Bond Case Briefs

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Articles posted by

Jamie Stewart

Las Vegas Train Bonds Will Go To California Housing.

- **California had set aside $200 million for rail that's delayed**
- **Company plans to request debt for tourist train next year**

California reallocated $200 million of tax-exempt private activity bonds formerly reserved for Fortress Investment Group's Las Vegas tourist train to be used instead by affordable housing projects.

In January, the state's Debt Limit Allocation Committee set aside that portion of California's limited financing resource in anticipation that the firm's Brightline Holdings would request it later in the year. Instead, the venture said in June it will seek an undisclosed amount of debt next year. The committee's three-member board on Wednesday unanimously approved moving the bonds to housing.

This is the second time California had expected the train to use the bonds, only to give the resource to housing, with demands from housing developers far outstripping what's available. Last year, California had given Fortress the ability to sell $600 million of private activity bonds, which are meant for ventures for the public interest that are capped annually in each state by the federal government.

But Fortress was unable to get enough investors on board for an unrated bond deal that would have financed construction for a 169-mile (272-kilometer) line connecting Las Vegas to the desert town of Apple Valley, 90 miles away from downtown Los Angeles. After the firm pulled the deal in October, California reallocated Fortress's award to affordable housing needs.

In the latest iteration of the project, the line would move closer to Los Angeles by extending to Rancho Cucamonga, which is located along an existing commuter rail called Metrolink. In July, Brightline said it purchased a site in Las Vegas for its station.

Bloomberg Markets

By Romy Varghese

August 11, 2021, 2:11 PM MDT

Novogradac 2021 Fall Opportunity Zones Conference.

Hilton Cleveland Downtown & Online | October 21, 2021 – 8:30am to October 22, 2021 – 5:30pm

Introducing the Novogradac 2021 Fall Opportunity Zones Conference.

Develop your professional relationships and reconnect with others active in opportunity zones (OZ) investment in Cleveland, a city that is benefiting from more than $250 million of OZ investment. Learn from qualified opportunity fund (QOF) managers, investors, developers and Novogradac accountants who will discuss the state of the marketplace, types of project trends, plus structuring and operational considerations of QOFs.

For those unable to join us in Cleveland, we invite you to join us online, where you can view our panels, chat with both in-person and virtual attendees, plus watch online-only content of the event.

Click here to learn more and to register.

Fitch: Midwest Metros Drive Job Growth While Other Regions Lag

Fitch Ratings-New York-12 August 2021: Metros in the Midwest drove employment growth during a flat month for the country overall, according to the latest U.S. Metro Labor Markets Tracker from Fitch Ratings.

The Midwest's median recovery rate for major metros rose to 71% in June from 66% in May, with eight of nine major metros in the Midwest seeing employment recovery rates above 50%.

"Cleveland and Chicago were the only Midwestern major metros where recovery rates declined month-over-month from May to June," said Senior Director Olu Sonola.

Additionally, Cleveland again saw the largest month-over-month decline among Midwestern major metros at 0.5%. While the Midwest's median Fitch-adjusted unemployment rate fell to 7.8% in June from 8.8% in May, the same figure rose in three Midwestern metros in June: Indianapolis, Milwaukee, and Minneapolis.

Elsewhere throughout the country, the median share of jobs recovered by major metros in the West was 62% in June, the lowest regional median. Salt Lake City is the first major metro to have reached 100% of pre-pandemic employment since February 2020, having now regained 104% of pre-pandemic payroll figures by June.

The median jobs recovery rate for major Metropolitan statistical areas (MSAs) in the Northeast rose to 64% in June from 63% in May. A closer look at the region shows that New York City finally reached a recovery rate of 50% of jobs lost at the start of the pandemic. Hartford and Rochester are the only two major Northeastern MSAs to see a decline in recovery rates in June.

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

Contact:
Olu Sonola
Senior Director
+1-212-908-0583
Fitch Ratings, Inc.

Hearst Tower 300 W. 57th Street
New York, NY 10019

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email: sandro.scenga@thefitchgroup.com

Additional information is available on www.fitchratings.com

The Conclusion of a Long Running Pay-to-Play Case.

Many of the cases brought recently by the Commission have been either offering fraud or microcap issuer cases with the latter often centered on pump-and-dump manipulations. These cases typically fleece unsuspecting investors who purchase what appear to be inexpensive securities based on some type of guaranteed return or assurance against lost in the case of offering fraud actions or the lure of quick profits from an about to increase stock in the case of the manipulations. The outcome in all of these cases is the same – the investors lose their hard earned savings.

Some cases follow a different pattern. For example, some cases involve public officials taking a bribe in return for steering business to others. In those cases the pattern is different but for investors it is the same, they lose although it may not be as apparent. Once such case is *SEC v. Webb*, Civil Action No. 17-8685 (N.D. Ill.), a pay-to-play case.

Defendant David Webb is the mayor of the City of Markham, Illinois. In connection with a 2012 municipal bond offering designed to fund city capital projects, Mr. Webb engaged in a pay-to-play scheme. The mayor approached a contractor involved in the city capital projects and solicited a bribe. In return Mr. Webb agreed to steer a multi-million construction project to the contractor. The project would be funded from the offering proceeds of the municipal bond offering.

The complaint alleges violations of Securities Act Section 17(a) and Exchange Act Section 10(b). To resolve the action Mr. Webb consented to the entry of a permanent injunction based on the Sections cited in the complaint in late 2017. This week the Court entered the final judgment after determining monetary remedies. The Court entered permanent injunctions based on the Sections cited in the complaint. The mayor was also barred from participating in further municipal bond offerings. In addition, Mr. Webb was directed to pay disgorgement of $85,000 and prejudgment interest of $32,849.35. Those amounts were deemed satisfied by the restitution order entered in the parallel criminal case. *See* Lit. Rel. No. 25160 (August 9, 2021).

SEC Actions – Thomas O Gorman

August 12 2021

Port of Miami to Sell $1.4 Billion in Muni Bonds.

Miami-Dade County will sell debt backed by revenue from Port of Miami, a pandemic high and a sign of investors’ demand for local-government debt

Florida officials announced the largest pandemic-era municipal-bond sale backed by port revenue, hoping to tap into investor demand for local-government debt tied to recovering sectors of the U.S. economy.

Miami-Dade County said Monday it is selling around $1.4 billion of bonds due 2050 and backed by revenue from the Port of Miami, or PortMiami—the county's largest municipal bond sale ever. That is also the largest sale tied to a port since last March, beating a $1.1 billion bond issued by the Port Authority of New York and New Jersey during July 2020.

Miami is home to the largest port in Florida. It processed more than $45 billion worth of cargo during the fiscal year ending September 2020 and in normal times is home to over a fifth of the world's cruise traffic.

The offering's size is a sign of the strength of the overall municipal market. A stimulus- and vaccine-fueled recovery has sparked a rally in bond prices, dropped yields toward record lows and left many state and local governments flush with cash. Those improvements, plus increased prospects of a federal tax increase, have prompted more investors to buy municipal bonds, analysts say, after coronavirus fears sparked a sharp selloff last spring.

Investors, meanwhile, have been receptive to assets that benefit from a global shipping crunch, leading municipal bonds tied to ports to outperform other local debt. The S&P municipal-bond port index has returned over 2.4% to investors this year through Aug. 4, including price changes and interest payments. That compares with a 1.9% return on municipal bonds broadly and 0.2% on U.S. investment-grade corporate bonds.

Still, the Miami sale, which is being led by Wells Fargo, WFC -1.52% will occur against a backdrop of growing fears related to rising Delta variant infections. Questions remain about the cruise industry's recovery following canceled cruise voyages over the past year. PortMiami officials are forecasting around 3.8 million cruise passengers during the next fiscal year starting in September, below pre-pandemic totals above six million.

So far, between fiscal years 2019 and 2020, cruise revenue at PortMiami has fallen more than 35% to $34 million, based on the port's most recent audit. Other passenger fees such as parking revenue have declined by nearly half to around $6 million.

Recent support from the federal government has helped PortMiami make up lost revenue. The port received over $66 million through the American Rescue Plan, the second-largest recipient among ports in Florida, behind Port Canaveral.

Increased demand for shipping goods globally has also helped soften the blow from stranded cruises. Cargo volume at PortMiami this fiscal year is running at an annualized pace of 1.25 million 20-foot-equivalent units, or TEUs, port officials say. That is on pace to beat the port's previous volume record from 2019 by 11%. Cargo revenue during the fiscal year ending September 2020 rose over 20% to $28.7 million.

Despite the challenges, analysts are optimistic about the offering's prospects. While PortMiami relies more on cruise revenue than other U.S. ports, investors in search of yield have been willing to lend to shipping and travel-related municipal borrowers looking to refinance debt, said Howard Cure, director of municipal bond research at Evercore Wealth Management. "The market is pretty receptive to giving some relief as long as there's a faith things will return to normal," he said.

Cruise operators and port officials are expecting passenger volumes at PortMiami to recover as the world reopens. Construction of new boat-berthing spaces and ship terminals is expected to increase yearly passenger capacity to around 8.5 million people, officials say.

Moody's Investors Service recently raised the credit outlook for PortMiami to stable from negative. It expects cruise operations will increase over the next year and that the port has sufficient liquidity to manage that transition.

The new bond will refinance most of PortMiami's $1.6 billion in outstanding debt, some of which will be used for new construction. The deal will also extend the maturity of about $600 million in short-term debt, helping lower yearly interest costs.

Demand for municipal bonds has made such refinancings attractive to local officials. "Now is the right time to take advantage of historically low interest rates," said Juan Kuryla, chief executive of PortMiami.

Daniella Levine Cara, mayor of Miami-Dade County, said the bond sale could have an added benefit: increasing confidence among county officials about the government's ability to tap debt markets for future financing needs.

"We can take this to the bank," she said.

The Wall Street Journal

By Sebastian Pellejero

Aug. 10, 2021 7:00 am ET

The HYD ETF: Elevate Your Municipal Bond Income

Yields are low across the fixed income spectrum and municipal bonds aren't being spared. The positive is that bond prices are appreciating, but when yields get too low, investors are often compelled to embrace riskier fixed income assets.

Investors looking for high yields with some protection and tax benefits in the municipal bond universe have a friend in the VanEck Vectors High Yield Muni ETF (HYD). HYD, which tracks the Bloomberg Barclays Municipal Custom High Yield Composite Index, sports a 30-day SEC yield of 2.17%. That's not the high yield investors are accustomed to with junk-rated corporates, but it's well in excess of standard muni benchmarks.

HYD isn't just about yield. More speculative munis are outperforming their investment-grade counterparts, and improving state finances support the case for this asset class.

Continue reading.

etftrends.com

by TOM LYDON

AUGUST 10, 2021

PSE Confirms Plans for Public-Private Partnership to Finance New Buffalo Bills Stadium.

Pegula Sports and Entertainment told Mayor Byron W. Brown this week that it will seek a “public-private partnership” with state and local government to build a new stadium for the Buffalo Bills in Orchard Park.

A PSE executive late Friday confirmed Brown’s account of his conversations over the past few days with officials “at the highest levels” of the company that indicated Bills ownership will not seek a deal totally financed with public money.

Ron Raccuia, executive vice president of PSE, offered his first public comments on the stadium proposal late Friday. He said “the Pegulas purchased the Bills with a commitment to build a championship caliber organization.”

“They want to win, and they have continued to provide the resources necessary to do so,” Raccuia said. “When it comes to the future new home of the Bills, they have always known that, like virtually all NFL stadiums, this will ultimately be some form of a public/private partnership.”

The mayor said he periodically speaks with the team about their plans, even though any public financing for a new facility would stem from state and county sources.

“They made it clear to me they are willing to be a financial partner in a new stadium and expect to be,” Brown said. “I’m sure they expect a public partnership as well. They see it as a public-private partnership.”

Multiple sources told The Buffalo News for an Aug. 1 story that the proposal centered around 100% public financing. The sources spoke on condition of anonymity due to the high sensitivity of the early stages of negotiations, noting that the Bills were seeking at least $1.1 billion in taxpayer assistance – grants, tax breaks and other possible funding streams. Sources later confirmed to The News that the actual amount the team offered in its first proposal was $1.4 billion.

