intervention in action by Indiana residents seeking declaratory judgment that city's "welcoming ordinance" establishing commitment to protecting rights of immigrants violated state law and injunction preventing city from enforcing it did not preclude dismissal based on residents' lack of standing, where state did not file separate complaint, sought no relief from city, intervened only to offer its view of the meaning of the relevant statutory provisions, and conceded that dismissal would be appropriate if residents lacked standing.

ZONING & PLANNING - MASSACHUSETTS

City of Boston v. Conservation Commission of Quincy

Supreme Judicial Court of Massachusetts, Suffolk - July 25, 2022 - N.E.3d - 2022 WL 2911830

City sought certiorari review of local conservation commission's denial of city's application for permission to build a bridge that would impact wetlands, pursuant to Wetlands Protection Act and local wetlands ordinance.

The Superior Court Department allowed city's motion for partial judgment on the pleadings, after which the Superior Court Department entered a final judgment. Commission appealed.

The Supreme Judicial Court held that Department of Environmental Protection's (DEP) superseding order of conditions preempted the commission's denial of city's application.

Department of Environmental Protection's (DEP) superseding order of conditions pursuant to Wetlands Protection Act preempted local conservation commission's denial of city's application for permission to build a bridge to the extent that commission's decision was premised on impacts related to access road, where commission stated that it was unable to assess cumulative wetlands impacts under local wetlands ordinance, the impacts with which commission's consultants and commission were concerned were within DEP's purview, and differing analyses for any consideration by commission of impacts other than those that the DEP found meaningful were not due to local ordinance being more stringent than Act.

ZONING & PLANNING - MICHIGAN

Saugatuck Dunes Coastal Alliance v. Saugatuck Township

Supreme Court of Michigan - July 22, 2022 - N.W.2d - 2022 WL 2903871

Environmental organization with local residents as members brought action in which it sought review of township zoning board of appeals' separate decisions that organization lacked standing to

appeal the grant of conditional, preliminary approval and the later grant of final approval to proposed residential site condominium project that included a marina and boat basin with boat slips.

The Circuit Court affirmed the board's determination that organization lacked standing to appeal the conditional, preliminary approval, the Circuit Court, affirmed the board's determination that organization lacked standing to appeal the final approval. Organization appealed both circuit court decisions. After consolidating the actions, the Court of Appeals affirmed in part and remanded. Organization applied for leave to appeal.

On the application for leave to appeal, the Supreme Court held that to be a "party aggrieved" by a zoning board of appeals decision, an appellant must have participated in the challenged proceedings by taking a position on the contested proposal or decision, must claim some protected interest or protected personal, pecuniary, or property right that will be or is likely to be affected by the challenged decision, and must provide some evidence of special damages arising from the challenged decision; overruling to a limited extent *Joseph v Grand Blanc Twp*, 5 Mich App 566, 147 N.W.2d 458; *Olsen v Chikaming Twp*, 325 Mich App 170, 924 N.W.2d 889; and other cases.

DISCIPLINE - NEW YORK

Matter of Genova

Supreme Court, Appellate Division, Second Department, New York - July 13, 2022 - N.Y.S.3d - 2022 WL 2709358 - 2022 N.Y. Slip Op. 04548

As part of attorney disciplinary proceeding, the Attorney Grievance Committee (AGC) moved to confirm special referee's report sustaining charges of professional misconduct against attorney, who was deputy town supervisor, and to impose discipline.

The Supreme Court, Appellate Division, held that disbarment was warranted for attorney's misconduct involving dishonesty, fraud, deceit, or misrepresentation.

Disbarment was warranted for misconduct of attorney, who was deputy town supervisor, in helping bidder on municipal contracts in acquiring unfair advantage, orchestrating loan guarantees by town for bidder, accepting bribes from bidder in form of car rides, meals, and discounts, and failing to disclose that town was guarantor for bidder on various financial documents; in aggravation, attorney engaged in corruptive practices as public official for personal and professional benefit, jeopardized financial well-being of town, received thousands of dollars in benefits from bribes, and damaged public's trust.

IMMUNITY - NORTH DAKOTA

Lovro v. City of Finley

Supreme Court of North Dakota - July 21, 2022 - N.W.2d - 2022 WL 2840065 - 2022 ND 145

Property owner brought action against city alleging negligence, gross negligence, and breach of contract seeking damages after city's water line broke and caused damage to owner's driveway and

basement.

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

The Supreme Court held that:

- District court did not abuse its discretion in refusing to allow additional time for owner to conduct discovery before deciding city's motion for summary judgment;
- Owner failed to establish that city could or did waive its governmental immunity, and thus, owner's claims were barred by governmental immunity; and
- Owner waived issue for appellate review that district court erred in granting summary judgment dismissing his breach of contract claim.

Property owner failed to establish that city could or did waive its governmental immunity, and thus, owner's claims were barred by governmental immunity in action seeking damages against city alleging negligence and gross negligence after city's water line broke and caused damage to owner's driveway and basement; owner failed to cite any case law which provided that the discretionary function exception could be waived, and owner alleged the damages were caused by city's failure to property operate, maintain, repair, and inspect their water system.

BANKRUPTCY - PUERTO RICO

In re Financial Oversight and Management Board

United States Court of Appeals, First Circuit - July 18, 2022 - F.4th - 2022 WL 2800724

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

Creditors objected. The United States District Court for the District of Puerto Rico overruled objections, and confirmed plan. Teachers' associations appealed and filed motions for stay pending appeal. The District Court denied stay motions. Board appealed to challenge ruling of Title III court that Fifth Amendment precluded plan from impairing prepetition claims for just compensation that arose under Takings Clause.

The Court of Appeals held that:

- Confirmation order under Title III of PROMESA could not be considered as categorically exempting takings claims from discharge as exercise of discretion;
- On issue of first impression, Fifth Amendment precluded impairment or discharge of prepetition claims for just compensation in bankruptcy under Title III of PROMESA; and
- Fifth Amendment did not permit impairment of prepetition claims for just compensation simply because claimants no longer possessed rights in taken property postpetition.

Live controversy existed over issue of otherwise valid Fifth Amendment takings claims arising prepetition could be discharged in bankruptcy proceedings under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) without payment of just compensation; although confirmed plan of adjustment provided for full payment of takings claims, plan expressly provided for such full payment only if Title III court's ruling on takings claims was

upheld on appeal.

Confirmation order under Title III of Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) could not be considered as categorically exempting takings claims from discharge as exercise of discretion, since Title III court necessarily determined that discharging valid, prepetition takings claims for less than just compensation would violate Fifth Amendment and render plan providing for such discharge unconfirmable under PROMESA, Title III court never purported to exercise any discretionary authority in exempting takings claims from discharge, and Title III court would have to had reason for exercising its discretion in that manner and only possible reason could be that Fifth Amendment required exempting takings claims from discharge.

Fifth Amendment precluded impairment or discharge of prepetition claims for just compensation in bankruptcy under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA).

Fifth Amendment did not permit impairment of prepetition claims for just compensation simply because claimants no longer possess rights in taken property after governmental obligor has sought bankruptcy relief.

EMINENT DOMAIN - RHODE ISLAND

Johnston Equities Associates, LP v. Town of Johnston

Supreme Court of Rhode Island - July 1, 2022 - A.3d - 2022 WL 2378319

Owner of federally subsidized affordable-housing apartment complex brought continuing trespass action against town, town finance director, and town director of public works, alleging that they allowed sewage from town's sewer pipelines to be discharged into apartment complex's private sewer line.

The Superior Court entered judgment on jury verdict for complex owner but reduced $1.2 million award to $100,000 based on statutory cap on damages. Complex owner appealed, and town cross-appealed.

The Supreme Court held that:

- Complex's general contractor, who was a partner in complex's owner, did not have apparent authority to enter into agreement with town to transfer ownership of private sewer line to town;
- Evidence was insufficient to show that town's use of apartment complex's private sewer line was open and notorious, and thus town did not have a prescriptive easement;
- Town's continuing trespass was a "proprietary function" to which the statutory cap on tort damages did not apply;
  Public duty doctrine did not apply;
- Complex owner could recover prejudgment interest beginning from date on which it submitted presentment letter to the town council seeking damages;
- Evidence was sufficient to support finding of causation; and
- Bills, invoices, and general ledgers were supported by testimony of parties who performed the work that was the subject of those documents, and thus were admissible.

Town's continuing trespass through connection of town sewer line to apartment complex's private sewer line was not part of the design and construction of the system, and thus was not a "governmental function" but instead was a "proprietary function" to which the statutory cap on tort

damages did not apply; town was unaware of the connection until shortly before the trespass action was filed, plans and maps did not show any plan for the town to tie into the private line, and claim was that town, by allowing its sewage to flow into the private line, wrongfully operated the town's sewage system.

LIABILITY - TEXAS

Vess v. City of Dallas

United States District Court, N.D. Texas, Dallas Division - June 23, 2022 - F.Supp.3d - 2022 WL 2277504

City resident experiencing homelessness brought action against city and city fire-rescue department employee, asserting claims under § 1983 for excessive force and municipal liability arising from incident in which employee assaulted resident when employee responded to grass fire. Employee moved for judgment on the pleadings, city moved to dismiss.

The District Court held that:

- Resident was seized when employee kicked him in the head;
- Resident failed to state claim for municipal liability based on alleged custom or practice of inaction and attitude of indifference towards providing medical treatment for persons with mental health conditions and persons experiencing homelessness;
- Resident sufficiently alleged that city had practice or custom of protecting previously-disciplined and unfit fire department employees, as element of § 1983 claim for municipal liability;
- Resident sufficiently alleged that city's practice or custom of protecting previously-disciplined and unfit fire department employees was moving force behind department employee's actions; but
- Resident failed to sufficiently allege that city was deliberately indifferent in providing inadequate training regarding how to detain and treat persons with mental health conditions and persons experiencing homelessness.

IMMUNITY - VIRGINIA

Patterson v. City of Danville

Supreme Court of Virginia - July 7, 2022 - S.E.2d - 2022 WL 2517205

Inmate's estate brought action against city jail physician, alleging that physician committed medical malpractice by failing to provide appropriate care to inmate, who died a few months after suffering from cardiac arrest in jail.

Danville Circuit Court granted physician's plea in bar to estate's negligence claim and granted physician's demurrer to estate's gross negligence claim. Estate appealed.

The Supreme Court held that:

- Physician was entitled to derivative sovereign immunity, and
- Physician's conduct did not rise to level of gross negligence.

