
MUNICIPAL CORPORATIONS - CALIFORNIA

City of Oxnard v. County of Ventura

Court of Appeal, Second District, Division 6, California - November 23, 2021 - Cal.Rptr.3d - 2021 WL 5460725 - 21 Cal. Daily Op. Serv. 11,559 - 2021 Daily Journal D.A.R. 12,037

City brought action against surrounding county seeking preliminary injunction to prevent county from providing ambulance services within city limits pursuant to joint powers agreement.

The Superior Court denied city's motion for preliminary injunction. City appealed.

The Court of Appeal held that:

- City lacked authority under Emergency Medical Services Systems and the Prehospital Emergency Medical Care Personnel Act to resume administration of its own ambulance services;
- City's authority to provide and administer ambulance services, even if police power, was subject to limits set forth in the Act; and
- Any withdrawal by city from joint powers agreement did not provide basis for city to resume providing ambulance services absent county's consent.

City lacked authority under Emergency Medical Services Systems and the Prehospital Emergency Medical Care Personnel Act to resume administration of its own ambulance services after it had entered into joint powers agreement with surrounding county regarding ambulance services; joint powers agreement empowered county, not city, to contract for and administer ambulance services, and fact that city was indirectly contracting for such services by being signatory to joint powers agreement did not make it eligible under Act's grandfathering provision which allowed cities to continue to provide existing services until such services were integrated into larger emergency medical services system.

City's authority to provide and administer ambulance services was subject to limits set forth in the Emergency Medical Services Systems and the Prehospital Emergency Medical Care Personnel Act, even if provision of ambulance services was police power; city had power to make and enforce only those ordinances and regulations that were not in conflict with general laws, and the Act was a general law.

Any withdrawal by city from joint powers agreement with surrounding county regarding ambulance services did not provide basis for city to resume providing ambulance services absent county's consent; as of date specified in section of the Emergency Medical Services Systems and the Prehospital Emergency Medical Care Personnel Act allowing cities to continue to provide existing services until they entered into an agreement with a county to provide such services, county's authority to provide ambulance services in city limits did not come from joint powers agreement, but from Act, and under Act, city could not expand its control by excluding county from provision of ambulance services.

ZONING & PLANNING - FLORIDA

Persaud Properties FL Investments, LLC v. Town of Fort Myers Beach

District Court of Appeal of Florida, Second District - December 11, 2020 - 310 So.3d 493 - 45 Fla. L. Weekly D2772

Property owner filed suit against town for declaratory relief, alleging a taking under state law and deprivation of due process under state constitution, and seeking mandatory injunction following town's determination that property owner had abandoned nonconforming use of property which permitted alcohol sale on part of property that extended onto environmentally critical zone.

The Circuit Court granted town's motion for summary judgment on all counts. Property owner appealed.

The District Court of Appeal held that town zoning ordinance included intent element, and thus property owners did not abandon nonconforming use during period of renovations.

Town zoning ordinance which provided that nonconforming use of property in environmentally critical zone specific to sale or service for on premises consumption of alcoholic beverages "may continue until there is an abandonment of permitted location for continuous nine-month period" included an intent element, and thus property owners did not abandon nonconforming use of property during one-year period of closure while renovations and construction were ongoing, where there was no evidence property owners intended to discontinue selling alcohol in environmentally critical zone once renovations were complete.

PUBLIC EMPLOYMENT - INDIANA

Sweet v. Town of Bargersville

United States Court of Appeals, Seventh Circuit - November 17, 2021 - 18 F.4th 273 - 2021 IER Cases 440,722

Former town employee, a customer-service representative in clerk-treasurer's office, brought § 1983 action against town and clerk-treasurer alleging retaliation in violation of First Amendment right to free speech arising from employee's termination five months after she criticized clerk-treasurer for reconnecting utility service of a wealthy delinquent customer.

The United States District Court granted summary judgment for town and clerk-treasurer. Former employee appealed.

The Court of Appeals held that:

- Employee's criticism of clerk-treasurer was not protected speech;
- Gap of five months between employee's criticism and her firing was too great to support an inference of retaliatory motive; and
- Purportedly shifting explanations for the firing did not establish retaliatory motive.

Town employee's criticism of elected town clerk-treasurer for reconnecting utility service of a wealthy delinquent customer amounted to a complaint about possible misconduct in employee's official area of responsibility, and thus the criticism was not constitutionally protected speech, where employee's job duties as customer-service representative in clerk-treasurer's office included handling utility disconnections, despite argument that it was not employee's job as a low-level employee to confront a high-ranking elected official about questions of policy.

PUBLIC MEETINGS - PENNSYLVANIA

Marshall v. Amuso

United States District Court, E.D. Pennsylvania - November 17, 2021 - F.Supp.3d - 2021 WL 5359020

Attendees of school board meetings whose public comments were interrupted or terminated pursuant to board policies brought action against school district seeking preliminary injunction to prevent application of policies that restricted their speech at public meetings.

The District Court held that:

- Policies which prohibited certain comments constituted viewpoint discrimination, for purposes of as-applied challenge to policies under Free Speech Clause;
- Policies which restricted speech at public meetings were irreparably clothed in subjectivity and were thus unconstitutionally vague under First Amendment;
- Policies which restricted speech at public meetings were unconstitutionally overbroad in violation of Free Speech Clause;
- Policy which required attendees of board meetings to publicly state their home address before speaking during period for public comment was facially invalid under Free Speech Clause;
- Plaintiffs showed that they would suffer irreparable harm absent grant of preliminary injunction;
- District failed to show that they would suffer risk of irreparable harm due to preliminary injunction; and
- Balance of equities supported waiver of requirement for plaintiffs to pay injunction bond.

PUBLIC RECORDS - VERMONT

McVeigh v. Vermont School Boards Association

Supreme Court of Vermont - November 5, 2021 - A.3d - 2021 WL 5145183 - 2021 VT 86

Requester brought action against private nonprofit corporation, a membership organization made up of school boards, seeking declaration that corporation was a public agency under the Public Records Act (PRA) and therefore had to comply with its request for copies of its records.

The Superior Court entered summary judgment for nonprofit corporation. Requester appealed.

The Supreme Court held that nonprofit corporation did not qualify as a "public agency" subject to the PRA.

Private nonprofit corporation, a membership organization made up of school boards, was not an instrumentality of the state, and therefore, it did not qualify a "public agency" within meaning of the Public Records Act (PRA); although association was involved in aspects of public education and had power to appoint members to certain boards and commissions, it was not a means through which the state or its subdivisions performed a fundamentally governmental function.

Fitch Ratings 2022 Outlook: U.S. States and Local Governments

Fitch's Sector Outlook: Neutral Fitch's outlook for U.S. states and local governments in 2022 is neutral relative to surprisingly strong 2021 underlying business conditions. Operating conditions generally link closely to economic trends given the primary reliance on taxes. We anticipate national economic growth will remain ahead of its long-term trend next year, but slow considerably relative to the current year as the recovery from the pandemic matures and the immediate effects of enormous, pandemic-driven federal fiscal policy supports wane. States and local governments will benefit in 2022 and beyond from their share of the $350 billion in direct aid provided under the March 2021 American Rescue Plan Act's (ARPA) Coronavirus State and Local Fiscal Recovery Funds and $122 billion under the Elementary and Secondary School Emergency Relief Fund. Fitch anticipates this aid, the vast majority of which remains unspent and even unallocated, will provide cushion in the event of unexpected economic or public health setbacks. However, the aid is not likely to fundamentally improve most governments' operating conditions. The Infrastructure Investment and Jobs Act (IIJA) and additional federal policy measures, if enacted, are likely to benefit entities over the long term.

ACCESS REPORT

Thu 02 Dec, 2021

Fitch: U.S. State & Local Governments Search for Predictability in 2022

Fitch Ratings-New York-02 December 2021: How sustainably Federal stimulus aid is rolled out will be key for both U.S. state and local governments next year amid labor shortages, a new COVID variant and other unforeseen post-pandemic fallout, according to Fitch Ratings in its 2022 outlook report for the sector.

Fitch's outlook for U.S. states and local governments in 2022 is neutral relative to surprisingly strong 2021 underlying business conditions. "Economic growth above trend and a significant boost in resources from federal stimulus will keep states and local government finances on a positive path in 2022," said Senior Director Eric Kim. "Rising inflation and supply constraints will remain challenges."

COVID-19 remains influential and unpredictable as transmission rates and hospital caseloads can shift rapidly. This makes the new Omicron variant a potential area of concern as a new pandemic surge could cause another economic setback, complicating governments' budget outlooks. The largely unspent infusion of federal aid in 2021 provides some fiscal cushion.

The recent return of international travel should improve the outlook for major tourist draws and leisure and hospitality recovery overall in 2022. That said, state and local governments most dependent on business travel, including convention activity, will see the slowest recovery, particularly if Omicron variant infections become more widespread in the U.S.

Another area of note next year is labor shortages, which are beginning to trigger wage pressure for government employees and could in time erode expenditure flexibility for some state and local governments. "Governments with slower or stagnant revenue growth prospects may see an emerging or growing mismatch and increased pressure on budget-balancing tools," said Senior Director Michael Rinaldi.

The full report "Fitch Ratings 2022 Outlook: U.S. States and Local Governments" is available at www.fitchratings.com.

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S&P: Pension Pressure Lingers For Largest U.S. Cities Despite Federal Stimulus

Key Takeaways

- Pandemic-related federal stimulus provided funding for the cities surveyed, helping to alleviate immediate budgetary pressure, even if federal stimulus could not be used to fund pension payments.
- Funded ratios remained relatively stable, with the overall median increasing slightly, and we estimate reported funded levels will improve in fiscal 2021 given generally strong market returns to date.
- Fixed debt service and retirement costs remain high for several cities surveyed which could cause downward rating pressures over the long term.
- For most cities surveyed, pension contributions outpaced budgetary growth over the past decade.

Continue reading.

29 Nov, 2021

Valuing Water Rights in Eminent Domain: Nossaman

As water becomes scarcer in California, public agencies are looking for new sources and opportunities to provide water to their communities. When the government identifies those water sources but confronts unwilling sellers, eminent domain sometimes becomes necessary. This is currently taking place in the Antelope Valley, where the Rosamond Community Services District recently approved the adoption of a resolution of necessity to acquire water rights from agricultural land by eminent domain.

The District is facing shortages in its future water supplies and it is limited in the amount of groundwater it may use to serve its customers. The property identified is near an existing water distribution system, and the District could not locate another willing seller to secure sufficient water rights to meet the shortfall. It appears the owners plan to challenge the District's right to take the property, and if the District is successful, there will be a large fight on the value of the water rights. The District approved financing that would provide up to $17.5 million to acquire the water rights, which would be repaid through rates passed on to customers.

Valuation of water rights is a complex analysis that depends on a number of factors. In addition to determining the actual water rights in existence and their transferability, appraisers also consider:

- the quality of the water and its suitability for a variety of uses (agricultural, municipal, or drinking water);
- the costs to extract the water, including necessary improvements that must be installed to secure access;
- the reliability of the water source, including its priority in the water basin in the event of low-flow conditions; and
- alternative water supplies in the area, which dictates supply and demand and the price buyers and sellers will pay for water in the geographic vicinity.

Once those factors are established, appraisers typically use methodologies that are applied to traditional real estate valuation, such as the income approach, comparable sales approach, or cost approach. For example, in valuing water rights, an appraiser could consider the anticipated revenue stream of leasing the water, discounted to present value. Alternatively, an appraiser could look at other comparable transactions of water rights and make necessary adjustments to determine the appropriate value of the water rights. Or, under a cost approach, an appraiser could analyze the cost of developing an alternative water supply.

Rights that provide a reliable source of water, provide access to high-quality water, have minimal limits on transferability, and have scarce options for alternative water sources will ultimately fetch the highest price.

Nossaman LLP – Bradford B. Kuhn

November 30 2021

BlackRock on the Power of Public-Private Finance.

The current chapter of the Anthropocene epoch, characterized by a Code Red for humanity, demands an "all of the above" approach to climate solutions. While it is the public sector's role to lead on policy that protects society's broad interests, the recent COP26 in Glasgow, Scotland, was, as GreenBiz's Joel Makower wrote, in many ways the "business COP."

The private sector's commitment to stepping up to lead on climate solutions, or at least purporting to, is not new. But what stood out in Glasgow was the prevalence of public-private initiatives, some of which were seriously substantive.

One that caught my attention was BlackRock's Climate Finance Partnership (CFP), a public-private fund that will target investments in countries across Asia, South America and Africa that aren't part of the Organization for Cooperation and Economic Development (OECD). The Glasgow Financial Alliance for Net Zero (GFANZ) crowded headlines with its eyebrow-raising $130 trillion commitment to global transition finance — although that is a figure that Thomas O'Neill, InfluenceMap co-founder and now founder of Universal Owner, says "at best, $50.7 trillion should be removed from." That position is based on Universal Owner's analysis of the Net Zero Asset Managers Initiative, which found that the group has not committed asset managers to align themselves with climate science.

Continue reading.

greenbiz.com

By Grant Harrison

December 1, 2021

S&P: U.S. Not-For Profit Senior Living Sector's Resilient And Decisive Management Gave Ratings Stability In 2020

Key Takeaways

- Ratings remained stable despite the pandemic, with 21 affirmed and no rating or outlook changes.
- Operating losses increased as the gap between rating categories widened.
- Our rated organizations were resilient largely due to management teams reacting quickly to limit positive COVID-19 cases among both staff and residents as well as implementing other risk mitigating initiatives.

Continue reading.

29 Nov, 2021

Fitch: Inflation Could Disrupt Steadier U.S. Transportation in 2022

Fitch Ratings-New York-01 December 2021: U.S. transportation infrastructure is likely to see a firmer upward trajectory next year, though Fitch Ratings' 2022 outlook report for the sector says the path of inflation could be disruptive for some sectors.

Higher inflation will cause net income to rise as long as revenues grow at the same pace as O&M. This stands to benefit most toll roads in particular as many of them apply automatic annual rate increases indexed to inflation. Conversely, some toll roads that do not have the economic, legal, or political flexibility to raise revenues in line with inflation may experience some financial impairment.

“Seaports and toll roads have benefitted from a rapid and robust recovery in 2021, laying the groundwork for a return to more normalized growth next year,” said Lehman. “Airports and cruise-focused ports still have further room for traffic recovery as remaining travel restrictions ease as expected through next year.”

Airports continue to see relief of late thanks to improved leisure traffic. However, international traffic is still down by more than half as compared to pre-pandemic, while business travel is also lagging. As a result, full recovery will come quickly in some markets but also remain elusive for a segment of airports until 2024, per Fitch’s projections.

Toll roads, by contrast, are much closer to full pre-pandemic recovery. Fitch expects commercial traffic to continue rising, though passenger traffic remains below 2019 levels largely due to telecommuting.

Ports will be contending with congestion challenges well into 2022. Disrupted supply chains continue to challenge operational efficiency at gateway ports, with bottlenecks leading to shipping delays exacerbated by strained logistics networks and ongoing labor shortages.

‘2022 Outlook: U.S. Transportation Infrastructure’ is available at ‘www.fitchratings.com’.

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Fitch Ratings 2022 Outlook: U.S. Transportation Infrastructure

Fitch’s Sector Outlook: Neutral Fitch Ratings’ 2022 sector outlook for U.S. transportation infrastructure is neutral, indicating Fitch’s expectation for broadly stable performance in 2022, relative to a mixed profile of recoveries in 2021. Robust pandemic recovery and resiliency in 2021 were especially significant in the toll road and seaport sectors, while airport traffic continues to return to pre-pandemic levels. Fitch anticipates a steadier pattern of upside activity trends in 2022, given transportation infrastructure issuers are operating close to or above pre-pandemic volumes, approaching more normalized long-term growth patterns. Airports, cruise ports and international bridge crossings have yet to recapture all of their pandemic-related losses, primarily due to ongoing travel restrictions that have an outsized impact on these systems. Fitch expects these assets will benefit from an improving operating environment in 2022, as the pandemic wanes and travel restrictions are more fully repealed.

ACCESS REPORT

Wed 01 Dec, 2021

With Ridership Still Down, Transit Agencies Rethink Priorities.

More frequent service in low-income neighborhoods, fewer buses to affluent areas, even fare-free transit, are all on the table as transit agencies try to figure out the future, according to a new report from the Urban Institute.

Transit systems across America are facing an existential moment. Ridership remains dramatically down from its 2019 levels and budgets are only kept afloat by federal subsidies that will not continue indefinitely.

But this moment of peril for public transportation is also an opportunity to break old routines.

"Transit agencies get stuck in their service patterns, without considering the fact that those service patterns may not be reflective of what people want," says Yonah Freemark, senior research associate at the Urban Institute. "They have bus routes, in some cases, that they've had literally since they were running streetcars."

Freemark and his co-authors — Jorge González-Hermoso and Jorge Morales-Burnett — wrote a lengthy report for the American Public Transportation Association (APTA) on how an array of transit agencies are planning for the post-pandemic future.

governing.com

December 3, 2021 • Jake Blumgart

Substantial PFAS Funding in Infrastructure Act Flows Towards Protecting Water and Wastewater Systems.

The Infrastructure Investment and Jobs Act ("IIJA") allocates $10 billion in new government funding to address per- and polyfluoroalkyl substances ("PFAS") and emerging contaminants that increasingly challenge the nation's water and wastewater systems.[i]

Ordinarily, such funding requires matching or cost-sharing from the state. But the IIJA's PFAS funding is awarded as a grant, loan with the entire principal forgiven, or combination of the two. This grant funding provides states and water systems with additional resources to address PFAS impacts to their water sources

This third article in our series on the IIJA outlines which water providers and other communities are eligible for the Act's new water-focused funds, how they can receive funding, and the implications of such funding.

Public water systems; public, private, and nonprofit entities developing water infrastructure projects; and privately- and publicly-owned community water systems can access this funding through their individual state programs. This funding distribution includes:

- $5 billion to address emerging contaminants for small and disadvantaged communities, distributed to improve drinking water quality under the Safe Drinking Water Act ("SDWA");
- $1 billion for wastewater and stormwater infrastructure projects under the Clean Water State Revolving Funds ("Clean Water Funds") under the Clean Water Act ("CWA"); and
- $4 billion for community water systems to upgrade drinking water treatment, distribution, and replacement of contaminated sources under the Drinking Water State Revolving Funds ("Drinking Water Funds") of the SDWA.

Continue reading.

Marten Law LLP – Jeff B. Kray, Jessica K. Ferrell, Sara V. Cloon and Martha H. Geyer

December 1 2021

EPA Selects 39 Waterworks Projects to Apply for Billions in Financing.

The agency is teeing up projects for a new round of loans under a low-cost borrowing program for water and sewer infrastructure

Local governments, agencies and utility companies behind 39 major water and sewer projects in states across the U.S. can move ahead applying for billions of dollars in financing through a federal program that provides low-cost loans for waterworks infrastructure, the Environmental Protection Agency said Friday.

The loans would be available under the agency's Water Infrastructure Finance and Innovation Act program, or WIFIA for short. EPA estimates that, as funds become available, $6.7 billion in financing will flow to projects worth upwards of $15 billion in 24 states. WIFIA is designed to support regionally and nationally significant projects.

EPA emphasized that 14 of the projects include components meant to help infrastructure better withstand the effects of extreme weather and climate change, and that many also include elements involving cybersecurity and water reuse.

Continue reading.

ROUTE FIFTY

by BILL LUCIA

DECEMBER 3, 2021

How States Can Best Use Federal Fiscal Recovery Funds: Lessons From State Choices So Far

Most states have started using their share of the $195 billion Fiscal Recovery Funds (FRF), created under the federal American Rescue Plan to help states and localities address the pandemic's harmful effects. Our review of these spending decisions shows that many states are using these funds constructively: to offset declines in their revenue collections, to address the health, economic, and fiscal impacts of the pandemic, and to start new long-term investments to address racial and economic inequities. Decisions in some states are not constructive. All offer important lessons for how states should use the remaining $90 billion of these funds, which will be critical both to addressing the pandemic's ongoing damage and to putting states' economies on a path toward a strong recovery.

States are making substantial progress in using FRF, our review shows. As of early November 2021, some 39 states, the District of Columbia, and Puerto Rico have appropriated $105 billion. (See Figure 1.) That is 53 percent of the full $198 billion set aside for them, and 68 percent of the $155 billion distributed to them in 2021 (the rest will be in 2022). Among states that have allocated funds, the median state has committed 53 percent of its full allocation. Of the 11 states that have not — often because funds became available after (or very late in) their legislative session — most are expected to begin making spending decisions next year, as part of their budget process. States have until the end of 2024 to fully obligate their FRF, and until 2026 to complete their spending.

States have tremendous flexibility over how they use FRF. The most substantial use of these funds to date has been to replace state revenues that fell below projected levels as the pandemic pushed state budgets out of balance. This use has been important, because states must balance their budgets every year, even during economic downturns when demands for social services rise and revenue collections decline, for instance through lower sales tax and income tax collections. The FRF used to replace state revenues helped sustain state funding for schools, health care, and other services and avoided deep cuts to these services during the pandemic, including by minimizing layoffs for teachers and other public employees.

Continue reading.

CENTER ON BUDGET AND POLICY PRIORITIES

NOVEMBER 29, 2021 | BY ED LAZERE

Muni Impact of US Infrastructure Bill Could Prove Longer Term.

While the new US infrastructure investment bill didn't have any initiatives directly targeting the municipal bond market, there are still implications for munis in the longer term, according to our Municipal Bond Director of Research Jennifer Johnston. She explains the ramifications for investors in the space.

On November 15, 2021, US President Joe Biden signed into law HR3684, the Infrastructure Investment and Jobs Act. This bipartisan infrastructure bill includes $1.2 trillion of federal spending over the next five years. Of the $1.2 trillion, $550 billion is new spending, while the remainder will fund the reauthorization of the Highway Trust Fund. The final bill did not contain certain municipal bond market-related initiatives such as advance refunding, Build America Bonds (BABs) or elimination of the state-and-local tax (SALT) deduction cap.

The $550 billion in new spending is spread out over a number of transportation subsectors. The largest spending categories include $110 billion for roads and bridges, $73 billion for electric grid infrastructure, $66 billion for rail, $65 billion for broadband projects and $55 billion for water infrastructure. Moneys will be allocated using various formulas and distribution methods to states, local governments and agencies that will ultimately determine how the money is spent.

Continue reading.

advisorperspectives.com

by Jennifer Johnston of Franklin Templeton Investments, 12/1/21

A Look at How 150 Governments are Planning to Use ARPA Funds.

A new online dashboard offers insights into what cities and counties intend to do with the federal pandemic aid.

For those interested in how local governments across the U.S. intend to use billions in pandemic aid provided under the American Rescue Plan Act, a new online tool released Thursday is worth taking a look at.

Good government nonprofit Results for America and policy research firm Mathematica created what they're calling the American Rescue Plan Data and Evidence Dashboard. It presents information gleaned from reports 150 cities, counties and tribes have filed with the federal government outlining their spending plans for ARPA allotments.

“The thing we've heard from our communities, our cities and counties, has been: What are others doing? There's a huge network of people who are committed to using this money effectively to both build out their own capacity and deliver real results for residents,” said Zachary Markovits, vice president of local government at Results for America and managing director for the What Works Cities initiative.

Continue reading.

ROUTE FIFTY

by BILL LUCIA

DECEMBER 2, 2021

TAX - OHIO

State ex rel. Pike County Convention and Visitor's Bureau v. Pike County Board of Commissioners

Supreme Court of Ohio - November 16, 2021 - N.E.3d - 2021 WL 5313119 - 2021-Ohio-4031

County convention and visitor's bureau brought action against county board of commissioners and county auditor, seeking writ of mandamus compelling board and auditor to disburse to bureau the proceeds of a county-imposed sales tax on hotel lodging.

The Supreme Court held that:

- Bureau's claim was cognizable in mandamus;
- Board had discretion to redirect the tax proceeds to new entity;
- Board did not abuse its discretion in redirecting tax proceeds to new entity; and

- Bureau failed to establish clear legal right to retrospective monetary relief.

County convention and visitor's bureau's claim against county board of commissioners and county auditor, seeking disbursement to bureau of proceeds of county-imposed sales tax on hotel lodging based on statute authorizing the tax, was cognizable in mandamus; bureau's complaint sought to compel rather than prohibit official action, even though the requested relief would, in effect, prohibit the enforcement of certain resolutions of the board.

County board of commissioners, under statute authorizing tax on lodging, had discretion to redirect from county convention and visitor's bureau to another entity the proceeds of county-imposed sales tax on hotel lodging; other than prescribing a duty on board to earmark a residual percentage on tax proceeds for "the convention and visitors' bureau operating within the county," the statute said nothing more concerning the recipient of the funds, and the absence of statutory guidance concerning how an entity was designated to receive tax revenue was to be read as a grant of discretion on that point.

County board of commissioners did not abuse its discretion in redirecting from county convention and visitor's bureau to another entity the proceeds of county-imposed sales tax on hotel lodging, precluding bureau's claim for mandamus relief ordering board to disburse the proceeds to bureau prospectively; board explicitly enacted resolution redirecting the proceeds to new entity in response to documented findings of financial negligence by bureau, resolution referred to the findings as basis for the action taken, and period of more than a year between publication of the findings and passage of the resolution did not establish an arbitrary or unconscionable attitude on the part of the commissioners.

County convention and visitor's bureau failed to establish a clear legal right to retrospective monetary relief with respect to proceeds of county-imposed sales tax on hotel lodging allegedly withheld unlawfully or redirected by county, in bureau's mandamus action; resolution of county board of commissioners redirecting the proceeds to another entity was not an abuse of discretion under statute authorizing tax on lodging, and even if an earlier resolution of the board improperly withheld proceeds from the bureau, the bureau no longer qualified as entity designated to receive the proceeds under the statute in light of subsequent actions of the board.

Cities Tap Federal Relief Aid to Reward Workers With Bonuses.

Tens of thousands of U.S. public employees stand to benefit as local officials use $350 billion of federal virus aid for extra pay.

U.S. states and cities are tapping an enviable war chest as they fight to stop a four-month slide in public-sector employment and reward workers for their efforts during the pandemic.

From California to Kentucky to Massachusetts, dozens of cities, counties and state governments are using some of the $350 billion they received from the Biden administration's American Rescue Plan to shower extra pay on workers, especially those on the front lines in areas like public safety, health and education. Tens of thousands of public employees stand to receive a financial boost, at a time when an increasing number of Americans are quitting their jobs.

The bonuses are a bid to combat a wave of retirements and resignations that are complicating municipalities' efforts to rebuild their workforces. Despite an increasingly rosy fiscal outlook, state and local payrolls are still down 951,000 jobs from February 2020, after dropping from August through November, Labor Department figures showed Friday.

Continue reading.

Bloomberg CityLab

By Amanda Albright

December 3, 2021

Rating Muni Bonds on ESG and Impact.

Are all municipal bonds sustainable and impactful? Most investors would say yes.

However, just as all businesses are not profitable, not all muni bond issuers and issues are highly sustainable. Some are leaders, some are laggards. Many achieve their mission, but enough lag to distinguish the overall impact — teaching kids, improving patient health and citizen well-being.

If you got sick right now, would you care which hospital you go to? The best hospitals achieve better patient outcomes, with fewer returns for the same condition, while managing with fewer violations.