The idea of total financing of a new stadium produced concern among Albany lawmakers, with several labeling the idea a “non-starter.” Assembly Majority Leader Crystal D. Peoples-Stokes, D-Buffalo, was among those dismissing the original plan as outlined to her. Late Friday, she reiterated that she always understood the PSE proposal involved total public financing, adding she was encouraged by the mayor’s comments.

“The way it was intimated to me by the governor’s people is that they wanted to build a new stadium, but there was no reference to a public-private partnership,” she said, adding that Brown’s version of the team’s position “was not the way it was given to me originally.”

The mayor, meanwhile, said he believes that the public-private relationship was “their position all along.” Brown said he spoke to PSE representatives because he was “concerned” about the situation.

“So we have the Pegulas and their representatives clarifying that they certainly will be a financial partner in this,” he said, “and that definitely made me feel good about this prospect.”

Representatives of New York State and Erie County, the main public entities expected to finance a new stadium, were not available for comment.

The News reported earlier this month that PSE had floated to the state and county officials an initial ask that the public pay for a new facility to be built in Orchard Park adjacent to the team's existing facility. The proposal would negate any need to temporarily relocate to another city during a multi-year construction effort.

The team's current lease for the county-owned Highmark Stadium expires in 2023. As a result, sources told The News that negotiations between PSE, the state and Erie County are taking on a more serious tone in recent weeks.

The concept also carries broad implications for the entire state beyond just financing. Other areas of New York could be expected to make their own proposals for Albany dollars to pay for new minor league baseball stadiums or downtown hockey arenas, as has occurred in the past whenever major league projects have been proposed for New York City or Buffalo.

All of this also occurs as Gov. Andrew Cuomo prepares to leave office following his announced resignation stemming from sexual harassment allegations. He will be succeeded by Lt. Gov. Kathy Hochul, who said this week that keeping the Bills in Buffalo is a "high priority."

The Buffalo News

by Robert J. McCarthy

Aug 14, 2021

- S&P: USPF Enterprise Sectors Treatment Of Operating Leases Under FASB's ASU 2016-02 (ASC 842)
- MSRB Proposes Amendments to Annual Customer Notification Requirements.
- A "Good" Tax-Advantaged Bond Bill Tells Issuers Whether They Can Refund – A Case Study: Squire Patton Boggs
- Transaction Costs During the Covid-19 Crisis: MSRB White Paper
- The Use Of A Crisis To Create Opportunity In The Muni Market.
- BDA Fixed Income Insights Digital Magazine – Summer 2021
- *City and County of San Francisco v. All Persons Interested in Matter of Proposition G* – Court of Appeal holds that, although the constitutional provision requiring two-thirds vote of qualified electors to approve special taxes, requires governmental entities to gain approval of supermajority of voters before imposing a special tax, it does not repeal or otherwise abridge by implication the people's power to raise taxes by initiative, and to do so by majority vote.
- And finally, Is There, Like, A Test For Performance De-enhancing Drugs, Dude? is brought to us this week by *State ex rel. Schmitt v. Bridgeport*, in which no less an authority than the Supreme Court of Ohio was called in to untangle a workplace farce in which William Schmitt wandered into the offices of Bridgeport Village in order to drop off a citizen initiative petition. Mr. Schmitt walked into cheerful-bizarro-alternate-bureaucracy-land that he was uniquely unqualified to navigate. (*e.g.* "An unknown person directed Schmitt to the mayor's office, and when he arrived at that office, he asked a woman at the desk if she was the 'clerk.' She responded affirmatively. Later in that conversation, she clarified that she was merely a 'volunteer clerk.'" *See, also*, "The fiscal officer is Mary Lyle, not Carole Lyle. (The record does not disclose whether the two Lyles are related.)" Then again, Mr. Schmitt was there "to place an initiative on ballot to enact an ordinance limiting the penalty for the possession or cultivation of certain quantities of marijuana or hashish within the village to a fine of $0." But if the fine is, like, zero dollars, is that really, like, a fine,

man?

EMINENT DOMAIN - COLORADO

North Mill Street, LLC v. City of Aspen

United States Court of Appeals, Tenth Circuit - July 27, 2021 - F.4th - 2021 WL 3163952

Property owner, whose property was located within area of city zoned for industrial use, brought action against city after council adopted ordinance that removed free-market residential units as permitted conditional use within such zoning district and refused to rezone property to mixed use zoning district, seeking declaratory judgment that ordinance was invalid and unenforceable and injunction against enforcing ordinance, and alleging, inter alia, a § 1983 regulatory takings claim under the Fifth Amendment.

The United States District Court granted defendants' motion to dismiss. Property owner appealed.

The Court of Appeals held that:

- Finality rule, under which a regulatory takings claim is not ripe until plaintiff has received final decision, is prudential, and not jurisdictional;
- Owner's claims were constitutionally ripe for review;
- City retained discretion to approve free-market residential unit development, supporting determination that city's decision was not final, and thus claims were not prudentially ripe for review; and
- It was not reasonably certain that city would deny application for variance, supporting determination that city's decision was not final, and thus claims were not prudentially ripe for review.

Finality rule, under which a regulatory takings claim is not ripe until the plaintiff has received a final decision regarding the application of the challenged regulations to the property at issue from the government entity charged with implementing the regulations, is prudential, and not jurisdictional.

Property owner, whose property was located within industrial zone, adequately alleged that it suffered economic injury that was fairly traceable to city's adoption of ordinance that removed free-market residential (FMR) units as permitted conditional use within property's zoning district and denial of owner's rezoning application, so as to satisfy injury-in-fact requirement for Article III standing, and thus owner's claims were constitutionally ripe for review, for purposes of claims against city alleging, inter alia, § 1983 regulatory takings claim under the Fifth Amendment; owner alleged that ordinance made it more difficult to find suitable tenants, and that it was not able to build FMR units unless it pursued planned development application for a variance.

City retained discretion to approve free-market residential unit (FMR) development on property owner's property, which was zoned for industrial use, through the planned development application process, supporting determination that city's decision was not final, so as for claims to not be prudentially ripe for review, for purposes of claims against city alleging, inter alia, § 1983 regulatory takings claim under the Fifth Amendment; city retained discretion to approve a use variation from the zoning regulations through the planned development application process, and city was merely required to consider earlier findings made in course of rezoning application in considering such a variance.

It was not reasonably certain that city would deny property owner's application for variance from zoning regulations through the planned development application process, in order to permit free-market residential unit (FMR) development on property zoned for industrial use, supporting determination that city's decision was not final, and thus claims were not prudentially ripe for review, for purposes of claims against city alleging, inter alia, § 1983 regulatory takings claim under the Fifth Amendment; relevant zoning ordinance did not definitively determine type of development permitted on property specifically, and owner had only submitted an application for re-zoning as opposed to variance.

ZONING & PLANNING - MAINE

[Hill v. Town of Wells]

Supreme Judicial Court of Maine - July 13, 2021 - A.3d - 2021 WL 2932349 - 2021 ME 38

Property owner sought judicial review of the decision of town's zoning board of appeals (ZBA) denying his request for setback variances.

The Superior Court rejected ZBA's denial of the variances. Abutting landowner, as intervenor, appealed.

The Supreme Judicial Court held that:

- In considering whether the essential character of the locality within which property owner sought a setback variance would be altered if variance was granted, "locality" included a wildlife sanctuary and the abutting undeveloped Refuge and wetlands, and
- Property owner failed to show that his proposed residence with the variances would conform to the "essential character of the locality," and would not degrade the significant value of surrounding environmental resources, thus, supporting denial of owner's variance request.

BALLOT INITIATIVES - OHIO

[State ex rel. Schmitt v. Bridgeport]

Supreme Court of Ohio - August 3, 2021 - N.E.3d - 2021 WL 3376105 - 2021-Ohio-2664

Initiative proponent sought a writ of mandamus to compel village clerk to certify to the elections board the sufficiency and validity of an initiative petition, or to compel the elections board to place the initiative on the November ballot.

The Supreme Court held that initiative proponent failed to comply with the requirement that he file a signed initiative petition with the village clerk.

Initiative proponent failed to comply with the requirement that he file a signed initiative petition with the village clerk, and thus he was not entitled to mandamus relief compelling village clerk to certify to the elections board the sufficiency and validity of the initiative petition, or compelling the elections board to place the initiative on the November ballot; proponent attempted to file the petition with mayor and unpaid volunteer clerk in the mayor's office, however statute required proponent to file the initiative petition with the village clerk, whose duties had been consolidated with the village treasurer into an appointed position called "fiscal officer," and proponent never attempted to file initiative petition with fiscal officer.

PUBLIC MEETINGS - OHIO

Ison v. Madison Local School District Board of Education

United States Court of Appeals, Sixth Circuit - July 7, 2021 - 3 F.4th 887

Four attendees of school board meetings, who were interrupted or prevented from speaking for failing to comply with board's public participation policy, filed § 1983 action asserting that board's policy violated First Amendment facially and as applied to them, and they sought compensatory damages, declaratory relief, and an injunction.

The United States District Court for the Southern District of Ohio granted summary judgment in favor of board. Attendees appealed.

The Court of Appeals held that:

- Policy constituted impermissible viewpoint discrimination in violation of the First Amendment;
- Policy violated First Amendment as applied to attendee who was interrupted and removed from meeting;
- Board had significant governmental interest supporting policy's in-person preregistration requirement, as necessary for requirement to be valid time, place, or manner restriction;
- Preregistration requirement was narrowly tailored to that significant governmental interest, as necessary for it to be valid time, place, or manner restriction;
- Individuals who could not comply with preregistration requirement had ample alternative channels to communicate with board, and thus requirement was valid time, place, or manner restriction;
- Preregistration requirement did not violate First Amendment as applied to three attendees who were prevented from speaking; and
- Policy was not void for vagueness under the First Amendment.

PROCUREMENT - PENNSYLVANIA

U.S. Venture, Inc. v. Commonwealth

Supreme Court of Pennsylvania - July 21, 2021 - A.3d - 2021 WL 3073379

Distributor of fuel products petitioned for review of Board of Claims' order, No. 4180, dismissing distributor's contractual claims arising out of Commonwealth's nonpayment of two alternative and clean energy (ACE) grants that distributor obtained to add compressed natural gas fuel pumps to existing fuel stations.

The Commonwealth Court affirmed. Distributor petitioned for allowance of appeal, which was granted.

The Supreme Court held that ACE grants were "grants" that were not subject to limited waiver of sovereign immunity under Procurement Code.

Commonwealth's award of Alternative and Clean Energy (ACE) grants to fuel products distributor to support distributor's plans to add compressed natural gas fuel pumps to two existing fuel stations were "grants" that were not subject to limited waiver of sovereign immunity under Procurement Code, and thus Board of Claims did not have jurisdiction to resolve distributor's contractual claims arising from nonpayment of grants, despite argument that grants were awarded with a primary purpose to procure construction, where Commonwealth had no ownership, control of, or interest in the privately-owned fuel pumps located on privately-owned property, and Commonwealth received nothing from the deals other than advancement of its desire to promote ACE program and reduce harmful emissions.

LIABILITY - WASHINGTON

Norg v. City of Seattle

Court of Appeals of Washington, Division 1 - July 19, 2021 - P.3d - 2021 WL 3030524

Husband and wife filed suit against city, alleging that city was negligent in responding to wife's 911 call while husband was having heart attack.

City filed motion for summary judgment, and husband and wife filed motion for partial summary judgment. The Superior Court granted husband and wife's motion and struck city's public duty doctrine defense. City appealed.

The Court of Appeals held that public duty doctrine did not apply to bar husband and wife's claim.

City's duty to respond to 911 call was not public duty owed to general public at large but was instead common law duty to exercise reasonable care in providing emergency medical services, and therefore public duty doctrine did not apply to bar claims brought by husband and wife alleging that city was negligent in responding to wife's 911 call while husband was having heart attack.