Provision of constitutionally and statutorily required medical care to inmates at city jail involved exercise of powers and duties of a government conferred by law on the municipality, so as to qualify

as a governmental function subjecting the city to sovereign immunity from tort liability arising therefrom, for purposes of determining jail physician's derivative sovereign immunity, as a municipal employee, from medical negligence claim alleging that physician failed to provide appropriate care to inmate who died a few months after suffering from cardiac arrest in the jail.

City jail physician was entitled to derivative sovereign immunity from inmate's estate's medical negligence claim arising from allegations that inmate died after suffering from cardiac arrest at jail, for which physician failed to provide appropriate care; physician's city employer had constitutional and statutory duty to provide medical care to incarcerated patients and chose physician as its agent to fulfill that duty, all of the allegations in the complaint involved discretionary, not ministerial, medical decisions made by physician, and city had great measure of control over physician, as he had no control over patients he was obligated to treat, he did not bill inmates for his services, he was required to treat inmates at the jail using city-owned equipment and supplies, and he was subject to supervision of jail director.

Inmate's estate's allegations of jail physician's medical malpractice concentrated on physician's inadequacy in treating inmate, who died a few months after suffering from cardiac arrest in jail, not a heedless and palpable violation of legal duty by a physician who refused to show even slight diligence or scant care, and thus, the allegations did not rise to level of gross negligence that would pierce physician's derivative sovereign immunity defense; complaint provided long list of medical tests and treatments that inmate received and alleged that physician misdiagnosed inmate, but physician's multiple efforts to treat inmate, whether or not negligently performed, demonstrated that physician was exercising some degree of care in his capacity as a physician.

TAX - NEW JERSEY

Galloway Education, LLC v. Township of Galloway

Tax Court of New Jersey - June 24, 2022 - 2022 WL 2286327

The Atlantic Community Charter School, Inc. (ACCS), a New Jersey not-for-profit corporation, was issued a charter by the New Jersey Department of Education to operate a charter school pursuant to the Charter School Program Act of 1995.

ACCS sought to expand the school facilities. Comprehensive Recovery Services, Inc., a nonprofit corporation of the State of Colorado, established Galloway Education, LLC, a Delaware limited liability company. The sole member, which has all the interest in Galloway Education, is Comprehensive Recovery Services.

To fund the expansion project, bonds which totaled $11,165,000 were sold by Galloway Education to investors of Hamlin Capital Management, LLC, a for-profit investment firm located in New York. Hamlin is designated the Bondholder Representative so long as the majority of the outstanding bonds are owned by persons for whom Hamlin serves as an investment advisor. The proceeds of the bonds were utilized by Galloway Education to purchase the land and construct an addition to the school.

Galloway Education sought exemption from property taxes as a not-for-profit entity. Galloway sought the exemption under a 1931 amendment exempting properties utilized for the moral and mental improvement of men, women and children that are owned by a holding company.

The Tax Court noted that, although there exists a lease agreement between Galloway Education and

ACCS, a closer review of the lease agreement shows that the Bondholder Representative exercises significant control as would a landlord. Even outside default, the Bondholder Representative has significant control over the property and also has a say over the operations of the school.

Essentially, the school is merely a tenant of the property under a lease and pledge agreement in which the Bondholder Representative has extensive control. The powers conferred to the Bondholder Representative ensure the flow of revenues from the school to the bondholders and that this situation is not much different than a for-profit entity directly leasing its property to the school.

“It is one thing for a lender or a Bondholder Representative to have a mortgage on a property owned by a non-profit, it is quite another thing for a profit-making entity to have the ability to seize and obtain full and unfettered control of the not-for-profit entity for its own purposes.”

“Here, the structure of deal is plainly for the benefit of the bondholders represented by the Bondholder Representative. Control of the nominally not-for-profit Galloway Education can be transferred at the demand of the Bondholder Representative to a for-profit to protect the profits of the bondholders. The not-for-profit in this case exists to benefit a for-profit endeavor.”

“There is nothing sinister or wrong with the Bondholder Representative ensuring that a profit is made. The court realizes that the avenues for financing would be limited without the potential for a profit. However, a tax exemption here would allow ‘indirect taxpayer subsidization’ of the bondholders. This would confer a competitive advantage upon the bondholders at the expense of the other taxpayers in the municipality.”

Fitch: Timely US State Budgets Facilitated by Revenue Gains

Fitch Ratings-New York-28 July 2022: Budget enactment before the start of fiscal year 2023 (July 1 for 46 states) for practically all US states is an improvement from the years preceding the pandemic when a number of states delivered belated state budgets, Fitch Ratings says. Seven states entered fiscal 2020, the last pre-pandemic budget cycle, without an enacted budget, according to the National Conference of State Legislatures (NCSL). Fitch attributes budget timeliness this year to large revenue surpluses in fiscal 2022 for many states, easing fiscal decision making.

Earlier this month Pennsylvania’s legislature and governor reached agreement on a budget for fiscal 2023, leaving Massachusetts as the only state without an enacted full-year fiscal plan. Massachusetts is close to finalizing its 2023 budget, as the legislature unanimously voted to approve the budget on July 19, and it was sent to the governor, who has 10 days to review it. In each of the last six years, Massachusetts started the fiscal year without an enacted budget.

Fitch expects US growth to slow sharply in 2023 to 1.5% from 2.9% in 2022, due to rapidly rising interest rates. States are well positioned for slower growth, as a result of generally prudent fiscal choices made with tax revenue growth that far outpaced budget projections for two consecutive fiscal years.

States are focused on building fiscal resilience by building up reserves, paying down liabilities and using federal aid for one-time measures such as infrastructure. Most tax changes seem to be prudent, reflecting states’ caution with inflationary conditions and risk of recession. States have also made investments in government employee salaries.

Pennsylvania’s slight budget delay appeared to reflect policy and fiscal questions around how to

utilize significant revenue surpluses reported for the current fiscal year. This is a twist on past budget deliberations, which revolved around fiscal constraints. The commonwealth historically delayed its budget enactment into the start of each new fiscal year with sometimes contentious negotiations between the governor and legislative leadership extending well past July 1.

The Pennsylvania budget is somewhat indicative of other states' budgets in making preparations for deteriorating economic conditions, such as a $2.1 billion deposit to its rainy-day fund and leaving a $3.6 billion unallocated balance in the general fund, despite calls for more substantial policy actions in areas such as K-12 education. The commonwealth's Independent Fiscal Office (IFO) projects a sizable yoy decline in net tax revenue in fiscal 2023 of nearly $1.5 billion, or just over 3% in fiscal 2023, primarily citing weakening macroeconomic trends. This is $1.3 billion worse than the official budget estimate and follows tax revenue growth of $5.5 billion (14.4%), which was ahead of the official estimate in fiscal 2022, and boosted by the waning effects of pandemic-driven federal fiscal and monetary stimulus.

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Cyber Insurance Price Hike Hits Local Governments Hard.

Some rates have more than doubled, and many insurers require new security protections.

Horry County, South Carolina, officials were in for a shock earlier this year, when they discovered their cyber insurance premium would be spiking from $70,000 last year to about $210,000.

And if they couldn't satisfy the insurance company's requirements and prove they had the robust controls needed to protect and defend themselves against cyberattacks, they learned, they wouldn't be able to get their $5 million policy renewed at all.

"The insurance companies have you over a barrel. There was not a lot of negotiation," said Tim Oliver, the county's chief information officer.

Continue reading.

governing.com

July 29, 2022 • Jenni Bergal, Stateline

How Local Governments Are Handling a Threat They Can't See.

The proliferation of cyberattacks has prompted Pennsylvania municipalities to take extra steps to secure their systems. Here's what they're doing.

In 2018, an Allentown city employee took a city laptop with him on a work trip. During that trip, he opened a phishing email that ultimately cost the city more than $1 million in repairs to its digital infrastructure. Hackers, based in Ukraine, hit the Lehigh Valley city with malware known as Emotet—which the federal Cybersecurity & Infrastructure Security Agency ominously describes as "an advanced Trojan primarily spread via phishing email attachments and links that, once clicked, launch the payload"—that began to self-replicate, steal credentials and work its way across their computer systems.

"A colleague came down the hall and said, 'Hey, my account's locked'—and I went to sign in and found that my account was locked" as well, Matthew Leibert, Allentown's longtime chief information officer, recalled of the moment he knew something was seriously wrong—a realization that hit him physically as well. "I definitely felt sick," he added.

Four years—and millions of dollars of sunk costs later—his staff still struggles to keep up with the monitoring and maintenance required to keep their systems safe for this city of more than 120,000 residents.

Continue reading.

Route Fifty

By Harrison Cann

JULY 28, 2022

Municipals & Climate Change Series: Drought & Extreme Temperatures.

Municipal bond issuers are often linked to tangible, physical assets directly exposed to the effects of climate change. Over the long term, we believe municipalities will increasingly have to contend with the effects of this exposure, such as preparing for rising sea levels, managing constraints on local water supply, or rebuilding infrastructure after a hurricane or wildfire. This series will explore how various climate-related risks and policy responses could impact municipal issuers and describe our approach to assessing those risks.

In recent years, recurring drought conditions and rising temperatures have negatively affected large parts of the United States. According to the National Drought Mitigation Center, 76.4% of the western US was experiencing drought conditions at the end of June, with 38.1% under extreme

drought.1 Continually hot, dry conditions have constrained local water supply for municipal water and sewer utilities and could stress public power utilities. Here, we'll examine how these conditions can affect municipal utilities and how we approach these risks in our analysis.

Water and Sewer Utilities

With drought conditions increasing in frequency and severity, water supplies for retail and wholesale providers are likely to remain constrained, particularly in the western US. Persistent drought has forced many utility providers to rely more on expensive imported water from state or regional sources rather than local sources. However, state and regional sources generally have many stakeholders and some have begun reducing annual allocations to retail providers, underscoring the importance of water rights, which determine priority access to water supply. Additionally, some municipalities have implemented voluntary or mandatory conservation measures to help combat supply challenges, potentially decreasing customer demand.

Continue reading.

advisorperspectives.com

by Ryan Friend of Loomis, Sayles & Co., 7/29/22

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6 Things For State and Local Governments to Watch With Democrats' Climate and Tax Deal.

With billions in proposed spending, the package could affect both government programs and regional economies.

The unexpected climate and tax deal Democrats in the U.S. Senate announced this week raises the possibility of billions in new federal spending that would help to support state and local government programs, while also potentially spurring new economic development and jobs around the country.