Do parents seek out the best schools for your kids? Of course they do — some school districts provide students with more teachers per student, higher allocations to the classroom and free school lunches to serve lower-income students.

Across muni-bond sectors, there are more than 200 data-driven metrics and 5 million annual data points to measure performance. VanEck and HIP Investor have partnered to track the overall impact and sustainability of 122,000 entities that could benefit from muni bonds.

Continue reading.

etftrends.com

By Paul Herman

CEO & Founder HIP Investor

DECEMBER 5, 2021

Separate But Unequal: How Tribes, Unlike States, Face Major Hurdles to Access the Most Basic Public Finance Tools

Economic development benefits communities through job growth, higher standards of living and improved subjective well-being. Fiscal Capacity, which allows governments to deliver programs and services such as health care, education, workforce development and law enforcement, is also a product of growing economies. As a result, state and local governments use an artillery of public finance tools such as subsidized borrowing and tax incentives to spur development. Consistently overlooked and largely underappreciated, the responsibilities of tribal governments mirror those of state and local governments. Yet, unlike these sub-national governments, tribal governments face hurdles when accessing even the most basic forms of public finance tools. This lack of parity is especially harmful today as recent research shows that the COVID-19 pandemic has crippled tribal government revenues and disproportionately impacted American Indian and Alaska Native age-adjusted mortality and prime-age employment. this short article, we summarize three distinct ways in which tribes have been shut out of tax-based economic development tools that are readily available to state and local governments.

State and local governments use sizable amounts of tax-free debt obligations (i.e, municipal bonds) to supply public goods such as highways, bridges, and parks along with private goods such as hotels, golf courses, and sports stadiums. In addition, these governments can issue non-taxable [i] which let the benefits of low-cost borrowing flow directly to the private sector — provided that these bonds are used on specific projects such as airports, educational facilities, and affordable rental . These bonds benefit the public by building economic infrastructure without raising taxes.

Continue reading.

The Brookings Institution

by Matthew Gregg

December 3, 2021

More Than Fines and Fees: Incorporating Equity into City Revenue Strategies

ABSTRACT

In the wake of the COVID-19 pandemic, city leaders are working to tackle structural inequities in access to wealth and opportunity. An infusion of federal dollars from the Infrastructure Investment and Jobs Act and American Rescue Plan Act provides an opportunity to rethink past budget choices. This brief describes how city leaders are integrating equity into revenue structures. Our review suggests that cities should consider equity in both processes and outcomes, use data- and community-driven strategies to track progress and routinize evaluations, and include in-kind resources in their assessments. Federal, state, and county governments can also design intergovernmental grant and shared-revenue programs to prioritize equity.

Full Report

Tax Policy Center

by Aravind Boddupalli, Tracy Gordon, Lourdes Germán

Dec 1, 2021

The Outlook For Municipal Markets (Bloomberg Radio)

Joe Mysak, Editor of Bloomberg Brief: Municipal Markets, has the latest news on municipal markets around the country. Hosted by Matt Miller and Taylor Riggs.

[Listen to audio.]

Bloomberg Radio

Dec 03, 2021

[Pot Taxes May Yield $12 Billion for States by 2030 Says Barclays.]

- **Legal weed will blunt budget pain after federal aid runs out**
- **California raised about $1 billion in pot revenue in 9 months**

When U.S. states and municipalities burn through their federal coronavirus relief money, taxes on legal weed will help blunt the budget pain.

Cannabis tax revenue generated more than $2 billion in the U.S. last year and that could grow to $10 billion to $12 billion for states by 2030, exceeding tax revenue from alcohol, according to municipal-bond strategists at Barclays Plc. This year, five states–New York, New Jersey, Connecticut, Virginia and New Mexico legalized recreational pot, bringing to 18 the number of states enacting law to regulate and tax cannabis for adult use.

“We’ll have some long lasting consequences of the pandemic and you’ll need to make money up somewhere,” said Mikhail Foux, Barclays head of municipal strategy.

For now, U.S. municipalities are swimming in cash. States and cities collected $350 billion from the Covid-19 stimulus package to spend on everything from subsides for low income renters to pay increases for teachers. They also plan to fund hundreds of millions of dollars on projects like broadband and water and sewer upgrades — and that’s before they get another massive infusion of cash from the $550 billion infrastructure package approved last month.

Municipalities must commit the stimulus money by 2024, and spend it by 2026. And when the federal money’s gone, municipalities will need to find new revenue to pay for ongoing programs they funded with one-time aid.

Legal sales of cannabis totaled $17 billion in 2020 and should grow to as much as $27 billion this year, according to Barclays. By 2030 sales should reach about $80 billion, the London-based bank estimates.

California took in almost $1 billion in cannabis tax revenue in the first three quarters of 2021, a 21% increase over the same period the prior year. California may bring in $1.7 billion in cannabis revenue by 2026, while New York, New Jersey and Connecticut could generate as much as $2 billion, Barclays estimated.

There’s more growth potential in populous states like Florida and Pennsylvania that haven’t yet legalized recreational weed.

Bloomberg Politics

By Martin Z Braun

December 3, 2021

Illinois's Cost of Debt Falls as Chicago Preps New Bond Sales.

- **State's credit ratings rise with federal aid, higher revenue**
- **Drop in Treasuries helping muni deals this week: Lord Abbett**

Illinois's $400 million municipal bond sale Wednesday is the first in a string of sales from issuers in the Land of Lincoln this month as the state's cost to tap the $4 trillion market has shrunk following an improved outlook on increased revenue and billions in federal aid.

"Illinois was able to get much improved spreads in rates compared to where they were a year ago based upon their more positive outlook and the strong demand for incremental yield in the market right now," said Dan Solender, director of tax free fixed income investments for Lord, Abbett & Co., which holds $36 billion in muni assets including Illinois debt. Deals this week also are benefiting from a drop in Treasuries, he said.

The state sold $400 million in tax-exempt bonds through a competitive deal and saw the penalties over benchmark municipal securities drop sharply from a year ago, according to data compiled by Bloomberg. Morgan Stanley purchased one $200 million series with spreads ranging from 17 basis points for debt maturing next year to 52 basis points for bonds due in 2031 with 5% coupons. Barclays bought the remaining bonds with spreads ranging from 54 basis points for debt with a 5% coupon maturing in 2032 to 116 basis points for bond due in 2041 with a 3% coupon.

Around this time last year Illinois paid much more to borrow from the muni market. In October 202O, a competitive tax-exempt sale by the state drew spreads ranging from 97 to 294 basis points. At that time, Illinois was feeling pressures from the pandemic layered on top of years of self-inflicted financial woes.

Illinois was the only state to borrow from the Federal Reserve's Municipal Liquidity Facility last year and did so twice as its costs in the muni market surged. It was facing the threat of its credit rating falling to junk after voters rejected a shift from its flat income tax rate to a graduated levy. Long-term problems included almost no money in its rainy day fund, a roughly $140 billion unfunded pension liability and billions more in unpaid bills.

Illinois has seen a vast improvement in its financial outlook over the last year. The state expects a bigger surplus this fiscal year and smaller gaps in the next four annual budgets thanks to a quicker than expected recovery in revenues and billions in federal aid. In mid 2021, Illinois also received upgrades from S&P Global Ratings and Moody's Investors Service, the first in more than 20 years, while Fitch Ratings boosted its outlook to positive from negative. The state also has paid off $2.3 billion of the total $3.2 billion it borrowed from the Fed.

"The results of today's sale really reflect the improving credit story for the state as well as the supply demand mismatch as we round out the year," said Dora Lee, director of research for Belle Haven Investments, which holds $15.7 billion in muni assets. "We expect the Chicago deals next week to benefit from the credit improvements at the state level since the two are so interconnected."

Amid strong demand from investors, other issuers from Illinois are also expected to come to market this month. The planned sales include a $600 million deal Thursday from the Illinois State Toll Highway Authority and $270 million from the city of Chicago next week, according to bond documents. Chicago's Sales Tax Securitization Corp. also is slated to sell about $981.5 million in second lien bonds as well, according to filings.

Bloomberg Markets

By Shruti Singh

December 1, 2021, 12:43 PM PST

— With assistance by Danielle Moran

Municipal Bonds on Track to Break Three-Month Losing Streak.

- **Munis have returned 0.67% this month, beating Treasuries**
- **Omicron variant shows little impact on muni market so far**

Municipal bonds are on track to snap a three-month losing streak as investors continue to pour cash into tax-exempt debt and as yields have stabilized after reaching their highest levels of 2021.

State and local government debt has returned 0.67% month to date, beating a 0.55% gain in Treasuries and the 0.2% decline in U.S. corporate debt, Bloomberg index data show.

November has been busy for fixed-income markets with the Federal Reserve's tapering announcement, passage of President Joe Biden's infrastructure package and the emergence of a new Covid-19 variant that spurred a brief flight to safety Friday in Treasuries. Still, munis have remained expensive, bolstered by generally strong local-government financial performance.

"Municipals were much more resilient during November than their taxable counterparts," said Craig Pernick, senior managing director at Chevy Chase Trust. "Fund flows remain really high, maturities are still heavy and the calendar is fairly light."

While cash has flowed into municipal-bond mutual funds for 38 straight weeks, it had eased to almost a trickle in October. It's surged back since then, with $720 million put in during the week ended Nov. 24 and $1.4 billion the week before.

Municipal issuers plan to power ahead with $16.6 billion of sales in the coming month. Illinois plans to sell $400 million of general obligation bonds this week. California's Golden State Tobacco Securitization Corp. is scheduled to issue $4.2 billion of tobacco settlement asset-backed bonds in early December.

CreditSights expects at least $38 billion of redemptions in December, which would ease pressure on pricing.

"There is a really attractive new issue calendar, and that tends to motivate investors," said Patrick Luby, a municipal strategist at CreditSights. "The market is in fairly good footing for the next couple of weeks."

Bloomberg Markets

By Nic Querolo

November 29, 2021, 10:44 AM PST

Junk to Drive 2022 Muni Supply to Record $500 Billion.

- **Minimum-denomination deals, a proxy for junk, are on the rise**
- **Professionals now dominate market, and they hunger for yield**

Here's my call for 2022: U.S. states and local governments will borrow more than $500 billion in the municipal-bond market for the first time. You can credit investors' taste for junk.

I am presuming here that any new coronavirus variants don't prove to be dangerous enough to trigger further economic restrictions and the kind of severe market volatility that leads governments to rethink borrowing plans.

This year, issuers have sold $425 billion of long-term municipal debt, and my rough calculation places them on track to sell about $450 billion, just shy of the record of over $455 billion in 2020, data compiled by Bloomberg show.

Wall Street forecasts compiled by my colleague Danielle Moran show the average estimate is for about $470 billion of muni issuance in 2022, although projections range from $420 billion to $550 billion. I predict we'll top $500 billion, and I expect muni junk will move the needle — unrated, speculative deals sold only to qualified investors in minimum denominations of $100,000, $250,000 and $500,000.

The key reason I anticipate this boom is because the municipal market is becoming more professional, and those buyers hunger for yield. In 2022, I expect supply to catch up with demand. Again, this assumes the new variant doesn't suppress issuance, a risk Municipal Market Analytics laid out this week.

To get a sense of where we're going, it's useful to see where we've been. The chart above shows the history of the junk muni market through the annual volume of high-denomination transactions. Issuance didn't hit the double-digit billions until the 1990s, and exploded in the 2000s, reaching $98.2 billion in 2008, or around 27% of the $362.8 billion in munis sold that year.

The financial crisis quashed demand for risky stuff. Junk issuance ultimately dropped to about $17 billion in 2015. It started to rebound the next year, and the 2021 tally stands at about $35 billion. If it finishes the year at $37 billion, — the most since the 2008 boom — that's only 8% of the total of the $450 billion that I estimate we were on pace to achieve before the latest market turbulence.

So I expect the market to continue on the current trajectory, assuming no interruption to the present cycle of easy credit, which is emboldening developers to take on all manner of endeavors.

These kinds of deals typically finance risky projects like charter schools, recyclers, hangar operators at airports, minor-league stadiums, hotels, museums, theme parks and real estate projects that are way out there.

Pro Shift

And developers can typically have confidence that they'll find funding in the muni market. As I say, the junk resurgence is happening in large part as the market is becoming more professional.

As Patrick Luby of CreditSights wrote, "individuals have shifted from direct ownership of individual bonds to indirect ownership via mutual funds, ETFs and CEFS," referring to exchange-traded and closed-end funds. He continued, “The nearly stagnant level of individual bond holdings implies that some (perhaps most) growth in muni Separately Managed Accounts has come from the conversion of self-directed portfolios.”

Federal Reserve data show that the household sector owned $1.88 trillion of municipal securities in the second quarter, down from $1.92 trillion at the end of 2020. Cumberland Advisors this month cited a Citigroup Inc. estimate that separately managed accounts may comprise almost $800 billion of this.

Meanwhile, of course, mutual funds continue to grow, controlling $952 billion of the $4 trillion in outstanding munis, according to Fed data. Closed-end funds account for $97 billion and ETFs $76 billion.

Seeking Yield

These are the customers who want yield, and they’re not finding it in the plain-vanilla tax-backed munis so beloved by Mom and Pop investors. The BVAL 10-year top-rated benchmark yields around 1.05%, well below its five-year average.

Professional buyers want quirky, idiosyncratic deals that offer a big yield premium. High-minimum denomination deals offer yields hundreds of basis points over triple-A. The question is: For how long? The offering documents on junk deals usually warn buyers that their entire investment is at stake.

A couple more caveats to my $500 billion prediction. I’m not counting on tax-exempt advance refundings or a new version of Build America Bonds being restored to the Build Back Better legislation. Nor am I including munis sold with corporate cusips in my total.

Bloomberg Markets

By Joseph Mysak Jr

December 1, 2021, 8:00 AM PST

— With assistance by Danielle Moran

(Joe Mysak is a municipal market columnist who writes for Bloomberg. His opinions do not necessarily reflect those of Bloomberg LP and its owner, and his observations are not intended as investment advice.)

Fortress-Backed Rail Gets Nod to Sell $1 Billion of Muni Debt.

- **Florida agency approves Brightline’s request to fund expansion**
- **Service resumed last month after suspended since March 2020**

Brightline Holdings, the train company backed by Fortress Investment Group, on Friday won the authority to sell $1 billion of tax-exempt private activity bonds to finance an extension of its Florida line that would quadruple its current operating length.

The decision by the board of the Florida Development Finance Corp., the municipal agency that gives private entities access to low-cost financing, clears the way for the company to first issue short-term escrowed debt this month, which won't be based on the project's risks. The company will then remarket the securities after going back to the board for final approval. That offering will test investors' faith in the passenger railroad, which will extend operations to Tampa from Miami for a total of 320 miles (515 kilometers).

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. Service resumed last month between Miami and West Palm Beach after stopping in March 2020 for the pandemic. Construction continued on an expansion to Orlando, which is expected to wrap up at the end of next year.

About 70% of Florida's population will have access to the line once it ends in Tampa, Brightline Chief Executive Officer Michael Reininger told the board Friday. "It will become the most powerful alternative transportation system in the country," he said.

Most of the proceeds of the new debt will go to building capacity for the line to Orlando, with about $20 million going toward design and engineering for Tampa, Brightline Chief Financial Officer Jeff Swiatek told the board.

Brightline has previously used this financing tactic of issuing escrowed bonds and then converting the debt to fixed-rate bonds. But in what would be a first for the company, a significant portion of the remarketed securities — $650 million — could receive investment-grade ratings because the debt would be backed by a combination of upfront and annual payments Miami-Dade and Broward counties will make to Brightline in exchange for using the line for their commuter services, according to a report by PFM Financial Advisors LLC.

The smaller amount of the remarketed securities will be unlikely to earn investment-grade ratings because other cash sources such as operating revenue will back the debt, which will be subordinate, the report said.

Wider Range

The securities with an investment-grade rating would draw a wider range of buyers than the unrated debt can attract.

"Given the solid revenue stream, it's a reasonable expectation that the bonds would be attractive to a large number of tax-exempt buyers," Ryan Rosberg, senior research analyst at Nuveen Asset Management, said before the meeting.

Because of concerns raised by board member and Florida's bond finance director Ben Watkins, the board adjusted its resolution on the debt issuance by requiring Brightline to return for approval of the remarketing. Watkins said that while he supported the project, aspects of the permanent financing remain unclear. "I just can't get comfortable signing off on something when I don't know what it looks like," he said.

Brightline had already sold $2.7 billion of unrated tax-free debt for the $6 billion project. Some of the bonds have recently traded up in price amid positive developments for the project such as its re-launch. A bond due in 2049 traded Nov. 19 at an average yield of 5.3%, compared with a high of 7.75% in January, according to data compiled by Bloomberg.

Brightline also plans to sell debt for a line connecting Las Vegas to southern California.

Bloomberg Business

By Romy Varghese

December 3, 2021, 9:47 AM PST

New York Is Set to Refinance One World Trade Center.

- **Agency approves bonds to redeem debt on NYC's tallest building**
- **Silverstein also plans 7 World Trade Center refinancing**

A state agency approved $700 million in bonds to refinance debt used for One World Trade Center, the tallest building in New York City, located on the site of the towers destroyed on Sept. 11, 2001.

New York Liberty Development Corp., created in 2002 to help rebuild lower Manhattan after the terrorist attacks, plans to issue the bonds this month on behalf of the Port Authority of New York & New Jersey. Proceeds will redeem securities sold in 2011 to help finance the 1,776-foot structure. Siebert Williams Shank & Co. and Goldman Sachs Group Inc. will manage the deal.

Separately, the agency approved developer Larry Silverstein's selection of Goldman to manage a $525 million refinancing for nearby 7 World Trade Center. The building opened in May 2006, the first in the new complex. Silverstein last refinanced the municipal bonds for the 52-story building in 2012. The date of the bond sale wasn't immediately available.

Market prices for trophy office buildings in lower Manhattan have suffered more than those in midtown during the coronavirus pandemic. The valuation of the World Trade Center complex and Goldman's headquarters at 200 West Street fell by about 23%, compared with a 14% median decline for landmark buildings in midtown for the fiscal year beginning July 1, according to the city's Department of Finance.

One World Trade had leased about 90% of its 3 million square feet of commercial office space as of March 31, according to an April Port Authority bond offering document. 7 World Trade Center was 95% occupied as of Sept. 30, according to a quarterly management report from Silverstein Properties.

Bloomberg Markets

By Martin Z Braun

December 2, 2021

Illinois Effort to Fix Ailing Local Pensions Faces Legal Hurdle.

- **State law mandates merging of assets for 650 funds by mid 2022**
- **No police funds have shifted assets amid pending court ruling**

A court ruling as soon as this month will help determine the fate of one of Illinois Governor J.B. Pritzker's key plans to ease the massive shortfall in local pension funds across the state.

A 2019 law championed by Pritzker would merge about 650 local police and firefighter pensions with assets topping $16 billion into two funds to cut costs and improve returns. Fixing the underfunded plans, which weigh on budgets and credit ratings of many communities statewide, is critical for Illinois's economic rebound.

The law set a June 30 deadline for the consolidation of the funds, but many of the local pensions are hesitating or even refusing to merge until they learn the outcome of litigation to block the combining. Three dozen current employees and retirees, along with 18 local retirement plans, filed a lawsuit in February in Illinois circuit court saying the consolidation violates the state constitution. A key ruling is expected as early as December, said Daniel Konicek, an attorney representing plaintiffs.

The 2019 state law was "a positive step forward for Illinois pensions," said Geoffrey Buswick, an analyst for S&P Global Ratings, noting that many smaller pension funds are chronically underfunded, which weighs on municipalities' credit quality.

"Will it work? There's no guarantee," he added.

The stakes are high for Illinois. The Land of Lincoln is the lowest-rated U.S. state even after recent upgrades, and fixing pensions is critical as it recovers from the pandemic. The state isn't obliged to bail out local retirement plans, but if municipal governments are struggling, Illinois will lag as well.

A spokesperson for Illinois Attorney General Kwame Raoul declined to comment, citing pending litigation, while spokespeople for Pritzker did not respond to emails and calls seeking comment.

Funds Wait

Five statewide systems have a total unfunded liability of about $144 billion. And the collective unfunded liability of local downstate public safety pension plans through the end of fiscal 2020 topped $13 billion, according to Illinois Department of Insurance data.

The upcoming ruling may slow or even halt consolidation. The 2019 law set up one bigger fund for police officers and another for firefighters to take over the management and investment of the combined assets, but left control over benefits and contributions with the local boards.

So far, however, the new Illinois Police Officers' Pension Investment Fund hasn't received any assets and expects to begin getting funds around March, said executive director Richard White. About 44% of the 357 downstate and suburban police funds that were supposed to be merged into the bigger pension plan haven't even responded to requests for information, White said.

The Firefighters' Pension Investment Fund has received about $2.2 billion in assets but about a quarter of would-be participants in the early tranches are not complying, said executive director William Atwood. The transfers are complicated and take time, Atwood said.

The Illinois Municipal League, which advocated for the consolidation for a decade before the law was enacted, "is confident in the legality and validity of the act, and we see no reason why the suit will render any ultimate decision from the courts otherwise," executive director Brad Cole said in an email. The two consolidated funds should be able to meet the June deadline, said Cole, who serves on the board of both but is commenting on behalf of the league.

"We are already showing savings and increased earning ability, proving the benefit that was predicted and is needed by this consolidation," Cole said.

A Relief?

Some local governments are relieved to see their plans consolidated.

Police and fire pension costs for DeKalb, Illinois, use up about 20% of general fund revenue, up from 10% in 2014, city manager Bill Nicklas said in an interview. The entire property tax levy for the city's proposed 2022 budget will go toward the two pension funds and some more revenue from sales taxes may be tapped for the retirement system payments, he said.

"Of the options that are out there, consolidation seems to be a good place to begin," Nicklas said.

But underscoring how difficult this shift is, the DeKalb Police Pension Fund doesn't agree with city officials and is listed as one of the plaintiffs in the lawsuit.

"I don't think many of us trust the government of Illinois to handle our money given their history," said Jim Kayes, president of the DeKalb Police Pension Fund board, in an interview.

Constitutional Rights

The lawsuit claims that the law takes away the plaintiffs' local authority and "diminishes and impairs the pension benefits" to which they are entitled. Illinois' constitution bans any reduction in worker retirement benefits.

In passing the law, "the Governor and General Assembly have acted in dereliction of their duties to uphold the Illinois Constitution," according to the complaint. "Plaintiffs must therefore turn to this Court to protect their rights and pensions they have earned, invested, and managed."

The state said in a filing in reply that Illinois's constitution protects the payments that retirees are entitled to, but that doesn't extend to areas like choosing the entity that manages the retirement plan.

Even amid the uncertainty that's resulting in a slowing of the process, the consolidated funds are continuing to move forward to meet the statutory requirement, according to their executive directors. The Illinois Police Officers' Pension Investment Fund is increasing its outreach to improve compliance and will respond as needed once the court rules, Executive Director White said.

"We will be in very good shape. There will be certain outliers that didn't quite make it," said Atwood from the consolidated fire fund. "It's not going to be for a lack of trying on our part."

Bloomberg Politics

By Shruti Singh

December 2, 2021, 9:26 AM PST Updated on December 2, 2021, 12:25 PM PST

U.S. Bond Funds See Higher Outflow in the Week to Dec. 1 -Lipper

(Reuters) – U.S. bond funds witnessed a surge in outflows in the week to Dec. 1 on rising prospects that the U.S. Federal Reserve will ramp up the pace of unwinding its bond purchases and will lift rates as soon as mid-2022. According to Refinitiv Lipper data, investors sold U.S. bond funds worth a net $2.16 billion, compared with their net selling of $245 million in the previous week.

Despite concerns over the Omicron coronavirus variant, the two-year U.S. Treasury yield jumped 7 basis points on Wednesday after the Fed chief said that in December the Fed will discuss whether to end their bond purchases a few months earlier than expected.

U.S. taxable bond funds witnessed net selling of $3.03 billion, that was the largest weekly outflow since early-April 2020. However, municipal bond funds attracted inflows of $1.14 billion.

U.S. short/intermediate investment-grade funds and loan participation funds witnessed outflows of $1.84 billion and $304 million respectively, while weekly inflows into U.S. inflation protected funds also dropped to a four-month low of $169 million.

However, U.S. equity funds drew $7.56 billion in net buying, their largest inflow in five weeks. Large cap funds pulled in $13.09 billion after two straight weeks of net selling, although investors sold small- and mid-cap equity funds worth $1.96 billion and $104 million respectively. U.S. growth funds attracted $621 million in net purchases after four straight weeks of outflows. However, value funds saw net selling of $2.22 billion, the biggest in six weeks.

Technology funds lured inflows for a third straight week worth $2.39 billion, although financials and industrials posted outflows of $1.51 billion and $481 million respectively.

Meanwhile, U.S. money market funds secured a net $29.27 billion in net purchases, the biggest inflow in five weeks.

By Reuters

Dec. 3, 2021

(Reporting by Gaurav Dogra and Patturaja Murugaboopathy in Bengaluru; Editing by Shailesh Kuber)

Ernesto A. Lanza Named Acting Director of SEC Office of Municipal Securities.

Washington, D.C.–(Newsfile Corp. – December 3, 2021) – The Securities and Exchange Commission today announced that Ernesto A. Lanza will serve as Acting Director of the Office of Municipal Securities (OMS). Mr. Lanza, who has served as Senior Counsel to the OMS Director since 2019, replaces Rebecca J. Olsen, who was named Deputy Chief for the Division of Enforcements Public Finance Abuse (PFA) Unit. Mark R. Zehner, who held the PFA role since July 2010, is retiring from the agency after 25 years of service.

“I look forward to working closely with Ernie on oversight of municipal securities,” said SEC Chair Gary Gensler. “This critical $4 trillion market finances local governments and the essential infrastructure of our communities, such as roads, hospitals, and schools. I thank Rebecca for her leadership of OMS since 2018 and congratulate Mark on his retirement from the SEC.”

Prior to joining the SEC in 2019, Mr. Lanza was in private practice with a focus on public finance matters related to securities law, disclosure, and market structure issues. He previously served as the Deputy Executive Director of the Municipal Securities Rulemaking Board (MSRB), where he led a number of policy initiatives, including the launch of the EMMA system. Before that, he was the MSRBs Chief Legal Officer and General Counsel. Mr. Lanza holds a J.D. from the University of Pennsylvania Law School and earned his undergraduate degree cum laude from Harvard University.

Ms. Olsen became head of OMS in September 2018 and previously served as the Offices Deputy Director, Chief Counsel, and attorney fellow. She earned a bachelor's degree from Boston College, a J.D. from the Georgetown University Law Center and an LL.M in International Business Law from the Vrije Universiteit Amsterdam, The Netherlands.

Mr. Zehner joined the SEC in January 1997. Prior to joining the Enforcement Division, he served as Regional Municipal Securities Counsel in the SECs Philadelphia Regional Office and as an Attorney-Fellow in OMS. He received a J.D. from the University of Pennsylvania Law School and a B.A. from Dartmouth College. In 2006, he received the Stanley Sporkin Award, the agencys highest honor for enforcement staff.

Looking for Bonds? Consider Munis Amidst Volatility.

The $1.2 trillion infrastructure investment bill didn't contain any provisions for municipal bonds specifically, but the market still looks to benefit in the long term as the spending trickles out over the coming years.