BDA Fixed Income Insights Digital Magazine – Summer 2021

The BDA's quarterly digital magazine, Fixed Income Insights, is now available right here by clicking here.

It can also be viewed on the new BDA app, which can be downloaded in the Apple store, Google play store, and Amazon app store.

This month's edition contains articles by the industry's top contributors and relevant topics:

- **Cover Story** – A conversation with US Senator Roger Wicker (R-MS) on Infrastructure and Municipal Bonds
- **Municipal Markets** – Articles from DPC Data and Hilltop Securities
- **Taxable Markets** – Kevin McPartland of Greenwich Associates
- **BDA Member Profile** – Ted Karn, President and Founder of The Karn Group

If you are unable to access the online version, a pdf can be found here.

If you have any questions or about the magazine or the new app, please contact Rebecca Rodriguez at rcrodriguez@bdamerica.org

Bond Dealers of America

August 6, 2021

A Municipal Finance Tool to Avert Another Deadly Condo Collapse.

Local governments could turn to special assessment districts to cost-effectively assure safety improvements, bypassing occupants' foot-dragging and dysfunctional homeowners' associations.

Experts have yet to determine the precise causes of the June 24 collapse of a Surfside, Fla., condominium tower in which 98 residents died. But policymakers don't need to wait for engineering reports to tell us what is painfully obvious: Condo ownership associations and their volunteer boards are ill-equipped to tackle serious safety deficiencies in high-rise buildings. Of the 160,000 condominium buildings in the U.S., tens of thousands are precariously underfunded.

The public finance profession has long understood the "tragedy of the commons," in which everybody enjoys the benefits of community property but their self-interested collective neglect leads to its demise. In the Surfside property, the homeowners' association had been delivered a clear warning that structural defects were mounting and collective remedial action was required. Yet the building's HOA board became so frustrated with securing unit owners' consent that many of its members resigned, and costs kept mounting. A problem that might have been solved a few years ago expanded — "exponentially," in the words of an inspector — to the point of no return. The Champlain Towers South disaster goes down as one of American history's most horrific and insightful examples of the tragedy of the commons.

Finger-pointing and blame-laying will go on for months, and undoubtedly there will be new laws to require more frequent safety inspections. But where local governments also need to focus their policy reforms is on the remediation process itself, to provide a cost-effective mandatory protocol for timely funding of structural repairs in isolated cases when private ownership fails.

Anybody who's lived in a residential community with HOA fees knows how much carping goes on over dues assessments to advance-fund repairs and replacements of common facilities. "Why should we pay now for benefits that will be enjoyed by future owners?" is the all-too-familiar complaint of the tightwads and procrastinators. Even if an HOA is able to borrow money for necessary repairs and bill the owners through installments, there will be defaults and delinquencies. In the Champlain Towers case, the cost per unit for remediation was estimated to be six figures, a staggering cost for some occupants. Would you want to serve on an HOA board facing such opposition and likely litigation from all ends?

A SAD Opportunity

Fortunately, there is a legal and financial tool that can be adapted to solve the problem of the tragedy of the condominium commons: special assessment districts. In California, they are known as Mello-Roos districts, and most states have laws on the books that authorize municipalities to levy a special charge on properties for a wide variety of public improvements that benefit the owners within a designated district, or in some cases even a single building. The bill can be per owner or (in some states) ad valorem based on property values. The municipality that establishes such SADs, as they are known, can take out bank loans or sell bonds, often at lower tax-exempt interest rates, to finance the improvements that are secured by the liens on the properties. In the case of condos, the special financing bonds would have to be secured by a senior tax lien on the underlying land, and in some states, new laws may be needed for single-building districts.

Few condo boards can ever hope to attain long-term financing at such low costs. Most importantly, the SAD tax collections are liens on property and payable by installments so that owners don't have to cough up the full cost of repairs immediately. When a unit is sold, some states and escrow companies require that the entire assessment be paid off to remove the lien, and the new owner essentially absorbs that cost in the mortgage. But however they are structured, SADs can accomplish what HOAs sometimes cannot.

Of course there are drawbacks. For municipal finance departments and property tax collectors, administering these special districts poses a thankless task. Most assessment districts are relatively small and clutter the books, so many localities charge modest administrative fees to compensate for the staff work they require. Unless consolidated into an annual debt issue, the litter of small individual SAD debt issues can become a fiscal management nuisance — but nothing in comparison with the resources demanded of a municipality that suffers a building collapse. It's important to retain perspective here and put safety before bureaucracy.

When Lives Are at Risk

This brings us to the implementation process, which will require thoughtful policy design. In some localities, existing laws and policies may require tweaking. One example is how timely intervention could be triggered proactively by the municipal governing body, either upon recommendation of the building inspection department or the HOA board. Usually such municipal actions require a public hearing, but the authority ultimately resides with the municipal governing body. Typically the project work is performed by the local government by contract, which raises questions about eminent domain, indemnification, property access and possibly private activity bond tax rules that may require updated laws and local policies.

Those laws and policies should establish criteria for declaring a demonstrable and documented public safety interest in mandatory improvements to a privately owned building. Doing this without stigmatizing the property is an issue to address. By state law, an intervening local government should be indemnified, given the legal jeopardy and certified structural risks. Statutory or written criteria could provide a checklist for local officials to follow before instigating public intervention.

Perhaps every new high-rise building's land-use permit and periodic recertification should require creation of a dormant special assessment district that can be activated and invoked immediately upon certification of major structural remediation requirements. If time allows and depending on the severity of defects and risks, the HOA could be given a short grace period to undertake repairs on its own. But the community interest should not be hamstrung by time-wasting protocols or stalling tactics, especially when lives are at risk. In some cases, precautionary evacuations may be necessary, with temporary housing allowances added to an owner's amortized project assessment.

This financial tool is no panacea, and should be used only in rare cases. But its availability will provide a safety net. Municipal attorneys, along with policy and professional organizations, can guide the way for precautionary enabling legislation and local risk management policies.

governing.com

August 3, 2021 • Girard Miller

Quick Thoughts: Are You Pricing in Water Risk?

Our Chief Market Strategist, Stephen Dover, believes that water risk is global now—devastating *floods, unseasonal hurricanes, droughts, megafires, and more demonstrate this. The economic implications of risks related to water are significant and should be considered when investing.*

Devastating floods, unseasonal hurricanes, excessive droughts, megafires, and more demonstrate how extreme water risk is global now. From an investor's perspective, the economic implications of risks related to water are significant and should be a consideration when investing.

- By 2030, the global population will likely exceed nine billion and the world will require 40% more fresh water than it does today.1 The global supply of accessible freshwater accounts for less than 1% of water supplies.
- In my view, risks associated with water affect economic policies, constrain economic growth, and should be incorporated along with other climate-related market risks. Critical investments in water purification, reuse, efficiency, and delivery infrastructure are required on a global scale and could provide opportunity to investors.
- The projected declines in freshwater availability will likely affect gross-domestic-product (GDP) growth, present wide-ranging risks for investors across all asset classes, and encompass a broad range of sectors, from those with logical connections, like agriculture and utilities, to those that may not be so apparent, like packaging and semiconductors.
- Communities and companies must consider how to plan for and mitigate water risk. Companies that lack a full understanding of water risk, lag in disclosing water risk, or postpone adjustments to regulatory reforms, present long-term risks for both the communities and investors that invest in those companies.
- Infrastructure investment opportunities may be found globally as governments and municipalities prioritize managing water risk. China's Maritime Silk Road and Russia's Ice Silk Road expand their water infrastructure. The US bipartisan infrastructure proposals include investment in sewage systems, water supplies, and replacing lead pipes.

There are also opportunities in identifying companies that can provide solutions to deal with water scarcity, water sanitation, and water efficiency. Water impacts the day-to-day operations of companies and how they think through their business models. For details on water risk and investing, read "Water Disruption: Investment Risk From Multiple Angles," a 2020 research epitome from Franklin Templeton and K2 Advisors. In "Muni Market View on the American Jobs Plan," Jennifer Johnston, Director of Research, Franklin Templeton Municipal Bonds, discusses how infrastructure funding could filter through the US municipal bond market.

What Are the Risks?

All investments involve risk, including possible loss of principal. The value of investments can go down as well as up, and investors may not get back the full amount invested. Stock prices fluctuate, sometimes rapidly and dramatically, due to factors affecting individual companies, particular industries or sectors, or general market conditions. Special risks are associated with foreign investing, including currency fluctuations, economic instability and political developments; investments in emerging markets involve heightened risks related to the same factors. To the extent a strategy focuses on particular countries, regions, industries, sectors or types of investment from time to time, it may be subject to greater risks of adverse developments in such areas of focus than a strategy that invests in a wider variety of countries, regions, industries, sectors or investments.

China may be subject to considerable degrees of economic, political and social instability. Investments in securities of Chinese issuers involve risks that are specific to China, including certain legal, regulatory, political and economic risks.

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The views expressed are those of the investment manager and the comments, opinions and analyses are rendered as at publication date and may change without notice. The underlying assumptions and these views are subject to change based on market and other conditions and may differ from other portfolio managers or of the firm as a whole. The information provided in this material is not intended as a complete analysis of every material fact regarding any country, region or market. There is no assurance that any prediction, projection or forecast on the economy, stock market, bond market or the economic trends of the markets will be realized. The value of investments and the income from them can go down as well as up and you may not get back the full amount that you invested. Past performance is not necessarily indicative nor a guarantee of future performance. All investments involve risks, including possible loss of principal.

by Stephen Dover of Franklin Templeton, 8/5/21

Fitch: U.S. Labor Market Job Loss Mismatch to Persist Through 2022

Fitch Ratings-New York-04 August 2021: Employment recovery is far from complete and largely unequal, with a new Fitch Ratings report pointing to how the pandemic is disproportionately hitting relatively lower-wage service jobs where human interaction is essential.

There are early signs of this labor market mismatch in some states. For instance, while the labor market is very tight in Vermont and New Hampshire, the labor market is showing more slack in Hawaii, California and New York. Relatively low wage service jobs in the leisure and hospitality sector are accounting for a disproportionate share of these job losses, a disconnect that will likely remain in place at least through the end of next year.

“It would be hard to design a labor market shock that more drastically targeted low-wage workers. We’re seeing widening of existing inequalities and a rise in the risk of long-term labor force detachment and economic scarring in the most affected states,” said Fitch Senior Director Olu Sonola. ‘The segment of the population that has been unemployed for an extended period of time is most at risk for the impending government support cliff.’

This mismatch shines more of a light on the employment to population ratio (EPR), which Fitch views as a more holistic measure of disequilibrium than the unemployment rate because it combines the impact of both labor force participation and unemployment. South Dakota, Kansas and Mississippi are the only states that are now back to pre-pandemic EPR levels. However, despite significant recovery, Mississippi, West Virginia and New Mexico have the lowest three EPR levels. This suggests that that the long-term economic growth trajectory of these states will likely continue to be slower, relative to other states, absent offsetting productivity gains. ‘U.S. States Labor Market: Disparities in Pandemic Job Losses to Persist Beyond 2022’ is available at ‘www.fitchratings.com’.

Contact:

Olu Sonola
Regional Credit Officer, U.S. Public Finance
+1 212 908 0583

Fitch Ratings, Inc.
300 W 57th Street
New York, NY 10019

Eric Kim
Senior Director, Head of U.S. State Government Ratings
+1 212 908 0241

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email: sandro.scenga@thefitchgroup.com

Additional information is available on www.fitchratings.com

Fitch: Coronavirus Aftershock to Widen Ratings Divide for U.S. NFP Hospitals

Fitch Ratings-Austin-03 August 2021: U.S. vaccination efforts have placed early coronavirus fears in the rear-view mirror, though Fitch Ratings' latest median report for the sector says operational stress will still likely be felt by healthcare providers for the foreseeable future, and there is looming concern over the rise of the Delta variant.

Medians were mixed for U.S. not-for-profit hospitals and health systems amidst the fallout of the global pandemic, yet proved the sector's resiliency. That said, expenses are still quite high for NFP hospitals. "Capital spending post-pandemic will increase slightly seeing as organizations necessarily curtailed capex during the height of the pandemic," said Fitch Senior Director Kevin Holloran. "Higher expenses are likely here to stay, as is an emerging credit split between stronger and weaker hospitals, which could spur more M&A and expansion activity."