Central to the plan is $369 billion for programs meant to cut carbon emissions, restore land, reduce pollution in disadvantaged neighborhoods, lower energy costs and strengthen domestic manufacturing of products like wind turbines and electric vehicles. On the revenue and savings side, estimates released by Democrats show the bill would raise $739 billion through a mix of drug pricing reforms and tax measures, including a 15% corporate minimum tax.

Democrats say the deal would not increase taxes on households earning up to $400,000 a year or small businesses. And the watchdog group Committee for a Responsible Federal Budget says the bill would reduce federal deficits by more than $300 billion over a decade.

Continue reading.

Route Fifty

By Bill Lucia

JULY 28, 2022

Muni Defaults: Should Investors Worry?

Summary

- At the end of April, Moody's Investors Service released its annual municipal bond market snapshot, US municipal bond defaults, and recoveries, 1970-2021, with updates through 2021.
- Even though the average five-year municipal default rate since 2012 has been 0.1%, compared to 0.08% throughout the study period (1970-2021), it remains extremely low.
- According to Moody's report, there were only 114 distinct Moody's-rated defaults, representing a little over $72 billion, across the whole universe of more than 50,000 different state, local, and other issuing authorities between 1970 and 2021.

Continue reading.

Seeking Alpha

Jul. 28, 2022

S&P Updated U.S. Transportation Infrastructure Activity Estimates Show Air Travel Normalizing And It's A Long Road Back For Transit Operators.

Key Takeaways

- Evolving remote or hybrid work practices, the growth of online shopping, the persistence of coronavirus variants, and other factors will delay indefinitely a recovery in public transit ridership to pre-pandemic levels compared with other U.S. transportation infrastructure asset classes.
- Our updated activity estimates reflect slower but still resilient economic growth and inflationary pressures, combined with momentum observed across the broader transportation sector.
- Our current baseline activity estimates show public transit recapturing about 60% of pre-pandemic activity by the end of 2022 and only about 75% by the end of 2025; and U.S. systemwide enplanements returning to near pre-pandemic levels by the end of this year, with the international component continuing to lag the broader domestic rebound.
- Our current downside activity estimates show public transit ridership returning to only 70% of pre-pandemic levels by the end of 2025, and U.S. systemwide enplanements returning to near pre-pandemic levels by the end of 2023.

Continue reading.

27 Jul, 2022

Inflation Drives Unstable Bond Financing in First Half of 2022: Ziegler

Driven by inflation, bond financing has been slow and unstable during the first half of the year, according to specialty investment bank Ziegler.

After previously raising the short-term interest rate by 75 basis points, the Federal Reserve is

expected to attempt to slow the market again by raising “its benchmark overnight interest rate by three-quarters of a percentage point to a target range of 2.25% to 2.50% at the end of a two-day policy meeting on Wednesday,” Reuters reported.

According to Ziegler, the issuance of senior living tax-exempt debt for the first half of 2022 was down approximately 9% from the same period last year. That compares with a change of 41% in 2021 over 2020, due to the pandemic. Total par volume was slightly below last year at nearly $1.6 billion through June 30, compared with nearly $1.8 billion for the same period in 2021, Ziegler said.

Continue reading.

McKnights Senior Living

by Kathleen Steele Gaivin

JULY 27, 2022

Where Traditional Public Financing Fails, Blockchain Steps In.

Both private and government funding have weaknesses. Crypto networks offer a third way to coordinate big collective projects.

This week saw big moves from the U.S. Securities and Exchange Commission. First, the regulator declared several digital assets “securities” in the course of lobbing insider-trading allegations at an employee of crypto exchange Coinbase. The SEC then opened an investigation into Coinbase’s own alleged unauthorized sale of securities.

That’s huge grist for those trying to read the tea leaves of U.S. crypto regulation, but I want to take a big step back and think about the underlying issue of how societies fund large collective projects. Securities are a well understood way of doing that, and the SEC regulates that system in large part to keep money flowing to genuine, socially useful investments.

But one of the major promises of cryptocurrency networks is an entirely new approach to pooling and deploying capital, one that complicates the traditional split between public and private funding. It’s a major reason crypto has captured the global imagination and a key topic for those who would like to see regulators strike a balance between protecting the public and fostering innovation.

Continue reading.

Yahoo Finance

by David Z Morris

Fri, July 29, 2022

Privatized Student Housing: A Guide for Municipal Bond Investors.

Municipal bonds are a key source of financing for on-campus or university-affiliated

residences at many colleges.

Colleges and universities fund student housing and related facilities with operating surpluses, reserve draws, philanthropic receipts, appropriations, and, in many cases, proceeds from municipal bond offerings. Public and private colleges are not strangers to the municipal market. In fact, over the last five years, four-year universities accounted for 6% of total municipal issuance.1

A substantial portion of that issuance can be traced to financing auxiliary operations—namely housing, dining, and recreational facilities.

In a traditional, higher-education debt transaction, a university will borrow for construction, and bonds will be backed by either the full faith and credit of the university, or some pledge of university revenues. In some cases, a university will create a narrow auxiliary pledge to accommodate these housing borrowings separate from its broader, primary lien. These narrower pledges come with varying degrees of incremental credit risk and are typically rated one or more notches below the university's primary rating. Regardless of structure, however, in all these cases, the university is the ultimate borrower, and bondholder security is explicitly derived from university revenues.

Continue reading.

Lord Abbett

By Richard T. Gerbino

July 26, 2022

The View From Muniland: Lions And Tigers And Bear Markets?

Summary

- This has been a historical year in fixed income, and municipals are no exception. Yields rose dramatically this year in anticipation of Fed moves, as the market is trying to get ahead of the Fed as the Fed is trying to tame inflation.
- The largest reason being outflows in the municipal market. That's another record that was set, and that just forces bond managers to need to sell – and when there's more supply, that drives up yields.
- But one thing that I'd like to remind investors of [is] that if your time horizon is longer than the duration of your portfolio, you want yields to rise. You're begging yields to rise.

Continue reading.

Seeking Alpha

Jul. 27, 2022

A 2022 Bounce Back For Munis?

Joe Mysak, Editor of the Bloomberg Brief: Municipal Markets, discusses the latest news from the

municipal bond market. Hosted by Paul Sweeney and Matt Miller.

Listen to audio.

Bloomberg

Jul 29, 2022

Diddy, MacKenzie Scott Among Donors Boosting Howard University's Bond Rating.

- **Sean 'Diddy' Combs announced $1 million donation at BET Awards**
- **Howard's endowment has increased to $795 million in FY 21**

Aid to Howard University from the federal government and wealthy donors that include musician Sean "Diddy" Combs helped boost the school's credit rating in the municipal-bond market.

Moody's Investors Service upgraded the historically Black college in the nation's capital one notch to Ba1 from Ba2 and revised its outlook to stable from negative. The upgrade applies to about $49 million of taxable revenue bonds. It's the first upgrade for the school by Moody's since 2004.

"The upgrade of the issuer rating to Ba1 incorporates the university's improving operating performance, more effective enrollment management, revenue growth and liquidity gains," Dennis Gephardt, lead analyst at Moody's, wrote in the report. "Increased federal, state and private funds for Howard reflects a shifting societal trend for greater philanthropic and governmental financial support of the mission of minority serving institutions, a supportive credit element and key driver of the rating action."

Continue reading.

Bloomberg Markets

By Hadriana Lowenkron

July 25, 2022,

Vanguard Tells Investors Bonds Are Attractive After First-Half 'Horror Show'

- **Fixed-income team sees opportunities in corporates, munis, EM**
- **But not all market sectors have fully priced in slower economy**

Investors should look to bonds for income and as a hedge to equities again after fixed-income assets suffered a "horror show" first half, Vanguard Group Inc. said.

The $7.1 trillion money manager sees the TINA mantra — there is no alternative to equities — as a thing of the past with a weakening economy likely validating bonds as a portfolio diversifier, the firm's fixed-income team led by Sara Devereux wrote in a note on Monday.

"Corporates, municipals, high yield, and emerging markets present more opportunity than any time

in the recent past," according to the Vanguard team.

Continue reading.

Bloomberg Markets

By David Caleb Mutua

July 25, 2022

Should You Buy Muni Closed-End Funds?

Many investors are avoiding the bond market after another surprise inflation reading sparked fears of steeper-than-expected interest rate hikes. While that's not necessarily a bad idea, the sell-off in the bond market is creating some opportunities for value investors – especially in municipal bond-focused closed-end funds.

Let's take a closer look at why municipal bond-focused closed-end funds are attractive and whether you should invest.

Continue reading.

municipalbonds.com

by Justin Kuepper

Jul 26, 2022

Summary of Texas Government Code Chapter 809: Baker McKenzie

In brief

In an attempt to protect its oil and gas industry, Texas has passed legislation that seeks to punish investment firms that divest from fossil fuel related investments.

On 16 March 2022, the Texas Comptroller of Public Accounts, Glenn Hegar, sent a letter to 19 major financial companies which was not limited to US or Texas-based companies and included Japanese companies requesting verification that they do not engage in investment policies that result in the boycott of fossil fuel-based energy. This request was made pursuant to Texas Government Code Chapter 809: recent legislation prohibiting the Texas Government from investing in financial companies that take any action intended to penalize, inflict economic harm, or limit commercial relations with a company based on the company's involvement in fossil fuel-based energy.

Contents

1. Definition of boycott energy company
2. SEC scrutiny of ESG disclosure to investors
3. What happens next?

If the Comptroller determines that any of these companies is "boycotting energy company", the consequences are severe. The names of a financial company boycotting energy company will be published on a public list. Unless such financial companies cease boycotting energy companies within certain period thereafter, Texas Government entities will be prohibited from contracting with that company, will need to divest any interest held in that company and will be prohibited from further investing in that company. The ramifications of Chapter 809 are significant because the state-run investment funds that Texas is threatening to divest from impacted investments collectively hold hundreds of billions of dollars in assets. For example, some of the funds identified in the bill include the USD 214 billion Texas Permanent School Fund; and the Employees Retirement System of Texas and Texas Municipal Retirement System funds, both of which manage around USD 35 billion. As Texas Government Code Chapter 809 does not rely on extraterritorial application, rather it governs the application of investment policy, companies which do not have any subsidiary, branch or representative office in Texas will still be subject to this legislation.

Importantly, financial companies that fail to provide a response to the Comptroller's request before the 61st day from receipt are presumed to be boycotting energy companies and will be included on a public list. Since the original 19 letters, Comptroller Hegar has sent similar letters to around 160 other publicly traded investment companies, and he intends to send more in the near future.