President Biden signed the Infrastructure Investment and Jobs Act into law mid-November, and while it lacked any specific targeted boost to municipal bonds, the government's commitment to repairing bridges and roads and investing in trains and sewers will likely lead to growth for the municipal bond market, reports the Wall Street Journal.

As government spending starts to make its way to city and state legislatures, it often will only be partial support for a project that will require further funding from local sources. That burden falls onto cities and states, and could lead to greater bond issuance.

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

With so many varied projects receiving funding, the odds of the need for new municipal bonds in the coming months and years is high, with improvements slated for bridges, roads, railways, water and sewerage, and more.

Seeking Tax-Free Income Amidst Volatility and Rising Rates
With current market volatility and the potential for its persistence well into next year, finding tax-free income from municipal bonds that will potentially see continued growth over the next five years could be a way to pivot for investors. The American Century Diversified Municipal Bond ETF (TAXF) offers actively managed exposure to the space.

TAXF mainly invests in municipal bonds and other debt securities, while sometimes investing in "junk bonds," or high-yield securities. The high-yield securities are rated below investment-grade, including bonds that are in monetary or technical default. The issuers typically have short financial histories or questionable credit, or else have a history of problems making interest and principal payments.

The debt securities purchased can be of any duration, with the average duration of the portfolio varying depending on the interest rate forecast.

The fund primarily seeks current income but also works to increase capital appreciation based on interest rate fluctuations and credit upgrade potentials. When investing in a security, the portfolio manager looks at the current and predicted interest rates, the credit of an issuer, comparable alternatives, the overall market condition, and other factors.

A breakdown of current investments by states includes a 14% allocation to California, a 10% allocation to Texas, 9% to New York, 6% to Florida, and 5% to Illinois.

TAXF carries an expense ratio of 0.29% with monthly distributions.

ETF TRENDS

by KARRIE GORDON

DECEMBER 2, 2021

What Happens if Muni Bonds Stop Being Tax-Free?

The 2017 Tax Cuts and Jobs Act was a wake-up call, one analyst says

For decades, everything from sewer systems to schools to stadiums have been built by debt issued by state and local governments. Municipal bonds are a mainstay of the American economy: They level the playing field between tiny towns and massive state economies, letting every issuer reach investors who want a steady stream of income that's also tax-free.

But what if tax-free bonds stopped being tax-free?

One analyst thinks the market should be more prepared for such a shift. "I don't see an immediate threat," said Tom Kozlik, head of municipal research at HilltopSecurities, in an interview with MarketWatch. But in an era where deficit reduction may start to resonate more for lawmakers even as low taxes reign supreme, Kozlik says the muni market needs to be vigilant.

Continue reading.

MarketWatch

By Andrea Riquier

Dec. 2, 2021

California Scheming.

Luxury apartment or essential housing? How America's most notorious junk municipal bond peddlers are getting rich off California's affordability crisis.

Among California real estate developers, Jordan Moss has an exceptionally big heart. His Marin County firm, Catalyst, is dedicated to developing affordable housing—no small challenge in a state in which small one-bedroom apartments routinely lease for more than $3,000 a month and rents can climb at double-digit rates annually.

“I quickly came to the conclusion that I don’t have the temperament for that business, when you’re waiting years and years to find out if you’re going to get an allocation of [low-income housing tax] credits and bonds, and all the other things needed to make that sausage,” says Moss, a former UC Davis basketball player.

But in 2019, he partnered with a group of municipal-bond wizards and has since acquired 14 fully occupied luxury apartment buildings in some of California’s most expensive Zip codes—places like Sausalito, Larkspur and Huntington Beach. Even better, because he promises to turn these buildings into so-called “essential” or “workforce” housing, his deals were 100% financed by $2.5 billion in tax-exempt municipal bonds, mostly courtesy of a little-known governmental entity he helped create: the California Community Housing Agency (CalCHA).

Continue reading.

Forbes

by Matt Schifrin with Isabel Contreras and Rachel Sandler

Dec 2, 2021

Fitch: Home Price Increases Have Varied Effect on Property Taxes

Fitch Ratings-New York-03 December 2021: Local governments in some states are better positioned to benefit in the near to medium term from strong home price growth, says Fitch Ratings. The potential revenue impact depends on a municipality’s property tax regime, home price trends and the historical relationship between home price trends and property taxes, which reflects tax policy and government action. Fitch ranked states according to the possible tax revenue impact based on an index of these three factors.

Home price growth has surged in all states but has been uneven. Municipalities in states near the top of the ranking may see a boost to property taxes because of higher home price growth, the contribution of property taxes to total revenues and tax policies that capture this growth.

Property taxes are a smaller portion of overall tax revenues for municipalities in states ranked near the bottom. These states have had less exuberant home price growth, and there is little or no correlation between historic property taxes and house prices, partially due to atypical valuation cycles, rate limits and policy choices.

Continue reading.

ESG Relevance Scores in Credit Ratings vs Sustainable Fitch ESG Ratings in Financial Institutions: Fitch Webinar

15 December 2021 | 3:00 – 4:00pm CET

Join us for a discussion and introduction to our new ESG Ratings from Sustainable Fitch.

Maria Bazhanova, Associate Director in the Sustainable Fitch team will provide you with an introduction to the ESG Ratings and Janine Dow, Senior Director, Sustainable Fitch, will introduce you to the differences between the established ESG Relevance Scores in Credit Ratings and the new ESG Ratings in Financial Institutions.

KEY TOPICS

ESG Ratings:

- Introduction to Sustainable Fitch´s ESG Ratings and the underlying methodology.

ESG Relevance Scores in Credit Ratings vs. ESG Ratings:

- ESG Relevance Scores in Credit Ratings
- From Credit Ratings to ESG Ratings: Difference between the ESG Relevance Scores in Credit Ratings vs ESG Ratings

The discussion will be followed by a Q&A session. Please send any questions in advance to Christiane Treutel: christiane.treutel@fitchratings.com.

We hope you can join us for this event.

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CCCFA Issues California's First Municipal Clean Energy Project Revenue Bonds Worth over $2 Billion

The bonds will support community clean energy goals across the counties of Alameda, Contra Costa, Marin, Napa, San Joaquin, Santa Clara, and Solano

OAKLAND, Calif. and SAN RAFAEL, Calif. and SUNNYVALE, Calif., Dec. 6, 2021 /PRNewswire/ — Three Community Choice Aggregators (CCAs) – East Bay Community Energy, MCE, and Silicon Valley Clean Energy – have issued California's first ever municipal non-recourse Clean Energy Project Revenue Bonds through the California Community Choice Financing Authority (CCCFA). Two separate bond issuances, valued at over $2 billion for thirty-year terms, support the purchase of clean electricity to serve over 2.5 million residents and businesses across the Bay Area and Central Valley.

The two Clean Energy Project Revenue Bonds prepay for the purchase of over 450 megawatts of clean electricity – enough to power 163,000 homes and reduce 765,000 metric tons of greenhouse gas emissions annually. These transactions will reduce renewable power costs by almost $7 million annually for the first 5-10 years. For decades, municipal utilities have used the prepayment structure as an industry standard practice to reduce costs for the purchase of natural gas. For the first time, these Revenue Bonds apply this structure to the purchase of clean electricity.

"CCAs are known for being innovative and nimble in our efforts to provide our community with electricity from cost-effective, clean sources," said Girish Balachandran, CEO of Silicon Valley Clean Energy. "For SV Clean Energy, we are working to advance innovative decarbonization solutions across sectors, and in this case, we have applied a new approach to how we finance our clean power projects, furthering the financial savings enjoyed by our customers."

A Clean Energy Project Revenue Bond is a form of wholesale electricity prepayment that requires three key parties: a tax-exempt public electricity supplier (the CCA), a taxable energy supplier, and a municipal bond issuer. The three parties enter into long-term power supply agreements for zero-emission clean electricity sources like solar, wind, geothermal, and hydropower. The municipal bond issuer – in this case, CCCFA – issues tax-exempt bonds to fund a prepayment of energy that is to be delivered over thirty years. The energy supplier utilizes the bond funds and provides a discount to the CCA on the power purchases based on the difference between the taxable and tax-exempt rates. This discount is historically in the range of 8-12%, and minimum discounts are negotiated for each transaction.

The first of these bonds, which was issued by CCCFA to the benefit of East Bay Community Energy and Silicon Valley Clean Energy, was underwritten by Morgan Stanley. It successfully generated nearly $1.5 billion in proceeds, after having received an investment grade "A1" rating from Moody's and a "Green Climate Bond" designation from Kestrel Verifiers, making it the largest ever issuance of prepayment bonds for clean electricity.

"These two prepay transactions are a fantastic representation of CCAs' position at the leading edge of the clean energy transition," said Nick Chaset, CEO of East Bay Community Energy and Chair of CCCFA. "While it took a lot of time and attention to apply the structure to electricity, issuing these green bonds exemplifies the commitment and competitive edge we bring as an industry. By leveraging a decades-old process available for natural gas procurement savings and making it work for clean electricity, we're picking it up and repurposing it to meet the needs of today."

The second transaction, issued by CCCFA to the benefit of MCE, was underwritten by Goldman Sachs. The very successful bond sale produced approximately $700 million in bond proceeds and generated significant investor demand. The issue received an investment grade "A2" rating from Moody's Investors and a "Green Climate Bond" designation from Kestrel Verifiers.

"MCE began exploring prepayment bonds three years ago as a pathway to reduce the cost of our renewable energy portfolio," said Dawn Weisz, CEO of MCE. "This transaction will help us deliver on our promise of cleaner power, community reinvestment and competitive rates. We are pleased to pass these cost savings on to our customers."

About CCCFA: The California Community Choice Financing Authority (CCCFA) was established in 2021 with the goal to reduce the cost of power purchases for member community choice aggregators (CCAs) through pre-payment structures. The founding members of CCCFA include Central Coast Community Energy, East Bay Community Energy, MCE, and Silicon Valley Clean Energy. CCCFA is a Joint Powers Authority which can help member CCAs save up to 10% or more on power purchase agreements, helping reduce costs for ratepayers and increase available funding for local programs. Learn more at CCCFA.org.

About EBCE: EBCE is a not-for-profit public agency that operates a Community Choice Energy program for Alameda County and fourteen incorporated cities, serving more than 1.7 million residential and commercial customers. EBCE initiated service in June 2018 and expanded to the cities of Pleasanton, Newark, and Tracy in San Joaquin County in April 2021. As one of 19 community choice aggregation (CCA) programs operating in California, EBCE is part of the movement to expedite the climate action goals of their communities and those of California. EBCE is committed to providing clean power at competitive rates while reinvesting in its local communities. For more information about East Bay Community Energy, visit ebce.org.

About MCE: As California's first Community Choice Aggregation Program, MCE is a groundbreaking, not-for-profit, public agency that has been setting the standard for energy innovation in our communities since 2010. MCE offers renewable power at stable rates, significantly reducing energy-related greenhouse emissions and enabling millions of dollars of reinvestment in local energy programs. MCE is a load-serving entity supporting a 1,200 MW peak load. MCE provides electricity service and innovative programs to more than 540,000 customer accounts and more than one million residents and businesses in 37 member communities across four Bay Area counties: Contra Costa, Marin, Napa, and Solano. For more information about MCE, visit mceCleanEnergy.org.

About SV Clean Energy: Silicon Valley Clean Energy is a not-for-profit, community-owned agency providing clean electricity from renewable and carbon-free sources to more than 270,000 residential and commercial customers in 13 Santa Clara County jurisdictions. As a public agency, net revenues are returned to the community to keep rates competitive and promote clean energy programs. Silicon Valley Clean Energy is advancing innovative solutions to fight climate change by decarbonizing the grid, transportation, and buildings. For more information about Silicon Valley Clean Energy visit svcleanenergy.org.

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- IRS Sets Releases New Rules For Private Activity Municipal Bonds.
- Infrastructure Investment and Jobs Act: Selected Changes Impacting Public-Private Partnerships
- Here's One Way to Get the Municipal Bond Market to Come Clean on Climate Change Risks.
- There Are No Municipal-Market Bond Vigilantes When It Comes To Climate Risk, This Study Confirms.
- Previewing Enhanced CUSIP Groups Feature on EMMA: MSRB Webinar
- *City of Fort Wright v. Board of Trustees of Kentucky Retirement Systems* – Supreme Court of Kentucky holds – as a matter of apparent first impression – that standard applicable to Board of Trustees of Kentucky Retirement Systems in making investments for the County Employees Retirement System (CERS) was prudent investor standard, and Board was not restricted by statute from making investments in unregulated hedge funds and private equity funds in managing CERS assets.
- And finally, Great Moments In Judicial Pronouncements is brought to us this week by *Martinez v. City of Beverly Hills*, in which the court magisterially intoned the following immortal line, "The City is aware that people sometimes walk in its alleys." So true. So wise. But let us move on to the gravamen of the complaint and play Frivolous Plaintiff Bingo! Represented by legal bottom feeders? Check. "Wearing soft-bottomed flip-flops and carrying a paper plate piled with pastries?" Uh, maybe? Tripped on a "divot" and sustained unspecified injuries? You betcha! Got slapped around by the Court of Appeal? Bingo!

ZONING & PLANNING - CALIFORNIA

[People v. Venice Suites, LLC]

Court of Appeal, Second District, Division 8, California - November 15, 2021 - Cal.Rptr.3d - 2021 WL 5298494

State of California brought action against apartment house owner and operator, alleging violation of Los Angeles Municipal Code (LAMC), public nuisance, unfair business practices, and false advertising.

The Superior Court granted summary adjudication in part for owner and operator, and government voluntarily dismissed remaining claims. Government appealed.

The Court of Appeal held that:

- Court of Appeal could exercise its discretion to consider government's legal argument on uncontroverted facts, raised for first time on appeal, that short-term rentals were impliedly prohibited under permissive zoning scheme;
- Residential zone not specifying length of occupancy did not implicitly prevent apartment house from being used for short-term occupancies of 30 days or less;
- Long-term occupancy requirement for apartment house could not be inferred from definition limiting transient occupancy residential structure (TORS) to occupancies of 30 days or less; and
- Zoning code expressly authorizing use of apartment house in zone for human habitation without length of occupancy restriction could not be read in conjunction with rent stabilization ordinance (RSO) or transient occupancy tax ordinance (TOT) to require long-term occupancy.

IMMUNITY - CALIFORNIA

[Martinez v. City of Beverly Hills]

Court of Appeal, Second District, Division 2, California - November 10, 2021 - Cal.Rptr.3d - 2021 WL 5231409 - 21 Cal. Daily Op. Serv. 11,427

Pedestrian brought action against city alleging premises liability and negligence for a trip-and-fall in alley behind law office where she worked.

City moved for summary judgment, and the Superior Court and entered judgment,. Pedestrian appealed.

The Court of Appeal held that:

- City lacked actual notice of divot on which pedestrian tripped, and
- City lacked constructive notice of divot.

City lacked actual notice of divot on which pedestrian tripped, for purposes of determining city's liability for dangerous condition in pedestrian's action against city alleging premises liability and negligence for a trip-and-fall in alley behind law office where she worked, where Court of Appeal was permitted but not required to infer that city had actual notice because city did not produce a declaration from every possible city employee who might have been in alley in past denying having seen divot, and such an inference was not reasonable, given that city had not received complaints about alley's divot in six years preceding pedestrian's accident and had not been presented with any claims or lawsuits regarding divot in preceding 15 years.

City lacked constructive notice of divot on which pedestrian tripped, which was less than two inches deep, for purposes of determining city's liability for dangerous condition in pedestrian's action against city alleging premises liability and negligence for a trip-and-fall in alley behind law office where she worked, because cost of keeping alleys as defect-free as sidewalks for foot traffic had greater cost and less benefit, given that alleys degraded faster than sidewalks due to heavy vehicle traffic while being used less than sidewalks for foot traffic, city could reasonably elect to apply less rigorous scrutiny when inspecting alleys for defects as compared with sidewalks, meaning that universe of "obvious defects" for alleys was smaller than for sidewalks.

PUBLIC PENSIONS - KENTUCKY

City of Fort Wright v. Board of Trustees of Kentucky Retirement Systems

Supreme Court of Kentucky - October 28, 2021 - S.W.3d - 2021 WL 5050126

City employers brought action alleging improper investments by the Board of Trustees of Kentucky Retirement Systems in its management of the County Employees Retirement System (CERS).

The Circuit Court entered declaratory judgment in favor of Board. City employers appealed. The Court of Appeals affirmed. Discretionary review was granted.

The Supreme Court as a matter of apparent first impression, held that standard applicable to Board in making investments for the CERS was prudent investor standard.

Standard applicable to Board of Trustees of Kentucky Retirement Systems in making investments for the County Employees Retirement System (CERS) was prudent investor standard, and Board was not restricted by statute from making investments in unregulated hedge funds and private equity funds in managing CERS assets.

CITY CHARTER AMENDMENT - MINNESOTA

Samuels v. City of Minneapolis

Supreme Court of Minnesota - November 10, 2021 - N.W.2d - 2021 WL 5227155

Petitioners sought to correct the language city council had approved for a question on the ballot for a city election.

The District Court granted the petition and enjoined city from putting the question on the ballot as then framed. City council approved revised ballot language, and petitioner moved to strike the revised question from the ballot. The District Court granted the motion. City appealed and filed a petition for accelerated review, which was granted.

The Supreme Court held that petition that proposed to amend city charter to remove language requiring a police department and to establish a new department of public safety was not so unreasonable or misleading as to preclude voters from understanding the purpose of proposed amendment, and thus proposed amendment could be placed on ballot.

Petition that proposed to amend city charter to remove language requiring a police department and to establish a new department of public safety was not so unreasonable or misleading as to preclude voters from understanding the purpose of proposed amendment, and thus proposed amendment could be placed on ballot; the essential purpose of proposed amendment was fairly communicated as it indicated the police department would be removed from city charter and a department of public safety would be established, and the ballot language was not misleading or vague as it stated the department of public safety would use a "comprehensive public health approach," the mayor and city council would decide the "specific functions" of new department, and the new department "will not be subject to exclusive mayoral power."

SCHOOLS - PENNSYLVANIA

In re Formation of Independent School District Consisting of Borough of Highspire, Dauphin County

Supreme Court of Pennsylvania - October 7, 2021 - 260 A.3d 925

Coalition of inhabitants of borough appealed an order of the Court of Common Pleas denying its petition for formation of an independent school district after the Secretary of Education determined the petition had no educational merit.

The Commonwealth Court reversed. Districts sought review.

The Supreme Court held that as a matter of first impression, Secretary of Education could consider financial implications of transfer upon quality of education provided in affected districts.

In considering petition to establish school district independent of existing district for sole purpose of having new district be absorbed into neighboring district, Secretary of Education could consider audit addressing educational impact of proposed transfer over objection that financial projections in audit were "conjectural," where audit was entered into evidentiary record by stipulation and opponent agreed that auditor would not be required to offer witness to testify regarding its contents.

EMINENT DOMAIN - PENNSYLVANIA

Department of Transportation v. Bentleyville Garden Inn, Inc.

Commonwealth Court of Pennsylvania - October 1, 2021 - A.3d - 2021 WL 4483462

Pennsylvania Department of Transportation (PennDOT) condemned portion of condemnee's property, which was adjacent to condemnee's remaining property put to hotel use, and petitioned for appointment of board of viewers.

PennDOT subsequently appealed as excessive board's award of $2,908,000 to condemnee. After trial on merits of PennDOT's appeal, jury awarded condemnee $355,000, and the Court of Common Pleas denied condemnee's motion for judgment notwithstanding the verdict (JNOV) or a new trial. Condemnee appealed.

The Commonwealth Court held that:

- Eminent Domain Code permitted consideration of hotel's depressed value to calculate after-taking valuation of condemnee's remaining property;

- Hotel’s loss of revenue before, during, and after PennDOT’s construction of highway exit was relevant to establish damages to condemnee’s remaining property;
- Consideration of hotel’s revenue data from more than one year after taking to determine value of condemnee’s remaining property conformed with Eminent Domain Code;
- Assumption made by PennDOT’s expert that building highway exit did not affect access or visibility to condemnee’s remaining property was not supported by record; and
- Belief that oil and gas industry was solely responsible for hotel’s revenue decline following taking was contrary to the evidence.

Enacting President Biden's Infrastructure Bill: Opportunities in The Infrastructure Investment and Jobs Act - Jones Day

The Situation: On November 15, 2021, President Biden signed into law a long-awaited $1.2 trillion bipartisan infrastructure bill, The Infrastructure Investment and Jobs Act (“IIJA”).

The Result: The IIJA will transform the United States’ failing infrastructure system with several clean energy initiatives focused on transportation, technology, and updated water systems. The funds will be distributed through a series of grant programs by the Treasury Department, presenting new funding opportunities for companies engaged in the infrastructure sector.

Looking Ahead: As soon as December 2021, dedicated highway funds will become available through private-public partnerships. However, funds for mass transit, railways, and buses will not be announced until Congress’s anticipated Spending Bill for the fiscal year. Businesses engaging with physical infrastructure have many opportunities for funding available through the IIJA that will continue to be allocated over coming months.

The Road Towards Better Infrastructure

On November 15 2021, President Biden signed into the law the long-awaited Bipartisan Infrastructure Framework, The Infrastructure Investment and Jobs Act (“IIJA”).

This $1.2 trillion plan will revitalize America’s deteriorating infrastructure system, which leaders on both sides of the aisle have long acknowledged as a key issue. The IIJA only provides funding for physical infrastructure, unlike President Biden’s previous proposals, which involved heavy investment in what he deemed “human infrastructure,” including childcare, healthcare, and community programs. This bipartisan framework focuses on transportation, technology, and waterways. Businesses in the infrastructure and energy fields will have new opportunities through bonds and public-private partnerships provided by the plan.

This Commentary will review the principal sections of President Biden’s agreement and potential opportunities for businesses in infrastructure, energy, and technology.

Transportation Improvements

President Biden’s new agreement amounts to $550 billion in new infrastructure spending, with $312 billion going towards transportation. The transportation budget will invest $110 billion in roads and bridges, $66 billion in passenger and freight rails, and $49 billion in public transit. Fifteen billion in funds is allocated for electric vehicle infrastructure, including 500,000 electric vehicle chargers nationwide, far less than previous drafts’ allocations.

The spending package also includes $89.9 billion to modernize public transit over the next five years, with $39 billion to improve accessibility for the elderly and people with disabilities, and $7.5 billion to replace transit vehicles, such as buses and ferries, with zero-emission vehicles. Significant amounts of these funds will go to major city transit systems, like New York City's, based on federal funding formulas. The package will also invest $16 billion for major projects that are too large or complex for traditional funding programs, $11 billion in transportation safety programs, and $5 billion for street repair, particularly to protect cyclists and pedestrians.

The IIJA goes beyond just cars and roads and allocates significant funds to alternative means of transport. The spending package invests $22 billion for Amtrak, $24 billion in grants for Northeast Corridor modernization, $12 billion for grants for intercity rail service, including high-speed rail, $5 billion for rail improvement and safety grants, and $3 billion for grade crossing safety improvements. The goal of these investments is to provide a reliable alternative to flying and driving. Ports will receive $17 billion and airports will receive $25 billion to repair existing issues, reduce congestion, and to develop systems that require lower emissions.

Technological Improvements

The plan also provides $191 billion to upgrade "other" infrastructure. The spending package includes $65 billion to update and expand the power grid, to expand reliance on renewable energy, to conduct R&D on advanced electricity transmission technologies, and to implement smart electricity grids. Some of these funds will also be dedicated to research for advanced nuclear, carbon capture, and clean hydrogen projects. The spending package includes $65 billion for broadband deployment to create universal access to high-speed internet, to require providers to show families cheaper internet service options, and to subsidize access to internet service for low-income households.

Waterway Improvements

The IIJA also provides over $50 billion to improve water infrastructure in the West and national grid systems susceptible to cyberattacks, as well as $55 billion to replace lead service lines and national lead pipes that currently carry drinking water throughout the United States. The package includes $21 billion to remove pollution from soil and groundwater and to clean polluted areas in the United States, including Superfund and brownfield sites, abandoned mine lands, and orphaned gas wells.

Funding

Unlike President Biden's originally-announced plan, entitled "The American Jobs Plan," this bipartisan plan does not include an increased corporate tax rate as a source of funding. Instead, the plan is funded from increased IRS enforcement of pre-existing due taxes, redirection of unused unemployment and other COVID relief funds, state and local investment, and strategic petroleum reserve sales. Most interestingly for the private sector, lawmakers expect to fund $100 billion from public-private partnerships and direct-pay municipal bonds. This will create new opportunities for businesses interested in construction or electricity.

While the President's original plan detailed a series of tax credits in clean energy investments, a ten-year extension of the federal production tax credit, and an extension of the investment tax credit, the passed bill does not contain such allocations. However, as spending terms are not yet completed by the Senate, business are advised to stay informed as to whether such credits and extensions are added to further updates.

Looking Ahead

It is still somewhat uncertain as to the role that public-private partnerships ("P3s") will play with respect to infrastructure initiatives. The IIJA does, however, recognize the role of private investment in facilitating and implementing P3s and in several instances directs programs to consider P3s. The mere increase in available funds and additional projects that should follow will likely create more opportunities for P3s. The companion human infrastructure bill, the Build Back Better Plan, is still yet to be passed. While Build Back Better proposes increased taxes as a significant source of funding, there is question as to whether the bill can be passed without bipartisan support. Businesses should stay informed as to the status of Build Back Better and whether it will impact any of the new opportunities provided in the IIJA, Additionally, as the Senate releases more spending information, businesses are advised to keep note as to what new tax credits or grants become available in the transportation and clean energy spaces.

Four Key Takeaways

1. Transportation: The IIJA provides $550 billion in new transportation infrastructure funds. While significant portions are allocated to roads, bridges and tunnels, alternative transportation will also receive significant funding including railways, ferries, and airports.
2. Technology: The plan also includes $191 billion to upgrade for "other" infrastructure that is non-transportation based. This includes $65 billion for universal internet access.
3. Water: The bill allocates $55 billion towards improvements to water infrastructure systems, $50 billion to protect against cyber-attacks, droughts, floods, and wildfires, and $21 billion to remove pollution from ground soil.
4. Opportunities: The bill will provide new opportunities for businesses through bonds and public-private partnerships allocated by the Department of Transportation. Businesses are also well-advised to watch as the Senate continues to release new spending information, which may include new benefits such as tax credits and exemptions.

Jones Day

by Jeffrey D. Gaulin, Dean E. Griffith, Edward T. Kennedy, Richard P. Puttré, Jeffrey A. Schlegel and Brian L. Sedlak

November 23 2021

Infrastructure Investment and Jobs Act: Selected Changes Impacting Public-Private Partnerships

On November 15, President Biden signed into law the $1 trillion Infrastructure Investment and Jobs Act (the "IIJA" or the "Act") which cleared the House of Representatives in early November after months of delay. The new law (also known as the Bipartisan Infrastructure Framework or BIF) garnered considerable bipartisan support in the Senate where it was negotiated and crafted over the summer, and a narrow but ultimately determinative slice of crossover votes in the House. The first of two large infrastructure packages promised under the Administration's Build Back Better agenda, the Act allocates $550 billion in new federal funding in a bold attempt to address decades of underinvestment in America's infrastructure. These funds will go to support investments in highways, passenger and freight rail, public transit, ports, airports, water, broadband, energy efficiency, power and grid resiliency and electric vehicle charging stations, as well as to fund a number of research and pilot programs.