"That said, hospital finances would have taken a more serious drubbing were it not for stimulus relief and re-bounding elective procedural volumes," said Holloran.

2021 median operating margins and operating EBITDA decreased incrementally to 1.5% and 7.3%, respectively, from 2.3% and 8.7% in the prior year. Yet days cash on hand improved to 241.4 days, compared with 219.8 in the prior year.

The 2021 medians largely reflect the direct coronavirus shock to hospitals and health systems. "Health organizations continue to be hampered by traditional fee-for-service reimbursement due to their experience during the coronavirus pandemic, which resulted in "no services and no fees," said Holloran.

Fitch's '2021 Median Ratios: Not-for-Profit Hospitals and Healthcare Systems' is available at 'www.fitchratings.com'.

Contact:

Kevin Holloran
Senior Director, Head of U.S. NFP Hospitals & Health Systems
+1-512-813-5700
Fitch Ratings, Inc.
2600 Via Fortuna, Suite 330
Austin, TX 78746

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email: sandro.scenga@thefitchgroup.com

Additional information is available on www.fitchratings.com

Fitch: ESG-Labelled Debt Can Address Climate Funding Gap in Infrastructure

Fitch Ratings-Hong Kong/New York-02 August 2021: Issuance of green infrastructure and project finance bonds is expected to rise as more governments adopt a net-zero carbon emission target by 2050, says Fitch Ratings in a new report. This will be supported by strong investor demand for ESG-labelled bonds. We believe the bulk of financing required to address climate transition and adaptation will be allocated to sustainable infrastructure assets, such as renewable energy, and to upgrade existing assets to function in a 2°C temperature increase scenario.

The achievement of net-zero emissions by 2050 will require a plunge in fossil-fuel consumption. This will affect infrastructure associated in the production, transport and use of fossil fuels and could constrain medium- to long-term profitability and capital access for infrastructure asset owners. Fitch considers oil production and refining, liquids transportation, oilfield services and coal-fired power generation to be highly vulnerable to climate-related financial risk.

Climate change mitigation could require investment upwards of USD13 trillion by 2030, but the International Energy Agency estimates that current investment levels are one-third of that required. Infrastructure also faces adaptation costs for the physical risks caused by climate change. Changes in precipitation, temperature, sea levels and more extreme weather events can affect the operation and performance of infrastructure assets. Roads, railways, airports, seaports as well as coastal and urban infrastructure are among the most exposed sectors.

There has been consistent demand for high-quality green bonds in recent years. Green project finance bonds can limit an investor’s exposure to non-green activities compared with green corporate bonds, where the issuer may have carbon-intensive operations outside of the bond’s specific use of proceeds. As banks increasingly impose negative screening policies on fossil-fuel related activities, reallocation of capital towards sustainable investments can meet requirements under new climate-focused financial regulations.

Contacts:

Nneka Chike-Obi
Director, Sustainable Finance
+852 2263 9641
Fitch (Hong Kong) Limited
19/F Man Yee Building
68 Des Voeux Road Central, Hong Kong

Cherian George
Managing Director, Global Head, Infrastructure and Project Finance
+1 (212) 908 0519

Media Relations: Wai Lun Wan, Hong Kong, Tel: +852 2263 9935, Email: wailun.wan@thefitchgroup.com
Alanis Ko, Hong Kong, Tel: +852 2263 9953, Email: alanis.ko@thefitchgroup.com

Sandro Scenga, New York, Tel: +1 212 908 0278, Email: sandro.scenga@thefitchgroup.com

Additional information is available on www.fitchratings.com

Bipartisan Infrastructure Package Set to Pass Senate – Bill Includes Expansion of PABs

By tomorrow, the Senate bipartisan infrastructure bill is expected to pass the Senate, setting up a September fight to get the package through the House prior to the Highway Trustfund running out of funding on September 30th. While the American Infrastructure Bond amendment did not receive a vote during the prolonged debate, the package includes multiple bond financing provisions that expand the usage of PABs, including:

- The Rural Broadband Financing Flexibility Act (S.1676) is the template for adding broadband as an allowable use for private activity bonds (PABs). This would allow states to issue PABs to finance broadband deployment, specifically for projects in rural areas where a majority of households do not have access to broadband.
- Carbon Capture Improvement Act (S. 1829) allows carbon capture and direct air capture (DAC) technologies to be eligible for PAB financing. Private activity bond financing encourages commercial deployment, which is essential for bringing costs down and developing these technologies to scale. **These bonds would be outside the volume cap.**
- The bill increases the current cap of tax-exempt highway or surface freight transfer facility bonds from $15 billion to $30 billion as proposed by the bipartisan BUILD Act (S.881). Currently, $14,989,529,000 billion of the $15 billion caps has been issued or allocated. Increasing the cap will allow state and local governments to enter into additional public-private partnerships to supplement future surface transportation projects with private investment.

Budget Reconciliation–Additional Opportunities for Munis

Later today Senate Budget Chairman Bernie Sanders (I-VT) is expected to release the $3.5 trillion dollar budget outline, setting up the next infrastructure fight for later this fall in the House. The Senate is expected to pass the bare budget outline this week prior to adjuring for August recess, without policy detail included. This package will provide additional opportunities for the passage of key muni priorities.

The MBFA and BDA have learned through conversations with senior Administration staff and key Capitol Hill contacts that muni provisions remain a priority for Congressional tax writers as Democrats eye the next spending opportunity this fall.

These muni provisions under consideration include:

- The restoration of tax-exempt advance refundings;
- Raising the BQ limit; and
- The direct-pay American Infrastructure Bond.

The MBFA and BDA will continue to provide updates as they become available.

Bond Dealers of America

August 9, 2021

Transaction Costs During the Covid-19 Crisis: MSRB White Paper

MSRB publishes new research paper analyzing the evolution of transaction costs in the municipal and corporate bond markets during the COVID-19 liquidity crisis and the subsequent recovery.

Read the paper.

What Is in the New Bipartisan Infrastructure Bill?

State and local governments are set to receive billions if the legislation passes, including funding to support cybersecurity, broadband, transit, roads, water and more. Here are the details.

A bipartisan infrastructure bill now under debate in the U.S. Senate promises more than $500 billion in new spending — including massive programs that will benefit state and local government.

The spending, contained in a 2,700-page bill passed by the House of Representatives and going through amendments in the Senate now, covers a wide range of programs but delivers the bulk of the funding to roads, bridges, transit and water. Here are the broad funding areas, as outlined in a White House fact sheet:

Continue reading.

governing.com

August 6, 2021 • Ben Miller

Direct Pay Amendment Introduced in Senate.

Today, Senator Roger Wicker (R-MS) introduced an amendment to the bipartisan infrastructure agreement that would create a new direct-pay bond, the American Infrastructure Bond. The AIB's would have a flat 28% reimbursement rate. While not exempt from sequestration, the text provides the ability to increase reimbursement rates to offset any potential negative impacts in the case of sequestration. The Infrastructure Financing Authority provision in the original agreement was removed after an outcry from muni advocates, including the MBFA and BDA before the text was released. At this time, there was no amendment to reintroduce the federal government bond bank that has been submitted.

At this time it is unknown which amendments will receive consideration.

The MBFA and BDA will continue to provide updates this week as the legislation and amendments debate develops further.

Bipartisan Infrastructure Agreement

Last week, the Senate voted 67-32 to move the bipartisan infrastructure agreement to debate without full legislative text-a a key step in advancing the 1 trillion dollar package. This vote sets up an extensive debate process, kick-starting a week's worth of debate and more compromise, to get the package across the finish line in the Senate before sending across the Capitol to the House for an early fall vote. While this is an important first step in the legislative process, expect many hiccups to arise over the next few weeks.

The updated agreement includes multiple private activity bond provisions. These provisions include:

- The Rural Broadband Financing Flexibility Act (S.1676) is the template for adding broadband as an allowable use for private activity bonds (PABs). This would allow states to issue PABs to finance broadband deployment, specifically for projects in rural areas where a majority of households do not have broadband access.
- Carbon Capture Improvement Act (S. 1829) allows carbon capture and direct air capture (DAC) technologies to be eligible for PAB financing. Private activity bond financing encourages commercial deployment, which is essential for bringing costs down and developing these technologies to scale. **These bonds would be outside the volume cap.**
- The framework increases the current cap of tax-exempt highway or surface freight transfer facility bonds from $15 billion to $30 billion as proposed by the bipartisan BUILD Act (S.881). Currently, $14,989,529,000 billion of the $15 billion caps has been issued or allocated. Increasing the cap will allow state and local governments to enter into additional public-private partnerships to supplement future surface transportation projects with private investment.

Update on Other Muni Provisions

The original bipartisan agreement included a provision that would create a new direct-pay bond the American Infrastructure Bond. The provision was removed as a way to find needed revenue to ensure the package would be "revenue neutral." This offer was publicly rejected by both Republican and some Democratic negotiators, and we continue to work with our partners on the Hill and in the Administration promoting these key financing options. The next steps for the package at this time remain murky, with portions of the upcoming August recess likely to be cut short.

The MBFA and BDA have learned through conversations with senior Administration staff and key Capitol Hill contacts that muni provisions remain a priority for Congressional tax writers as Democrats eye the next spending opportunity, the likely $3+ trillion-dollar budget reconciliation package later this summer.

These muni provisions under consideration include:

- The restoration of tax-exempt advance refundings;
- Raising the BQ limit;
- The direct-pay American Infrastructure Bond;

Bond Dealers of America

August 3, 2021

TAX - CALIFORNIA

City and County of San Francisco v. All Persons Interested in Matter of

Proposition G

Court of Appeal, First District, Division 4, California - July 26, 2021 - Cal.Rptr.3d - 2021 WL 3140071 - 21 Cal. Daily Op. Serv. 7511

Following amendment to California Constitution, which required that any special tax adopted by a local government entity take effect only if approved by a two-thirds vote of the electorate, city and county brought action to establish that initiative measure entitled "Parcel Tax for San Francisco Unified School District," was validly enacted.

The Superior Court granted summary judgment in favor of city.

The Court of Appeal held that:

- Constitutional provision does not repeal or abridge by implication the people's power to raise taxes by initiative;
- Constitutional provision did not constrain initiative power;
- Constitutional provision cannot prevent the people, exercising their initiative power, from adopting an identical tax; and
- State initiative qualified for ballot measure through method in which voters could propose measure by initiative petition.

Although the constitutional provision requiring two-thirds vote of qualified electors to approve special taxes, requires governmental entities to gain approval of supermajority of voters before imposing a special tax, it does not repeal or otherwise abridge by implication the people's power to raise taxes by initiative, and to do so by majority vote; any such partial repeal by implication is not favored by law, which imposes a duty on courts to jealously guard, liberally construe and resolve all doubts in favor of exercise of the initiative power.

Constitutional provision requiring two-thirds vote of qualified electors to approve special taxes adopted by a "local government" did not constrain initiative power for the same reasons that supermajority vote requirements did not apply to citizens' initiatives; the text of the constitutional provision did not reach the electorate, as the electorate was not an "agency."

Just as the State Constitution does not prohibit local government from adopting a special parcel tax with voter approval, so it cannot prevent people, exercising their initiative power, from adopting an identical tax.

State initiative measure entitled "Parcel Tax for San Francisco Unified School District," qualified for ballot measure based on city charter recognizing two ways to put measures on the ballot, and specifically method in which voters could propose measure by initiative petition; city's evidence showed that initiative qualified for the ballot showing that initiative qualified for ballot, including evidence of a declaration from director of elections and copies of the material submitted to director by three citizen proponents of initiative.

A "Good" Tax-Advantaged Bond Bill Tells Issuers Whether They Can Refund – A Case Study: Squire Patton Boggs

This is the second in a series of posts about neutral principles that make for "good" tax-advantaged bond legislation.