In a Press Release, Comptroller Hegar stated that his frustration is rooted in financial companies that claim they are committed to the fossil fuel sector when directed to conservative, energy states, while conversely also pushing net-zero and other environmental, social, and governance (ESG) policies addressed towards the public sector. In an Open Letter to the Comptroller, the Lieutenant Governor of Texas, Dan Patrick, reiterated these sentiments, targeting specific companies he believed to be counteracting Texas fossil fuel-based energy companies' best interests.

The thrust of all of this is simple: Texas is attempting to push back on these new investment trends using its influence as a powerful institutional investor.

Definition of boycott energy company

While the potential consequences of being deemed a "boycotting energy company" by the Comptroller are intimidating, the terms within the legislation are still ambiguous enough to warrant uncertainty regarding whether a company is truly at risk.

For example, in Section 809.001(1), refusing to deal with a fossil fuel-based energy company is not considered boycotting if it is committed pursuant to an "ordinary business purpose." The state of Texas has yet to define what conduct would constitute an "ordinary business purpose," and it is unclear how this standard will be applied in practice. For example, based on the language of the statute, it is undecided as to whether refusing to invest in a risky fossil fuel industry, such as arctic oil drilling, would be allowable. Moreover, it is also uncertain whether Texas would consider hedging between green and fossil fuel-based energy for regular diversification purposes as an ordinary business purpose or a full-blown boycott.

While Texas was undoubtedly inspired to pass this legislation due to policy motivations surrounding its prominent oil and gas industry, the extent to which other fossil fuel industries are protected is uncertain. Boycotting an industry such as coal may not cause a similarly targeted response from Texas legislators, but based on the language of the legislation, it would still be considered to be boycotting energy companies.

SEC scrutiny of ESG disclosure to investors

In connection with capital markets, in the event that financial companies publicly declare their ESG policy, such financial companies must ensure that their response to the Comptroller is harmonized with any similar disclosure to investors or filing with The U.S. Securities and Exchange Commission.

Through the initiation of recent Enforcement Actions by the SEC, it is clear that the SEC plans to thoroughly investigate funds that claim to be environmentally responsible in order to ensure that they are accurately incorporating ESG factors into their investment selection process. Thus, ensuring that a response to the Comptroller is in line with any similar disclosure to investors or filing with the SEC is important.

What happens next?

Texas legislators have proven their willingness to protect the state's oil and gas sector, but it is unclear how they will apply the reach of Chapter 809 in the process.

We expect the Comptroller's office to provide further clarity over the coming months. We also predict that the Comptroller's office will continue to serve these questionnaires upon various financial institutions, both before and after the formalization and publication of the initial list of financial institutions that "boycott energy companies."

If your firm receives a letter from the Comptroller's office, action is imperative. The strict 60-day deadline to respond to the request excludes the possibility of extensions, so it is important that a carefully-tailored response is provided on a timely basis. Your firm should also consider what, if any, further actions can be taken to ease the Comptroller's concerns.

If your firm has not yet been contacted by the Comptroller's office, we recommend considering whether Chapter 809 poses a material risk and if so, developing an action plan. As noted above, the deadline cannot be extended, so it is better to begin to gather documents and brainstorm potential responses before the clock starts running.

Finally, Texas is not alone in the fight to keep its fossil fuel industry entrenched. Similar bills that punish fossil fuel divestment and discourage carbon-neutral commitments have been introduced in other states, including West Virginia, Oklahoma, Indiana, and Louisiana. It appears that legislation to protect the fossil fuel industry is a primary goal for the Republican party this year, but the enforcement process remains uncertain. Thus, financial firms invested in states that have prominent fossil fuel-based energy industries should also begin to think about how they would respond to a similar request.

Baker McKenzie – Peter K.M. Chan, Masato Honma, Stephen W. Long, Sydney Hunemuller, Hiroyuki Kitamura and George Patrick

July 28 2022

Legacy Retailer Rebates Costing States Billions Under Scrutiny.

- **Illinois, Missouri consider reform to vendor discounts**
- **Retailers fight back pointing to sales tax complexity**

When states started levying sales taxes almost a century ago, some gave shopkeepers small rebates for manually collecting and submitting the money. Now those rebates cost states more than $1 billion a year, and critics say they make no sense in the age of automated tax systems.

Budget hawks in a handful of states are exploring options to either jettison or trim these “vendor discount” arrangements, which were intended to compensate sellers for serving as agents of state revenue departments. Illinois Gov. J.B. Pritzker (D) often refers to the programs as “corporate tax loopholes.” And Missouri’s state auditor, Nicole Galloway, worries that her state offers the most generous vendor discount in the country.

“Missouri’s discount gives the biggest benefits to the wealthiest retailers just for turning over sales tax paid by consumers,” Galloway said in a recent statement. “Ordinary citizens don’t get a discount for paying taxes on time.”

Continue reading.

Bloomberg Tax

by Michael J. Bologna

July 25, 2022,

Cox-backed OpenGov to Buy Government Software Maker Cartegraph in Bet on Cities Upgrading Tech.

- **Combined company will be valued at about $1.25 billion**
- **Deal comes as public agencies upgrade infrastructure**

Startup OpenGov is acquiring Cartegraph Systems LLC, a software provider for public agencies, in a deal that could benefit from the efforts of local governments to modernize their technology.

The combined company has a valuation of about $1.25 billion, according to people familiar with the matter who asked not to be identified because the information was private.

OpenGov, which gives cities tools to manage budgets and resources, was valued at $750 million in 2021, according to data provider Pitchbook.

Continue reading.

Bloomberg Markets

By Jennah Haque

July 27, 2022

McKinsey Payments in Puerto Rico's Bankruptcy Come Under Fire.

- **Advocacy groups ask bankruptcy judge to deny further payments**
- **Group alleges company has conflicts of interest in Puerto Rico**

A coalition of community groups is asking the judge overseeing Puerto Rico's historic bankruptcy to withhold additional payments to McKinsey & Co. for its work on the island's debt restructuring, alleging the management-consulting firm has conflicts of interest that it has failed to fully disclose.

In a letter sent this week to US District Court Judge Laura Taylor Swain, a group called Power 4 Puerto Rico said McKinsey's final fee application should be denied, citing the court's prerogative under the Puerto Rico Recovery Accuracy in Disclosures Act of 2021, or PRRADA.

As a consultant to the federally appointed Financial Oversight and Management Board, or FOMB, McKinsey has run up a tab of $120 million helping the panel oversee the territory's finances, according to a Wall Street Journal story last month. At the same time, the company helped the board review high-profile public contracts that ultimately went to McKinsey clients.

Puerto Rico's bankruptcy is the largest ever in the US municipal bond market, and legal and professional fees alone total almost $1 billion.

The oversight board "has allowed for the untransparent procurement of advisors and consultants for millions of dollars while alleging the need to cut payroll for public employees," Power 4 Puerto Rico said in the letter, which is dated July 28. "The least that should be done is to prevent Puerto Rico's taxpayer dollars from filling the coffers of consultants that have not complied with PRRADA and their fiduciary responsibility as a consultant."

In a statement, McKinsey said it will continue to be "forthright and transparent regarding its work in Puerto Rico."

"We follow strict protocols to prevent conflicts of interest in our engagements and have complied with our disclosure requirements under the law," a company spokesperson said in the statement. "We are proud to support the FOMB on what is arguably the most complex fiscal turnaround of any jurisdiction in U.S. history, and are confident we have provided our advice with objectivity and independence."

Power 4 Puerto Rico is a US national coalition that includes the Center for Popular Democracy, Alianza for Progress, the Center for American Progress and the Hispanic National Bar Association.

Bloomberg Markets

By Jim Wyss

July 29, 2022

West Virginia Penalizes Banks Including JPMorgan, Goldman for Coal 'Boycotts'

The state is cutting ties with four banks and asset manager BlackRock, saying their stance on coal is harming its economy

West Virginia will no longer award state business to a group of banks including JPMorgan JPM Chase & Co. and Goldman Sachs Group Inc., saying their efforts to combat climate change amount to a boycott of the state's coal industry.

State Treasurer Riley Moore said the banks' decisions to curb financing for coal companies is harming the state's economy, limiting tax revenues and costing residents jobs. State lawmakers had passed a law earlier this year giving him the authority to create the list of banned entities, which also includes Wells Fargo & Co., Morgan Stanley and asset manager BlackRock Inc.

"Any institution with policies aimed at weakening our energy industries, tax base and job market has a clear conflict of interest in handling taxpayer dollars," Mr. Moore said in a statement.

Some of the financial firms called the state's move a mistake. "This decision is shortsighted and disconnected from the facts," JPMorgan said in a statement. "Our business practices are not in conflict with this anti-free market law."

West Virginia isn't the first state to take action against financial firms seen as pushing policies that don't align with its own. Texas has passed similar laws blocking banks from doing business with the state that it says discriminate against energy companies and against gun makers.

An academic study found Texas cities will pay hundreds of millions more in interest rates on municipal bonds because of the lack of competition from banks.

Mr. Moore informed the firms of his decision last month and gave them 30 days to argue their case. In their responses, the companies all said they aren't boycotting any particular sectors of the energy industry.

The financial firms have pledged to reduce emissions in the coming years by helping fossil-fuel companies through the energy transition and by financing more green energy. Some banks have said they would no longer finance specific parts of the coal industry, but they argued in their letters to Mr. Moore that those decisions are based on limiting risks and don't amount to an industry boycott.

Goldman Sachs pointed to a report, titled "Banking on Climate Chaos," that detailed how it had financed $17.8 billion in fossil fuels in 2021 alone. Morgan Stanley also pointed to that report and its inclusion as a "member of the 'Dirty Dozen' of top financiers of fossil fuels."

BlackRock, which said in its letter it manages over $438 million in municipal bonds in the state, has pressed the companies in which it invests to limit emissions.

U.S. Bancorp was the only institution to successfully argue it shouldn't be banned.

Bloomberg Markets

By David Benoit

July 28, 2022

Treasury Management Best Practices: GFOA Webinar

August 10, 11 & 13 2022 | 1 – 3:45 p.m. ET

Details:
This course, focuses on GFOA's best practices in treasury management. Participants will be able to understand the importance of governments developing and having policies and procedures related to their cash management duties. This includes discussions on the payables and receivables functions, cash flow forecasting, banking services and fraud prevention. Attendees will be able to learn not only from the GFOA best practices and resources, but also the presentation of case studies, and interactions with course leaders and other participants.