Important to the expansion of the public-private partnership ("PPP") model in the transportation, social infrastructure and broadband sectors, among other things the IIJA provides guidance on the use of PPPs on eligible projects, expands several programs that leverage additional private sector investment in infrastructure, and funds grants to consider asset concessions and PPPs, which we summarize below.

1. Transportation Infrastructure Finance and Innovation Act (TIFIA). The Act contains a number of updates to the federal TIFIA loan program, which should help expand the availability of low cost federal loans to projects procured under a PPP delivery method and improve the terms under which the Build America Bureau can commit funding to support projects. The changes include:

- Extending the period for contingent commitments under a TIFIA master credit agreement from three years to five;
- Raising the threshold above which more than one credit rating will be required for an eligible project 's Federal credit instrument from $75 million to $150 million;
- Extending the potential maturity of a TIFIA loan for a capital asset with an estimated useful life of more than 50 years to the longer of (a) 75 years after the date of substantial completion and (b) 75% of the estimated usable life of the asset.
- Expanding the types of projects eligible for TIFIA loans to include:

– Transit-Oriented Transportation Projects: A project to improve or construct public infrastructure that either

> is located within walking distance from and accessible to a transit, passenger rail, intercity bus or intermodal facility, including a transportation, public utility or capital project; or
>
> is an economic development project, including commercial and residential development and related infrastructure, that (a) incorporates private investment and (b) is physically or functionally related to a passenger rail station or a multimodal station that includes rail service, (c) has a high probability to commence work within 90 days, and (d) has a high probability of reducing Federal funds assistance for the rail station or service by increasing ridership, rental payments or other activities that generate revenue in excess of project costs;

-Airport-related projects, including terminal development, gate construction and the conversion of vehicles and ground support equipment to low emission technology. (For a Transit-Oriented or Airport-related project to be eligible, a letter of interest must be delivered to the Secretary of Transportation (the "Secretary") and it must receive a determination of eligibility from the Secretary by September 30, 2025. For each fiscal year, qualifying projects will be eligible for up to 15% of TIFIA's total budget authorization for such fiscal year); and

-Projects to acquire plant and wildlife habitats pursuant to a transportation project environmental mitigation plan that has been approved by the Secretary of Interior in accordance with the Wildlife Protection Act.

- Requiring Payment and Performance Security: Any project making use of the TIFIA program must demonstrate that its design and construction are supported by appropriate payment and performance security, regardless of whether the obligor is a private entity (as is the case in PPP

projects) or a State, local authority or any department or instrumentality thereof. If local law requires such security then the Secretary may accept that security if "the Federal interest with respect to Federal funds and other project risk related to design and construction is adequately protected".
- Providing for a Streamlined Application: The Act requires the Secretary to design, within 120 days after enactment of the IIJA, a streamlined application procedure for certain projects that have, among other required elements, a reasonable expectation that the contracting process for the project can commence within 90 days after a Federal credit instrument is obligated for the project under the TIFIA program.

2. Private Activity Bonds (PABs). The Act increases the limit of PABs for qualified highway or surface freight transportation facilities from $15 billion to $30 billion and expands the types of projects eligible for funding with PABs to include:

- A Qualified Broadband Project ("QBP"), defined as any project that (a) is designed to provide broadband service solely to one or more census blocks in which 50% of the residents do not have access to residential terrestrial fixed broadband service that delivers at least 25 megabits per second ("mbps") downstream and at least 3 megabits of service upstream, and (b) results in residential or commercial users or a combination of both enjoying speeds of at least 100 mbps download speed and 20 mbps upload speed. For a project to qualify as a QBP, however, the issuer will need to demonstrate that 90 of the locations that will receive the increased service either did not have any service or their service did not meet the minimum threshold of 25 mbps download/3 mbps upload. To qualify for PABs funding broadband projects, the issuer must also notify every existing broadband service provider in the service area and request information on the ability of each such existing provider to deliver gigabit service, and give such provider 90 days to respond.
- Qualified Carbon Dioxide Capture Facilities, to include funding for[(a) the eligible components of carbon capture facilities; i.e. the equipment included in such facilities used to capture, treat, purify, compress, transport or on-site store industrially produced carbon dioxide, or that is integral to or used for the process to convert coal or petroleum residue or biomass or other materials recovered in the industrial process into a gas to be used for industrial conversion; and (b) certain direct air capture technologies.

Both new categories of eligible PABs projects will enjoy a 75% exemption from the volume cap under per Section 146(g) of the Internal Revenue Code.

The Act does not, however, accommodate an industry request to expand TIFIA and PABs eligibility to certain kinds of social infrastructure such as courthouses or government buildings, although as noted above residential and commercial buildings adjacent to rail stations or similar facilities will become eligible for TIFIA funding.

3. Requirements for Transportation Projects Carried Out through PPPs: The IIJA requires a public partner carrying out a project using Federal financial assistance with an estimated total cost of at least $100 million to meet certain requirements no later than 3 years after the date of project operations, including:

- Conducting a review of the project, including a review of the compliance of the private partner with the terms of the PPP agreement;
- Certifying to the Secretary that the private party is meeting the terms of the PPP agreement or notifying the Secretary that the private partner has not met one or more of the terms of the PPP agreement by including a brief description of each violation of the PPP agreement; and
- Disclosing the certification or notifying the public without exposing any proprietary or confidential business information.

4. Value for Money Analysis: The entity carrying out a project estimated to cost more than $750 million and implemented with assistance under the TIFIA program or the Railroad Rehabilitation & Improvement Financing ("RRIF") Program, will be required under the Act to conduct a value for money (VfM) analysis and report the analysis to the Secretary. Requirements include providing (a) an evaluation the life-cycle cost and project delivery schedule, (b) a cost comparison between public funding and private financing for the project, (c) a description of the key assumptions made in developing the analysis, including benefit-cost analysis regarding the allocation of risk, (d) a forecast of user fees and other revenues expected to be generated by the project, and (e) other information that the Secretary of Transportations deems to be appropriate for such VfM analysis; and submitting a report of the VfM analysis results to the Build America Bureau and the Secretary and by uploading the report to the project website.

The Secretary, in coordination with the Build America Bureau, is required to submit the compiled analyses to Congress. The Secretary is also required to coordinate with the Build America Bureau and issue guidance on performance benchmarks, risk premiums, and expected rates of return on private financing.

5. Asset Concessions: The IIJA authorizes certain grants (maximum $2 million) to eligible entities, including a state, a unit of local government and an agency of a state or local government, to help them "develop, review, or enter into an asset concession" with a concessionaire, a private individual or corporation. The grants under this section include:

- Technical assistance grants used for (a) identifying assets for potential concessions, (b) soliciting and negotiating asset concessions and hiring staff for these purposes, (c) conducting a VfM analysis to compare benefits of asset concessions with other procurement methods, (d) evaluating options for the structure and use of asset concession payments, (e) assessing the risks and benefits of all contract provisions, (f) identifying best practices to protect the public interest, (g) identifying best practices for managing transportation demand and mobility to facilitate transportation demand management, and (h) integrating pricing, data, and fare collection with other regional operators; and
- Expert services grants where a state or local government agency uses the grants to retain the services of an expert firm to get direct project-related assistance and services, including:

-Project planning, feasibility studies, revenue forecasting, cost-benefit analysis, other economic assessments, public benefit studies, VfM analyses, business case development, lifecycle cost analyses, risk assessment, financing and funding options analyses, procurement alternative analyses, and statutory and regulatory framework analyses;

-Financial and legal planning;

-Early assessment of environmental review and regulatory processes and costs; and

-Assistance with entering into an asset concession.

The Secretary will be required to ensure that, among other things: (a) the asset concession will not make it more difficult for an eligible entity to construct a new project, (b) the full amount of any asset concession payment will be used to pay infrastructure costs of the eligible entity, and (c) the terms of the asset concession do not result in any burden on taxpayers.

November 24, 2021

Infrastructure Investment and Jobs Act Supports Broadband Partnerships.

Background

Broadband networks, like electric power systems a century ago,[1] have increasingly become drivers and enablers of simultaneous progress in just about everything that matters to communities. This includes robust economic development, lifelong educational opportunity, homeland security, public safety, affordable modern healthcare, workforce training and retraining, energy efficiency and security, smart transportation, environmental protection, efficient government service, and much more. As a result, a growing number of initiatives across America have sought to facilitate affordable access to broadband by working with willing incumbents, partnering with new entrants, establishing their own communications networks, or by developing creative new alternatives. For many, broadband partnerships have emerged as their most attractive option; for some, partnerships may be their only feasible option.[2]

Depending on the circumstances, partnerships can significantly improve a broadband project's prospects for success. Among other things, they can facilitate pooling of resources available to the partners, enable each partner to perform the tasks for which it is best suited, and allow for asymmetric allocation of benefits. For example, a well-crafted partnership can take advantage of a public or cooperative entity's ability to invest "patient capital" in projects that provide long-term benefits for the community and, at the same time, accommodate a private entity's need to earn more immediate profits. In some cases, partnerships can also enable the parties to comply with State restrictions on purely public broadband initiatives.

Recognizing the attractiveness of broadband partnerships, Congress and several States have sought to encourage them to help accelerate broadband deployment, adoption, and use. To cite some examples at the federal level, Congress appropriated $300 million in the Consolidated Appropriations Act to be distributed by the National Telecommunications and Information Administration exclusively to P3s.[3] Under the US Department of Agriculture's ReConnect Program, P3s are not only eligible to receive funding, but the USDA Rural Utilities Service's scoring criteria awards 15 points to P3s for doing so.[4] In the same vein, the bill that would become the Build Back Better Act, which the House of Representatives passed last Friday, contains a $280 million pilot program for urban P3s.[5]

Broadband partnerships are also increasingly popular at the State level. For example, responding with admirable vision to the COVID-19 pandemic, the Arkansas legislature voted unanimously this year to expand the authority of municipalities to engage in broadband initiatives. Among other things, Arkansas authorized municipalities to fund broadband projects through municipal bonds or special taxes, as long as they "partner, contract, or otherwise affiliate with an entity that is experienced in the operation of the facilities to be acquired or constructed."[6] A number of other states have funding programs that encourage or limit eligibility to broadband partnerships.[7]

Broadband Partnerships Under the Infrastructure Investment and Jobs Act

The IIJA does not just favor partnerships in broadband matters. It also does so for transportation[8] and cybersecurity.[9] (See, e.g., Section 40121). With respect to broadband, the Act establishes the $42.45 BEAD Program to support qualified broadband projects. The Act defines the term "eligible entity" as "a State,"[10] and it contemplates that States will funnel these funds to eligible "Subgrantees." That term is broadly defined as "an entity that receives grant funds from an eligible entity to carry out activities under subsection (f)."[11] Elsewhere, however, the Act makes clear that

Congress intended partnerships to be among the favored recipients of IIJA funds (with our emphasis added in italics):

Section 60102(h) BROADBAND NETWORK DEPLOYMENT.—

(1) ORDER OF AWARDS; PRIORITY.—

(A) IN GENERAL.—An eligible entity, in awarding subgrants for the deployment of a broadband network using grant funds received under this section, as authorized under subsection (f)(1)—

…
(iii) may not exclude cooperatives, nonprofit organizations, public-private partnerships, private companies, public or private utilities, public utility districts, or local governments from eligibility for such grant funds …

Furthermore, Section 60102(e)(1)(D) requires States to submit 5-year Action Plans in accordance with specifications that the Assistant Secretary (the head of NTIA) is required to develop:

(ii) REQUIREMENTS OF ACTION PLANS. The Assistant Secretary shall establish requirements for the 5-year action plan submitted by an eligible entity under clause (i), which may include requirements to—

…
(VI) ascertain how best to serve unserved locations in the eligible entity, whether through the establishment of cooperatives or public-private partnerships;

As Kathryn de Wit, director of the Pew Charitable Trusts' Broadband Access Initiative, aptly put it in her recent article on the fundamental shifts that the IIJA may spawn,

One thing is certain: The shifts — whether training clinicians on new technology, wiring households to fiber or retraining workers — won't happen without partnerships. That's why the timing of the state five-year action plans is so critical. Research from The Pew Charitable Trusts has found that states have already used planning processes to evaluate need, drive stakeholder engagement and map out a plan for achieving broadband expansion goals.

Now is the time for businesses, research organizations, community partners and others to participate in the continuing state planning efforts, helping to shape state strategies for using federal dollars and developing plans that meet the needs of the state and its communities in ways such as sharing information on skills gaps in the labor force, identifying evidence-based solutions for increasing telehealth usage, or elevating how living on a fixed income may influence aging Americans' ability to access digital resources.[12]

Five or ten years into the future, we may look back on this as "the Age of Partnerships" – viewing that term in its broadest sense. Let's act now to make that happen.

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[1] J. Baller, "The Essential Role of Consumer-Owned Electric Utilities in Developing the National Information Infrastructure (Nov. 1994), https://tinyurl.com/3arcez52.

[2] Keller and Heckman Partners, "Broadband Partnerships: For Many Communities, A Good Option at a Good Time," IMLA Magazine (Sep-Oct 2021), https://tinyurl.com/4umyt5a3; J. Hovis, et al., "The World of Broadband Public-Private Partnerships: A Business Strategy and Legal Guide," Benton

Foundation (May 2017), https://tinyurl.com/5psjsw3e; J. Hovis, et al, "Public Investment/Private Service: A Shared Risk Partnership Model for the 21st Century, Benton Institute (Oct 2020), https://tinyurl.com/cejddhyp.

[3] NTIA, "Commerce Department's NTIA Announces $288 Million in Funding Available to States to Build Broadband Infrastructure," May 19, 2021, https://tinyurl.com/aejt5k7z.

[4] USDA Rural Utility Service, Funding Opportunity Announcement, Oct. 25, 2021, https://tinyurl.com/c8ra38pa ("Local governments, non-profits and cooperatives (15 points). Applications submitted by local governments, non-profits or cooperatives (including for projects involving public-private partnerships where the local government, non-profit, or cooperative is the applicant) will be awarded 15 points.")

[5] House Committee on Energy and Commerce, "Fact Sheet," (November 2021), https://tinyurl.com/crrp8epf.

[6] J. Baller, "Arkansas State Legislature Significantly Expands Local Broadband Options, February 9, 2021, https://tinyurl.com/4arhtztt.

[7] See, e.g., the Virginia Telecommunications Initiative, https://www.dhcd.virginia.gov/vati; the Maryland Expansion of Existing Broadband Grants Program, https://dhcd.maryland.gov/Broadband/Pages/default.aspx; the Massachusetts Mass Interconnect Program, https://broadband.masstech.org/recovery-plan-programs/mass-internet-connect; and the Georgia Broadband Deployment Initiative, https://www.gacities.com/Resources/Reference-Articles/Resources-to-Serve-Cities-Georgia-Broadband-Deploy.aspx.

[8] See, e.g., Section 11508 of the IIJA.

[9] See, e.g., id., at Section 40121.

[10] Section 60102(a)(1)(F).

[11] Section 60102(a)(1)(F). The "subsection (f)" in the definition of "subgrantee" refers to Section 60102(f), the provision specifying the permissible uses of the funds appropriated under the Act.

Keller and Heckman LLP

November 29 2021

USDOT Reveals How It's Handing Out Infrastructure Money to the States.

Of course, a bill as huge as the five-year, $1.2-trillion Infrastructure Investment and Jobs Act signed into law by President Biden Nov. 15 will deliver benefits to every one of the 50 states and the District of Columbia. But how much benefit will vary from state to state. A report in Mass Transit examined the factors the U.S. Department of Transportation used to determine how to divvy up the portion of the $1.2 trillion devoted to public transit.

For starters, every state will get at least 31 percent more money in the first year of the cycle than it got from the transit portion of the funding bill it replaced, the Fixing America's Surface Transportation Act (FAST Act). The District of Columbia will see the greatest percentage increase, 52 percent, while ten states will see increases of at least 40 percent. From largest to smallest percentage, they are: Vermont, Wyoming, Alaska, Maine, New York, Illinois, North Dakota, Pennsylvania, Massachusetts and New Hampshire.

On average, American transit riders spend 77.5 percent more time commuting by transit than by car. Strategic spending could change that. Today, the five states with the highest time penalty: Wyoming (150.3 percent), Idaho (150.2), Nevada (133.9), Connecticut (130.4) and Rhode Island (120.1). Arkansas transit users spent the least amount of extra time riding (31.3 percent).

Continue reading.

NEXT CITY

SANDY SMITH

NOVEMBER 24, 2021

S&P U.S. Municipal Utilities Credit Brief: Medians Held Strong In 2020 As California Retail Water And Sewer Utilities Prepare For A Dry Future

Overview

Despite the effects of the COVID-19 pandemic on the broader economy, California retail municipal water and sewer utilities demonstrated generally stable credit quality in fiscal year 2020. In fact, most California utilities saw improved revenue growth year-over-year (4.4%). Increased residential water consumption in the region helped offset lower revenues from commercial customers and many utilities scaled back discretionary costs without eroding operating performance. Most key financial median ratios, including available liquidity median metrics, improved modestly, reflecting the financial resilience of California retail municipal utilities. The medians also indicate that California utilities have very strong enterprise and financial risk profiles, which reflect strong demographic and financial characteristics. Although some areas in the state have faced lower levels of economic activity due to social-distancing practices and mandatory business closures because of the pandemic, the influence on utility revenue has been relatively muted, as most serve diverse customer bases that are anchored by steady residential demand, with the exceptions of those with outsize agricultural or tourism and hospitality sector concentration. These utilities also remained operationally resilient in the face of past drought conditions and record-setting wildfires. As a result, we believe California utilities have displayed significant stability in financial performance in recent years.

S&P Global Ratings maintains water and sewer utility revenue ratings on over 320 retail utilities in California. About 57% of these utilities are in the ‘AA’ category, 33% are in the ‘A’ category, 7% are in the ‘AAA’ category, and fewer than 3% are in the ‘BBB’ category or lower. The higher rating distribution reflects California utilities’ generally stronger enterprise and financial risk profiles than the national medians (see chart 1). In addition, about 90% of the ratings have a stable outlook, while approximately 10% have a negative outlook. Most ratings with a negative outlook have exposure to tourism or agricultural production. We believe that pervasive drought and accelerating water shortages could potentially lead to the permanent idling or conversion of farmland over time, which heightens business risk for water purveyors that serve farming operations or farmworkers. For more information, see “20 California Irrigation District Rating Outlooks Revised To Negative From Stable

On Rising Drought Severity," published Oct. 28, 2021, on RatingsDirect.

Continue reading.

17 Nov, 2021

Senior Living Muni Bond Defaults Reach $1.6B in 2021, With More Pain Coming.

Thirty-one senior living borrowers have missed a payment on their municipal bond debt for the first time in 2021, representing about $1.6 billion of muni bonds in default and tying the record number of senior housing defaults set last year.

That's according to the latest statistics from Municipal Market Analytics (MMA). The findings build on previous MMA reports, including one last month that showed 27 senior housing muni bond defaults this year.

Distress in the sector is likely to worsen before the sector stabilizes and rebounds, according to MMA Partner Matt Fabian.

"Covid has made labor costs much higher, made staffing much more difficult and made occupancy more volatile," Fabian told Bloomberg. "Longer term it's a sector with good prospects, medium term, we're probably going to see more defaults."

The senior housing bonds in default represent 4.3% of the sector's $37.6 billion of debt, as of Jan. 1, 2021.

Senior living has been hit harder by Covid-19 than any other U.S. public finance sector, Moody's Investor Service noted in May 2020, predicting a wave of bond defaults.

"No other sector has seen the singular confluence of both revenue and expenditure difficulties as the elder housing sector," Moody's Vice President Dan Seymour wrote in a commentary at the time.

The latest default numbers from MMA indicate that despite recent occupancy gains and the widespread vaccination of residents and staff against Covid-19, the senior living sector is still particularly vulnerable to financial distress, particularly for operations that already were in a tenuous position pre-pandemic. One CCRC that recently defaulted had a 2019 debt service coverage ratio of 0.0x, the MMA report noted.

Labor issues have become especially pressing, with assisted living employment falling by 38,000 workers since the start of the pandemic, according to recent data from the American Health Care Association/National Center for Assisted Living (ACHA/NCAL).

While some senior living providers have expressed confidence that they can raise monthly rates to largely compensate for higher labor costs, operators that are less stable could flounder.

Indeed, more "spectacular failures" are almost certain to occur in the sector, Shankh Mitra, CEO of Welltower (NYSE: WELL), said on the real estate investment trust's most recent quarterly earnings call.

Mitra and other senior living leaders have predicted that as financial distress comes to a head, industry consolidation will occur, with properties moving into the control of more stable owners and operators.

Such consolidation is already coming to pass among providers with muni bond debt. Today, a judge with the U.S. Bankruptcy Court of New Hampshire approved the sale of Hillside Village Keene to Covenant Living.

Faced with Covid-related pressure, Hillside Village Keene — a 222-unit life plan community — was unable to meet its obligations related to long-term tax-exempt bond debt and filed for Chapter 11 bankruptcy protection. Skokie, Illinois-based Covenant in August 2021 agreed to pay $33 million to acquire the distressed community, if no higher bids emerged through a stalking horse process.

Covenant adds Hillside Village to its existing portfolio of 18 communities in nine states.

Senior Housing News

By Tim Mullaney | November 22, 2021

[ESG In U.S. Public Finance Credit Ratings: S&P 2022 Outlook And 2021 Recap]()

[View the S&P Outlook & Recap.]()

[Free registration required.]

29 Nov, 2021

[Muni Strategists See Average of $470 Billion of Supply in 2022.]()

- **Issuance estimates range from $420 billion to $495 billion**
- **Bank of America differs with estimate of about $550 billion**

Bankers in the $4 trillion municipal-bond market should prepare for a busy 2022 with issuance that's mostly expected to be on par or more than this year.

Sales forecasts collected from almost a dozen firms range from about $420 billion to $495 billion. A notable outlier is the projection from researchers at Bank of America, the market's largest underwriter, who expect a record year of sales totaling $550 billion.

Averaging the 11 forecasts show municipal issuers are expected sell about $470 billion of bonds next year.

States and local governments have sold about $422 billion of long-term debt so far this year, plus another $20 billion sold with corporate identifiers with about three weeks left before the winter holidays. Including municipal-backed corporates, long-term sales are running at a pace about 5% below 2020, data compiled by Bloomberg show.

For much of the year, investors flooded funds that invest in state and local government debt on the outlook for higher taxes and comfort with the state of municipal credit buoyed by federal stimulus. Overall, investors added about $81 billion of new cash to municipal mutual funds, according to the Investment Company Institute.

The market would need about $475 billion of supply next year to meet current demand, according to Bloomberg Intelligence analyst Eric Kazatsky. His outlook is based on the latest muni-fund flows and bondholder reinvestment data.

Key Insights

- Bank of America municipal analysts see a record boom of upcoming sales with governments issuing $550 billion of bonds in 2022. Yingchen Li and Ian Rogow, co-heads of municipal research, said that governments' balance sheets, flush with federal dollars, will permit them to sell more debt for infrastructure projects.
- That's an opinion shared by Tom Kozlik, head of municipal research and analytics at Hilltop Securities. He said muni-bond sales are poised to "materially rise" next year as "a long-standing aversion to funding infrastructure and other key projects with municipal bonds will begin to abate."
- Strategists at UBS led by Thomas McLoughlin and Kathleen McNamara estimate a "modest supply contraction" because issuers will have less need to sell debt because of strong finances and because there were fewer bond ballot measures approved by voters. The prospect of higher interest rates also could stymie refinancing sales, they said.
- The group said that total returns for investment-grade municipal bonds will be low, likely between 1% and 2% while those on high-yield debt should perform better.
- The federal infrastructure bill will be "constructive" for municipal supply, said Matt Fabian, a partner at Municipal Market Analytics. He expects sales to reach between $450 billion and $475 billion.
- "Governments will want to piggy back their own priorities onto projects being funded with federal dollars, and assuming the federal spending stabilizes or improves areas, it will encourage development, and development brings municipal bonds," Fabian said in an email.
- Peter Block, a managing director at Ramirez & Co. said that because the new federal aid for infrastructure will be spent over the next five- to eight-years he doesn't expect "any sea change" in the amount of bonds sold for public works projects. He forecasts $476 billion of total sales.
- Erin Ortiz, managing director for municipal credit at Janney Montgomery Scott, expects $490 billion of new sales bolstered by historically low interest rates and a bevy of infrastructure needs. She expects the debt will be well absorbed into the market.
- "The demand side is still very favorable," she said in a interview. "If a government has a project they are perusing this is a good environment for them."
- Charles Peck, head of public finance at Wells Fargo & Co., estimates new muni sales will be "flat to slightly up" in 2022 compared with this year. He said that governments may borrow for "ancillary infrastructure" projects like broadband and electric vehicles.
- Analysts at Morgan Stanley round out the low end of the forecasts, saying that debt issuance will total about $420 billion in 2022.
- "Decreased new money issuance may seem counterintuitive given increased federal infrastructure spending, but historically this hasn't reliably boosted muni borrowing," strategists Michael Zezas, Samantha Favis and Barbara Boakye wrote in a research note.

Bloomberg Markets

By Danielle Moran

November 24, 2021

Monetary and Fiscal Policies on Municipal Bond Markets.

As we approach the end of 2021, the big question for all financial markets is how the federal monetary and fiscal policies are going to shift to address various market forces like inflation, economic recovery, supply chain chaos and short- to long-term impacts of COVID-19.

Since the start of the pandemic, the federal government has had numerous interventions in the form of fiscal stimulus for individuals, businesses and local & state governments, which, when paired with the reopening of the U.S. economy, resulted in peak growth for the economy in the 2nd quarter of this year. However, in the upcoming months, the economic growth will likely be tamed and the markets will likely experience a normalized expansion. It's also important to note that the recently signed, bi-partisan, infrastructure bill has a spending plan spread over many years, which will continue to add to the economic growth for years.

In this article, we will take a closer look at some of the market forces and how they are impacting the municipal bond markets; in addition, we will explore the federal government's approach in the current times.

Continue reading.

municipalbonds.com

by Jayden Sangha

Nov 24, 2021

2022 Muni Outlook: Near-Term Pain, Longer-Term Opportunity

Current low yields and tight spreads in the municipal bond market have made it difficult for investors to find opportunities to earn attractive interest income on their investments. We expect that to change in 2022.

Our outlook for 2022 is that both spreads and yields should modestly increase. This may result in near-term price declines, but we expect there will be opportunities for higher yields. Portfolios that are appropriately positioned should benefit from the rise in spreads and yields over time (a spread is the difference in yield between two bonds of comparable maturity, and reflects the additional compensation investors require to own a security relative to a highly rated alternative, such as a U.S. Treasury bond).

Early in 2021, there were concerns that the ongoing pandemic would create waves for the finances of some municipal issuers and lead to downgrades. That didn't happen. Instead, Washington threw a life raft to the muni market. The economy also recovered much quicker and stronger than expected. As a result, credit concerns ebbed and prices on muni bonds didn't fall as much as other fixed income sectors, resulting in munis outperforming most other highly rated fixed income sectors.

Continue reading.

adviserperspectives.com

by Cooper Howard of Charles Schwab, 11/23/21

The New COVID-19 Variant And Municipal Markets (Bloomberg Radio)

Eric Kazatsky, Senior US Municipals Strategist for Bloomberg Intelligence, joins the show for the "Munis in Focus" weekly segment. He talks about how a step backwards for the economy could affect muni markets nationwide.