We pick up our series as the Senate prepares for a final vote on a bipartisan infrastructure bill in the coming days. In the last post, we stated the general rule that a good piece of tax-advantaged bond legislation tells issuers how and when they can refund bonds issued under any new bond program. Here's an example in current law to illustrate the point.

In 2005, Congress created a new category of tax-exempt "exempt facility" private activity bonds for highway facilities and surface freight transfer facilities.[1] These bonds are exempt from the typical private activity bond volume cap[2] but are subject to a special volume cap administered by USDOT. Unlike the typical PAB volume cap (which is apportioned among the states annually based on population), the special volume cap for these bonds is a national $15 billion cap that is available indefinitely, although all of it has now been spoken for.[3]

Continue reading.

The Public Finance Tax Blog

By Johnny Hutchinson on August 6, 2021

Squire Patton Boggs

How Governments Can Best Manage Federal Relief Funds.

There are a lot of challenges to spending the $350 million allocated to states and localities, but effective centralization and standardization can better ensure economic recovery.

Across the nation, grant dollars are playing a vital role in fiscal recovery and delivering impact to those who need it most–from getting PPE to hospitals, equipping homeless shelters with more beds, to helping local businesses stay afloat. While the Covid-19 pandemic has emphasized its urgency, the focus on grant funding as a revenue source has been steadily growing. Just over the last five years, federal grant spending grew from $576 billion in 2014 to more than $800 billion in 2020.

In the latest federal stimulus package, $350 billion has been allocated to state and local governments. All those extra grant dollars sound great, right? While the funds and the possibilities they bring are welcome, they also pose many challenges for local governments. Lower head count, remote work environments and existing grant management responsibilities (including those involving previous Covid-19 relief funds), complicate already tedious efforts to ensure funding is well managed and has the desired impact.

Ensuring that funding is spent transparently and according to federal requirements laid out in Uniform Grant Guidance is a feat in itself. According to the Government Accountability Office, one in every six grant dollars is mismanaged.

While the challenges are many, so are the possibilities when it comes to delivering impact through grants. Yet, those possibilities can only be realized if local governments master a few critical areas: planning ahead as much as possible, ensuring cross-departmental coordination, agreeing upon priorities, carefully tracking project finances, and creating a system of accountability. Here's how:

Centralizing With Priorities and Targets

Whether it's a large team of 15 or more, or a small but mighty team of two, cities should aim to have at least one grant manager overseeing all grant portfolio activities. This person should know the details of funding requirements and help to ensure compliance. If possible, teams can bring in a senior procurement officer to help stay on top of procurement regulations and processes while supporting purchasing contracts and subawards. In addition, an internal auditor can be essential to helping the team establish and monitor a clear audit trail and stay on top of all grant activities to ensure compliance.

It's also important to align grant funding with the priorities that matter most to target communities by ensuring prioritized, data-driven projects and programs actually meet community needs in advance of receiving funds. One way cities and local jurisdictions can get ahead is by holding comprehensive preplanning and kickoff meetings for all staff across departments before funds start arriving. This will help the grant team to know where to focus incoming funding and where it will deliver the most impact.

To effectively execute current and new emergency grant programs, grant teams must also understand how much has been spent by creating a system of internal controls to help track future spending. To accomplish this, teams should separate budgets into two groups: Covid-19 relief funding and reallocation of previous awards for other projects. This will help teams track grants better while staying ahead of new federal guidelines and reporting requirements.

Once these two groups are identified, it's important to document expenditure data to support cost allocation plans and indirect cost rates on an ongoing basis. This will inform teams so they know how much has already been spent before executing any emergency grant programs. Then, teams can prepare additional appropriation and spending plans in order to respond quickly to new emergency appropriations, contingency appropriations, and special appropriations.

Standardizing Through Digitization

In addition to a sound strategy that standardizes grant management processes, local governments need the proper tools to execute their plans. Many are turning to cloud-based grant management tools to help aggregate data, increase visibility throughout their organizations, support remote collaboration, and ensure compliance with federal grant requirements.

A digital grant management solution can help government administrators, grant managers and staff save time, reduce redundancies, streamline data entry, and mitigate compliance risk. Rather than spending time on the administrative work of grants, teams can focus on tracking where grant dollars are going and ensure they are meeting departmental goals, mayoral goals, and identified needs in the community.

Delivering Economic Recovery and Real Impact

Ultimately, there are many challenges for grant management, but the possibilities that come with innovating these processes are even greater. If governments start the important work of centralizing, standardizing, and digitizing their grant processes now, they will better ensure economic recovery for the future while streamlining grant dollars to quickly get them into the hands of those that need it the most.

Route Fifty

By James Ha

AUGUST 6, 2021

How Should Cities Spend Billions in Aid? Ask People Who Live There.

Some state and local governments are turning to Zoom and Survey Monkey polls to ask residents how to use their federal Covid relief aid.

As America's states and cities decide how to spend their share of the $350 billion in Covid relief funds they're getting from the federal government, some are asking residents for ideas. Richmond, Virginia, turned to Survey Monkey.

Through a web page using the popular survey tool that can be accessed via a QR code, Richmond has found plenty of ideas to choose from, with about 750 people responding in its first two days online. The results aren't public yet. "This should be an exciting question to answer," said Sam Schwartzkopf of the city's Office of Public Information and Engagement. "People really seem to be taking interest in it."

Government officials across the U.S. have set out to gather ideas from citizens on how to spend the money that's part of the $1.9 trillion American Rescue Plan. The ideas, both big and small, speak to the unusual position that cities and states find themselves in after the federal government provided them with an unprecedented amount of cash. The funds will help local governments take an active role in the recovery and avoid the municipal budget cuts that weighed on the economy after the 2008 recession.

Continue reading.

Bloomberg CityLab

By Amanda Albright and Skylar Woodhouse

August 5, 2021, 8:13 AM PDT

Munis In Focus: Recovery Winners (Bloomberg Radio)

Eric Kazatsky, Senior Municipal Strategist for Bloomberg Intelligence, discusses muni market news. Hosted by Paul Sweeney and Matt Miller. (Renita Young fills in for Matt Miller)

Listen to audio.

August 6, 2021

What are Build America Bonds or Direct-Pay Municipal Bonds?

Interest on many municipal bonds issued by local and state governments and some non-profits is exempt from federal income taxes. As a result, investors, mainly high-income individuals, are willing to lend money to issuers at a lower interest rate than they would demand if the bonds were taxable. Build America Bonds (known as BABs or direct-pay bonds) were created by the American Recovery and Reinvestment Act of 2009 as an alternative way for the federal government to subsidize local and state government borrowing. Instead of making the interest on those bonds exempt from federal income taxes, the federal government provided a subsidy directly.

The BABs program ended in 2010, but the concept has been part of the 2021 debate over financing increased federal infrastructure spending. Here is a primer on these bonds.

HOW DID BABS WORK?

Because the interest investors earn on municipal bonds is generally exempt from federal income taxes, an investor in the top income tax bracket can earn the same after-tax return on a lower-yielding municipal bond as on a higher-yielding taxable bond. For example, for an investor in the top tax bracket, the after-tax return on a 1.3% tax-exempt bond is the same as on a 2.15% taxable bond.

Continue reading.

The Brookings Institution

by Nasiha Salwati and David Wessel

August 4, 2021

Munis In Focus: Water Parks & Infrastructure (Bloomberg Radio)

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

Play Episode

July 30, 2021

IRS Notice Provides Population Figures for Disaster-Zone LIHTC Allocation.

Internal Revenue Bulletin 2021-31 provides state and territory low-income housing tax credit (LIHTC) allocating agencies with population figures to calculate disaster LIHTCs they can allocate under the Taxpayer Certainty and Disaster Tax Relief Act of 2020. Notice 2021-45 identifies the counties and parishes eligible for the disaster LIHTCs along with their combined populations. The disaster LIHTCs are equal to the lesser of $3.50 multiplied by the population in the disaster zones or 65% of the state LIHTC ceiling for calendar year 2020. California's 23.1 million residents in disaster zones was the largest of the 11 states plus Puerto Rico eligible for the credits.

The 2021 edition of the Novogradac Low-Income Housing Tax Credit Handbook is an essential resource for affordable rental housing owners, developers, managers and investors.

Novogradac

Monday, August 2, 2021

MSRB Proposes Amendments to Annual Customer Notification Requirements.

The MSRB proposed amendments to narrow the scope of the annual customer notification requirements under MSRB rules on delivery of investor brochures and transactions with sophisticated municipal market professionals.

The MSRB filed with the SEC amendments that would narrow the scope of the annual customer notification requirements under MSRB Rule G-10 ("Delivery of Investor Brochure"). The amendments would limit the persons dealers would have to notify to only those who either (i) have effected municipal securities transactions or (ii) hold a municipal securities position.

The proposal also includes amendments to MSRB Rule G-48 ("Transactions with Sophisticated Municipal Market Professionals") that would except dealers from making such annual notifications to sophisticated municipal market professionals, so long as the required information is available on the dealer's website.

Comments on the proposal must be submitted within 21 days of its publication in the Federal Register.

Cadwalader Wickersham & Taft LLP

August 3 2021

S&P: USPF Enterprise Sectors Treatment Of Operating Leases Under FASB's ASU 2016-02 (ASC 842)

Background

S&P Global Ratings is updating the market with its views on the Financial Accounting Standard Board's (FASB) new standard, Leases (ASC-842), and its impact on audited financial statements of rated entities in the not-for-profit health care, higher education, charter schools, and public power and electric cooperative sectors, which S&P Global Ratings collectively refers to as enterprise sectors. With the standard now in effect for a greater number of rated entities that report under FASB standards, we are providing additional information on the treatment of operating leases under our enterprise sectors criteria. We had published an FAQ, "How New Accounting Rules Will Affect U.S. Enterprise Sectors," on March 11, 2019, on RatingsDirect and this update supersedes that commentary.

We will continue to review our approach to incorporating lease liabilities into our analysis of enterprise sectors pursuant to our criteria, particularly as governmental issuers in the enterprise sectors implement lease updates through the Governmental Accounting Standards Board (GASB) Statement No. 87-Leases after a substantial delay in the required implementation date (see last section, titled "How will GASB No. 87 impact our analytical approach to leases?") to fiscal years beginning after June 30, 2021. Since GASB No. 87 changes how leases are classified, effectively no longer recognizing the operating lease distinction, we will expect to maintain consistency and comparability across the two accounting standards, to the extent possible given nuances associated with each standard, as the enterprise sectors have entities that present financial statements under both FASB and GASB standards.

Not all of our rated FASB entities have incorporated the new lease standard, yet. In response to concerns of the impact that the Coronavirus (COVID-19) pandemic could have on stakeholders, the FASB released ASU 2020-05 in June 2020, which delayed the effective implementation dates for ASC 842 for certain public not-for-profit entities which had not yet issued financial statements reflecting adoption of the standard, which includes obligors that use conduit issuers, and all other not-fo--profit entities. Early adoption continues to be permitted. While a number of entities we rate have adopted the standard, certain entities have not yet adopted the standard due to FASB's delay of the effective implementation date.

Frequently Asked Questions

Will the lease accounting requirements result in rating changes?
Lease accounting requirements enhance transparency and add to robustness of disclosures, but are generally not expected to result in rating changes, nor have they in the past for rated entities that have adopted the standard. While the financial statement presentation under ASC 842 provides more clarity on the actual value of the lease liability, the actual lease obligations incurred by rated entities largely have remained unchanged; therefore, the accounting standards update has not been viewed as a new credit factor. We believe the financial effect of existing operating leases has been incorporated into our credit ratings and related analyses prior to the ASC 842 update.

How do we incorporate lease usage into our analysis of enterprise sector obligors?
We will assess lease usage by the following measures:

Health care. Operating lease liabilities are typically not included in our calculation of long-term debt and related ratios, and we continue to believe that our lease-adjusted maximum annual debt service (MADS) coverage metric appropriately captures lease utilization within our assessment of the financial profile. Further, as per our criteria, we retain the flexibility to make an analytical judgment as to whether a negative consideration is warranted for the entities where liabilities or off-balance-sheet financings, including operating leases, materially bring added risk to the financial profile when not fully captured in debt to capitalization or other financial metrics. While we recognize that in certain cases the audited presentation of operating lease expense may now encompass additional expenses, such as variable lease costs, in most instances we are able to adjust for this such that operating lease expense remains comparable with prior periods, which typically consisted solely of operating and short-term lease costs. To date, there have been no rating changes driven by the change in accounting for operating leases among rated not-for-profit health care entities that have adopted ASC 842.