Learning Objectives:
Become familiar with key practices related to treasury management
Lay the groundwork for developing their own appropriate policies and procedures for payables and receivables
Understand policies and procedures for determining and procuring banking services
Determine key internal controls policies necessary for fraud prevention in the Treasury office

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

Click here to learn more and to register.

MSRB Elects New Board Leadership and Announces New Members for FY 2023 at Quarterly Meeting.

Washington, DC – The municipal market's self-regulatory organization (SRO) met July 27-28, 2022 for its final quarterly Board of Directors meeting of Fiscal Year 2022. The Municipal Securities Rulemaking Board (MSRB) elected new officers and announced four new members who will join the Board in FY 2023.

Also at its meeting, the Board discussed current and forthcoming initiatives to advance its mission of protecting and strengthening the $4 trillion market that enables access to capital, economic growth, and societal progress in tens of thousands of communities across the country.

"The work of an SRO is never more important than at a time of profound evolution and modernization of financial markets," said MSRB Chair Patrick Brett. "I am proud and grateful to have served alongside a dedicated Board of experts steeped in the characteristics of our unique market, who have not shied from advancing an ambitious agenda. With engagement from a broad universe of market stakeholders, the MSRB has taken meaningful steps to enhance the efficiency and transparency of municipal market structure, to deepen our own and the broader market's understanding of how market practices are evolving, and to create opportunities for collaboration that will yield powerful new technology platforms and data analytics capabilities."

Board Leadership and New Members for FY 2023

Brett's term as Chair and Board member ends September 30, 2022. The Board announced today that it has elected public member Meredith L. Hathorn, Managing Partner, Foley & Judell, L.L.P. in Baton Rouge, LA, to serve as FY 2023 Chair of the Board. Public member Carol Kostik, the retired former deputy comptroller for public finance for the City of New York, will serve as Vice Chair. Officer terms are one year. The Board also announced the incoming class of four new Board members whose terms will begin October 1, 2022.

Chair-elect Hathorn, the FY 2022 Vice Chair and head of the Board's Nominating Committee said, "Each year, we cast a wide net to identify a new class of market experts to join us on the Board. We thank each applicant for their willingness to give back to our market, and we could not be more pleased to welcome four new members who each bring a distinct perspective, a wealth of experience and an outstanding commitment to overseeing the execution of the MSRB's long-term strategic goals."

New public members joining the MSRB Board in Fiscal Year 2023 are institutional investor representative David F. Belton, Director, American Family Insurance; and municipal issuer representative Horatio Porter, Chief Financial Officer, North Texas Tollway Authority. Joining the Board as regulated members are: bank representative Patrick O. Haskell, Managing Director and Head of Municipal Securities and Co-Head of Fixed Income Retail Capital Markets, Morgan Stanley; and municipal advisor representative Jill Jaworski, Managing Director and Partner, PFM Financial Advisors. The new Board members were selected from more than 70 applicants this year.

For FY 2023, the Board will have 15 members, including eight independent public members and seven members from MSRB-regulated broker-dealers, banks and municipal advisors. The size of the Board was reduced as part of a series of governance enhancements that also tightened standards of independence for public members and established a lifetime service limit for Board members. To implement the transition plan to a smaller Board, the terms of a current public member on the Board, Donna Simonetti, and one regulated member, Francis "Frank" Fairman, have been extended one year. Board member Daniel Kiley's term also has been extended one year to complete the final year of a vacancy created by the 2021 resignation of a regulated representative on the Board.

Market Regulation

The Board discussed the status of the ongoing retrospective rule review to holistically consider its rules and interpretive guidance and identify opportunities to streamline, update and promote consistency with rules of other regulators. The Board authorized staff to prepare a new request for comment on MSRB Rule G-47 to seek feedback on a proposal to codify interpretive guidance and specify certain additional information that may be material and require time of trade disclosures to customers. The MSRB plans to engage with stakeholders prior to the release of the request for comment.

In coordination with the Securities and Exchange Commission (SEC) and Financial Industry Regulatory Authority (FINRA), the MSRB is preparing to issue a request for comment in the coming week on proposed amendments to shorten MSRB Rule G-14 's time of trade reporting requirements as part of an initiative to enhance post-trade transparency across fixed income markets.

Market Transparency

The Board received a demonstration of continued work to develop the future-state MSRB.org website. The MSRB website is being redesigned to make MSRB rules, compliance resources, educational materials and other information easier and more intuitive to find, and to complement the ongoing work to modernize the Electronic Municipal Market Access (EMMA®) website and related market transparency systems.

Market Structure and Data

The Board continued its ongoing discussions about market structure, including the potential implications for the MSRB's rules of the SEC's proposal to bring more Alternative Trading Systems (ATSs) under the regulatory umbrella. Additionally, the Board discussed working with staff to

develop coordinated proposals with fellow regulators on the collection of pre-trade data in the fixed income markets. The Board also discussed potential new opportunities to support the market's use of structured data by leveraging EMMA Labs, the MSRB's innovation sandbox, to advance transparency and the quality and comparability of data in the municipal securities market.

"A common theme in our long-term strategic plan is the objective of advancing market efficiency, improving price transparency, and enhancing overall market liquidity, especially in light of the opportunities presented by evolving technology and market practices across the fixed income markets," said MSRB CEO Mark Kim.

Public Trust

The Board approved a $45 million operating budget to fund the operations of the MSRB for FY 2023, beginning October 1, 2022. A budget summary detailing the MSRB's projected expenses, revenues and reserve levels will be published at the beginning of the fiscal year. The Board recently proposed amendments to its fee setting process to ensure the MSRB collects only the revenue needed to fund its operations without accumulating excess reserves. Based on comments received on its proposal, the MSRB has advanced a revised proposal for filing with the SEC. The proposed amendments will be available for further public comment and would become operative on October 1, 2022.

Additionally, the Board discussed releasing a summary report in the coming weeks on comments received in response to its request for information on environmental, social and governance (ESG) practices in the municipal securities market, published in December 2021.

About the New MSRB Board Members

David Belton *is Director at American Family Insurance, where he provides credit research and portfolio management for the company's municipal bond holdings, both tax-exempt and taxable. Prior to joining American Family, Mr. Belton was Senior Vice President and Head of Municipal Bond Research at Standish Mellon Asset Management, where he was also portfolio manager of several Dreyfus municipal bond funds. Mr. Belton began his career at Van Kampen Merritt and subsequently held positions at Stein Roe & Farnham and Federated Investors. He has been active in the National Federation of Municipal Analysts at both the local and national levels. Mr. Belton holds a bachelor's degree in political science from Haverford College and an MBA from the University of Chicago. He is a Chartered Financial Analyst.*

Patrick O. Haskell *is Managing Director and Head of Municipal Securities and Co-Head of Fixed Income Retail Capital Markets at Morgan Stanley. Prior to this role, Mr. Haskell was Head of Credit Complex Trading, Americas, which included the Securitized Products Group, Corporate Credit and Municipal Securities. Prior to joining Morgan Stanley, Mr. Haskell was Chairman and CEO of diversified water technology company Ecosphere Technologies. Mr. Haskell began his career in municipal bond sales at Credit Suisse First Boston and went on to become Head of U.S. Government Bond Trading before joining HSBC as a Managing Director and Head of North American Rates Sales and Trading. He previously served as Board Chair of Tradeweb and as Chairman of the Primary Dealer Committee of SIFMA. He currently serves as the Board Chair for Boy's Hope/Girl's Hope NYC. Mr. Haskell earned a bachelor's degree in economics from Union College.*

Jill Jaworski *is Managing Director and Partner at PFM Financial Advisors, where she manages the Chicago financial advisory practice, serving a range of clients in Chicago and the Midwest, as well as transit and transportation clients nationally with a focus on the South and Mid-Atlantic regions. Ms. Jaworski began her career as an analyst in public finance investment banking at First Albany Capital, eventually rising to Vice President. She also worked at Jefferies & Company prior to joining*

PFM Financial Advisors. Ms. Jaworski holds a bachelor's degree in political science from the University of Chicago.

***Horatio Porter** is Chief Financial Officer and Assistant Executive Director of Finance at the North Texas Tollway Authority, where he is responsible for executing the company's financial strategies. In this role, he leads the accounting, business diversity, procurement and treasury functions. Mr. Porter was previously Chief Financial Officer for the City of Fort Worth and an Assistant Vice President at AmeriCredit, Corp. (now GM Financial). He is a certified public accountant and holds a bachelor's degree in accounting and a master's of business administration in finance from Texas Christian University.*

Date: July 29, 2022

Contact: Leah Szarek, Chief External Relations Officer
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lszarek@msrb.org

- **Ed. Note:** We'll be introducing a new password in the near future. This will affect only those accessing the website directly. You should not experience any affects upon clicking a link in the newsletter. We apologize for any inconvenience.
- Orrick: Lessons From Recent SEC Municipal Enforcement Actions
- US Cities Plan to Use Infrastructure Aid on Roads and Bridges.
- NASBO FY2023 Enacted Budget Summaries.
- *Goodman v. UBS Financial Services, Inc.* – After bondholder alleged that bank incorrectly reported the amount of amortized bond premiums on his 1099 Tax Form, causing him to significantly overpay his federal taxes, District Court holds that bondholder plausibly alleged claims of breach of contract and negligence.
- And finally, Your Mileage May Vary – Khe Sanh Edition is brought to us this week by *Torres v. City of St. Louis*, in which grandpa was awakened in his own home by the dulcet tones of a battering ram and a flash bang grenade. Followed immediately by a gunfight in which the SWAT team fired 93 rounds, hitting his grandson 23 times. The officers claimed that the grandson had fired at them with an AK-47, to which grandpa responded that, "he did not hear an AK-47 fire during the incident and would have noticed the sound because he had heard it 'thousands' of times during his military service in Vietnam." Sweet Christmas. Our most vivid memories of gramps is scratchy sweaters, risque ditties, and the increasingly anachronistic butterscotch hard candy. PTSD a bit thin on the ground on the mean streets of Santa Barbara, CA.

EMINENT DOMAIN - FEDERAL

Graves v. United States

United States Court of Federal Claims - July 7, 2022 - Fed.Cl. - 2022 WL 2525366

Landowners brought action against United States, alleging physical taking, and land use exaction, of private right-of-way interest in United States Forest Service forest road offshoot that granted them exclusive use without just compensation, in violation of Fifth Amendment, and seeking declaratory and injunctive relief. United States moved to dismiss for lack of subject matter jurisdiction.