Hosted by Paul Sweeney and Katie Greifeld.

Listen to audio.

Bloomberg Radio

Nov 26, 2021

U.S. States Flush With Aid Spend at Fastest Pace in 35 Years.

- **Total spending, including stimulus, rose 16% in fiscal 2021**
- **States have spent $427.9 billion in overall Covid-19 aid**

Spending by U.S. states in the most recent fiscal year grew at the fastest pace in at least 35 years as the governments deployed a surge of federal relief funds.

Total spending, including stimulus, rose about 16% to an estimated $2.65 trillion in fiscal 2021, which for most states ended on June 30, according to a report published Friday by The National Association of State Budget Officers. In the past two years, states reported spending $427.9 billion in federal Covid-19 aid, the report said.

The unprecedented spending clip last fiscal year highlights the sheer scale of pandemic aid the federal government handed to states in an effort to cover the costs of responding to Covid-19 and to ease the hit to the nation's economy. It's part of the backdrop that's helped municipal debt outperform the rest of the U.S. bond market this year.

"We're seeing states use these funds in a continued effort to defeat Covid-19 and invest in the future," said Brian Sigritz, NASBO's director of state fiscal studies. "The amount of aid states and localities have received is higher than prior downturns. Of course, this downturn is different."

Total state expenditures and federal funds to states grew the fastest in the 35-year history of NASBO's report. As federal funding spiked 35.7% in fiscal 2021, general-fund spending grew at just 4.1%, below the historical average of 5.3%, according to the report.

States tapped funds to pay for programs ranging from public assistance to Medicaid, transportation and education. The largest increase was in a category that includes Covid-specific expenditures such as public-health programs, unemployment insurance and emergency management. States have until the end of calendar 2024 to allocate money from their Coronavirus State and Local Fiscal Recovery Funds.

It's still too early to tell what impact the stimulus funds might have on bonding needs, said Sigritz. In fiscal 2021, bonds financed about 1.7% of state expenditures.

Bank of America Corp., for one, expects the influx of cash will lead local governments to take on new projects, helping spur record muni sales next year.

Bloomberg Economics

By Nic Querolo

November 22, 2021

How One City is Working to Make Spending Data More Transparent.

Efforts by Los Angeles' controller to open up city fiscal data took on an added dimension when Covid-19 hit.

Los Angeles Controller Ron Galperin says that by the time he arrived on the job as the city's chief taxpayer watchdog he'd developed something of an obsession with where L.A.'s revenues came from and how they were being spent.

Wanting to understand why the city at times didn't have the money for certain priorities was one factor driving this interest, explained Galperin, who worked as an attorney, small business owner and journalist before being elected to his post in 2013. "I ran for controller because I believed that we had to run our city much more effectively and that data was a key," he said during a recent virtual conference held by the National League of Cities.

One of his priorities since taking office has been opening up the city's financial data so that it's available online for residents and city staff and officials to easily access and scrutinize.

Continue reading.

Route Fifty

by Bill Lucia

NOV 24, 2021

Puerto Rico's Bankruptcy Exit Likely Pushed Out to 2022.

- **Judge Swain gives U.S. DOJ until Jan. 7 to defend Promesa law**
- **Commonwealth at risk of increases in retirement expenses**

Puerto Rico creditors hoping the commonwealth exits its more than four-year bankruptcy in 2021 will need to wait a bit longer as the U.S. Department of Justice may weigh in on the process.

U.S. District Court Judge Laura Taylor Swain is reviewing Puerto Rico's plan to restructure $33 billion of debt, including $22 billion of bonds, after finishing closing arguments Tuesday on the debt adjustment plan. The hearings ended after hurricanes, earthquakes, political upheaval and the coronavirus pandemic postponed the bankruptcy process for years.

Swain is likely to wait until next year to issue her ruling because on Monday she gave U.S. government lawyers until Jan. 7 to decide whether to get involved in defending the constitutionality of the federal law, called Promesa, that allows Puerto Rico to reduce its obligations through bankruptcy.

"It is a little frustrating it's been pushed out," Daniel Solender, head of municipals at Lord Abbett & Co., said about the delay. "It's already been a pretty long wait. You want this to get completed. It's been going on for so long and everyone's just ready for it to be over."

Even with the potential delay, prices on some Puerto Rico general obligations remained in line with recent trading levels. A G.O. with an 8% coupon and maturing in 2035 changed hands Tuesday in a $2 million-size trade at 88 cents on the dollar, up from 87.75 cents on Nov. 15, the last time there was a trade of at least $1 million, according to data compiled by Bloomberg.

Puerto Rico's bankruptcy began in May 2017. It's the largest municipal workout, surpassing Detroit's 2013 bankruptcy. Bondholders haven't been paid since 2016 and as long as the island remains in bankruptcy, its residents live under a cloud of default.

Swain mentioned the people of Puerto Rico in her final statements before ending Tuesday's hearing, saying thousands of residents have shared to the court how the bankruptcy has affected their lives.

"As I make my legal decisions, I will always be mindful of the reality of your lives and the future of your homeland," Swain said.

That homeland has a financial monitor, however. A federally-appointed oversight board weighs in on Puerto Rico's budgets in addition to managing its bankruptcy. Even if Swain approves the debt plan, the oversight board will continue to oversee the island's finances until the commonwealth has implemented balanced budgets in four consecutive years.

To help control spending, the board wants to freeze the pensions of teachers and judges, move them to a defined contribution plan and end cost of living adjustments, which Swain said she will rule on. Additionally, the board is seeking court approval to prohibit island lawmakers from increasing retirement benefits for public workers.

Yet, even if the court sides with the board on these issues, Puerto Rico lawmakers will almost surely pass additional future pension laws anyway, Matt Fabian, a partner at research firm Municipal Market Analytics, wrote in a report Monday.

Investors will need to consider added pension costs as long-term payouts may be slower and more volatile than what the debt restructuring plan offers, according to Fabian.

"Once the board has left the island, there will be few actors left with a funded interest in stopping the government from doing as it chooses," Fabian wrote.

Bloomberg Markets

By Michelle Kaske

November 23, 2021

— With assistance by Steven Church

S&P State Brief: Iowa

View the Brief.

16 Nov, 2021

IRS Sets Releases New Rules For Private Activity Municipal Bonds.

On November 10, 2021, the IRS released Rev. Proc. 2021-45 setting forth calendar year 2022 methodologies for establishing private activity bonds volume cap (state ceiling) as well as brokerage commissions on guaranteed investment contracts or investments purchased for a yield restricted defeasance escrows, such as those often used in housing and other community-oriented private activity bonds.

For calendar year 2022, the amounts used under § 146(d) of the Internal Revenue Code to calculate the state ceiling for the volume cap for private activity bonds is the greater of (1) $110 multiplied by the State population, or (2) $335,115,000. In addition, Rev. Proc. 2021-45 places limits on the issuance of agricultural bonds. For calendar year 2022, the loan limit amount on agricultural bonds under § 147(c)(2)(A) for first-time farmers is $575,400.

Rev. Proc. 2021-45 also set forth safe harbor rules for brokerage commissions on guaranteed investment contracts or investments purchased for a yield restricted defeasance escrow. For calendar year 2022, under § 1.148-5(e)(2)(iii)(B)(1), a broker's commission or similar fee for the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is reasonable if (1) the amount of the fee that the issuer treats as a qualified administrative cost does not exceed the lesser of (A) $43,000, and (B) 0.2 percent of the computational base (as defined in § 1.148-5(e)(2)(iii)(B)(2)) or, if more, $4,000; and (2) for any issue, the issuer does not treat more than $122,000 in brokers' commissions or similar fees as qualified administrative costs for all guaranteed investment contracts and investments for yield restricted defeasance escrows purchased with gross proceeds of the issue.

Taft Stettinius & Hollister LLP – Raymond Headen

November 23 2021

MSRB Staff Examines Change in Use of External Liquidity over Time: Cadwalader

In a new report, MSRB staff examined the use of external liquidity in both "small" ($100,000 or less) and "large" ($1,000,000 or more) secondary market transactions over the past decade. As defined in the report, external liquidity is when "a customer purchase or sale is filled using the offering or bid of a dealer that is different than and not affiliated with the client's dealer."

MSRB staff analyzed how municipal market participants accessed the secondary market of fixed-rate, long-term securities in the years 2011, 2015, 2019 and 2020. As to small market transactions, from 2011 to 2019, the staff found an increase in external liquidity likely due to the increased use of online brokerages largely by individual investors. (From 2019 to 2020, there was a minimal decrease in small market transactions, likely attributable to the pandemic.) As to large market transactions, the MSRB found a decrease in external liquidity from 2011 to 2019. The researchers identified an increase in large market transactions in 2020. The MSRB concluded that the pandemic had a large impact on external liquidity usage in 2020. The staff researchers found that external liquidity usage varied greatly from month to month, peaking at the beginning of the pandemic and declining throughout the year.

The study also found a consolidation and decrease in the number of providers of external liquidity over the period. (In 2020, the top ten external liquidity providers accounted for 45% of all liquidity in trades, which was up from 42% in 2011). The MSRB suggested that those providers who left the market did not have a significant presence, and the number of firms providing "significant" external liquidity was on the rise.

MSRB staff said it will continue to monitor the use of external liquidity in the marketplace and will update the report when appropriate.

Cadwalader Wickersham & Taft LLP

November 19 2021

Previewing Enhanced CUSIP Groups Feature on EMMA: MSRB Webinar

On December 2, join MSRB staff for a free webinar to preview the completely redesigned "CUSIP Groups" feature that allows issuers to save a group of CUSIPs to use for future disclosure filings. This is one of a series of enhancements the MSRB is making to the free tools available for managing CUSIPs in the Electronic Municipal Market Access (EMMA®) system.

Click here to learn more and to register.

Quarterly Report of the GASB Chair.

The GASB Chair reports quarterly on the activities of the GASB to the Financial Accounting Foundation Board of Trustees and the members of the Governmental Accounting Standards Advisory Council.

January 1, 2021–March 31, 2021

Here’s One Way to Get the Municipal Bond Market to Come Clean on Climate Change Risks.

The SEC might consider offering issuers a grace period before cracking down, this firm suggests

As climate change continues to take a toll on the built environment in the United States, investors are often in the dark about its effects. State and local governments, which issue roughly $500 billion of bonds each year, are being urged to be more proactive about addressing climate change, as MarketWatch has reported.

Now, a new proposal from a longtime muni-bond research firm offers a suggestion for regulators focused on climate risks and looking to encourage municipal issuers to be more upfront with buyers of their bonds.

The solution: “a Climate MCDC program that allows muni borrowers not making sufficient disclosure of their material credit vulnerabilities via climate change a short period to officially post the related information they possess,” wrote analysts at Municipal Market Analytics in a Nov. 22 report.

MCDC stands for “Municipal Continuing Disclosure Cooperation,” and it refers to a successful 2014 initiative of the U.S. Securities and Exchange Commission, which offered more favorable terms for any municipal bond issuer willing to voluntarily self-report earlier instances of being out of compliance with disclosure regulations.

As the Municipal Market Analytics report notes, “In the past month of the MCDC safe harbor window (December 2014), 30 municipal issuers filed their first notices of past technical (23) and monetary (7) defaults. Even considering the COVID-19 pandemic, December 2014 still holds the record for most monthly new impairments since the Great Recession.”

MMA President Thomas Doe has been vocal about his skepticism of the municipal bond market’s approach to pricing climate-change risk. In a series of interviews with MarketWatch in August, he called migration to the sunshine states of the U.S. “denial”: “you may be able to live there for a short period, but it’s not going to be a 20-year experience.”

Muni-bond defaults are scant: 0.10% compared to 2.25% of all corporate bonds, according to the Municipal Securities Rulemaking Board, but advocates of better disclosure, like Doe, say climate risk is very mispriced. It might take only one bad weather event and one Congress reluctant to keep bailing out states and locals for an issuer to have trouble paying its debts.

Few other public finance observers have been quite as hawkish, but many share some concern that state and local issuers aren’t being as candid about the climate risks they face as investors might want — whether deliberately, or unintentionally.

The Nov. 22 note echoed much of what Doe told MarketWatch last summer: to the extent that the muni market needs discipline, it most likely won’t come from investors, since market supply and demand are so out of whack.

“Investors urge issuers to disclose ‘more and better information’ about risks, but don’t enforce true market discipline, the analysts wrote.

Yet, “Industry organizations representing issuers are encouraging voluntary disclosure with the hopes of avoiding a future regulatory mandate. But history suggests that efforts to obtain new voluntary disclosures may not generate the participation warranted and ultimately lead to a regulatory response.”

MMA concludes its proposal by noting that there are plentiful, often free, tools for issuers to use to quantify their climate risk. The SEC would be well within its rights to review bond documents to see if they “adequately disclosed reasonably known material risks to investors;” and, more broadly, to “convey its disclosure expectations.”

States are better-positioned to lead these efforts than local governments are, MMA writes, adding: “It is inefficient and not as credible for tens of thousands of local governments— varying in size, sophistication, and resources and many overlapping—to individually assess highly complex data, determine how their tax-bases, revenues, and operations could be impacted, develop resiliency plans, and make appropriate disclosures, all while fighting to retain or grow their respective allocations of local aid as their states decide what to pay for and where.”

MarketWatch

By Andrea Riquier

Nov. 23, 2021

There Are No Municipal-Market Bond Vigilantes When It Comes To Climate Risk, This Study Confirms.

The old saw that municipal bonds don’t default never accounted for climate change

From wildfires to floods, hurricanes to heat, the effects of climate change on our communities are well-known, and widely expected to get worse.

But as participants in the municipal debt market are starting to realize, there are no bond vigilantes to enforce discipline on state and local government issuers. A new study confirms that notion, showing that investors haven’t yet begun to demand any premium for bonds that may be more at risk due to extreme weather.

That means that as weather becomes more volatile, things may have to change: either municipalities will pay more to borrow, or state governments and Washington may increasingly pick up the tab to make bondholders whole.

The report, from climate analytics firm risQ, Inc. analyzed the yields on about 800,000 municipal bonds issued between 2006 and 2021, accounting for about $2.5 trillion of the $3.9 trillion outstanding. “This is an era,” the report notes, “where it is reasonable to assume climate risk was broadly recognized as a potential issue.”

The research process involved making an estimate of the expected yield of all the bonds in the data set, based on factors that are known to influence yield, such as duration of the bond, type of issuer, and so on. It omitted climate risk as an input. Then, the researchers layered a proprietary climate risk score over the bonds, demonstrating that there is no correlation between climate and any additional risk premia for bonds that was unexplained by the other drivers.

The researchers then reran the same model, using only bonds issued between 2017 and 2021, noting that “physical climate risk came to the forefront of the collective awareness of the market after 2017’s hurricane season,” which remains the costliest on record.

But they come to the same conclusion with the second experiment: climate doesn’t influence yields.

In addition to the data analysis they perform, risQ analysts have some important takeaways about why the municipal market hasn’t yet reckoned with climate risk.

Among them is the old saw that muni bonds rarely default. As they note, “compared to other asset classes, municipal bonds have indeed been historically less risky. Because of this, systemic risk in general (climate and otherwise) has not been nearly as central a concern to the world and culture of municipal bonds as it has been to insurance or mortgage-backed security markets.”

Another is a belief that climate hasn’t historically caused defaults, an argument “that we hear less and less of as the climate crisis worsens,” the report notes. They call climate risk “a ‘frog in a pot of boiling water’ situation, wherein systemic risk is significantly underestimated, and the heat will at least turn up gradually, and maybe abruptly.”

What does this mean for investors?

Among other things, risQ repeats some of the themes MarketWatch has reported on in recent months: investors should be aware that the municipal market may have risks that are camouflaged by lopsided supply and demand, issuers with little incentive (so far) to disclose their challenges, and ratings firms and regulatory agencies that may not be as proactive as necessary.

The risQ report concludes with one example of a recent climate catastrophe: the fire in Paradise, California, in 2018, where nearly 90% of the town was destroyed and 90% of the population forced to leave. Despite that, Paradise was able to pay its bondholders, both because of state legislation that allowed California to step in and backfill payments, and because the state was able to secure direct federal aid.

As MarketWatch has previously reported, some observers think the municipal market may not be able to continue to rely on state and federal bailouts, particularly as “hundred year” weather events become every-year occurrences. By the time the frog realizes he’s in hot water, in other words, it may be too late.

“Bond issuers will need to prepare for potential ‘sticker shock’ in many cases — yields don’t reflect climate risk yet, but this is almost certainly a matter of when, not if,” risQ writes. But the sooner they take proactive steps, the better: addressing the problem is not just good for the overall market, but is considered a “credit positive” as well.

MarketWatch

By Andrea Riquier

Nov. 24, 2021

- Munis Set for ‘Golden Decade’ of Credit With Infrastructure Aid.
- Implementing the Recommendations of the Task Force on Climate-Related Financial Disclosures

(2021)
- Expansion of Qualified Private Activity Bond Categories Under the Infrastructure Investment and Jobs Act : Ballard Spahr
- Federal Infrastructure Bill Set to Supercharge P3 Spending: Saul Ewing
- Fitch: Rising Insurance Costs Add to US Public Finance Cyber Pressures
- And finally, All In All, Not Such A Bad Day is brought to us this week by *Fite v. Mudd*, in which Austin Fite skateboarded into a city crosswalk – high as the proverbial kite (by his own admission) and without looking for oncoming traffic (also by his own admission) – and was, quite predictably, hit by a truck. For his troubles (as he was not particularly injured), Mr. Fite was awarded 6.5 million. Dollars. 6.5 million dollars. Something about a faulty intersection or something, dude. While we've known for years that no good deed goes unpunished, we had not previously considered the converse. Fair play to the stoners.

WATER LAW - COLORADO

Glover v. Serratoga Falls LLC

Supreme Court of Colorado - November 15, 2021 - P.3d - 2021 WL 5296927 - 2021 CO 77

Owners of water-rights easement in ditch brought action against adjacent property owner asserting multiple claims arising from adjacent owner's construction activities.

Adjacent owner brought counterclaims seeking declaration of scope of easement owners' water rights, permission to alter ditches, and declaration of parties' maintenance obligations associated with each ditch. The Water Court entered judgment on the merits for adjacent owner and awarded attorney fees to adjacent owner. Easement owners appealed.

The Supreme Court held that:

- Water court had jurisdiction over claims;
- Adjacent property owner did not trespass on water-rights easement; and
- Water court acted within its discretion in awarding attorney fees against easement owners.

Claims in which owners of easement to access certain water rights through ditch sought declaratory judgments or "adjudications" related to the scope of those water rights and easements to convey those water rights presented "water matters" within exclusive jurisdiction of water court; before resolving dispute over location and maintenance of ditch, court first had to determine exact scope of decreed water rights in ditches and reservoir, which involved court deciding numerous right-to-use issues.

Adjacent property owner did not trespass on water-rights easement in ditch when performing construction work on adjacent property, which resulted in damage to physical infrastructure of ditch; adjacent property owner did not move ditch, adjacent property owner promptly repaired any damages without moving or altering ditch, and adjacent property owner properly came to water court to propose altering easement from open-air ditch to underground pipeline.

Water court acted within its discretion in finding that owners of water-rights easement in ditch lacked substantial justification for bringing trespass claim, and thus award of attorney fees against owners was authorized; court had determined that owner of adjacent property had not engaged in unilateral movement or alteration of ditch without consent and that adjacent owner did not interfere with easement owners' rights, and adjacent owner recognized that it would need to come to water court to propose alteration to ditch easement.

Water court acted within its discretion in determining that claim of trespass to water right, which was based on right to one fill of reservoir during each irrigation season, lacked substantial justification, warranting award of attorney fees; water court concluded that there was no evidence that any groundwater that was diverted caused injury to water right, and court found that reservoir continued to fill to capacity after installation of subdrains.

IMMUNITY - MINNESOTA

Jepsen as Trustee for Dean v. County of Pope

Supreme Court of Minnesota - November 10, 2021 - N.W.2d - 2021 WL 5227159

After child died of injuries from being thrown against a wall by father's girlfriend, trustee for child's heirs and next of kin brought wrongful death action against county and county social workers, alleging negligence in performing duties under Reporting of Maltreatment of Minors Act (RMMA).

The District Court granted county and social workers' motion for summary judgment. Trustee appealed. The Court of Appeals affirmed. Review was granted.

The Supreme Court held that:

- The immunity provision of the RMMA abrogates common law official immunity for child protection workers performing specified duties under the RMMA;
- Social workers' duties under RMMA were operational-level decisions and thus unprotected by discretionary-function immunity under the Municipal Tort Claims Act (MTCA); and
- Genuine issue of material fact as to whether social workers' failure to notify local law enforcement of reports of suspected child abuse was a proximate cause of child's death precluded summary judgment on claim that social workers violated RMMA.

LIABILITY - WASHINGTON

Fite v. Mudd

Court of Appeals of Washington, Division 2 - November 9, 2021 - P.3d - 2021 WL 5190918

Pedestrian brought action against motorist and municipality, alleging negligence after he was struck by vehicle while in crosswalk.

The Superior Court granting summary judgment regarding pedestrian's duty of care and intoxication affirmative defense, and granted judgment for pedestrian after jury verdict in his favor. Motorist appealed.

The Court of Appeals held that:

- Even without urinalysis, pedestrian's admission that he was "high," i.e., under influence of drug, during accident potentially satisfied complete defense from liability for injury;
  factual issue existed as to whether pedestrian was under influence of drug, and therefore whether motorist was entitled to affirmative defense to liability for injury;
- Trial court abused its discretion by submitting instruction to jury that improperly emphasized pedestrian's theory of case;
- Police officer's denial of knowledge of police reports of prior accidents at intersection at issue, on

cross-examination by pedestrian's attorney, did not open the door so they could be admitted; and
- Although pedestrian was required to look before entering crosswalk, he was not required to specifically look to left and right before entering crosswalk; and
- Witness who testified at trial that she did not remember if pedestrian had looked before entering crosswalk could be impeached with her prior inconsistent statement that pedestrian did not look before entering crosswalk.

PUBLIC LANDS - WASHINGTON

Michel v. City of Seattle

Court of Appeals of Washington, Division 1 - November 8, 2021 - P.3d - 2021 WL 5176658

Homeowners brought amended claims for adverse possession, quiet title, prescriptive easement, trespass, and conversion relating to disputed property previously deeded to railway company and eventually conveyed to city.

City brought its own claims for adverse possession. On cross-motions for summary judgment, the Superior Court granted summary judgment in favor of homeowners, allowing homeowners to take disputed property by adverse possession and granting prescriptive easements for access. Following denial of its motion for reconsideration, city appealed.

The Court of Appeals held that:

- City established their actual and exclusive possession of disputed property, acquiring title by adverse possession more than 50 years prior;
- Land actually used or planned for use in a way that benefits the public as shown by the benefits flowing from governmental ownership is immune from claims of adverse possession; and
- Homeowners were barred by statute immunizing government-held property from adverse possession from taking possession of property.

City established their actual and exclusive possession of disputed property, acquiring title by adverse possession more than 50 years prior to action by homeowners claiming adverse possession of portions of property; city maintained a continuous presence on property for more than 60 years by using it for electrical distribution with power poles, city did not share possession of property with homeowners and their heirs or ensigns, city consented to the use of the property by third parties by allowing access to roadway, parks, recreation, and trails, city actively managed property, and city granted permits to portions of property to prior homeowners while requiring that it be allowed to access property at all reasonable times to ensure compliance with permitted use.

Because the legislature intended to broadly shield government-held land, the prohibition on adverse possession of public lands can apply to adverse possession claims brought against a government entity under the statute governing adverse possession claims based on payment of taxes, the statute governing adverse possession claims based on the disputed property being vacant or unoccupied, or the statute governing adverse possession claims brought within ten years of possession.

In the context of the statute immunizing certain government-held property from adverse possession, the statutory phrase "lands held for any public purpose" means land actually used or planned for use in a way that benefits the public as shown by the benefits flowing directly or indirectly from governmental ownership of the particular property

Homeowners were barred by statute immunizing certain government-held property from adverse possession from taking possession of city-owned public property; property was used continuously for recreation from the time of the city's possession for more than 60 years, including for fishing, swimming, and as a public park and an inter-urban trail, and property was further used continuously to supply public utility service since the city's possession, including for electrical distribution and water infrastructure.

PUBLIC EMPLOYMENT - WASHINGTON

Bradley v. City of Olympia

Court of Appeals of Washington, Division 2 - November 9, 2021 - P.3d - 2021 WL 5190924

Claimant, a former firefighter, sought judicial review of decision of Board of Industrial Insurance Appeals affirming Department of Labor and Industries' (DLI's) denial of workers' compensation benefits related to claimant's bladder cancer allegedly caused by firefighting activities.

The Superior Court granted claimant's summary judgment motion. City appealed.

The Court of Appeals held that:

- City's evidence showing that firefighting in general does not cause bladder cancer was insufficient to create a question of fact as to whether statutory presumption of compensability was rebutted;
- City failed to prove nonoccupational factors caused claimant's bladder cancer; and
- Claimant was entitled to attorney fees.

Munis Set for 'Golden Decade' of Credit With Infrastructure Aid.

- **However, lack of certain muni provisions seen capping issuance**
- **Fresh flood of cash may also suppress borrowing needs**

U.S. municipalities are set for another massive infusion of cash from the $550 billion infrastructure package, leaving participants in the muni-bond market to assess the impact on the nation's states and local governments.

In a nutshell, the analysis boils down to a couple big takeaways: It's great for credit quality in the $4 trillion market. Bank of America Corp., for example, sees a "golden decade" of credit ahead. But on the other hand, all that cash may even suppress bond sales.

The legislation will unleash spending in an array of areas: It allocates around $110 billion for roads and bridges, $66 billion for rail, and $39 billion for public transit. Another $65 billion is earmarked for connecting Americans to high-speed Internet, while $65 billion will go to the power grid and $55 billion for drinking-water systems.

The influx comes as municipalities have already collected a historic infusion of $350 billion of federal cash from the American Rescue Plan. Here's how investors, bankers and analysts expect the new funding will affect the dynamics and borrowers in the muni market:

Credit Boost

"The passage of the Infrastructure Investment and Jobs Act is broadly credit positive for the muni market as the infrastructure investment will boost economic growth and revenues for market issuers," wrote Yingchen Li and Ian Rogow, co-heads of municipal research at Bank of America, the market's largest underwriter.

Granted, the aid is a fraction of the $2.6 trillion U.S. infrastructure-funding gap estimated by the American Society of Civil Engineers. But the money "will likely still allow muni market issuers to address growing deferred maintenance costs," an issue that credit-rating companies have increasingly focused on over the past decade, according to Li and Rogow.

Ann Ferentino, a portfolio manager at Federated Hermes, also pointed to the funding as a "credit positive" given that municipalities typically assume the lion's share of public-infrastructure investment.

"Historically, a portion of those efforts would have gone unaddressed, delayed or been funded through additional debt issuance that strained cash flows and eroded credit quality," she said. The act will "take a load off states and municipalities by addressing decades of underinvestment in physical projects, a positive for investors in the broad muni securities market."

Supply Disappointment

Some market observers initially expected the infrastructure plan and separate legislation would spur a flood of bond sales. Lobbying groups had advocated for the restoration of a debt-refinancing tool known as advance refunding as well as the revival of an Obama-era bond program. But those items didn't make the final bill, dousing expectations for a deluge of issuance.