Higher education. While our criteria treats capital leases as debt, we have not generally treated operating leases as debt and have not included them in our MADS burden or total debt ratios. However, we review an institution's operating leases and in cases where we deem those operating leases significant compared with debt, we have assessed them in some capacity (e.g., either by including them in the MADS burden or in total debt calculations). Pursuant to our criteria, we reserve the right to adjust aspects of the financial profile assessment in order to adequately capture the risk associated with elevated operating lease usage. Since implementation of FASB ASC 842 (applicable to private colleges and universities, independent schools and some public universities that elect to follow FASB accounting standards), none of our ratio definitions and their applications have changed and, related to this matter alone, there have not been any changes in our opinion of an institution's underlying creditworthiness.

Charter schools. Pursuant to our criteria, operating lease liabilities are typically not included in our calculation of long-term debt and related ratios. However, for charter schools, we have consistently incorporated the use of operating leases into our rating analysis through our use of lease-adjusted

MADS when calculating key financial ratios, such as debt service coverage (DSC) and debt burden. For example, we calculate lease-adjusted MADS coverage as earnings before interest, depreciation, and amortization plus facility lease expense/MADS plus facility lease expense. Lease-adjusted MADS coverage is generally the heaviest weighted component of our financial profile assessment for rating charter school bonds. We reserve the right to adjust aspects of the financial profile assessment when we deem the lease-adjusted MADS coverage and debt burden to insufficiently capture the risk associated with elevated lease usage.

We will continue to analyze the effect of implementation on all entities that use operating leases and update our view of the underlying creditworthiness accordingly.

Public power and electric cooperatives. Our long-standing practice has been to treat lease agreements as having debt-like attributes irrespective of whether accounting standards dictate classifying power purchase agreements as finance or operating leases. We reflect these adjustments in our fixed-charge coverage calculations, which we perform in addition to our DSC calculations. Our fixed-charge coverage focuses on payments utilities make to utility suppliers to reserve generation capacity and to their retail customers. Because we are already capturing the dominant lease and lease-like payments in our fixed-charge coverage, we believe that the changes in accounting standards do not affect coverage ratio analysis for public power and electric cooperative utilities.

When do we consider operating lease usage to be significant and compel additional adjustments to our standard ratios?

The analytic decision to make an additional adjustment within the financial profile assessment of an obligor could reflect various lease factors such as our view of the magnitude of the operating lease liability relative to the capital structure, structural elements of the leases, and the perceived strategic risk of the leasing strategy. In those instances where we believe these lease factors are not fully captured in our ratios, we reserve the flexibility in our criteria to apply a negative adjustment in the financial profile section of the criteria. While rare, there have been instances where we have applied a negative adjustment within the financial profile section of our criteria.

How do we expect accounting for leases to differ under FASB ASC 842 compared with GASB No. 87?

Based on our initial understanding of GASB No. 87, we expect that after its implementation, most lease arrangements previously classified as operating or capital leases, will be considered finance leases, which we typically include in long-term debt. Therefore, we believe this difference in lease accounting reporting requirements under GASB compared with FASB complicates the ability to separate lease liabilities from long-term debt. However, the underlying economics of lease arrangements are unchanged solely due to the new accounting standard, so we generally do not anticipate rating changes associated with the GASB No. 87 standard. We will review whether the presentation of GASB No. 87 requires us to revisit the details of how we incorporate operating leases into our criteria–specifically as it relates to debt and coverage-related ratios.

How will GASB No. 87 affect our analytical approach to leases?

We expect to maintain analytical consistency in our approach to evaluating lease obligations and to maintain comparability across rated entities within sectors regardless of whether the rated entities follow GASB or FASB accounting standards, to the extent possible given the incongruity of the two accounting pronouncements. While early adoption is permitted, to date, S&P Global Ratings has not seen the specifics of how GASB No. 87–applicable to most public colleges and universities, community colleges, hospital districts, public transportation, public housing, local governments, and public power entities–will present on financial statements.

More broadly, since the GASB update on leases will affect all USPF credits, we will update the market on our views regarding leases beyond the enterprise sectors, including all government entities in USPF.

This report does not constitute a rating action.

30 Jul, 2021

[The Use Of A Crisis To Create Opportunity In The Muni Market.]

The Coronavirus pandemic has led to death, tragedies and social and economic disruptions. Most of the disruption was unavoidable and unknowable and some individuals actually saw opportunities to create services and products that would be welcomed in this environment. Others, however, saw opportunities to use the economic disruption to achieve gains by playing on the publics' fear. The municipal bond market is highly vulnerable to fear based abuse because of its mediocre performance in public disclosure and a weak secondary market.

While the municipal market is no stranger to abusive practices in bond issuance and secondary market pricing, its greatest vulnerability is in its failure to police ongoing disclosure compliance. The Municipal Securities Rulemaking Board, or MSRB, has been given the responsibility for overseeing disclosure practices, but has little enforcement power or staff to maintain order in this massive and unregulated market. The SEC can step in to curb abuse since they do have a broader mandate, but they appear to have priorities elsewhere.

My concern today is that large investors in existing issues are using their ability to manage the information flow about a specific project to discourage smaller investors and motivate them to sell their bonds which they can then buy up at below their true value. Remember that the municipal secondary market is not a truly competitive market and even less so when the required public information filings are not being made. Their motivation for this are as diverse as:

- A need to restructure the bonds. Buying up other holders' bonds reduces their haircut on their holdings.
- Seeing the need to provide additional funding to the project which would benefit others as well.
- Seeing a high coupon long maturity bond issue which can be re-purposed for a more viable project.
- An opportunity to profit from investors fearing the worst as they tend to do when the information flow is not there.

So how does one hold back on the information flow and create an information vacuum:

- Own or gain control of 25% or more of the bonds. Trustee's, who are the main enforcers of the disclosure and payment requirements love to obtain guidance from such a proportion of bondholders in order to avoid being liable for anything they do or fail to do.
- Stop interest payments and maturity redemptions even if there are reserve funds available. This is usually justified as being done to preserve funds for legal actions or other contingencies.

- Reach a standstill agreement with the project owner whereby he too comes under the control of the majority bondholders who can then manage his information flow and other actions.
- Stop public reporting of the projects status and keep bondholders informed by teleconference where there is no written record of what was said.
- Minimize the information any non-current bondholder can see in order to make a competing price offer.
- Let the brokerage firms, who make a market in specific bonds, know you are a buyer and at what price.

You would think that the bond trustee would exercise some professional responsibility here when he senses what is happening. More likely is that he will resign from the account if he feels vulnerable or is removed if he starts to act responsibly. Note that I have never seen a notice of a trustee resignation or removal that gave a cause. This can be need-to-know information, but good luck with that.

Bank trustees' loyalty is first to themselves, next to the obligor who pay them their annual fees and then to the bondholders representing 25% or more of an issue. And don't expect any help from the bond issuing authority who are lending their name and provenance to the bonds. They will go out of their way to tell you that they have absolutely no liability on the bonds, which translates into also having no concern with how bad a bond issue is from inception.

Forbes

by Richard Lehmann

Aug 9, 2021

OZ Exit Plans and Structural Risks: Podcast

What are the advantages of a Qualified Opportunity Fund that is structured as a REIT instead of a partnership? How does the level of diversification in a fund impact its risk/return profile?

Peter Ciganik is Managing Director at GTIS Partners, a global real estate investment firm based in New York.

Episode Highlights

- How the REIT structure may be advantageous for real estate investments with extended holding periods.
- Why exit strategy planning is important in determining the bottom line returns that OZ investors realize.
- How opportunity zone funds are attracting investors to real estate as an asset class for the first time.
- The potential benefits of diversification when investing in real estate, and the risks associated with single-asset strategies.
- The structural regulatory benefits that come with multi-asset strategies.
- Why rising costs pose challenges for real estate development in the current environment.
- How the opportunity zone program is achieving its objective of catalyzing community investment.

Listent to audio.

OPPORTUNITYDB

by JIMMY ATKINSON

JULY 28, 2021

Tax Policy Changes & Opportunity Zones, an OZ Pitch Day Panel: Podcast

What changes to tax policy are likely coming under the Biden administration? If enacted, how will these changes impact the appeal of Opportunity Zone funds and the returns available to investors? Several Opportunity Zone experts provided their insights on a live panel recorded on July 27, 2021 during OZ Pitch Day, titled "Tax Policy Changes & Opportunity Zones."

Today's podcast episode is the audio version of that panel. Moderated by OpportunityDb founder Jimmy Atkinson, the panel featured Shay Hawkins of the Opportunity Funds Association, Kunal Merchant of CalOZ, and John Sciarretti of Novogradac.

Episode Highlights

- A crash course in Opportunity Zone basics.
- The tax policy changes that are likely coming down the pipeline, on both the regulatory and legislative sides.
- How the Opportunity Zone program is winning support in Congress, even among some of its one-time critics.
- The likelihood of changes to the Opportunity Zone program, including transparency and reporting requirements via the IMPACT Act.
- Why an increase in capital gains tax rates may do little to diminish the appeal of Opportunity Zone incentives.
- The potential to give preferential treatment to Opportunity Zone investments in any new tax legislation.
- The role that Opportunity Zones can play in the economic recovery from COVID-19.
- How the trend towards increased state and local incentives may be a boon to projects located in Opportunity Zones.
- Why the rumored changes to 1031 exchanges may never materialize.
- What is likely to be included in a comprehensive Opportunity Zone expansion bill.
- The possible permutations of a reconciliation bill in the current Congress.
- Technical discussions of the tax advantages of different QOF structures.

Listen to audio.

OPPORTUNITYDB

by JIMMY ATKINSON

AUGUST 4, 2021

[Building an Inflation Strategy With Munis.]

Back in March, Warren Buffett warned that fixed-income investors "face a bleak future.". A few months later, inflation is starting to rear its ugly head, and fixed-income investors feel the pain. The bond market has recovered from the pandemic and yields remain low, but rising inflation means that bond yields could move higher over the coming years.

There are many ways to shield a portfolio from inflation, but investors that rely on a fixed income cannot always avoid bonds. Fortunately, municipal bonds may provide an attractive safe haven from inflation, particularly for high net worth investors maximizing their tax advantages. The challenge is finding the right opportunities in a highly competitive market.

Let's look at the current state of inflation and how muni bonds may help protect your portfolio.

Continue reading.

dividend.com

by Justin Kuepper

Aug 04, 2021

HYD: I Feel Comfortable Buying High Yield Munis

Summary

- State and local governments saw much stronger fiscal performance coming out of the pandemic than many might have expected.
- Part of the reason we have not seen many credit downgrades has been because of massive federal support. This has improved the outlook for general obligation bonds, and also revenue bonds.
- High-yield munis tend to perform well in a rising rate environment since that correlates with a strong macro environment. As I expect higher rates in 2022, high-yield munis are helping me prepare.
- This idea was discussed in more depth with members of my private investing community, CEF/ETF Income Laboratory.

Continue reading.

Seeking Alpha

Aug. 08, 2021

American Dream Mall Draws on Reserves to Make Bond Payment.

- **Complex drew $9.3 million from reserve fund to service debt**
- **Coronavirus outbreak delayed American Dream's opening**

American Dream, a $5 billion super mall in New Jersey's Meadowlands, had to tap into a reserve fund to make a bond payment as it copes with a cash flow crisis exacerbated by the coronavirus.

The 3.3 million-square-foot behemoth, which features an indoor ski slope, amusement park and water park, used the reserves to make a $9.3 million Aug. 2 payment on about $290 million of debt, according to a securities filing. American Dream has about $9.3 million left in the fund, enough to make its next debt payment on Feb. 1.