The Court of Federal Claims held that:

- Landowners objectively should have known of United States' alleged physical taking of private right-of-way interest when they signed Federal Land Policy and Management Act (FLPMA) easement;
- Landowners failed to establish alleged taking was inherently unknowable; and
- Landowners failed to establish United States concealed alleged taking.

Landowners objectively should have known of United States' alleged physical taking of private right-of-way interest in United States Forest Service (USFS) road offshoot, and thus takings claim accrued and six-year statute of limitations began to run, when they signed Federal Land Policy and Management Act (FLPMA) easement, even though owners argued claim accrued five years later, when they were first told that USFS was claiming ownership of road; takings claim was that USFS' requirement that owner maintain easement, pay fees, obtain special use permit, and allow other landowners to use easement constituted taking, and such requirements were all included in easement owners signed, and owners had previously signed easement that placed upon them exact limitations and restrictions they disputed in instant proceeding.

Landowners failed to establish that United States' alleged physical taking of private right-of-way interest in United States Forest Service (USFS) road offshoot was inherently unknowable as of accrual date of takings claim, as would have suspended accrual of six-year statute of limitations for bringing such claim in Court of Federal Claims, pursuant to accrual suspension rule; all of the United States' actions that landowners alleged constituted takings claim, including that United States Forest Service (USFS) required them to pay fees, maintain permit, and allow others to use road, were requirements found in easements landowners had previously signed.

Landowners failed to establish that United States concealed its alleged physical taking of private right-of-way interest in United States Forest Service (USFS) road offshoot with result that they were unaware of acts' existence, as would have suspended accrual of six-year statute of limitations for bringing such claim in Court of Federal Claims, pursuant to accrual suspension rule, even though their complaint referenced conversation with United States Forest Service (USFS) official who landowners alleged put them on notice and landowners' counsel indicated at oral argument that there was outside agreement; landowners did not allege USFS prevented them from understanding easement into which they entered with United States or otherwise fraudulently concealed material facts to prevent them from learning of alleged taking.

INTERLOCAL AGREEMENTS - KANSAS

Delaware Township v. City of Lansing

Supreme Court of Kansas - July 8, 2022 - P.3d - 2022 WL 2661879

Municipalities petitioned for declaratory judgment to stop city's dissolution or alteration of fire district that was created by Board of County Commissioners under the Fire Protection Act and disposition of fire district property, and city counterclaimed seeking declaratory judgment that interlocal cooperation agreement governing joint operation and management of fire district was enforceable in its entirety, including agreement's termination and asset division provisions.

The District Court determined that city could not unilaterally alter or disorganize fire district and could not force a disposition of property as a matter of public policy. City appealed. The Court of Appeals affirmed. City petitioned for review, which was granted.

The Supreme Court held that:

- Agreement was enforceable on its own terms without placing fire district itself in any jeopardy of being unlawfully dissolved;
- Termination provision was not void as against public policy; and
- No party was prejudiced by unfair surprise.

Interlocal cooperation agreement governing joint operation and management of fire district, including termination and asset division provisions, was enforceable on its own terms without placing fire district itself in any jeopardy of being unlawfully dissolved; agreement acknowledged that there was a functional distinction between terminating the fire district and the agreement, and the power of any party to terminate agreement was clearly bargained for.

Termination provision of interlocal cooperation agreement governing joint operation and management of fire district was not void as against public policy; there was no reason to believe that individual party ownership of fire district assets was an inherent threat to public safety, municipalities had retained title to their own assets when they initially entered into agreement, there was no reason to believe any citizen would be left without adequate fire protection as assets would be fairly distributed and liabilities would be relatively allocated across all parties, leaving no party with disproportionate access to resources or stuck with disproportionate liabilities, and agreement required arbitration by a third party if parties could not agree on fairness.

No party was prejudiced by unfair surprise in connection with termination of interlocal cooperation agreement governing joint operation and management of fire district, and thus city's notice of termination of agreement was effective, such that municipalities were required to allocate assets and liabilities per agreement's terms; notice of 18 months was required for termination and that term was surely bargained for to allow the parties to make appropriate arrangements.

COUNTIES - MARYLAND

Prince George's County v. Thurston

Court of Appeals of Maryland - July 13, 2022 - A.3d - 2022 WL 2709752

82Petitioners sought a temporary restraining order and preliminary injunction to enjoin the use of Council Resolution, an alternative redistricting plan proposed by county council.

The Circuit Court declared the resolution was ineffective and determined the county redistricting commission's redistricting plan had become law. County petitioned for writ of certiorari, which was granted.

The Court of Appeals held that county council was required to use a bill and pass a law, and could not rely upon a resolution to enact an alternative redistricting plan.

County council was required to use a bill and pass a law, and could not rely upon a resolution to enact an alternative redistricting plan, when it elected not to adopt the plan of the redistricting commission following receipt of federal decennial census data, and council's failure to do so resulted in adoption of the commission's redistricting plan on the last day of November, pursuant to county charter.

Express Powers Act did not allow county council to enact an alternative redistricting plan different from the plan proposed by appointed redistricting commission by resolution, as argued by county,

rather than by bill; while local government article provided that "[a] county may create and revise election districts and precincts," county charter, which was ratified by county voters, included redistricting provisions that expressly addressed creating and revising election districts.

State legislative districting process in state constitution did not allow county council to enact an alternative redistricting plan different from the plan proposed by appointed redistrict commission by resolution, as argued by county; statewide legislative districting was governed by the Constitution of Maryland and councilmanic redistricting was governed by the county charter, state and county have separate and distinct redistricting procedures, and the terms "joint resolution" and "resolution," and used by the general assembly and in county charter differed.

TRANSPORTATION IMPACT FEE CREDITS - MARYLAND

Anne Arundel County v. 808 Bestgate Realty, LLC

Court of Appeals of Maryland - July 7, 2022 - A.3d - 2022 WL 2526948

Developer petitioned for judicial review of decision of county board of appeals denying developer's request for transportation impact fee credits in connection with certain road improvements that it made to county road as part of redevelopment project.

The Circuit Court reversed board's decision. County appealed. The Court of Special Appeals affirmed in part and reversed in part. Developer and county filed petition for writ of certiorari, which the Court of Appeals granted.

The Court of Appeals held that:

- County code required county to award transportation impact fee credits to developer for improvements that exceeded road provisions and were approved by county's engineer administrator, and
- Remand for county board of appeals to address issue of whether developer's improvements were "site-related" improvements for which transportation impact fee credits could not be given was unnecessary.

County code provision stating that transportation impact fee credits "shall" be allowed for improvements providing capacity over provisions for adequate road facilities required county to award transportation impact fee credits to developer for improvements to county road that exceeded road provisions and were approved by county's engineer administrator, although developer satisfied road provisions without need for mitigation plan; the word "shall" was mandatory, not discretionary, nothing in code conditioned entitlement to credits on necessity of mitigation plan, and county had approved requests for credits where no mitigation was necessary to satisfy road provisions.

Remand for county board of appeals to address issue raised sua sponte by Court of Special Appeals of whether developer's improvements to county road as part of redevelopment project were "site-related" improvements for which transportation impact fee credits could not be given was not necessary or desirable to avoid the expense and delay of another appeal, given stipulation by county and developer in briefs and oral arguments before Court of Appeals that improvements were not "site-related."

IMMUNITY - MISSOURI

Torres v. City of St. Louis

United States Court of Appeals, Eighth Circuit - July 1, 2022 - F.4th - 2022 WL 2374560

Surviving family members of suspect who was shot and killed during the execution of a search warrant at his grandfather's home brought action against police officers and city, alleging unlawful seizure, use of excessive force, and conspiracy under § 1983 in violation of the Fourth Amendment, and alleging state-law claims for wrongful death and infliction of emotional distress. Additionally, grandfather filed action, alleging unlawful seizure.

The United States District Court denied officers' motion for summary judgment. Officers filed interlocutory appeal.

The Court of Appeals held that:

- Two officers could not be liable for use of excessive force;
- Court of Appeals lacked jurisdiction to consider whether officers were entitled to qualified immunity;
- Grandfather was not unlawfully seized in violation of Fourth Amendment; and
- Court of Appeals lacked jurisdiction to determine whether officers were entitled to official immunity.

Court of Appeals lacked jurisdiction to decide whether police officers who shot and killed suspect were entitled to qualified immunity, in § 1983 Fourth Amendment excessive force claim brought by surviving family members of suspect, where District Court denied qualified immunity based on genuine factual disputes as to whether suspect fired semi-automatic weapon at police and was armed when he was shot.

Suspect was not "seized" by police officers, within meaning of Fourth Amendment, although officers entered suspect's home and allegedly shot their firearms, where suspect did not acquiesce to officers' show of authority and his freedom of movement was not restrained.

Court of Appeals lacked jurisdiction to decide whether police officers who shot and killed suspect were entitled to official immunity, under Missouri law, from liability, in claims for wrongful death and negligent infliction of emotional distress brought by surviving family members of suspect, where District Court denied official immunity based on genuine factual disputes as to whether suspect fired semi-automatic weapon at police and was armed when he was shot.

PUBLIC EMPLOYMENT - MISSOURI

Poke v. Independence School District

Supreme Court of Missouri, en banc - July 12, 2022 - S.W.3d - 2022 WL 2707806

School-district employee brought action against district, asserting violation of state statute through alleged retaliation for filing workers' compensation claim.

The Circuit Court granted summary judgment to district. Employee appealed.

On transfer from the Court of Appeals, the Supreme Court held that statute creating private right of

action for employees who are discharged, or discriminated against, by employer for exercising workers' compensation rights, read in conjunction with statute defining an "employer" for purposes of Workers' Compensation Law to include governmental entities, waived any sovereign immunity that school district had to employee's action; overruling *Krasney v. Curators of University of Missouri*, 765 S.W.2d 646; and *King v. Probate Division*, Circuit Court of County of St. Louis, 21st Judicial Circuit, 958 S.W.2d 92.

BONDS - NEW JERSEY

Goodman v. UBS Financial Services, Inc.

United States District Court, D. New Jersey - June 30, 2022 - Slip Copy - 2022 WL 2358403

Richard Goodman ("Bondholder") purchased – at a premium – a significant number of taxable municipal bonds, which he held in a brokerage account controlled by UBS Financial Services, Inc. ("UBS"). Bondholder alleged that for the tax years between 2015 and 2018, UBS incorrectly reported the amount of the amortized bond premiums on his 1099 Tax Form, causing him to significantly overpay his federal taxes.