The infrastructure plan "isn't likely to lead to a major increase in muni issuance," according to Cooper Howard, a fixed-income strategist at Schwab Center for Financial Research.

"The package contains a few muni-friendly elements that could lead to a modest increase in muni issuance, such as the expansion of private-activity bonds, but issuance is unlikely to surge," he wrote in an email.

State and local governments have sold about $412 billion of long-term bonds this year, around 0.6% less than the same period in 2020, data compiled by Bloomberg show.

Issuance Decline Mulled

There's even the prospect of a decline in borrowing ahead because of the aid.

Charles Peck, head of public finance at Wells Fargo & Co., estimates new muni sales will be "flat to slightly up" in 2022 compared with this year. But he also envision another scenario.

"We could see a decline in issuance because there is so much cash available and some governments have paused as they try to figure out how to best use the money," he said.

However, once issuers figure out those logistics, the infrastructure bill could spur more sales as larger projects get off the ground. He expects more borrowing for "ancillary infrastructure" projects like broadband and electric vehicles.

Mikhail Foux, head of municipal strategy at Barclays Plc, also anticipated a "capping effect" on new bond sales.

"Some of the funds municipalities will be using and would've been funded through the capital markets and now they won't have to bond for it," he said.

Some muni provisions could yet re-emerge in the Build Back Better Act, which is more focused on Democrats' social priorities, said Matt Fabian, a partner at Municipal Market Analytics.

"Since that bill has been sent back for more discussion that means that the muni provisions are not dead, things can always come back as the bill is rethought," Fabian said.

Bloomberg Markets

By Danielle Moran

November 17, 2021, 12:15 PM PST

— With assistance by Amanda Albright

Expansion of Qualified Private Activity Bond Categories Under the Infrastructure Investment and Jobs Act : Ballard Spahr

On November 15, President Biden signed the Infrastructure Investment and Jobs Act (PL 117-58) into law. This Act introduces more than $550 billion in new infrastructure spending in addition to reauthorizations of existing programs for a total of $1.2 trillion in federal infrastructure investment in local communities over the next eight years. The spending covers broadband infrastructure; air quality improvements; road, bridge, and tunnel repairs and reconstruction; rail and transit improvements; and clean water infrastructure.

The Act amends the tax-exempt bond provisions of the Internal Revenue Code (Code) to enhance the financing options available to state and local government to address the highlighted infrastructure needs. Specifically, the package adds two new categories of exempt facility private activity bonds (PABs) and additional volume cap for transportation PABs.

Here is what you need to know about the new PAB provisions:

Broadband Projects. The Act introduces qualified broadband projects as a new category of exempt facility PABs under Section 142(a) of the Code. Qualified broadband projects include facilities for the provision of broadband internet access to census tracts in which a majority of households lack broadband access prior to the date of issuance of qualifying bonds. Notably, this new category of PABs enjoys a 75% exemption from the volume cap requirements for privately owned projects and a 100% exemption from volume cap for government-owned projects.

Carbon Capture Facilities. The Act also adds qualified carbon dioxide capture facilities as a new category of exempt facility PABs under Section 142(a) of the Code. Qualified carbon capture facilities include key clean energy technologies such as eligible components of industrial carbon dioxide emitting facilities used to capture and process carbon dioxide, and direct air capture facilities. An eligible component is further defined by the Act as any equipment that is used to capture, treat, or store carbon dioxide produced by industrial carbon dioxide facilities or is related to the conversion of coal and gas byproduct into synthesis gas. Section 45Q(e) of the Code, relating to the business tax credit for carbon capture, defines a direct air capture facility as any facility which uses carbon capture equipment to collect carbon dioxide directly from air. Together, these technologies seek to capture and sequester emissions produced by power plants and industrial facilities that contribute to climate change. This new category of exempt facility PABs also enjoys a 75% exemption from the volume cap requirements for qualifying projects. As a partial offset, however, any otherwise available carbon capture credit is reduced by up to one-half if bonds are issued under this provision to finance the qualifying assets.

Qualified Transportation PABs. Additionally, the Act adds $15 billion to the national volume cap limitation available for qualified highway or surface freight transfer facilities. The prior volume cap limitation of $15 billion had largely been exhausted. The limitation for qualified highway or surface freight facilities is available by application to the U.S. Department of Transportation.

by Marybeth Orsini, Charles S. Henck, Jean S. Everett, Sheila Kles, and Andrew T. Wang

November 15, 2021

Infrastructure Investment and Jobs Act: Cybersecurity Impacts on the Energy Sector.

The November 15 signing of the Biden administration's bipartisan $1 trillion Infrastructure Investment and Jobs Act offers a prime opportunity to review the legislation, which brings a significant reinvestment in America's energy infrastructure and an opportunity for many in the energy sector. Unsurprisingly, following the Solarwinds Orion compromise and the ransomware attack on the Colonial Pipeline, cybersecurity features centrally in the act's provisions.

Service providers hoping to benefit from the act's substantial funding must be keenly aware of the cybersecurity requirements it implements, as they offer both potential opportunities for the prepared and potential pitfalls for the unwary. Although it would be impossible to analyze the full impact of the cybersecurity provisions here, we hope to highlight key aspects that warrant your further attention.

Cybersecurity Plans

One of the key cybersecurity provisions of the Infrastructure Investment and Jobs Act is its imposition of cybersecurity requirements as a potential precondition to receive federal funds. These requirements include submission of a cybersecurity plan demonstrating that the applicant has a mature cybersecurity program and a plan for maintaining cybersecurity throughout the life of the project. The plan will require detailed descriptions of how cybersecurity will be maintained, how ongoing risk evaluations will be conducted, how vulnerabilities or compromises will be reported and how Department of Energy cybersecurity programs will be leveraged.

These requirements create an urgent need for utilities, contractors and suppliers to ensure that they have robust cybersecurity mechanisms in place. The best way to do this is through regular risk assessments identifying gaps in technical, administrative and physical security. These assessments should be overseen by outside counsel so that potential security gaps and liabilities can be identified and rectified in a privileged manner before it becomes necessary to demonstrate that cybersecurity maturity to potential clients or funders.

Application of Cybersecurity Standards

The act further cements the centrality of two key cybersecurity models, the DOE’s Cybersecurity Capability Maturity Model and the National Institute of Standards and Technology’s Framework for Improving Critical Infrastructure Cybersecurity. Both models provide a procedural framework for evaluating an organization’s cybersecurity, conducting risk assessments and targeting future improvements. The act, however, makes these previously voluntary standards the default and requires documentation of any deviations, establishing their central role in discussions of cybersecurity going forward.

Continued Reporting

Perhaps the most significant change that we anticipate is the focus on continued evaluation and patching of cybersecurity risks. The cybersecurity plans potentially required under the act require ongoing evaluation and threat reporting, and the act provides a route to compliance by establishing a “voluntary” reporting program, encompassing:

1. Product testing,
2. A vulnerability reporting process,
3. Technical assistance to close vulnerabilities,
4. Biennial reviews of tested products and analysis of how they respond to and mitigate threats, and
5. Development of procurement guidance.

These ongoing requirements create an extended service obligation for vendors and contractors, which we anticipate may be filled by the original manufacturers and suppliers of equipment, by operations and maintenance contractors or by other third-party vendors. We also anticipate that, with increased and extended cybersecurity scrutiny, suppliers and contractors will face increased litigation risks as more vulnerabilities are identified and required to be corrected. Such reporting processes will also expose suppliers to potential compromise of intellectual property or the potential harm of inaccurate threat assessments.

Funding Opportunity

Although the Infrastructure Investment and Jobs Act imposes significant additional obligations on the energy industry, it also provides significant opportunities for growth through rate-based cybersecurity incentives, $250 million in grants and technical assistance for rural and municipal utilities and $250 million in grants for enhanced power grid security.

This funding creates massive opportunities for those with the cybersecurity infrastructure in place to satisfy the act’s requirements. We also note, however, concern that the added requirements connected to this funding may disadvantage smaller businesses, including women- and minority-owned business enterprises, that have not yet developed cybersecurity maturity, potentially forcing partnerships with more mature actors or reliance on external cybersecurity resources.

Key Takeaways

Cybersecurity requirements are not new to the energy sector, but the act significantly expands their application, creating both risks and opportunities for the energy industry. We encourage industry participants to begin thinking proactively about the act’s impacts, how best to position themselves to take part in government-funded projects subject to those requirements and what risks might lurk within these provisions.

Duane Morris LLP – Owen Newman and Chris J. Chasin

November 16 2021

[Electricity Transmission Provisions in the Bipartisan Infrastructure Bill: Bracewell]

On Monday, November 15, 2021, President Biden signed into law the $1.2 trillion Infrastructure Investment and Jobs Act (the "Act"), commonly referred to as the Bipartisan Infrastructure Bill. The package provides funding opportunities for a variety of traditional infrastructure projects, including approximately $65 billion for energy and electric grid development. The Act's energy provisions are diverse, and include opportunities for those investing in grid resilience and reliability, research and development for newer and emerging technologies such as battery storage and hydrogen, cybersecurity infrastructure, electric vehicle infrastructure, nuclear power, and emissions reduction technologies, among others. This update focuses on one subset of the energy provisions contained in the Act: direct investment in the nation's electric transmission and distribution facilities.

Excluding portions of the Act related to research and development, the five provisions offering opportunities for transmission developers and owners beginning in fiscal year 2022 are of particular interest.

Transmission Facilitation Program

The Act establishes a Transmission Facilitation Program – funded by a $2.5 billion revolving loan fund – that allows the Department of Energy ("DOE") to offer loans to, and enter into capacity contracts with, transmission developers in order to provide financial stability to proposed transmission projects. As envisioned, DOE's implementation of the Transmission Facilitation Program will include DOE's contracting with transmission developers for long-term capacity service with contract terms of up to 40 years, and for capacity not to exceed 50 percent of a transmission project's total proposed transmission capacity. In addition to entering into such long-term transmission service contracts, DOE now has statutory authority to be a lender to qualifying transmission projects and provide technical assistance in "designing, developing, construction, operating, maintaining, or owning an eligible project."

The Transmission Facilitation Program is specifically aimed at larger transmission projects – for new projects, only those capable of transmitting at least 1,000 MW qualify. However, upgrade projects may also qualify to participate as long as the upgrade is capable of transmitting at least 500 MW.

The Act funds the program but expects DOE to recover its costs from eligible projects either as a lender to the eligible project or, in the case of a transmission capacity contract, DOE may recover its investment through revenue recovered by the project's ultimate customers. The Act directs DOE to terminate its capacity contracts "as soon as practicable" – i.e., once DOE determines that the project is independently financially viable – by reselling the capacity to third party marketers or relinquishing the capacity back to the developer. The Act also stipulates that DOE's implementation of the Transmission Facilitation Program will provide that any DOE funds that a developer expends on studies for projects that are never constructed need not be repaid.

DOE Competitive Grant Program

The Act provides $5 billion in funding to DOE to establish a competitive program to fund grid resilience projects. Half of the funds will be awarded by DOE directly to eligible entities (which includes transmission owners and operators) and the other half will be distributed to states and Indian Tribes to fund their own resilience grant programs. Additionally, the Act's small utilities "set aside" provides that at least 30 percent of grant funds must be made available to entities that sell no more than 4 million megawatt hours of electricity per year. The DOE Competitive Grant program must be initiated by DOE by May 14, 2022.

An interested applicant, in addition to abiding by any rules to be established by DOE, will be required to provide a report detailing its "past, current, and future efforts…to reduce the likelihood and consequences of disruptive events." At least part of the justification for this provision is that entities will be limited to receiving a grant that is no more than the total amount it has spent in the prior three years on "efforts to reduce the likelihood and consequences of disruptive events."

Grant recipients are required to spend proceeds on the any of the following activities:

(A) weatherization technologies and equipment;

(B) fire-resistant technologies and fire prevention systems;

(C) monitoring and control technologies;

(D) the undergrounding of electrical equipment;

(E) utility pole management;

(F) the relocation of power lines or the reconductoring of power lines with low-sag, advanced conductors;

(G) vegetation and fuel-load management;

(H) the use or construction of distributed energy resources for enhancing system adaptive capacity during disruptive events, including— (i) microgrids; and (ii) battery storage subcomponents;

(I) adaptive protection technologies;

(J) advanced modeling technologies;

(K) hardening of power lines, facilities, substations, of other systems; and

(L) the replacement of old overhead conductors and underground cables.

Federal Transmission Siting Authority Reform

The Act amends Section 216 of the Federal Power Act in an attempt to reinvigorate DOE's and the Federal Energy Regulatory Commission's ("FERC") backstop transmission siting authority. Initially established by the Energy Policy Act of 2005, Section 216 allows FERC to issue permits with eminent domain authority to transmission projects located in national interest electric transmission corridors ("National Interest Corridors"). National Interest Corridors are designated by DOE through the issuance of a study and report that it is required to complete every three years. DOE's most recent report, however, issued in 2020, did not designate any National Interest Corridors. Dep't of Energy, *National Electric Transmission Congestion Study* vi (2020).

FERC's ability to issue permits under Section 216 was limited following a 2009 Fourth Circuit decision that interpreted the language of Section 216 as prohibiting FERC from issuing permits in the event a state agency expressly denied a transmission project's siting application. *Piedmont Env't Council v. FERC*, 558 F.3d 304, 309 (4th Cir. 2009). In other words, following *Piedmont*, FERC could use Section 216 when a state agency failed to act within a certain timeframe but could not issue a permit under Section 216 after a state agency actually denied a siting application.

The Act is intended to “undo” the adverse impact of Piedmont on DOE’s backstop authority and includes express language authorizing FERC to issue a permit where a state authority “has denied an application seeking approval” for the siting of electric transmission facilities located within a DOE-designated National Interest Corridor.

In designating National Interest Corridors, DOE must look to a variety of factors, including whether a lack of adequate electricity is imposing economic constraints on a particular region of the country, and non-economic factors such as whether a designation would serve the national interests and whether it would promote energy independence. The Act expands the scope of DOE’s review by providing additional factors DOE may consider in providing a National Interest Corridor designation. Specifically, DOE may now review whether a designation will “enhance the ability” of electric generation facilities “to connect to the electric grid,” whether the designation will decrease electricity costs for consumers, and also whether the designation will enhance the United States’ energy security.

Whether this expansion to the backstop federal transmission siting authority, and additional factors DOE may consider in designating National Interest Corridors, will result in change will depend on how DOE and FERC implement the new provision. DOE is not required to issue a new transmission siting study until 2023. Because there are currently no DOE-designated National Interest Corridors, FERC is unable to issue permits under Section 216 today. Nevertheless, the Act’s changes to Section 216 could significantly redefine the federal government’s role in the siting of electricity transmission projects – a role that has historically been almost exclusively within the purview of the states.

Smart Grid Investment

The Act provides additional funding – $3 billion – and expands the scope of qualifying projects under DOE’s Smart Grid Investment Matching Grant Program, 42 U.S.C. § 17386. Under this program, DOE may issue grants covering up to 50 percent of the costs associated with qualifying “Smart Grid investments.” Transmission owners and developers may now apply for and receive grants to cover expenditures related to the purchase and installation of “advanced transmission technologies such as dynamic line rating, flow control devices, advanced conductors, network topology optimization, or other hardware, software, and associated protocols applied to existing transmission facilities that increase the operational transfer capacity of a transmission network.”

Federal Financial Assistance to Non-Federal Entities for Grid Reliability and Resilience Projects

The Act provides $5 billion for DOE to offer grants to non-federal entities (state and local governments, state public utility commissions, and Indian Tribes) to collaborate with electric sector owners and operators on “innovative approaches…to harden and enhance resilience and reliability.” This program is specifically targeted to allow states to develop resilience programs in coordination with municipal entities and rural electric cooperative entities “on a cost-shared basis.” The program additionally appropriates $1 billion in financial assistance to rural and remote areas for the same purpose. The program must be established by DOE by May 14, 2022.

Bracewell LLP – Boris Shkuta, Michael Brooks, Stephen J. Hug, Rachael Novier Marsh and Catherine P. McCarthy

November 18 2021

Modernizing American Infrastructure Requires People and Procurement, Not Just Dollars.

This time, it really was Infrastructure Week. On November 15, President Joe Biden signed into law the first comprehensive infrastructure bill in a generation, including over $500 billion in new spending to upgrade broadband, roads, bridges, public transit, energy, clean drinking water, and other infrastructure systems.

While the bill is ambitious, it still misses important opportunities to modernize state and local governments. Without that focus, a large percentage of the funding in the enormous bill will inevitably be spent on the same types of projects we've been building for the last several decades—not the transformative projects we need.

Building those kinds of transformative infrastructure projects will require modernizing workforce development systems and procurement techniques. Unfortunately, the infrastructure bill doesn't do enough to help state and local partners with these essential inputs. If the nation wants generational impacts, we can't afford to overlook operational capacity.

Continue reading.

The Brookings Institution

by Ellory Monks

November 19, 2021

Infrastructure Investment & Jobs Act: What it Means for GFOA Members

On November 15, the Infrastructure Investment & Jobs Act (IIJA) was signed into law by the President. The highly anticipated bill authorizes $1.2 trillion for transportation and infrastructure spending with $550 billion of that figure going toward "new" investments and programs.

LEARN MORE

Federal Infrastructure Bill Set to Supercharge P3 Spending: Saul Ewing

Development through public-private partnerships or "P3s" has increased sharply in the past several years, and is poised for an even bigger jump thanks to Uncle Sam. The infrastructure bill, which passed the U.S. House of Representatives last week as H.R. 3684 and which President Biden signed into law on November 15, 2021, aims to directly increase P3 spending by tens of billions of dollars. The bill is also likely to dramatically increase the number of P3 projects by making hundreds of billions of dollars available for infrastructure improvements across the United States.

One significant benefit to P3 development should come from proposed changes to private activity bond legislation. Private activity bonds or "PABs" allow state governments to issue tax-free municipal bonds for the benefit of private entities that finance one of 27 categories of public works projects. As of 2021, states may issue PABs for P3 projects at a rate of up to $325 million per year or $110 per resident, whichever is greater. Federal law also caps highway and surface freight financing through PABs, which includes road, bridge, and tunnel projects, at $15 billion total across all states.

The infrastructure bill takes two big steps to increase PAB spending. First, it increases the cap for highway and surface freight projects from $15 billion to $30 billion. Second, and potentially more impactful, the bill would exempt from state caps 75 percent of PABs issued for qualifying broadband and carbon capture projects. In other words, the vast majority of P3s focused on broadband access and carbon capture could more easily be financed through tax-free municipal bonds.

But the PAB provisions are only half the story when it comes to H.R. 3684’s impact on P3s. With $110 billion earmarked for roads and bridges, $66 billion for railways, $65 billion for power infrastructure, and $39 billion for public transit, as well as tens of billions more for airports, sea ports, and water infrastructure, vast sums of money are likely headed to P3 projects.

The infrastructure bill will accelerate the recent U.S. trend of increased P3 spending. In 2020, the U.S. saw 84 active P3 projects – a more than 300 percent jump from 2018. P3 activity in 2022 and beyond is all but certain to dwarf those figures given the infrastructure bill.

Saul Ewing Arnstein & Lehr LLP

November 16, 2021

Developing WIFIA's Guarantee Capabilities for Taxable Municipal Bonds.

Legislative developments threw a few disappointments at water infrastructure finance recently, but there is a way to make at least a little lemonade from two Congressional lemons.

Legislative developments threw a few disappointments at water infrastructure finance recently. But there is a way to make at least a little lemonade from two Congressional lemons.

Lemon 1: Restoration of Direct-Pay Bonds Cut from BBB

A provision to restore and expand direct-pay bonds was approved by House Ways & Means for inclusion in the Build Back Better (BBB) legislation earlier this year. This was one of three provisions to increase the flexibility and reduce the cost of municipal finance. The other two, also originally approved, would reinstate tax-exempt advance refunding and expand the small tax-exempt issuer exception. However, in the Congressional horse trading required to resize the BBB to $1.75 trillion, direct-pay bonds and the other provisions were cut. Notwithstanding a compelling letter sent to Congress by thirty municipal groups (including AWWA, NACWA and WEF), the bond provisions are unlikely to be back in the final bill.

All the provisions would have benefited the US water sector, but the restoration of direct-pay bonds would have been especially useful for water infrastructure renewal. This is because they are taxable bonds that receive federal support in the form of a cash subsidy (not a tax-exemption) and can be bought globally by institutional investors. These investors are well-suited to finance long-lived assets, and they have a lot of appetite for US infrastructure in particular. Taxable bonds are also more flexible for innovative approaches that include impact and other pay-for-performance features which will interest the rapidly growing base of worldwide ESG and impact investors. Such risk-transferring features can be especially useful to water agencies in dealing with the infrastructure funding challenges of climate resilience and water equity.

Lemon 2: WIFIA Loan Program Authorization Flatlined in BIF

The recently passed $1.2 trillion Bipartisan Infrastructure Framework (BIF) has a lot of great new and expanded funding provisions for the water sector. Drinking and Clean Water State Revolving Funds in particular got a big and well-deserved boost. The EPA's Water Infrastructure Finance and Innovation Act (WIFIA) loan program was also reauthorized at $50 million per year for 2022-2026. But this authorization is slightly less than prior years. Relative to the other water-related provisions in the BIF that saw significant increases, this is disappointing.

The flatline of WIFIA's authorized funding is puzzling. The program has been remarkably successful since operational inception in 2018. Not expanding its resources would seem to indicate a perception that WIFIA has limited usefulness despite its initial success. This is somewhat understandable in light of WIFIA's portfolio to date. Almost universally, WIFIA loans are to highly rated water agencies that could have otherwise issued tax-exempt bonds. WIFIA loans have some very valuable features, especially with respect to construction period interest rate management, but in many ways they're not very different from tax-exempt water revenue bonds. Perhaps the program is seen as filling a niche purpose and not as a source of transformational or uniquely valuable financing for US water infrastructure?

This perception is completely incorrect. WIFIA's legislative framework and its proven team are capable of much more. The portfolio to date should be seen as demonstrating WIFIA's capabilities in efficiently sourcing and executing loans with high-quality borrowers that have excellent alternatives in the capital markets, no mean feat for a federal loan program. That capability is certainly not limited to interest rate management products — and it shouldn't be. WIFIA is only getting started.

Making Lemonade: Developing WIFIA Guarantees for Taxable Municipal Bonds

Perhaps not much can be done legislatively in the near future to restore direct-pay bonds or expand WIFIA's authorization. But there is an immediately available path to improve both situations and prepare for the next opportunity in Congress: Develop WIFIA guarantees for taxable municipal bonds.

WIFIA has the capability to attach a US full-faith-and-credit payment guarantee to loans and bonds, including taxable municipal bonds. Such a guarantee has quantifiable value. For example, a federal AAA/AA+ guarantee on a 30-year bond that otherwise would have been rated Baa3/BBB- will save the issuer about 0.50% in interest a year, or about 20% of debt service on a present value basis. In principle, the value of the federal guarantee for lower rated investment-grade bonds is equivalent to the cash subsidy of a direct-pay bond. The value of a guarantee is of course more variable and situational than a direct-pay bond's cash subsidy payments because it will depend on transaction terms, market conditions, etc. But both mechanisms are forms of direct and monetizable federal support for taxable bonds.

The value of a federal guarantee is not limited to simply raising the credit quality of a standard bond issue. Innovative infrastructure projects and funding sources often have demonstrably sound credit characteristics but financing them in the bond market may be prohibitively costly simply because the story is (by definition) new and unusual. A WIFIA guarantee would make bonds with innovative features much more attractive to investors, which also will familiarize them with the new approaches and create interest in the unguaranteed versions. Jump-starting new markets is a classic role for federal loan programs, and WIFIA is especially well-positioned to do exactly that. Innovation is a central part of the program's mission — it's even in the name. Apart from its own expertise and credibility in large-scale infrastructure finance, WIFIA can directly access the climatic and other ESG resources of the EPA to analyze new approaches that private-sector investors can't consider until they're more developed. A WIFIA guarantee is effectively an imprimatur on several levels (not just financial) that could have a transformational impact on ESG and resilience water infrastructure investment.

Getting Ready for the Next Legislative Opportunity

Even apart from the benefits of near-term transactions themselves, developing WIFIA guarantees for taxable municipal bonds will advance a much larger objective for municipal and water infrastructure finance. Successful innovation always gets a lot of attention. Even a few transactions that combine innovative approaches with federal support for taxable municipal bonds will demonstrate the value and potential in both WIFIA and direct-pay bonds. It may be a few years before there's another legislative opportunity to expand WIFIA's resources and restore direct-pay bonds, but that time will come because the US municipal infrastructure challenge isn't going away. When it does, a track record of successful transactions, motivated stakeholders among both issuers and investors, and proven capability for large-scale innovation will be very hard for Congress to horse trade away.

WaterWorld

by Chad Praul, John Ryan

Nov. 17, 2021

About the Authors: Chad Praul, P.E. is the Domestic Portfolio Director at Environmental Incentives, the only professional services Benefit Corporation that supports mission-driven champions to meet their environmental imperative. He provides expert support for local governments to develop water-related performance metrics and alternative procurement programs such as Pay-for-Performance and Community Based Public Private Partnerships (CBP3).

John Ryan is principal of InRecap LLC, a firm that is focused on federal loan program alternatives for the recapitalization of basic public infrastructure. He has an extensive background in structured and project finance. He recently served as an expert consultant to the U.S. Environmental Protection Agency.

Fitch: Rising Insurance Costs Add to US Public Finance Cyber Pressures

Fitch Ratings-Austin/New York-18 November 2021: The growing pace and sophistication of cyberattacks on US public finance (PF) entities has led to rising costs of, and challenges in acquiring, robust cyber insurance coverage, Fitch Ratings says. Public entities are increasingly required to undergo stringent security audits and adherence to industry best practices in order to purchase cyber insurance. Cyber insurance may become increasingly unaffordable for PF entities with smaller budgets as premiums continue to climb and if insurer guidelines necessitate increased staffing and costs to update older systems and software.

Without the ability to adequately transfer risk, public entities could face greater financial and reputational risks from cyberattacks, which could have negative credit implications. According to a 2021 survey of local governments by the Public Technology Institute (PTI), 59% of municipal IT executives report that their cybersecurity budgets increased from the previous year, yet the majority also felt their cybersecurity budget is inadequate to support ongoing and evolving security initiatives.

The rise of high-profile ransomware incidents in the PF sector beginning in 2018 led PF entities to turn to cyber insurance as a means of risk transfer. With ransom demands generally in the five-digit range, affordable and easy-to-obtain cyber insurance helped reduce financial risk.

However, with soaring ransom demands and recovery costs, insurers have adjusted premiums and prerequisites. With some ransomware demands climbing to six and seven digits, PF entities are getting priced out of quality and comprehensive commercial cyber insurance policies. Cyber insurers paid out about 73% of premiums collected last year, a dramatic rise from about 34% in 2018. Premiums on cyber insurance continue to rise in the wake of the coronavirus pandemic.

Despite higher costs, more and more PF entities are acquiring cyber insurance. About 90% of respondents in PTI's survey reported having cyber insurance, an increase from 78% the previous year, and 69% noted that their cyber insurance premiums increased since they were last renewed.

PF entities are also experiencing diminishing coverage limits, forcing some entities to purchase multiple policies to achieve the desired level of coverage. Reduced coverage may be more economical but it weakens the effectiveness of cyber insurance as a tool for risk transfer.