American Dream issued the municipal bonds, supported by a 75% pledge of sales tax receipts from purchases at the mall, in 2017. Developer Triple Five Group also sold $800 million of debt backed by payments the developers agreed to make to bondholders instead of paying property taxes, known as PILOTs.

Lisa Washburn, managing director at Municipal Market Analytics, said it “seemed inevitable” that American Dream would need to tap reserves on debt tied to mall sales.

“The economic shut-down and travel disruptions related to the pandemic could not have come at a worse time for the project, which had only partially opened and was already contending with a shifting retail landscape,” Washburn said in an email. “Now it needs to overcome concerns about congregating indoors with strangers.”

American Dream sales tax bonds due in 2024 last traded June 9 at 105 cents on the dollar, indicating that the cash crunch hasn’t fazed investors.

Nuveen LLC, the biggest holder of American Dream’s muni debt, wrote in a July note to investors that it expected reserves to fund a majority of the interest payment on the sales tax bonds. Triple Five Group is challenging its tax assessments for 2019, 2020 and 2021.

“Given space completion and tenant occupancy delays (18 to 24 months behind initial developer projections), sales tax receipts are anticipated to miss projections for the near term,” the Nuveen note said.

American Dream, located across the Hudson River from New York City, opened the doors of its entertainment complex in October 2019, almost two decades after a mall on the site was first proposed. Five months later, Covid-19 tore through New York and New Jersey, spurring lockdowns to contain the public health emergency and postponing the opening of the mall’s retail stores until October 2020.

American Dream also borrowed more than $1 billion in construction loans. As cash flow problems hit American Dream, senior construction loan holders seized minority stakes in Triple Five’s Mall of America and West Edmonton Mall, which were used as collateral for the American Dream loan.

This month American Dream reported $78.1 million in second quarter gross sales, a 27.4% increase compared with the first quarter, according to a securities filing. The mall was 76% leased for the three months ending June 30.

Bloomberg Markets

By Martin Z Braun

August 4, 2021, 3:26 PM PDT Updated on August 5, 2021, 5:24 AM PDT

Boarding School Attended by Tucker Carlson Joins in Muni Market Sales Boom.

- **St. George's School selling tax-exempt debt to refinance bonds**
- **Exclusive schools are among issuers seizing on low rates**

Elite boarding schools are getting in on the boom of debt sales in the $4 trillion municipal-bond market.

Rhode Island's St. George's School, with a campus that overlooks the Atlantic Ocean and $66,950 annual price tag for boarding students, is planning to sell about $43.4 million of tax-exempt bonds to refinance higher interest-rate debt and fund new projects at the alma mater of Howard Dean, Billy Bush and Tucker Carlson. The offering with preliminary maturities ranging from 2026 to 2051 comes shortly after New Jersey's Lawrenceville School sold bonds in July for a field house complex complete with a hockey rink and pool.

The boarding schools are among a plethora of borrowers that are seizing on ultra-low yields in the muni market, with the one-year AAA benchmark hovering at 0.04%, the lowest since at least 2015, according to Bloomberg BVAL. Long-term debt issuance has climbed nearly 9% year-over-year, according to data compiled by Bloomberg. Debt sales by private and religious schools are up 73% year-over-year, the data show.

Other K-12 schools are also tapping the market with sales to seize on low interest rates for capital projects or refinancing. Charter school bond issuance has also surged, with about $2.7 billion of debt sold, the data show.

St. George's and other elite boarding schools typically have high credit ratings, which helps them easily raise money in the muni market. St. George's School is selling bonds rated AA- by S&P Global Ratings, a credit ranking that's in line with schools like George School in Pennsylvania and the Taft School in Connecticut.

St. George's, founded in 1896, "ranks with the best private schools in the country," bond documents say. Enrollment totaled about 380 students in the 2020-21 academic year, and has met or exceeded its budgeted target for the last decade. The school's endowment had a market value of $209.3 million as of June 30.

St. George's is known for its weeks-long sailing program on a 70-foot vessel, Geronimo, where students learn seamanship skills while taking a marine science course. That program helps in the school's marketing to would-be students, bond documents note.

And the Lawrenceville School gave St. George's some idea of what to expect in the bond market given the school had a similarly-high credit rating that was rated two steps below AAA by Moody's Investors Service. It sold tax-exempt bonds that priced to yield 1.83% in 2051, about 48 basis points above AAA rated borrowers, according to data compiled by Bloomberg. The sale received about $325 million in orders from 17 different institutions, helping lower yields on the sale, according to Ben Hammond, the school's chief financial officer.

St. George's bond sale will be used in part to refinance debt sold in 2014, some of which has an effective interest rate of 3.11%, bond documents say.

Independent schools, which includes day schools, rated by S&P Global Ratings were able to reopen either fully in person or with hybrid learning in fall 2020, which helped them keep enrollments fairly stable and weather the pandemic, said Bobbi Gajwani, a director at S&P.

St. George’s received a record amount of applications for the upcoming school year and it expects the year to be its most selective in at least 20 years, with a selectivity rate of 21%. The school recorded a surplus in fiscal 2020 and another one expected in 2021.

Gajwani said St. George’s financial performance during the pandemic contrasts with initial expectations.

“We did expect most schools to see declines in operating margins given expected revenue impacts, particularly from boarding and international enrollment, and increased Covid-related expenses, but St. George’s is expecting surpluses — particularly impressive given its high percentage of boarding and some international enrollment,” she said.

Bloomberg Markets

By Amanda Albright

August 2, 2021, 10:30 AM PDT Updated on August 2, 2021, 10:56 AM PDT

— With assistance by Matthew Begley

Major League Baseball Visits Iowa’s Field of Dreams.

- **White Sox play Yankees at 1989 movie’s filming site on Aug. 12**
- **Venue’s popularity raises prospect of muni issuance to come**

Next week, life imitates art when a bunch of big-league ballplayers walk through a cornfield to get to a characteristically beautiful if comparatively secluded diamond to play baseball.

On Aug. 12, the Chicago White Sox will be the “home” team, taking on the New York Yankees at the site of the 1989 movie, “Field of Dreams” in front of 8,000 fans in Dyersville, Iowa. It’ll be the first regular season Major League Baseball game in the state, and maybe not the last.

This is the kind of exposure public officials dream about when they’re bitten by the economic-development bug. But the municipal market hasn’t quite caught up. Not yet.

Dyersville, with a population of roughly 4,100, was incorporated in 1872. It sold $3.9 million in general-obligation bonds this week to pay for capital improvements and a new skid loader and fire truck. The unrated offering included tax-exempt bonds due in 2037 that priced 84 basis points above top-rated munis.

The only mention of the thing that draws thousands of tourists to the city each year is contained in a single sentence of the official statement to the bonds: “The City is home to the National Farm Toy Museum and the Field of Dreams Movie Site.”

Such modesty is likely to fade after MLB comes to town with a national broadcast, no doubt to be filled with excerpts from the movie and swelling musical accompaniment in addition to glimpses of the charms of Dyersville’s downtown. But this I only suspect. As the old banker’s saw suggests, Show me a revenue stream, and I’ll show you a bond issue.

`People Will Come’

The site has shown remarkable durability for the setting of a 32-year old movie. There’s not exactly a lot to do there. Visitors basically follow the script as laid out in the movie by James Earl Jones’s character, writer Terence Mann: “People will come, Ray. They’ll come to Iowa for reasons they can’t even fathom.” Right now, they come to soak up the atmosphere and maybe look to the surrounding cornfield in the hopes that Shoeless Joe Jackson and the other Black Sox will emerge, as they did in the film. And then maybe tour the farmhouse and buy a souvenir.

That’s it. And yet between 65,000 and 100,000 fans reportedly do this every year. That’s staying power, and a testament to the movie’s place in the culture.

A company called Go the Distance Baseball bought the parcel in 2011. A representative says it’s now waiting to acquire and confirm funding to start to build a complex of six fields for a youth sports center on the site. We have seen lots of municipal bond deals finance these projects. Sister company All-Star Ballpark Heaven now runs youth tournaments at city facilities.

The MLB game was originally scheduled for 2020, but the pandemic intervened, and the event was postponed to next week. The game isn’t being played on the actual field, but on a diamond constructed beside it, accessed by a pathway through the cornfield.

Mayor James Heavens of Dyersville has said the long-term goal is to make this an annual event, and I was curious about whether the city had tallied up the benefits of being home to the “Field of Dreams,” or assessed what the impact of the big game might be.

And the answer is no. Go the Distance referred inquiries on the economic impact to the Dyersville Area Chamber of Commerce. Karla Thompson, executive director of the Chamber, said no study has been done on the site’s economic impact — “would love to know that number!” she said in a Thursday email — or of the game’s financial ripple effect. She did say that the city has seen an increase in tourism traffic and retail sales. Mick Michel, the city administrator, said in a Thursday email, “Next week’s game being played in our community is priceless.”

But some fans apparently feel you can put a price on existential joy. On Friday, pairs of tickets — sold to Iowans by lottery for $375 apiece and also distributed to the two clubs — were being offered on StubHub, starting at $1,365 for each seat.

Bloomberg Markets

By Joseph Mysak Jr

August 6, 2021, 8:00 AM PDT

— With assistance by Philip Brian Tabuas

Defaulted California Plant Turns to Burned Muni Holders for Cash.

- **Venture that turns rice straw into panels needs $18 million**
- **High board prices, surging demand for junk muni debt pave way**

In the heart of California’s rice country, a project that dealt municipal-bond investors one of the biggest high-yield defaults of the past decade is about to ask them for more cash. And there’s every reason to expect burned debtholders to go along.

After years of delay and setbacks including the pandemic and a fire, CalPlant I LLC last year finally finished building a facility that produces a unique type of fiberboard made from a rice-cultivation byproduct called rice straw. The company has equity backing from entities including a subsidiary of the Teachers Insurance & Annuity Association of America and has already borrowed $344 million since 2017 through sales of unrated tax-free debt, most of which is in default.

Still, the plant, which started making panels in November, needs about $18 million more to fully scale up to commercial operations. Bondholders appear to have faith, despite the missed debt payments. The company is poised to win final approval from California officials on Aug. 11 to sell that amount of new securities, most of which will likely go to the existing investors.

The quest for additional financing comes at an opportune time for the borrower: Portfolio managers have plenty of room to plow more money into a struggling venture because there’s so much cash in the $4 trillion muni market seeking tax-free income with a bit of yield. There are other forces at work, too: The residential construction boom has lifted the prices of materials that go into furniture and cabinets. And investors have an incentive to lay out more money if it helps ensure the project succeeds instead of getting caught up in an uncertain bankruptcy process.

It makes sense for bondholders to keep the plant going, said Matt Fabian, a partner at research firm Municipal Market Analytics.

“They’re already educated and exposed and they have money to burn,” he said. “So why not invest it in more CalPlant if that creates a positive outcome? If they remain constructive on the project, then pricing on their bonds remains constructive as well.”

Farmer’s Dream

Leaning again on debt investors could help achieve the dream of CalPlant co-founder Jerry Uhland, who quit rice farming to bring the patented idea to fruition at a site in Glenn County, north of Sacramento. The company says it’s producing the world’s first medium-density fiberboard made from rice straw.

“I have no hair left, but other than that, things are going better than they were a year ago,” Uhland, speaking from the facility’s straw yard, told board members of a California agency in a virtual meeting in July. “I believe the light at the end of the tunnel is nearing.”

Uhland and other executives didn’t respond to requests for comment. But in updates posted online for bondholders, they describe difficulties such as worker injuries and construction disputes. And they cited cause for optimism, such as rising prices for fiberboard.

They also spell out the need for more money: Talks with more potential equity investors haven’t progressed and the company will run out of cash in November, according to recent monthly reports.

Such tribulations may be expected given the unique nature of the project, which seeks to turn the tons of debris cast off by California’s rice growers into an environmentally friendly, profitable product that the company has dubbed Eureka MDF.

The fiberboard market shows the potential for CalPlant should it finally achieve full commercial operations, which it’s anticipating by the end of 2023. Average prices in July were 27% higher than the five-year average ending in 2020, according to industry publication Fastmarkets Random Lengths.