Bondholder alleged that instead of following the policy set out in the UBS Form 1099 Guide, the Form 1099s that UBS provided to him, included only the amount of interest, without including the amortizable bond premium, either as a gross amount or as part of a net calculation.

Bondholder brought contract and tort claims on behalf of himself and similarly situated individuals and UBS moved to dismiss.

The United States District Court held that:

- Bondholder plausibly alleged that UBS violated two interrelated implied terms of the Client Relationship Agreement ("CRA"). The Court found that it is implied in the CRA that UBS would provide accurate tax forms and that UBS would follow its stated policies in providing tax forms;
- Bondholder failed to state a claim for the violation of the implied covenant of good faith and fair dealing;
- Bondholder had not plausibly alleged that there was a fiduciary relationship between him and UBS related to tax information reporting, and thus could not state a claim for breach of fiduciary duty;
- Bondholder failed to plausibly allege a duty of care that sufficed to state a claim for negligent misrepresentation; and
- Bondholder stated a claim for negligence. Factual issues precluded dismissal at this stage and the economic loss rule did not bar his claim.

IMMUNITY - VIRGINIA

Patterson v. City of Danville

Supreme Court of Virginia - July 7, 2022 - S.E.2d - 2022 WL 2517205

Inmate's estate brought action against city jail physician, alleging that physician committed medical

malpractice by failing to provide appropriate care to inmate, who died a few months after suffering from cardiac arrest in jail.

Danville Circuit Court granted physician's plea in bar to estate's negligence claim and granted physician's demurrer to estate's gross negligence claim. Estate appealed.

The Supreme Court held that:

- Physician was entitled to derivative sovereign immunity, and
- Physician's conduct did not rise to level of gross negligence.

City jail physician was entitled to derivative sovereign immunity from inmate's estate's medical negligence claim arising from allegations that inmate died after suffering from cardiac arrest at jail, for which physician failed to provide appropriate care; physician's city employer had constitutional and statutory duty to provide medical care to incarcerated patients and chose physician as its agent to fulfill that duty, all of the allegations in the complaint involved discretionary, not ministerial, medical decisions made by physician, and city had great measure of control over physician, as he had no control over patients he was obligated to treat, he did not bill inmates for his services, he was required to treat inmates at the jail using city-owned equipment and supplies, and he was subject to supervision of jail director.

Inmate's estate's allegations of jail physician's medical malpractice concentrated on physician's inadequacy in treating inmate, who died a few months after suffering from cardiac arrest in jail, not a heedless and palpable violation of legal duty by a physician who refused to show even slight diligence or scant care, and thus, the allegations did not rise to level of gross negligence that would pierce physician's derivative sovereign immunity defense; complaint provided long list of medical tests and treatments that inmate received and alleged that physician misdiagnosed inmate, but physician's multiple efforts to treat inmate, whether or not negligently performed, demonstrated that physician was exercising some degree of care in his capacity as a physician.

NASBO FY2023 Enacted Budget Summaries.

Overview

Over the course of the past several months, governors in 33 states have released their fiscal 2023 budget proposals. Last year, 17 states enacted budgets covering both fiscal 2022 and fiscal 2023; in eight of those states, governors released a supplemental or revised budget recommendation for fiscal 2023. The remaining nine states did not release a new or revised budget proposal for fiscal 2023. 46 states begin their fiscal year on July 1 (New York begins its fiscal year on April 1, Texas on September 1, and Alabama and Michigan on October 1).

As of July 20, one state has yet to finalize their budget for fiscal 2023:

- Massachusetts – The legislature approved the budget and the governor is currently reviewing the budget bill. Earlier the governor filed an interim budget funding the state through July 31.

Continue reading.

Fitch: Covid-Hardened U.S. State Governments Ready for Tougher Macro Pressures

Fitch Ratings-New York-21 July 2022: Most U.S. state governments will exhibit financial resilience strong enough to navigate the next several months of slowing broader economic growth, according to Fitch Ratings in its inaugural 2022 U.S. States Median Metrics report.

Fitch's medians show U.S. state government ratings on an overall upward trajectory for the past five years with a faster rate of improvement coming, surprisingly, during the first year of the coronavirus pandemic. "States were able to repurpose at least some of the remarkably strong revenue growth towards improved resilience, with some states seeing historically high reserves," said Eric Kim, Senior Director and Head of Fitch's U.S. state government ratings group.

That said, a stiffer test of state governments' fiscal resolve awaits for the remainder of 2022 and into next year. "Revenue projections for fiscal 2023 suggest continued slower growth and possibly even declines as states anticipate various headwinds including a weaker macro environment with higher inflation and tightening monetary policy," said Kim. That is likely to manifest in the form of shifts in consumer spending towards less-taxed services and away from more-taxed goods and weaker markets driving down income tax revenues and consumer confidence.

As a result, Fitch anticipates some fall back in state government rating metrics by the end of fiscal 2022 or 2023, reflecting a material deceleration of economic growth. However, the very high ratings reflect Fitch's view that states will continue to act prudently in managing current budget surpluses to prepare for the next inevitable downturn.

Fitch's inaugural "2022 U.S. States Median Metrics" report is available at www.fitchratings.com.

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S&P: Cyber Security Should Be A Team Sport, Say Experts

Key Takeaways

- Public sector entities can best combat cyber risks by sharing information, collaborating, and pooling resources, industry experts told an S&P Global Ratings conference.
- The sector should also assess cyber risk exposure as part of their selection process of third-party vendors .
- Companies can minimize potential damage from a cyber security breach by building resistance into

their operations, panelists said.

Continue reading.

18 Jul, 2022

S&P U.S. Not-For-Profit Health Care Ratings And Outlooks As Of June 30, 2022.

View the Ratings and Outlooks.

21 Jul, 2022

Most US Cities Plan to Use Infrastructure Aid on Roads and Bridges.

- **In survey, 82% of cities said their funds will go to roads**
- **Drinking water projects also score high on the priority list**

Most US cities will pour their share of the federal infrastructure spending package into fixing crumbling roads and bridges, prioritizing motor vehicle infrastructure over other projects like public transit, airports and railways.

About four in five cities said they plan to spend their money on local roads, bridges and major projects, with 56% prioritizing road safety, according to a survey of 153 localities conducted by the National League of Cities and Polco. About 60% said they would use funds from the Infrastructure Investment and Jobs Act on water projects.

A little more than a third of the municipalities said they would spend their money on broadband Internet access. About 26% said they'd put the money toward public transportation, while a little more than a quarter cited electric vehicles, buses, and ferries. Just 13% identified airports as a spending priority. Ports and waterways and passenger and freight rail came in at the bottom with less than 10% each.

Continue reading.

Bloomberg Markets

By Mackenzie Hawkins

July 19, 2022, 11:41 AM PDT

From Broken Cities, a Plea for Grassroots Fixes.

In "The Fight to Save the Town," legal scholar Michelle Wilde Anderson shows how four poverty-struck communities fought back against austerity measures.

When Stockton, California, declared bankruptcy in 2012, it was the largest municipal failure in American history. But it wasn't exactly a surprise: By the late 20th century, the city had already become a symbol of urban decline. Once a hub of canning, farming and manufacturing jobs, Stockton saw its major employers begin to leave the region; the city's tax base evaporated and housing values plummeted.

As Michelle Wilde Anderson recounts in her new book, "The Fight to Save the Town: Reimagining Discarded America," Stockton's economic woes deepened in the wake of the Great Recession: Between 2007 and 2011, the city was saddled with 20% unemployment and suffered a higher foreclosure rate than any city in the nation apart from Detroit.

Since it couldn't keep up with its outlandishly overleveraged bond payments, Stockton began slashing emergency, health and recreation services; in that era it cut almost $90 million in public spending. Even as the nation recovered after 2015, joblessness rates in Stockton remained elevated and fully a quarter of people under 18 lived below the poverty line. Homicide rates soared, as did civilian killings by police.

Continue reading.

Bloomberg CityLab

by Michael Friedrich

July 19, 2022

Fitch: Global Port Labor Issues Add to Bottlenecks, Limited Credit Effect

Fitch Ratings-New York-21 July 2022: Labor issues at cargo ports could prolong shipping bottlenecks and temporarily reduce volumes, Fitch Ratings says. Global ports are sensitive to labor-related disruptions as they are still clearing residual pandemic-related backlogs with shippers entering their peak season. However, stable, contractually guaranteed revenues and robust liquidity will limit the effects on port credit profiles.

In the US, the International Longshore and Warehouse Union (ILWU) and Pacific Maritime Association (PMA) continue to negotiate a new contract following the expiration of their prior contract on July 1. Both parties announced that operations will continue, despite the failure to agree to a contract extension, but the risk of disruptions remain as long as an agreement has not been reached. Negotiations affect 29 West Coast ports, the largest of which are Port of Los Angeles (POLA) and Port of Long Beach (POLB), which together handle roughly 30% of US container volume. Major points of negotiation are salary increases and cargo handling automation. No end date for negotiations is set but market reports indicate a new contract may be in place by August or September.

Twenty-foot equivalent units (TEUs) at US ports remain elevated this year compared with 2019 and early 2020, and US port import volumes are expected to tick up as retailers stock up for back to school and holiday season sales. Stronger volume growth for East Coast ports beginning in 3Q21 was the result of shippers rerouting some cargo from the West Coast ports to avoid congestion and adjusting ahead of contract negotiations. East Coast and West Coast port TEUs were up 9.9% and 0.4%, respectively, this year through May 2022 versus the same period in 2021.

Continue reading.

KBRA Releases Research - EVs' Popularity Could Diminish State Gasoline Taxes for Transportation Funds

NEW YORK–(BUSINESS WIRE) — KBRA releases research that examines the dramatic growth in electric vehicles (EV) in recent years, with sales in 2022 up nearly 40% from the prior year. EV demand represents about 2.85% of total cars sold in the U.S. and is expected to increase to 6% by 2035.

Much of the recent growth has been supported by a favorable tax structure, including tax incentives to purchase EVs as well as lower taxes associated with their ownership compared to gasoline-powered cars. This favorable tax environment reflects the public policy goal to increase the use of EVs because of their lower carbon footprint. However, public policy will have to recognize the effects of lower tax revenues from gasoline taxes and consider implementing modifications to the tax laws. In this report, KBRA reviews the tax incentives for the purchase of electric vehicles and the longer-term revenue implications of the shift toward EVs, including the potential effects on outstanding municipal bonds.