In addition to commercial insurance, state-level risk pools are important providers of cyber insurance for many smaller to mid-sized municipal issuers. The Association of Governmental Risk Pools (AGRiP) estimated at least 80% of all local public entities participate in one or more risk pools, which are typically established on a membership basis and oriented toward same-kind government groupings, such as school districts or counties. These pools, in which members agree to share the cost of risk, were established in the US in the 1970s and 1980s to reduce and stabilize general insurance costs when many commercial insurers did not serve the PF market. Public entity risk-sharing pools do not have to deliver profits and external regulation of pools varies from state to state and by type of risk.

Trends in insurance cost pressures may be lagged in risk pools compared with commercial insurance but will eventually drive increased member costs and/or expanded coverage at a higher price point. This direction is highlighted by the Texas Association of School Boards (TASB) Risk Management Fund. Privacy and information security coverage was initially offered to members in 2014 for protection against cybercrime but it was available only in conjunction with a member's school liability coverage. This type of coverage subsequently expanded and larger members with more complex systems had the option to purchase higher coverage limits based on their organization's needs starting in 2019-2020, with TASB staff evaluating each member to determine the additional cost for requested higher limits.

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The above article originally appeared as a post on the Fitch Wire credit market commentary page. The original article can be accessed at www.fitchratings.com. All opinions expressed are those of Fitch Ratings.

[These Americans Are Just Going Around in Circles. It Helps the Climate.]

An Indiana city has the most roundabouts in the country. They've saved lives and reduced injuries from crashes — and lowered carbon emissions.

CARMEL, Ind. — It's getting harder and harder to run a stoplight here, because there are fewer and fewer of them around. Every year, at intersections throughout this thriving city, traffic lights and stop signs have disappeared, replaced with roundabouts.

Lots and lots of roundabouts.

There is a roundabout decorated with the local high school mascot, a greyhound and another with giant steel flowers. A three-mile stretch of Carmel's Main Street has 11 roundabouts alone. The roundabout that locals perhaps prize the most features box hedges and a three-tier bronze fountain made in France. In 2016, it was named "International Roundabout of the Year" by no less than the U.K. Roundabout Appreciation Society, which, according to the Carmel mayor, Jim Brainard, is largely made up of "three guys in a pub." (Their actual membership is six. But, still.)

Continue reading.

The New York Times

By Cara Buckley

Nov. 20, 2021

[Fitch: Inflation, Federal Policy to Weigh on U.S. Colleges]

Fitch Ratings-Chicago-18 November 2021: Most U.S. colleges and universities have enough flexibility to absorb inflationary increases for the foreseeable future, though a new Fitch Ratings report says their financial cushion may diminish beyond fiscal 2022.

The higher education sector reduced its labor force sharply at the onset of the pandemic with a decade of job gains evaporated in the space of one year. Median expense growth is expected to inch upward in fiscal 2022 as universities absorb inflationary increases in supplies and labor. 'Most colleges will be able to absorb inflationary increases to some extent, though they will be working with less financial flexibility beyond fiscal 2022,' said Fitch Senior Director Emily Wadhwani.

A few key proposals for higher education are included in the current $1.75 trillion budget reconciliation bill – among them a $550 increase in Pell Grant maximum awards. Pell Grants have historically not kept pace with inflation and tuition increases, though the proposed Pell award increase reflects the largest increase in a decade. 'Implications for institutions with large Pell student bases are generally favorable, including increased access and perhaps increased headroom for tuition growth,' said Wadhwani.

Sector pressures will continue to weigh most heavily on Fitch-rated colleges rated 'BBB' and below. 'Institutions with limited financial reserves have borne the bulk of recent negative rating actions and remain the most vulnerable to credit deterioration, consolidation and closure,' said Wadhwani. 'Market performance buoying endowment valuations will only serve to widen that gap further in coming years.'

Undergraduate enrolment is down over 6% since fall 2019 through the pandemic. That said, four-year colleges have fared better and selective institutions have even seen increases. Enrolment will be affected by an increasingly competitive landscape, with longer-term implications from high school demographic trends, an uncertain immigration trajectory, and increasing levels of remote and hybrid education models.

'What Investors Want to Know: What's Next for US Higher Education' is available at 'www.fitchratings.com'.

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Additional information is available on www.fitchratings.com

U.S. Hospitals Face Financial Reckoning as Federal Aid Dwindles.

- **Financial strains return with the retreat of the pandemic**
- **Costs for safety and labor surge while elective procedures lag**

More than a year after Saint John's Episcopal Hospital in Queens admitted the borough's first Covid-19 positive patient in March of 2020, life is returning to some semblance of normalcy. The three refrigerated tractor-trailers serving as morgues are gone and its halls — once at 150% of capacity — have quieted.

But with the retreat of the worst of the virus comes the reality that for many facilities, the finances never worked. The billions of dollars of aid the U.S. government distributed to hospitals during the pandemic — including advances in Medicare payments — kept struggling facilities afloat, but papered over longstanding problems.

The elective procedures that generate the most revenue haven't returned to pre-Covid levels. Now, a staffing crisis has emerged as a new challenge just as the final government disbursements are paid out — putting potentially thousands of hospitals at risk. “It does keep me up at night,” said Jerry Walsh, chief executive officer of St. John’s, a safety-net hospital that primarily treats patients that don’t have private insurance.

Federal Support

These risks aren’t yet reflected in the financial markets — an indication of the extent of the federal support. Junk-rated municipal hospital bonds are underperforming the overall high-yield muni index only slightly this year, with a 6.91% return, compared with 7.11% for the overall index. Still, concerns are growing about the added stress of rising labor, supply and interest costs on a system already rife with problems.

“We will see a significant number of failures post-pandemic,” said Steven Shill, head of the health-care practice at advisory firm BDO USA. “All the risks are pointing to probably a tough 18 months.”

Even before the coronavirus, many American hospitals were struggling to adapt to changing models of care, including the shift of even some complex procedures to outpatient settings. Weaker operators are still grappling with the same issues as before the virus, including poorer, sicker and often shrinking populations.

“There is no doubt that the CARES money kept the wolf from the door,” said Ken Kaufman, chair and co-founder of health-care consultancy Kaufman Hall, which estimates that more than a third of the 6,000 or so hospitals in the U.S. are losing money. His group also forecast the pandemic has cost them close to $400 billion this year and last.

More than three dozen hospitals entered bankruptcy in 2020, compared with just two this year, according to data compiled by Bloomberg. That includes Chicago’s Mercy Hospital and Medical Center, which filed Chapter 11 in February and was sold for just $1.

Turnaround adviser Alvarez & Marsal calculated that operating expenses jumped 5% last year at the 25 largest hospital systems, and those have the benefit of scale. St. John’s, for example, has been paying thousands of extra dollars a week to staffing agencies for certain positions to compete with larger systems for health-care workers, Walsh said.

“For safety-net hospitals, it’s an issue,” Walsh said. With enough state money to just survive under normal circumstances, “when you run a Medicaid business and they haven’t raised Medicaid rates in New York in 13 years, it’s a problem.”

Hospitals received $178 billion through the Provider Relief Fund, with most funding distributed or about to be. But the remaining aid doesn’t change the long-term problem that many don’t bring in enough to pay their bills.

“The upcoming disbursements won’t account for expenses and lost revenue from the spring and summer surges across the country due to the delta variant,” American Hospital Association executive vice president Stacey Hughes said in a statement to Bloomberg.

After the pandemic abates, labor and supply costs will be permanently higher, chiseling margins for a well-run hospital to 1.5% to 2% from an already-modest 3%, according to Kevin Holloran, a senior director at Fitch Ratings.

And though defaults have been low, an uptick in interest rates could change that. Felicia Gerber Perlman, who co-heads the bankruptcy and restructuring group at law firm McDermott Will & Emery, expects the next wave of distress to hit in the second half of next year. Rural facilities, urban hospitals that rely on publicly-funded insurance and centers in communities that can't support more than one hospital are expected to be hot spots.

"Now the federal aid is ending, but you still have underlying issues that will be facing the system," Perlman said.

Bloomberg Markets

By Lauren Coleman-Lochner

November 18, 2021, 5:15 AM PST

— With assistance by Dawn McCarty

[Senior Living Facility Defaults in Muni Market Break Record.]

- **2021 defaults represent more than 4% of sector's bonds: MMA**
- **Vacancies, growing labor costs, burnout, stalk nursing homes**

Senior living facility defaults in the municipal bond market are at a record high and the distress won't likely end soon.

The persistence of the pandemic is driving up labor costs — and a federal mandate to vaccinate all health-care workers may amplify an already serious worker shortage. Meanwhile, occupancy at independent and assisted living facilities hasn't bounced back from record lows even as vaccination rates increase and facilities end move-in moratoriums.

About $1.6 billion of muni bonds issued for senior living facilities have defaulted this year, representing 4.3% of the sector's $37.6 billion of debt as of Jan. 1, according to Municipal Market Analytics. Thirty-one borrowers have missed a debt payment for the first time, tying the full year record set in 2020.

"Covid has made labor costs much higher, made staffing much more difficult and made occupancy more volatile," said Matt Fabian, a partner with Municipal Market Analytics. "Longer term it's a sector with good prospects, medium term, we're probably going to see more defaults."

The Covid-19 pandemic, which was especially lethal to the elderly, has roiled the finances of senior living facilities. Operators faced increased costs for staff and protective equipment as well as move-in restrictions from state health agencies. Now, a nationwide labor shortage has become the biggest issue facing senior facilities. Workers are leaving for many reasons: low pay, burnout, fear of contracting Covid-19 or caregiving responsibilities, according to an October Morning Consult poll.

Kept Afloat

Assisted living facility employment fell by 38,000 since the beginning of the pandemic, or 8.2%, and financially strapped providers are struggling to compete for qualified staff, according to a Nov. 10 report by the American Health Care Association and its National Center for Assisted Living.

The AHCA/NCA, which represents more than 14,000 nursing homes and assisted living facilities, said that a Biden administration mandate requiring health-care workers become fully vaccinated against Covid-19 by Jan. 4. could exacerbate a "dire workforce crisis."

“Across the country, access to long term care is becoming strained as providers have no choice but to limit admissions or even close their doors,” Mark Parkinson, president and chief executive officer of AHCA/NCAL said in a Nov. 4 news release.

Occupancy at independent and assisted living facilities rose to 80.1% for the three months ended Sept. 30, from 78.7% in the previous quarter, according to survey by the National Investment Center for Seniors Housing & Care.

While many senior living facilities were kept afloat by federal Paycheck Protection Program loans last year, additional aid hasn’t been forthcoming, Fabian said.

“Many of these assisted living projects are shoestring operations, so additional mandates are difficult,” he said. “A lot of them need more money.”

Bloomberg Markets

By Martin Z Braun

November 17, 2021, 10:31 AM PST

Muni-Bond Appeal for Wealthy Seen Easing With a Higher SALT Cap.

- **Congress mulls proposals to raise state, local tax deductions**
- **‘Incremental demand would likely decline,’ says Lord Abbett**

The revival of proposals in Congress to increase the cap on state and local tax deductions threatens to erode some of the demand in the $4 trillion municipal bond market from rich Americans.

Democrats are deciding between at least two proposals to change the limit imposed in the 2017 tax law revision. That change capped state and local tax deductions at $10,000, an unpopular move with wealthier Americans in high-tax states such as California, New York, Connecticut and New Jersey who sought to ease the impact on their tax bill with investments in tax-exempt bonds.

“If this cap was lifted, then the incremental demand would likely decline a bit” in the highest-tax states, said Eric Friedland, director of municipal research for Lord Abbett & Co., which holds $36 billion in muni assets. Still, any higher taxes at the federal, state or local level would serve to counter the impact and “further enhance the relative value of municipal bonds,” he said.

The SALT cap helped propel record flows of cash into municipal-bond mutual funds, which have seen 37 straight weeks of gains, according to Refinitiv Lipper US Fund Flows data. Year-to-date, investors have added $78.2 billion to muni funds, according to the Investment Company Institute. The record inflows have helped keep yields from rising too far above historic lows set in 2020 as demand overwhelmed the supply of bonds coming to market.

Demand has topped muni supply, keeping yields tight

That growth rate into mutual funds would slow as wealthier Americans in higher-tax states would see their tax liability lessened if the cap is increased, said Cooper Howard, director of fixed income strategy for the Schwab Center for Financial Research. “I would expect that we would not see new record inflows in mutual funds and ETFs,” Howard said in an interview.

A potentially higher cap is one piece of a “shifting landscape” and could spur “modestly” higher muni yields, Howard said. The benchmark 10-year muni rate is hovering around 1.1%, which is relatively low by historical comparisons and investors have been on the look out for higher yields.

“Raising the limits on SALT can help undo some of the nosebleed prices bonds in both NY and CA have experienced since 2017,” said Eric Kazatsky, an analyst for Bloomberg Intelligence.

Bloomberg Wealth

By Shruti Singh

November 19, 2021, 9:32 AM PST

Municipal Bond Funds On Track For Record Inflows In 2021.

Summary

- For the Refinitiv Lipper fund-flows week ended November 17, 2021, investors injected $1.4 billion into municipal bond funds, for their thirty-seventh consecutive week of net inflows.
- Year to date the average municipal bond fund has returned 1.54%, with returns in this asset class ranging from 0.08% for Short Municipal Bond Funds to 4.88% for High Yield Municipal Bond Funds.
- For October, the Consumer Price Index witnessed a year-over-year rise of 6.2%, posting an almost 31-year high, and eclipsing the Federal Reserve’s 2% target.

Continue reading.

Seeking Alpha

Nov. 21, 2021

What Advisors Should Know About Muni Bonds for 2022.

With tax season on the horizon, munis are on the mind. Municipal bonds, which are utilized to fund government activities and special projects, are generally free from federal taxes for their shareholders. They have become an important tax planning tool, which heightens their importance as tax season looms.

Recently, ETF Trends’ managing editor Lara Crigger sat down with Joseph Gotelli, vice president and senior portfolio manager for American Century Investments, to discuss the role that muni bonds can play in a diversified, income-generating portfolio. Gotelli joined American Century in 2008, after seven years at Franklin Templeton Investments, where he served as assistant portfolio manager on various long- and short-term municipal bond portfolios.

Lara Crigger, managing editor, ETF Trends: We’ve seen massive flows entering the muni bond space this year. What market conditions have made munis such an attractive option?

Joe Gotelli, vice president and senior portfolio manager, American Century Investments:

Year to date, the asset class has had a very strong run. That was predominantly front-loaded at the beginning of the year, on the tail of the direct aid state and local governments received in mid-March under the American Recovery Plan Act (ARPA). That put a strong backstop into the fundamental view of the municipal credit market.

Additionally, the continuing recovery of the economy along with strong revenues at the state and local level really provided a tailwind for credit spreads early in the year. Combine that with expectations for large spending plans out of Washington and the potential for higher income taxes and corporate taxes, it helped to put tax mitigation on investors' minds. The attractive taxable equivalent yields the municipal market offers, combined with low default rates and low correlations to other asset classes, make a good case for owning municipals.

Then, as we look forward to 2022, we're probably looking at a more difficult rate environment. Rates have moved up recently, so total returns have come off the asset classes. A negative total return environment has created a little bit of a headwind for inflows into muni bonds. Investors have a more cautiously optimistic outlook for the fourth quarter and beyond. Still, there's lots of reasons to love the tax-exempt asset class as a whole.

Crigger: But there's still the expectation among investors of higher taxes down the line. Has that expectation evolved any, with all the back-and-forth in Congress?

Gotelli: Earlier in the year, investors were pricing in a higher probability of more extreme tax moves, in terms of what was proposed originally by the Biden administration. A lot of that has been taken back as the negotiations have continued. You've seen that in the ratio between municipals and treasuries. Mid-June is when we reached a recent peak in richness of the asset class, and since then, you've seen the relative value between munis and Treasuries ease off to become a more normalized range in the short term, but still generally rich over the long history of these ratios.

I do think investors recognize that it's probably not going to be [a situation] where short term capital gains skyrocket, and that, really, it's going to be on the margin for those earning $400,000 or more. The corporate tax rate is probably only going to go to something like 25–26%. The most extreme scenario was taken off the table.

Investors are focused on owning the right sectors within the municipal market now, underwriting the names that you want to own for the long term. Because much of that credit spread compression — where the asset class earned a lot of the return — is in the rearview mirror for us.

Crigger: What are the right sectors within the municipal market, then? Many strategies take a holistic approach to the market, rather than sector-specific.

Gotelli: The market is predominantly high quality, which speaks to the low historical default rate and the strong fundamentals. But this market is much more than just state and local general obligation bonds. You have a number of sectors on the revenue side that provide investors with incremental yield opportunities, if they can access those sectors in the marketplace. Broadly speaking, the market is about one third general obligation bonds and two thirds revenue bonds.

A huge portion of the market is made of revenue-centric projects: things like education, healthcare, transportation, revenue, utilities, essential services. Given how diverse the muni market is — we have over 50,000 issuers and hundreds of thousands of individual CUSIPs — we have to select using fundamental research that our research team provides us to find those incremental yield opportunities for investors. They might be in sectors like housing, healthcare, even some quasi-corporate style municipal credits. Those are the areas of the market where we'll capitalize on the relative value between sectors and leverage our research staff to do that deep fundamental analysis and provide the investment opportunities that might not be available in a more passive context.

Crigger: What other advantages does active management provide in the municipal bond market, compared to a market cap-based approach?

Gotelli: As we move away from market cap-weighted benchmarks, that provides us with a lens to view the market in terms of more relative value, and what's more opportunistic to the end investor. For the passive market participant, sectors such as healthcare, tobacco settlement, certain corporate names might not even be in the consideration set. So active management allows us to take them into the consideration set and view the entire market as an opportunity, rather than just the issuers that have issued the most amount of debt in the marketplace.

I think one thing that I always come back to is, when we talk with our credit team, we think about the fact that an AA-rated hospital is not the same as an AA-rated water bond, which is not the same thing as an AA-rated airport. They're all high quality, but with different risks. As you move down the credit spectrum, those differences get broader and broader in terms of what the credit quality is versus the yield, or the risk premium that we're achieving for being in those sectors. Leveraging all of those sectors, leveraging different coupon structures and calls — those are all the ways that we express our views on where there's relative value opportunity in the marketplace.

Crigger: Can you speak to the diversification benefits of munis in a portfolio?

Gotelli: For the end advisor, the asset class provides some important benefits such as low correlations or even negative correlations to other asset classes. We have a correlation matrix that shows investment grade municipals and their correlation to the S&P 500 Index (over the trailing 10 years) is nearly zero. For high yield municipals it's less than 0.25.

Crigger: That sort of non-correlation is hard to find nowadays.

Gotelli: Exactly. But when you look at what corporate high yield provides you, it's obviously a different lever, right? That's going to have much more correlation to the equity market.

So when an advisor thinks about the municipal market as a whole, some of those factors that can really benefit a client in their broader portfolio come from the levels of credit and credit exposure, rather than just high quality, passive duration exposure. We take the view that having that broad view of the marketplace and having a full representation of the market helps provide the end user of the product that level of diversification over time.

Crigger: You have a municipal bond mutual fund, and you have the American Century Diversified Municipal Bond ETF (TAXF). What is the advantage of using an ETF wrapper for this strategy?

Gotelli: When we designed TAXF, we were really trying to answer that question. We'd stand in front of clients and say, "We have a tax exempt core intermediate fund, we have a tax exempt high yield fund, and we view it as a core plus a satellite in terms of how you want to manage your duration and credit exposure." And what we found was investors telling us, "Well, you all are the experts. For those of us that believe in active management, we're willing to allow you to make that call for us."

That's what TAXF obviously is for. It tends to be a tool for advisors willing to allow us to make that allocation for them, allow us to take advantage of those opportunities — intra-month, intra-day, whenever we see opportunity. We don't have to wait for a model to rebalance to tell us how to position the portfolio. We're doing this, more or less, in real time.

I think that fits really well for advisors that are attracted to the ETF structure as a whole. Then, as a traditional mutual fund manager, the benefit of the ETF structure has become very apparent to me. Whether it's the levels of liquidity that the exchange offers and that the market offers to the redemption and creation process allowing for some tax efficiency. You allow somebody who's traditionally focused on taxes — like a tax-exempt mutual fund — to really have an extra tool in their toolkit through that creation and redemption process to help manage the tax exposure in the portfolio.

Crigger: What are folks still overlooking when it comes to muni bonds?

Gotelli: Right now, I think an eye on the duration impact in the portfolio is going to be key in the near term. But in terms of allocation to munis overall, I think that most investors are still underweight. Most could benefit from the tax exemptions, especially for the advisors with a higher net worth clientele in high tax states across the country.

I do think that it is an asset class to hold for the long term, which will help mitigate some of the volatility investors may experience. We have examples where we show just the holding period returns, where you rarely have had two years in a row where you have negative returns. So having a time horizon and being in the market for more than a short-term trade, that's important too. Because this is an investment vehicle, I wouldn't call it a trading vehicle. It allows us to use those levers that we just described to strive to achieve those returns over time. That's how I would view the best way to use the asset class, and TAXF is a great way to access it.

ETF TRENDS

by EVAN HARP

NOVEMBER 17, 2021

How Muni Bond Interest Can Trigger Medicare Premium Hikes.

KEY POINTS

- There's been record demand for U.S. municipal bond funds in 2021 with an estimated $85.36 billion in net inflows through September.
- However, tax-free muni bond interest may trigger Medicare premium hikes for higher-income investors.

As investors flock to municipal bonds, also known as muni bonds, the tax-free interest may trigger a costly surprise for higher-income retirees.

There's been record demand for U.S. municipal bond funds in 2021, with an estimated $85.36 billion in net inflows through September, according to Refinitiv Lipper data.

While demand slid from August through October, investors poured back into muni bonds in November, despite Democrats' stalled attempts to increase taxes on the wealthy.

Continue reading.

cnbc.com

by Kate Dore, CFP®

NOV 17 2021

S&P U.S. Public Finance Rating Activity, October 2021.

View the S&P Report.

18 Nov, 2021

S&P U.S. Not-For-Profit Health Care Outstanding Ratings And Outlooks As Of Sept. 30, 2021.

View the S&P Report.

18 Nov, 2021

Pension Cash Dwindles, Risking Liquidity Crunch.

Cash allocations have dropped to a seven-year low, with pensions seeking greater returns in private markets

Bigger private-market bets, inflation fears and a surge of retirees are putting public retirement funds at risk of a cash crunch that would force them to sell assets at losses to pay pension checks.

Cash allocations have dropped to a seven-year low at the funds that manage more than $4.5 trillion in retirement savings for America's teachers, police and firefighters. Public pension funds, which have increasingly turned to illiquid private markets to drive up returns, are now aiming to keep about 0.8% of their holdings in cash, according to data from the Boston College Center for Retirement Research.

These funds are managing a juggling act faced by many institutional and household investors who want to put their money to work but also want easy access to it in a pinch.

Continue reading.

The Wall Street Journal

By Heather Gillers

Nov. 22, 2021 5:30 am ET

Implementing the Recommendations of the Task Force on Climate-Related Financial Disclosures (2021)

The 2021 TCFD "Annex" updates and supersedes the 2017 version of "Implementing the Recommendations of the TCFD." It provides both general and sector-specific guidance on implementing the Task Force's disclosure recommendations.

Download report

Increased Investor & Rating Agency Interest in Cybersecurity and Climate Change Disclosure in Municipal Bond Issuances.

The topics of ***Cybersecurity*** and ***Climate Change*** disclosure are generating increased investor and rating agency interest in municipal bond issuances. The Securities and Exchange Commission (SEC) has expressed concerns about the adequacy of such disclosure given the increased frequency of cybersecurity breaches and severe weather-related events and their impact on municipalities' operations. SEC Release on Cybersecurity Disclosure; SEC Statement on Climate-Related Disclosure. Risks related to cybersecurity and climate change may be material to potential investors, and therefore, should be disclosed in bond offering documents.

Cybersecurity

Municipalities, like many other public and private entities, rely heavily on technology to conduct their operations, and as a result, are vulnerable to cyber threats. Yet, many municipal issuers fail to disclose these risks when they could have a material impact on operations due to, among other factors:

- a misunderstanding of the cyber issues by the individuals preparing the disclosures;
- the need to protect and keep private the mitigation measures; or
- uncertainty surrounding the potential impact of the cyber threats.

Lack of disclosure, however, will leave investors wondering whether there have been any threats or attacks and whether any mitigation strategy against such attacks exists at all. Investors want to assess the adequacy of the disclosure for the level of risk and the nature and quality of the management capabilities and mitigation strategies of the issuer. Topics relative to cybersecurity disclosure should include:

- recent cyber-attacks, that did, or could have, a material effect on operations; and
- mitigation strategies against cyber-attacks such as, insurance to protect against such attacks, upgrades to software and policies and committees put in place relating to the security of the network.

Climate Change

While the impacts of climate change have received media attention for many years, consideration of climate change in disclosure documents is a relatively new and evolving expectation. Earlier this year, the SEC created a Climate and Environmental Social Governance (ESG) Task Force to develop initiatives to identify climate and ESG disclosure related conduct. Given the SEC's heightened focus and that the increase in severe weather may impact state and local tax collections and increase infrastructure costs, municipal issuers should evaluate their current practice related to disclosure of climate risk to ensure that such risks are being vetted and disclosed. Specifically, municipalities should disclose:

- recent weather-related events that had an impact on operations;
- geographic location and what weather events it may be vulnerable to in light of the location such as flooding, wind and/or fires and their potential impact; and
- best practices for monitoring the ever-changing impacts of climate change and any plan for disclosure of such risks for future issuances.

Municipal issuers should consult with the professionals that assist them with their offering documents, including their municipal advisors and disclosure counsel, if any, to ensure that such offering documents include adequate cybersecurity and climate change disclosure.

Pullman & Comley LLC

by Jessica Grossarth Kennedy

November 17, 2021

MTA Fares Stay Put And Louisiana Rejects JP Morgan (Radio)

Joe Mysak, Editor of Bloomberg Brief: Municipal Market, discusses the latest muni news including MTA fares and JP Morgan's comments on guns affecting a potential deal with Louisiana. Hosted by Paul Sweeney and Matt Miller.

Listen to audio.

Bloomberg Radio

Nov 19, 2021

House Build Back Better Act: Details & Analysis of Tax Provisions in the $1.75 Trillion Reconciliation Bill.

The House Build Back Better plan would result in an estimated net revenue increase of about $1 trillion, 107,000 fewer jobs, and on average less after-tax incomes for the top 80 percent of taxpayers over the long run.

Read more.

Tax Foundation

Links to State Tax-Exempt Bond Allocating Agencies: Novogradac

[View the links.]

[2022 QAPs and Applications: Novogradac]

[View the 2022 QAPs and Applications.]

TAX - RHODE ISLAND

[Athena Providence Place v. Pare]

Supreme Court of Rhode Island - November 10, 2021 - A.3d - 2021 WL 5226361

Taxpayers petitioned for relief from city's tax assessments of their dwelling units in residential condominium development following a revaluation of units upon expiration of tax stabilization agreement for development.

After a bench trial, the Superior Court entered judgments for taxpayers. Tax assessor appealed.

The Supreme Court held that revaluation was not a selective assessment.

City's revaluation of taxpayer's dwelling units in residential condominium development upon expiration of tax stabilization agreement for development was not a selective assessment, where city's normal practice was to revalue and reassess properties upon expiration of a tax stabilization agreement, and there was no evidence that similar properties in city were not subjected to revaluation.

[SEC's FY 2021 Enforcement was Robust in the Muni Arena.]

The Securities and Exchange Commission's enforcement results for fiscal year 2021 highlight the SEC's focus on disclosure in the municipal finance space.

The results, released late Thursday, show the Commission overall filed 7% more enforcement actions in 2021 than in 2020. It also awarded over $564 million to more than 100 whistleblowers, surpassing $1 billion over the life of the SEC whistleblower program.

Twelve of the 697 SEC enforcement actions this year were categorized under public finance abuse. That represented 2% of the total enforcement actions and is consistent with the 12 public finance abuse actions taken in the previous fiscal year.

Overall, of the total filed enforcement actions, 434 were new, 120 were against issuers for delinquent filings, and 143 were for follow-on administrative proceedings.

The SEC also obtained judgments for close to $2.4 billion in disgorgement, a more than 30% decrease from FY 2020. It also won over $1.4 billion in penalties, which represented a 33% increase over the previous fiscal year.

"As these results show, we go after misconduct wherever we find it in the financial system, holding individuals and companies accountable, without fear or favor, across the $100-plus trillion capital markets we oversee,? SEC Chair Gary Gensler said in a statement.

While total actions in 2021 decreased by 3% from 2020, the SEC said the new actions “spanned the entire securities waterfront,” and addressed what the Commission described as “traditional and emerging areas.”

For example, the SEC brought a number of first-of-their kind enforcement actions involving for example, so-called DeFi technology, the dark web, and regulation crowdfunding.

In the public finance abuse category, the SEC brought its first enforcement actions of Municipal Securities Rulemaking Board Rule G-42 regarding duties of municipal advisors, when it alleged that Choice Advisors LLC and two of its principals, Matthias, O’Meara, and Paula Permenter violated their fiduciary duties.

The agency found that O’Meara and Permenter entered into a prohibited fee-splitting arrangement with their former employer without disclosing either the arrangement or their relationship with the underwriting firm, to their clients.

The SEC further alleged that Choice, O’Meara, and Permenter unlawfully engaged in municipal advisory activities when they were not registered with the SEC or the MSRB.

Permenter agreed to settle with the SEC without admitting or denying any findings.

Beyond Rule G-42, the SEC brought several other public finance abuse enforcement actions in 2021.

For example, the Commission charged RBC Capital Markets and two individuals with unfair dealing in municipal bond offerings. According to the SEC, RBC allegedly improperly allocated bonds for institutional customers and dealers, who then resold or “flipped” the bonds to other broker-dealers at a profit. RBC agreed to pay more than $800,000 to resolve the charges without admitting or denying the SEC’s findings.

The SEC also charged a broker dealer and its former chief executive officer with failing to disclose a conflict of interest regarding a tender offer of municipal bonds and a school district and its former chief financial officer for allegedly misleading investors who purchased $28 million in municipal bonds.

Speaking at a National Association of Bond Lawyers workshop in October, Natalie Garner, senior counsel in the SEC’s public finance abuse unit, described issuer disclosure as “a major [enforcement] priority” and said that the SEC will make every effort to hold responsible “issuers who have engaged in fraud or who mislead investors.”

Garner also said that the enforcement actions taken in recent years highlight the importance of disclosure requirements.

Lily Becker, partner at Orrick, with an extensive background in government investigations and enforcement actions, echoed that notion. “I think we can expect a continued focus on both annual and periodic disclosures.” Becker said.

Becker explained that “because the SEC looks at both omissions and misstatements, entities should be thinking carefully about both including all material information and making sure information disclosed is accurate at the time of the disclosure.”

Securities lawyer Michael Botelho, partner with the Hartford, CT-based law firm of Updike, Kelly & Spellacy, acknowledged that enforcement activity in the municipal arena was fairly robust this past year.

“The SEC brought some high profile actions against municipal issuers and their key officials for inaccurate and incomplete disclosure and for misleading investors in their offering documents,” Botelho pointed out.

“Under the leadership of Chairman Gensler, I expect that the SEC will remain active in bringing new investigations and enforcement actions in this area and possibly exceed last year’s output,” Botelho said.

BY SOURCEMEDIA | 11/19/21

By Kelley R. Taylor

Investors Still Flocked to Muni Bonds in November.

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

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

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

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

Continue reading.

ETF TRENDS

by BEN HERNANDEZ

NOVEMBER 19, 2021

JPMorgan Removed from Louisiana Muni Deal After Gun Scrutiny.

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

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

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

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

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

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

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

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

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

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

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

'Telling the World'

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

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

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

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

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

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

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

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

Bloomberg Markets

By Amanda Albright and Danielle Moran

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

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

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

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

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

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

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

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

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

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

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

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

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

Bloomberg Markets

By Danielle Moran and Amanda Albright

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Banking Relationships

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

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

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

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

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

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

Final Approval

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

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

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

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

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

Reaching Out

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

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

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

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

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

Bloomberg Markets

By Amanda Albright and Danielle Moran

November 15, 2021, 8:30 AM PST

Illinois Local Governments Offer Steady Stream of Pension Bonds.

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

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

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

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

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

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

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

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

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

POBs draw varying opinions from market participants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Berwyn and Moline are teeing up deals.

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

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

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

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

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

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

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

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

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

By Yvette Shields

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

Overview of Public Procurement: GFOA Webinar

December 6, 7 & 8 2021 | 2-4:45 p.m. ET

Details:

Procurement is an essential function for all governments and serves to provide service that connects public sector operations with private sector suppliers, contractors, and providers. High performing procurement functions not only support government's responsibility to use resources effectively, they also promote efficient operations, reduce business continuity risk, and work to maintain trust in government. Unfortunately not all organizations utilize procurement to its full strategic potential. In this course, instructors will cover the basics of public procurement, provide an overview of key processes and policies, highlight important features and tools of modern procurement functions, and explain how the profession is evolving to better meet the needs of governments.

Learning Objectives:

- Understand the basic principles of public procurement
- Identify strategies to better integrate procurement and finance
- Explore procurement ethics and how to apply commonly held values to everyday situations
- Review components of a procurement policy
- Learn best practices for common procurement processes
- Identify how to apply a more strategic role for procurement
- Understand technologies available to assist public procurement processes

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

Click here to register.

- Key Programs From Landmark $1.2 Trillion Infrastructure Act.
- Housing Provision in Reconciliation Bill Eases Private Activity Bond Cap.
- Muni Bond Prices Rally After Infrastructure Bill Leaves Out Market.
- Best Practices and Strategies for Public Investing: GFOA Webinar
- *In re Application of Suburban Natural Gas Company* – Supreme Court of Ohio holds – as a matter of first impression – that assessing whether property is "useful" for purposes of determining a public utility's rate base requires finding that the property be beneficial in rendering service for the convenience of the public as of the date certain.
- And finally, The Only Thing We Have To Mailbox Is Mailbox Itself is brought to us this week by *Smith v. City of Roswell*, in which a, "vehicle left the road and collided with two mailboxes." Ok. Not super cool but, whatever. Cleanup on Aisle 7 and all that. Until the opinion informs us that the fender-bender KILLED EVERYONE IN THE VEHICLE! How is this possible? Who made these? Of what do they consist? Thor's hammer? We fully understand that 20% off at Bed Bath & Beyond is an unalienable right, but still….

ZONING & PLANNING - CALIFORNIA

Chase v. Wizmann

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

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

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

The Court of Appeal held that:

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

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

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

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

IMMUNITY - GEORGIA

Smith v. City of Roswell

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

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

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

On consolidated appeal, the Court of Appeals held that:

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

DEVELOPMENT IMPACT FEES - NORTH CAROLINA

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

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

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

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

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

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

PUBLIC UTILITIES - OHIO

In re Application of Suburban Natural Gas Company

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

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

The Supreme Court held that:

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

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

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

MUNICIPAL ORDINANCE - PENNSYLVANIA

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

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

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

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

The Supreme Court held that:

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

ZONING & PLANNING - VERMONT

In re 15-17 Weston Street NOV

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

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

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

The Supreme Court held that:

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

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

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

Federal Infrastructure Funds Lessen Public Utility Operating Risk: Fitch

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

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

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

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

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

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

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

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

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

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

Key Takeaways

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

Continue reading.

8 Nov, 2021

Fitch: Infrastructure Bill Could Spur Overdue Road, Bridge Repairs

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

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

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

Continue reading.

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[Key Programs From Landmark $1.2 Trillion Infrastructure Act.]

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

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

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

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

Roads, Bridges, & Major Projects

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

Passenger and Freight Rail

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

Broadband

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

Power and Grid

- $5 Billion – Preventing Outages and Enhancing the Resilience of the Electric Grid
- $5 Billion – Electric Grid Reliability and Resilience Research, Development, and Demonstration
- $3.5 Billion – Establish Four Regional Direct Air Capture Hubs
- $3 Billion – Deployment of Technologies to Enhance Grid Flexibility
- $3 Billion – Battery Material Processing Grant Program
- $3 Billion – Battery Manufacturing and Recycling Grant Program
- $2.5 Billion – Transmission Facilitation Program
- $2.5 Billion – Carbon Storage Validation and Testing Program
- $2.1 Billion – Infrastructure Finance and Innovation Act Program for Carbon Dioxide Transportation Projects
- $2 Billion – Pumped Storage Hydropower Wind and Solar Integration and System Reliability Initiative
- $1 Billion – Clean Hydrogen Electrolysis Program Research and Development Program
- $750 Million – Advanced Energy Manufacturing and Recycling Grant Program
- $553.6 Million – Maintaining and Enhancing Hydroelectricity Incentives
- $500 Million – State Energy Program
- $500 Million – Clean Hydrogen Manufacturing and Recycling Research and Development Program
- $500 Million – Clean Energy Demonstration Program on Current and Former Mine Land
- $310 Million – Carbon Utilization Grant Program
- $250 Million – Rural and Municipal Utility Advanced Cybersecurity Grant And Technical Assistance Program
- $250 Million – Enhanced Grid Security
- $200 Million – Electric Drive Vehicle Battery Recycling and Second-life Applications Program

Water Infrastructure

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

Resiliency

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

Public Transit

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

Airports

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

Addressing Legacy Pollution

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

Ports and Waterways

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

Safety

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

Western Water Infrastructure

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

Clean School Buses & Ferries

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

Electric Vehicle Charging

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

Reconnecting Communities

- $500 Million – Reconnecting Communities Pilot Program

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

November 8 2021

Housing Provision in Reconciliation Bill Eases Private Activity Bond Cap.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

By Caitlin Devitt

BY SOURCEMEDIA | MUNICIPAL | 11/11/21

Infrastructure Bill Becomes Law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

By Caitlin Devitt

BY SOURCEMEDIA | MUNICIPAL

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

Key Takeaways

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

Continue reading.

10 Nov, 2021

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

Key Takeaways

- We are revising our U.S. airport sector view to positive from stable based on improving aviation industry conditions. This improvement is reflected in the strong rebound of U.S. domestic passengers in recent months, stabilization of airline credit conditions, massive federal assistance provided to the sector, and recovery in airports' revenue-generating capacity and rate-setting flexibility.
- Our airport sector median analysis and the modest degree of credit erosion across the sector highlight the significance of $15 billion-$20 billion in special federal COVID-19 relief grants, which operators used to pay debt service expenses and operating costs while preserving unrestricted cash reserves comparable with pre-pandemic levels. Separately, the recent passage of the $1.2 trillion Infrastructure Investment and Jobs Act will provide another $25 billion for the airport sector to fund capital projects over the next five years.
- Our analysis of 2020 airport medians revealed the effects of airport management actions taken to limit the financial implications of the precipitous drop in passenger traffic, with median debt service coverage (DSC; S&P Global Ratings-calculated) declining to an adequate 1.1x in 2020 from a strong 1.6x in 2019, while median liquidity levels fell by less than 6% to 489 days and median debt outstanding increased 21% to approximately $840 million.
- We expect the uneven enplanement recovery led by the domestic and leisure market segments will smooth out as business and international travel returns, aided by the lifting of certain travel restrictions on China, India, and much of Europe effective Nov. 8, 2021.
- Airports and related special facility issuers that demonstrate recoveries generally better than our activity estimates or demand levels sufficient to produce financial metrics we consider consistent with a higher rating on a sustainable basis are more likely to receive upgrades in the near term.
- We believe the experience and knowledge gained from handling the complex set of challenges from the severity of the COVID-19 pandemic will better prepare airport management teams and various stakeholders in addressing future shocks.

Continue reading.

10 Nov, 2021

America Has an Infrastructure Bill. What Happens Next?

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

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

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

Continue reading.

The Brookings Institution

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

Tuesday, November 9, 2021

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

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

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

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

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

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

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

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

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

Additional information is available on www.fitchratings.com

Sustainable Fitch ESG Encyclopedia.

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

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

- Greenhouse Heating Gas emissions and air quality
- Energy and fuel management
- Water
- Biodiversity and waste
- Exposure to environmental impact

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

Download Now

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

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

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

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

Continue reading.

12 Nov, 2021

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

Read the NASBO Issue Brief.

Fitch Ratings in a Pandemic: Responsive and Measured

View the Fitch Special Report.

Thu 11 Nov, 2021

Muni Bond Prices Rally After Infrastructure Bill Leaves Out Market.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Wall Street Journal

By Heather Gillers

Updated Nov. 15, 2021 4:35 pm ET

Muni Investors Stay Flexible As Rates Rise.

Summary

- Truly active managers shine in challenging investment environments, especially when they are given a flexible mandate.
- With tax-loss harvesting, active investors can deliberately sell at a loss to offset taxes on gains

elsewhere in a portfolio.
- Rising rates may be less worrisome than expected, at least as far as muni investors are concerned.

Continue reading.

Seeking Alpha

Nov. 09, 2021

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Wall Street Journal

By Jess Bravin

Nov. 10, 2021 5:51 pm ET

Investment In Stadiums And Municipal Bonds (Radio)

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

Play Episode

Bloomberg Radio

November 12, 2021

Junk Munis Seeing Best Outperformance Since 2012 as Cash Returns.

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

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

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

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

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

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

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

'Garnering Attention'

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

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

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

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

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

Bloomberg Markets

By Danielle Moran

November 12, 2021, 10:11 AM PST

Hotel Builder Misled Municipal Bond Investors, Trustee Alleges.

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

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

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

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

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

Monson didn't immediately return a call seeking comment.

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

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

Bloomberg Markets

By Martin Z Braun

November 9, 2021, 1:43 PM PST

[Best Practices and Strategies for Public Investing: GFOA Webinar]

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

Details:
This course offers attendees a comprehensive agenda of the concepts and techniques needed to effectively manage their investment portfolios. This two-day course highlights the importance for governmental entities to have a robust investment policy and corresponding procedures, and brings attention to GFOA's best practices related to investing. Through interactive activities and classroom presentations, attendees will gain a better understanding of the various elements of an investment program, whether the portfolio is managed internally or externally. Topics covered include: cash flow forecasting, hiring and managing external professionals, types of investments commonly used in the public sector, investment strategies for liquidity and core investment funds, managing risks, benchmarking, and reporting.

Learning Objectives:

Those who successfully complete this seminar should be able to:

- Understand key components of an investment policy
- Develop an approach to cash flow forecasting and understand how that leads to investment decisions
- Understand key factors in hiring and managing external investment professionals
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- Approach the multifaceted segments of investment strategies
- Choose the right benchmarking standard for your portfolios

Member Price: $315.00
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Click here to register.

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

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

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

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

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

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

Friday, October 15, 2021

Foley & Lardner LLP

TAX - GEORGIA

Executive Limousine Transportation, Inc. v. Curry

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

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

The Tax Tribunal granted summary judgment in favor of commissioner. Carrier appealed. The

Superior Court affirmed. Application for discretionary review was granted.

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

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

SEC Appoints New Director of Office of Credit Ratings: Cadwalader

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

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

Cadwalader Wickersham & Taft LLP

November 9 2021

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Bloomberg Markets

By Romy Varghese

November 9, 2021, 8:15 AM PST

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

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

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

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

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

“We elected not to engage in primary market underwriting activity with public sector clients in Texas temporarily while we were working through the certification process, which included submitting a standing letter to the Office of the Attorney General,” the bank said in a statement Tuesday through a spokesperson.

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

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

Resumption Seen Soon

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

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

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

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

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

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

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

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

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

Bloomberg Markets

By Amanda Albright

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

— With assistance by Danielle Moran

Illinois Projects Surplus But Gaps Come Back Next Four Years.

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

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

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

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

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

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

Big Turnaround

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

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

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

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

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

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

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

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

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

Bloomberg Markets

By Shruti Singh

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

GASB Outlook E-Newsletter Fall 2021.

Read the GASB Newsletter.

MSRB Seeks Volunteers For Its FY 2022 Compliance Advisory Group.

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

Read more.

- The Libor Transition: Protecting Consumers and Investors – SIFMA Statement. **Ed. Note:** Nothing particularly new here, but an excellent primer for those who've been meaning to get up to speed on the issue.
- Are We Due for a 'Golden Age' of Public Finance as the Infrastructure Bill Crosses the Finish Line?
- CDFA Publishes Annual Volume Cap Report: An Analysis of 2019-2020 Private Activity Bond & Volume Cap Trends
- Every Government Needs a Plan for the Worst-Case Cyber Scenario.
- S&P: Cyber Risk In A New Era: U.S. Utilities Are Cyber Targets And Need To Plan Accordingly
- *Bene v. State* – Court of Appeals upholds validating county development authority's issuance of proposed taxable revenue bonds and related security intended to finance four development projects. **Ed. Note:** We haven't seen a bond validation case for some time now and this one's worth a quick read.
- Substantive California charter school finance case here.
- And finally, Scope? The Mouthwash? is brought to us this week by *Berry v. Commerce Insurance Company*, in which the issue was whether or not Officer Sheehan was acting within the scope of his employment when a wee bit of trouble transpired following a lunch break during a day of firearms training. Let's all join hands, close our eyes, and picture a world in which the scope of an officer's duties includes "coming in a little hot" upon returning to the gun range, kicking up gravel, fishtailing, and pinning a fellow officer between the vehicle and the picnic table upon which he had been innocently enjoying a sandwich. To Swerve and Eject….

IMMUNITY - MASSACHUSETTS

Berry v. Commerce Insurance Company

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

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

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

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

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

SCHOOLS - ALABAMA

Sumter County Board of Education v. University of West Alabama

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

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

The Circuit Court dismissed action. Board of education appealed.

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

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

SCHOOL FINANCE - CALIFORNIA

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

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

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

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

The Court of Appeal held that:

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

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

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

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

ZONING & PLANNING - CONNECTICUT

Tillman v. Planning and Zoning Commission of City of Shelton

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

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

The Superior Court dismissed. Landowners appealed.

The Supreme Court held that:

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

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

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

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

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

BOND VALIDATION - GEORGIA

Bene v. State

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

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

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

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

The Court of Appeals held that:

- State did not fail to comply with statute requiring bond validation petitions to state purpose of bonds to be issued;
- Evidence supported finding that county would derive substantial benefit from bond transaction;
- Superior court did not impermissibly shift burden of proof;
- Superior court did not rule on ad valorem taxation issues without subject-matter jurisdiction;
- Superior court had jurisdiction concerning issue of valuation methodology;

- Superior court’s explanation as to why it had subject-matter jurisdiction over State’s petition was sufficient to satisfy statutory requirements; and
- Superior court made adequate findings of fact and conclusions of law to support conclusion that bond transactions at issue did not violate Gratuities Clause.

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

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

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

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

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

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

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

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

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

IMMUNITY - GEORGIA

Sharma v. City of Alpharetta

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

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

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

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

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

PUBLIC PENSIONS - KENTUCKY

City of Villa Hills v. Kentucky Retirement Systems

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

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

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

The Supreme Court held that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MarketWatch

By Andrea Riquier

Nov. 8, 2021

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

'Munis are going to muni,' says one expert

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"It's hard to get too worried about anything for this sector right now," Fabian said.

MarketWatch

Nov. 5, 2021

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

Watch video.

YouTube Finance

Nov 4, 2021

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

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

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

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

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

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

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

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

ETF TRENDS

by BEN HERNANDEZ

NOVEMBER 5, 2021

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

View the CDFA Report.

CDFA | Nov. 5

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

View the Novogradac Report.

Novogradac | Nov. 5

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

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

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

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

The legislation, spending billions in each of the next five years or more, falls short of the full ambitions of the Democratic Party, which is pursuing a separate, larger bill opposed by the Republicans. But the scope of the bill just passed makes the legislation significant in its own right. Here is a look at how the infrastructure package will affect American consumers and businesses, and where it might fall short of expectations.

Continue reading.

The Wall Street Journal

Nov. 6, 2021

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

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

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

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

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

Continue reading.

The New York Times

By Shawn Hubler, Emily Cochrane and Zach Montague

Nov. 6, 2021

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Return Option

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

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

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

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

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

Bloomberg CityLab

By Amanda Albright

November 4, 2021, 10:43 AM PDT

What's New In Retirement Facility Defaults.

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

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

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

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

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

It's time the MSRB got some backbone.

Forbes

by Richard Lehmann

Nov 6, 2021

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Governing

November 04, 2021 • Mark Weatherford

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

Key Takeaways

- S&P Global Ratings evaluates cyber security risks at U.S. utilities in our Operational and Management Assessment and as a component of environmental, social, and governance risks.
- Given that water and sewer services are critical to health and safety as well as the economy, the sector is particularly attractive to bad actors and cyber attacks could be devastating if not properly managed.

- Many U.S. utilities have historically prioritized the maintenance of their physical assets over their data-related systems, but the allocation of resources will need to be rebalanced to fully mitigate cyber risk.
- Failure to implement the most basic standards of cyber security indicates potential credit vulnerabilities, which can result in a lower rating given that a cyber incident can cause financial, legal, and reputational risk and even result in loss of life.

[Continue reading.]

3 Nov, 2021

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

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

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

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

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

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

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

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

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

Virginia’s largest issue up for referendum is a $567.5 million flood protection bond in Virginia Beach that would use proceeds to fund mitigation measures like barriers, drainage improvements and pump stations. If passed, residents would see real estate taxes increase between 4.3 cents and 6.4

cents per $100 of a home's assessed value. For the median home owner, that would mean paying an additional $115 to $171 annually, according to the the city's website.

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

Bloomberg CityLab

By Nic Querolo

November 1, 2021, 11:01 AM PDT

— With assistance by Danielle Moran

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

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

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

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

Continue reading.

Bloomberg Markets

By Nic Querolo and Joseph Mysak Jr

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

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

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

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

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

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

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

Bloomberg Politics

By Sri Taylor and Joseph Mysak Jr

November 5, 2021, 12:36 PM PDT

— With assistance by Nic Querolo

Does Municipal ESG Make Sense?

Municipal bonds underscore the weaknesses of ESG investing.

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

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

Climate Change and Default Risk

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

Continue reading.

NATIONAL REVIEW

By MARC JOFFE

November 2, 2021

[Muni Bond Provisions Likely Dead in Democrats' Spending Package.]

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

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

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

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

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

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

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

“Appropriations is about priorities,” Ruppersberger said.

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

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

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

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

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

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

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

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

ROUTE FIFTY

by BILL LUCIA

NOVEMBER 2, 2021

Public Finance and Racism.

Abstract

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

Download the full report.

The Brookings Institution

by William G. Gale

November 4, 2021

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

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

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

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

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

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

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

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

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

More Cash

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

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

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

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

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

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

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

Bloomberg Markets

By Amanda Albright

November 8, 2021

Texas Gun Law Isn't Hurting One of Its Largest Bond Issuers, CFO Says.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Bloomberg Markets

By Danielle Moran

November 3, 2021, 9:00 AM PDT

— With assistance by Amanda Albright

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

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

Munis have suffered from some high bouts of volatility.

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

Continue reading.

municipalbonds.com

by Aaron Levitt

Nov 03, 2021

TAX - ILLINOIS

Guns Save Life, Inc. v. Ali

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

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

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

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

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

TAX - GEORGIA

Executive Limousine Transportation, Inc. v. Curry

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

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

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

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

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

Citi Takes Key Step to Restart Texas Muni Business.

- **Bank said to verify its compliance with new GOP gun law**

- **Citi is said to have sent letter to attorney general's office**

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

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

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

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

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

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

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

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

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

'Unqualified Verification'

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

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

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

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

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

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

Bloomberg Markets

By Amanda Albright

November 4, 2021, 1:44 PM PDT

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

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

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

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

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

Bloomberg Markets

By Amanda Albright

November 5, 2021, 10:10 AM PDT

Newly Flush With Cash, Retirement Funds Struggle to Find Appealing

Investments.

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

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

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

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

Continue reading.

The Wall Street Journal

By Heather Gillers

Nov. 7, 2021 9:00 am ET

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

Key Takeaways

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

Continue reading.

MSRB Reviews Initiatives under Strategic Plan: Cadwalader

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

The MSRB considered updates on:

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

Cadwalader Wickersham & Taft LLP

October 29 2021

Fitch: Hurricane Ida Further Stalls Tepid Job Recovery in Louisiana

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

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

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

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

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

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Additional information is available on www.fitchratings.com

The Libor Transition: Protecting Consumers and Investors - SIFMA Statement

SUMMARY

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

View the SIFMA Statement.

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

SUMMARY

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

View the SIFMA Letter.

SIFMA signed with the following:

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

Investment Company Institute
The Loan Syndications and Trading Association (LSTA)
The Real Estate Roundtable
American Bankers Association
The American Council of Life Insurers (ACLI)
National Association of Corporate Treasurers

Puerto Rico Oversight Board Files New Debt Plan.

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

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

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

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

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

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

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

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

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

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

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

The Wall Street Journal

By Soma Biswas

Updated Nov. 5, 2021

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

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

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

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

[Continue reading.]()

The Brookings Institution

by William G. Gale

November 4, 2021

[Understanding Government Compensation and Payroll: GFOA Webinar]()

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

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

[REGISTER]()

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

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

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

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

Continue reading.

Bloomberg Markets

By Michelle Kaske and Steven Church

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

Munis In Focus: Kazatsky (Radio)

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

Play Episode

Bloomberg Radio

November 5, 2021 — 9:18 AM PDT

Chicago Police Pension Costs Seen Swelling With Proposed Law.

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

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

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

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

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

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

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

‘Sizable’ Shortfall

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

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

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

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

Firefighters’ Version

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

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

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

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

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

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

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

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

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

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

Bloomberg Markets

By Shruti Singh

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

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

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

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

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

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

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

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

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

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

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

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

Bloomberg Markets

By Romy Varghese

November 4, 2021, 2:54 PM PDT

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

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

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

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

Continue reading.

denverite.com

by Esteban L. Hernandez

Nov. 4, 2021

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

EASEMENTS - ALASKA

Windel v. Matanuska-Susitna Borough

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

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

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

On rehearing, the Supreme Court held that:

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

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

MUNICIPAL ORDINANCE - CALIFORNIA

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

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

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

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

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

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

LIABILITY - GEORGIA

Hall v. City of Blakely

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

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

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

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

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

POLITICAL SUBDIVISIONS - NORTH CAROLINA

Southern Environmental Law Center v. North Carolina Railroad Company

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

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

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

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

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

PUBLIC UTILITIES - OHIO

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

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

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

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

The Supreme Court held that:

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

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

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

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

MUNICIPAL ORDINANCE - PENNSYLVANIA

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

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

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

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

The Supreme Court held that:

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

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

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

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