Key Takeaways

- The demand growth for electric vehicles will reduce greenhouse gas emissions, but also gasoline taxes and related revenues. Lost tax revenues are already significant.
- Public policy will likely have to unwind the fiscal trade-off of encouraging EVs through incentives if the related reduction in revenues becomes more significant.
- The loss of gasoline-based revenues could pressure municipal bond issues that rely on them. That said, most major state borrowing programs that heavily rely on this revenue stream have room to adjust their tax structures if needed.

Click here to view the report.

July 18, 2022

GFOA Streamlining the Budget Process: Albany International Airport Embraces Technology

Make technology fit your needs, rather than making your needs fit technology. Embrace it! Everyone is familiar with the budget process diagram that shows a circle made up of four arrows: it's a repetitive process done every year, over, and over, and over. And this kind of repetition is a perfect fit for technology.

At the Albany County (New York) International Airport, the budget preparation process typically begins each year when an organization distributes the same spreadsheet to each of its department managers. The spreadsheet format includes four columns: the previous year actual results, current budget amounts, estimated current year projections, and next year's requested budget, account line by account line. Each department then completes the last column and returns the spreadsheet to the budget department, which in turn merges all the departments' spreadsheets into one consolidated

budget document. This process has worked for many years, but using the right technology can make it work more efficiently and with greater accuracy.

Publication date: June 2022
Author: Michael Zonsius

DOWNLOAD

America's Bus Driver Shortage Has Left Transit Systems in Crisis.

With the nation's current drivers retiring in large numbers, agencies need to cultivate a new generation of transit operators, a new report says.

The number of bus drivers across the US is declining as many retire or seek higher-paying private-sector jobs that require less in-person contact.

The shortage is creating a major challenge for transportation agencies as they try to revive their systems and win riders back after taking steep losses throughout the pandemic, according to a report by TransitCenter, a public transportation advocacy group, released on Wednesday. The report sheds light on the industry and what agencies can do to retain workers and attract younger drivers.

"While the culprits can vary from agency to agency, two causes stick out: an increased number of retirements by an aging workforce and difficulties recruiting and retaining new workers," the report said.

Continue reading.

Bloomberg CityLab

By Skylar Woodhouse

July 20, 2022

Is the Key to the Affordable Housing Crisis More Capitalism?

It now costs $600,000 to build a unit of affordable housing in Los Angeles. SoLa Impact is doing it for $250,000–and making money for investors.

In 2017, Martin Muoto got a call from his real estate agent about a four-unit building for sale on Budlong Avenue, in the heart of the South Central district of Los Angeles. The deal had "some hair on it," the broker noted. The property was controlled by the 57 Neighborhood Crips gang, which was using it as a narcotics bazaar, according to a civil complaint filed against the owner in state court by the Office of the Los Angeles City Attorney. The dealers stashed the drugs inside the garage and met their customers in an outdoor stairwell, where they sold rock cocaine, smoked marijuana and drank alcohol, and played loud music day and night, the city alleged.

Muoto, who'd been scouring the area for properties for his development company, SoLa Impact LLC, bought the building anyway, for $440,000. SoLa specializes in challenging situations. After closing

the deal, he did what he's done since growing up in strife-torn northern Nigeria: "I deescalated." He got to know the neighborhood gang leader and made his pitch, saying SoLa Impact wanted to improve the neighborhood not for affluent White outsiders—he wasn't trying to gentrify South Central—but for the families of color in South LA who've been ignored by banks and other businesses for generations. About 95% of SoLa Impact's tenants are Black and Brown. Muoto calls his development approach "same neighbors, better neighborhoods." The drug dealers backed off.

"The people in South LA are undervalued, and so is the property," Muoto says. "If we don't invest in these communities, who will? That's the big question not just for LA, but for American capitalism."

Continue reading.

Bloomberg BusinessWeek

By Peter Waldman

July 20, 2022

Drone Delivery Is Near With FAA, NASA Focused on Safety.

NASA and the FAA are working to revolutionize air traffic control for the drone era.

"Please stay clear of the flight line," warns Keith Hyde, director of U.S. operations for Wing. Safety comes first on these two fenced-off acres at the dead end of Welcome Street in Christiansburg, Va., where Wing has since 2019 been running the first North American drone delivery service. The drones are electric vertical takeoff and landing (eVTOL, pronounced "ev-tol") aircraft, so instead of a runway, they park on a grid of landing pads that double as charging stations. Three dozen of the pads are arranged on a gravel patch the size of a basketball court, each topped with a QR code large enough for an incoming drone to scan and confirm its touchdown location.

Wing, owned by Alphabet Inc., has no competition for the skies over Christiansburg, a town of 22,000 not far from Virginia Tech, and it operates only in clear, windless weather. Its drones are made of light plastic and polystyrene but still weigh in at 10 pounds because of the controllers, lasers, cameras, and battery packs required to achieve their 12-mile round-trip range. This morning a dozen drones recharge, awaiting orders. The flight line is flanked by 11 shipping containers. The ones labeled C1, C2, and C3 are where the drones "sleep" during off hours. Containers C3, C4, C5, and C6 hold inventory from partners such as Walgreens, a local coffee shop, and an area Girl Scout troop, which relied on Wing to shore up flagging cookie sales during the pandemic.

On the perimeter, "merchant success associate" Folake Adeshina, who's wearing a hard hat, an N95 mask, and a yellow safety vest, waits for an order. Her tablet dings, and she glances at the request: hot coffee. C6 is stocked with carafes, cups, cream, sugar, and stir sticks. Adeshina fills two cups with steaming hot brew. As she works, the pilot in command (PIC), a man identified only as P.J. who's stationed in C11 behind a computer, chooses which drone will fulfill the mission. The system has already calculated an optimal flight plan, but the Federal Aviation Administration requires a "pilot" for the mission, along with an observer who's surveying the operation from a nearby hill. "The PIC could probably be replaced with a decision algorithm," Hyde says as P.J. smiles behind the window of his container. (Hyde is no longer working for Wing.)

Continue reading.

Bloomberg BusinessWeek

By Chris Feliciano Arnold

July 21, 2022

Facing Largest Single-Year Decline in Funded Ratio Since the Great Recession.

Report finds funding shortfall to grow to 1.4 trillion in 2022, erasing nearly half of the gains from 2021's record investment returns; three-year funding trend remains net positive.

NEW YORK, July 20, 2022 /PRNewswire/ — State and municipal retirement systems are on track to lose nearly half of 2021's once-in-a-century investment returns in 2022, according to Equable Institute's annual State of Pensions report. Following a year of record investment gains and economic growth, unfunded liabilities dipped below $1 trillion in 2021, bringing the aggregate funded ratio to 84.8%, the analysis finds. However, Equable estimates that the aggregate funded ratio for U.S. public pension funds will decline to 77.9% in 2022 and unfunded liabilities will increase to $1.4 trillion — the largest single-year decline in funded ratio since the Great Recession.

Continue reading.

Yahoo Finance

Wed, July 20, 2022

A Black Family Won Back Its Beach. The Law Remains Broken.

It took the Bruce family nearly 100 years to win back land seized under eminent domain, but never developed. That's so wrong.

During the 1920s, the city of Manhattan Beach, California, used the power of eminent domain to seize the only seafront resort in Southern California that welcomed Black beachgoers. The owners received a small fraction of the market value, and together with other Black property owners were essentially run out of town. In a ceremony last week, the deed to the land known as Bruce's Beach was finally restored to the family. What happened in between is a tale not only of racism and theft, but also of the risks that arise when government can act without scrutiny.

Bruce's Beach was established in 1912 in Manhattan Beach; a decade and a half later, the city took the land by claiming they planned to develop it into a park. But the vaguer the limits on government power, the easier it is to wield that power for a malign purpose. And the limits of eminent domain are vague indeed.

Continue reading.

Bloomberg Opinion

By Stephen L. Carter

July 23, 2022

Legacy Retailer Rebates Costing States Billions Under Scrutiny.

- **Illinois, Missouri consider reform to vendor discounts**
- **Retailers fight back pointing to sales tax complexity**

When states started levying sales taxes almost a century ago, some gave shopkeepers small rebates for manually collecting and submitting the money. Now those rebates cost states more than $1 billion a year, and critics say they make no sense in the age of automated tax systems.

Budget hawks in a handful of states are exploring options to either jettison or trim these “vendor discount” arrangements, which were intended to compensate sellers for serving as agents of state revenue departments. Illinois Gov. J.B. Pritzker (D) often refers to the programs as “corporate tax loopholes.” And Missouri’s state auditor, Nicole Galloway, worries that her state offers the most generous vendor discount in the country.

“Missouri’s discount gives the biggest benefits to the wealthiest retailers just for turning over sales tax paid by consumers,” Galloway said in a recent statement. “Ordinary citizens don’t get a discount for paying taxes on time.”

Continue reading.

Bloomberg Tax

by Michael J. Bologna

July 25, 2022

Arizona Charter School Financed With Muni Bonds Files Bankruptcy.

- **Park View School issued $7.6 million of muni bonds in 2016**
- **SEC sued school in 2020 for misleading investors on bond sale**

An Arizona charter school north of Phoenix, sued by the US Securities and Exchange Commission for allegedly misleading investors in an 2016 municipal bond offering, filed bankruptcy Tuesday.

Park View School Inc., a non profit, listed $9.4 million in liabilities, mostly due to bondholders, and $9.7 million in assets. Bondholders have a lien on the school, which had recurring losses, according to a June 2021 financial statement.

On July 15, $10,000 of Park View bonds with a 6% coupon and maturing in 2050 traded at about 21 cents on the dollar.

In 2020, the SEC alleged Park View and …

Continue reading. **(Subscription required.)**

Bloomberg Law

by Martin Z. Braun

July 20, 2022

Michigan Taps Funding Sources to Support Water Infrastructure.

Drinking water construction project by Lansing Board of Power and Light in 2021There's a rising stream of support in Michigan for water infrastructure.

"Few things are more important to our households and businesses than clean drinking water, surface water, and groundwater," said Gov. Gretchen Whitmer. "I'm pleased to work with the Legislature and all partners to keep investments flowing to strengthen Michigan's vital water infrastructure and support a healthy and prosperous future."

The bipartisan 2023 state budget, passed July 1 for the fiscal year that begins Oct. 1, includes $48 million in technical assistance that can help communities apply for funds to replace lead water lines or other water infrastructure, and $7.9 million for drinking water permitting, both through the Michigan Department of Environment, Great Lakes, and Energy (EGLE).

Continue reading.

michigan.gov

July 20, 2022