“The market for medium-density fiberboard is very hot, and we expect it to remain that hot for at least the next 18 months to two years,” said Andy O’Hare, president of the Composite Panel Association.

Jane Abernethy, chief sustainability officer of Humanscale, a New York-based maker of ergonomic office furniture, said she’s interested in Eureka MDF. Depending on factors such as durability, it’s possible Humanscale might pay a premium for it, she said.

“They have a very good shot at ramping up and getting into production,” she said. “It sends the signal for others to see that finding innovative ways of reusing material that could be waste, that people do value it.”

Default History

The company first sold unrated municipal bonds in 2017 to build the factory, issuing $228 million of debt. Two years later, it sold about $74 million, and soon ran into trouble. It alerted bondholders in December 2019 that it would tap reserves to make debt payments. It ultimately defaulted on those two borrowings by mid-2020. It’s the third-largest high-yield muni default of the last decade, according to Municipal Market Analytics. CalPlant in October 2020 raised a third round of debt, totaling $42 million and due in 2032. It priced to yield 8.17%, at a time when rates on top-rated munis with a similar maturity were roughly 1%, data compiled by Bloomberg show.

The bid to sell more tax-exempt debt won approval on July 20 from the California Pollution Control Financing Authority. One more sign-off remains from another agency, the state’s Debt Limit Allocation Committee, whose board has the same voting members and which determines what projects get access to the low-cost financing. Uhland said in the July meeting that the amount may be less than the requested $18 million as talks with the senior bondholder group, who signed a forbearance agreement, continue.

Municipal junk-bond funds pulled in a record amount of money in the first half of the year, and underwriters of new deals have often been swamped with orders that are multiples of what’s available.

“The demand side is so strong that you’re able to get most deals done,” said Terry Goode, a senior portfolio manager at Wells Capital Management, which doesn’t hold CalPlant bonds. “That includes some that have had challenging credit stories or even defaulted securities.”

The top three bondholders — Franklin Resources, Invesco Ltd. and Sun Life Financial — hold a combined $162 million, according to the most recently available data compiled by Bloomberg. Spokespeople for the three firms declined to comment.

“None of us bondholders want to see the project fail,” said Jim Colby, senior municipal strategist at Van Eck Associates Corp., which says it holds about $28 million of CalPlant debt.

Bloomberg Finance

By Romy Varghese

August 4, 2021, 7:00 AM PDT

— With assistance by Natalia Lenkiewicz, Philip Brian Tabuas, and Kenneth Hughes

Complimentary GFOA Training on the CSLFRF Compliance & Reporting Guidance.

The first reporting deadline for the Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) is quickly approaching at the end of August. To bring CSLFRF recipients up to speed with their compliance and reporting responsibilities as well as a breakdown of each type of report, GFOA is hosting a complimentary just-in-time training next week.

Learn more.

MSRB Announces New Board Members for Fiscal Year 2022.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today announced four new members to serve on the governing board of the self-regulatory organization charged by Congress with protecting municipal securities investors, issuers and the public interest. The new members will serve four-year terms beginning October 1, 2021.

"We strive to build a Board that is diverse, inclusive and reflective of the wide variety of perspectives that contribute to the field of public finance," said Caroline Cruise, Chair of the Board's Nominating Committee. "This year's class is outstanding, with a diversity of backgrounds and expertise that will make a lasting contribution to our market. My fellow Board members and I look forward to working alongside them to implement our new strategic plan and ensure our regulatory, transparency and data initiatives advance our long-term goal of strengthening market efficiency and transparency."

New public members joining the MSRB Board in Fiscal Year 2022 are: Jennie Huang Bennett, Chief Financial Officer for the City of Chicago, and Katano Kasaine, Assistant General Manager and Chief Financial Officer at the Metropolitan Water District of Southern California. Joining the Board as regulated members are: Warren "Bo" Daniels, Atlanta-based Managing Director and Head of Public Finance of Loop Capital Markets, a minority-owned dealer firm based in Chicago, IL, and Liz Sweeney, President and founder of Nutshell Associates, LLC, a Maryland-based municipal advisory firm. The new Board members were selected from more than 60 applicants this year.

Congress established certain minimum requirements for Board composition, and all Board members are required to be individuals of integrity and knowledgeable of matters related to the municipal securities markets. The Board consists of four "classes" with staggered terms, with a new class elected annually in accordance with Congressional requirements and MSRB rules. Learn how the puzzle pieces come together to optimize representation on the Board.

For FY 2022, the Board will have 15 members, including eight independent public members and seven members from MSRB-regulated broker-dealers, banks and municipal advisors. The size of the Board was reduced as part of a series of governance enhancements that also tightened standards of independence for public members and established a lifetime service limit for Board members. To facilitate the transition to a smaller Board, the term of a current public member on the Board, Donna Simonetti, has been extended one year.

The MSRB recently announced that it has elected Patrick Brett, Managing Director and Head of Municipal Debt Capital Markets at Citi in New York, to serve as FY 2022 Chair of the Board.

Meredith L. Hathorn, Managing Partner, Foley & Judell, L.L.P. in Baton Rouge, LA, will serve as Vice Chair.

New MSRB Board Members, Fiscal Year 2022

Jennie Huang Bennett is Chief Financial Officer for the City of Chicago, where she oversees financial strategy and policy and a $13 billion total budget, manages a $26 billion portfolio of City of Chicago debt, and directs financial policy for a number of City agencies, among other things. Prior to her service at the City, Ms. Bennett served as Chief Financial Officer for Chicago Public Schools. She began her career with Morgan Stanley's Municipal Securities Division in New York and ultimately served as Executive Director in Chicago. Ms. Bennett has also served on the boards of directors of several organizations, including Perspective Charter Schools, Chicago Opera Theater and Women in Public Finance. Ms. Bennett earned a bachelor's degree in political science and economics from the University of Pennsylvania.

Warren "Bo" Daniels is Managing Director and Head of Public Finance of Loop Capital Markets, a minority-owned firm based in Chicago, IL. He is based in Atlanta and has been the senior banker on over $45 billion of financings during his career and worked on numerous higher education, general obligation, sales tax, transportation, water and sewer, single/multi-family housing, and financial products transactions, as well as complex asset-backed and structured financings. He has extensive experience with sophisticated and complex financial products, hedges and variable rate products. Prior to joining Loop Capital Markets and establishing its Atlanta office, Mr. Daniels was responsible for running the Atlanta public finance office for PNC, Morgan Stanley's Atlanta office, and Goldman Sachs's Chicago office, having begun his career with Goldman Sachs in New York. Mr. Daniels earned a bachelor's degree from the University of Southern California and a Master of Business Administration from the Wharton School of the University of Pennsylvania.

Katano Kasaine is an Assistant General Manager and Chief Financial Officer at the Metropolitan Water District of Southern California. In this capacity, she is responsible for directing Metropolitan's financial activities, including accounting and financial reporting, debt issuance and management, financial planning and strategy, managing Metropolitan's investment portfolio, budget administration, financial analysis, financial systems, and developing rates and charges. Her municipal experience spans over 26 years. In her prior role as Director of Finance/Treasurer for the City of Oakland, Ms. Kasaine managed all aspects of the City's finance functions, including the issuance and administration of all debt financings, budgets, and financial reporting. She has served on various public boards and committees, including the Oakland Joint Powers Financing Authority, the Police and Fire Retirement System and the Deferred Compensation Committee. Ms. Kasaine earned a bachelor's degree in business administration from Dominican University and a master's degree in public health from Loma Linda University.

Liz Sweeney is President and founder of Nutshell Associates, LLC, a Maryland-based municipal advisory firm, where she provides public finance expertise, debt advisory, and analytical tools and data to lenders, investors, and borrowers to improve access to capital and informed business decisions. Ms. Sweeney also serves on the board of directors of the University of Maryland Medical System. In addition, as a member of the Standard Government Reporting Working Group, she provides subject-matter expertise and market education in support of the development and adoption of machine-readable data standards for municipal and nonprofit disclosure. She began her career as a rating analyst with S&P Global Ratings, ultimately leading credit policy and risk management initiatives as Managing Director and Criteria Officer. She earned a bachelor's degree in finance from Georgetown University and a Master of Business Administration from NYU Stern School of Business.

Date: August 4, 2021

Contact: Leah Szarek, Chief External Relations Officer
202-838-1300
lszarek@msrb.org

- Frequently Asked Questions About MSRB Form G-32.
- MSRB Issues Guidance on Primary Offering Disclosure Form.
- Buckle Your Seatbelts: Tax Ramifications of the LIBOR Transition – Arent Fox
- SIFMA Supports Legislation Addressing Transition Away from LIBOR.
- SIFMA Joint Trades Letter on the Adjustable Interest Rate (LIBOR) Act.
- And finally, We Put The "Husband" In "Animal Husbandry!" is brought to us this week by *Matter of Title , Ballot Title and Submission Clause for 2021-2022 #16*, in which the Supreme Court of Colorado was faced with a ballot initiative that expanded the state's current statutory definition of "sexual act with an animal." (Oh, I see that we have your full attention.) We regret to inform you that the ballot initiative is not a euphemistic reference to your ex-husband, but rather about, uh, exactly what it sounds like it's about. Rather than subject you to the delightful details of the current and proposed statutes, we invite you to speculate on the (nubile) elephant in the room: What in god's name is going on in Colorado? Keep an eye out for the state's new tourism initiative, "Colorado! We Put the "Best" in "Bestiality!"

PUBLIC UTILITIES - CALIFORNIA

BullsEye Telecom, Inc. v. California Public Utilities Commission

Court of Appeal, First District, Division 5, California - July 6, 2021 - Cal.Rptr.3d - 66 Cal.App.5th 301 - 2021 WL 2801926 - 21 Cal. Daily Op. Serv. 6845

Local carriers filed petitions for writ review of decisions by Public Utilities Commission (PUC), first, finding that local carriers discriminated against long-distance carrier with respect to rates charged for switched access services and, second, denying local carriers' request for rehearing but modifying earlier decision.

Petitions were consolidated and writ of review was issued.

The Court of Appeal held that:

- PUC was not required to conduct new evidentiary hearing when granting request for rehearing;
- PUC's determination that switched access was monopoly bottleneck service was not novel;
- PUC's determination that switched access was monopoly bottleneck service allowed it to revisit prior holdings that disparity in rates was justified;
- PUC did not shift burden of proving unlawful discrimination to local carriers;
- Any deviations from scoping memorandum did not prejudice local carriers; and
- Statutes prohibiting discriminatory reparations and refunds of rates on file with PUC did not preclude PUC from ordering refund as reparation for rate discrimination.

When granting request for rehearing, statute governing orders of modification did not require Public Utilities Commission (PUC) to follow procedural aspects of regular hearings, including new evidentiary hearing, before modifying and superseding its prior decision that local carriers set discriminatory rates against long-distance carrier; statutes governing proceedings before PUC did not define “rehearing” as equivalent to regular hearing, but, rather, only specified that evidentiary proceedings were required in certain situations, such as on rehearing in expedited complaint procedure for small claims, and local carriers did not demonstrate they were denied opportunity to present evidence in original evidentiary proceeding or that new factual developments required new evidentiary hearing.

Determination by Public Utilities Commission (PUC) that switched access was monopoly bottleneck service, supporting PUC’s conclusion that local carriers imposed discriminatory rates against long-distance carrier, did not constitute novel determination, and, thus, did not violate PUC procedural rules prohibiting retroactive applications of novel regulatory determinations, where PUC had previously recognized, in context of incumbent local exchange carriers prior to adoption of Telecommunications Act of 1996, that switched access was monopoly bottleneck service, and given that PUC’s pre-Act determination turned on nature of services, PUC was not required to state expressly that same analysis would apply to post-Act competitive local carriers before applying that analysis in case at hand.

Determination by Public Utilities Commission (PUC) that switched access service constituted monopoly bottleneck service allowed PUC, on rehearing of long-distance carrier’s claims that local carriers engaged in rate discrimination, to revisit and reject its prior determinations that long-distance carrier was not willing and able to accept terms and conditions of local carriers’ lower-rate contracts with its competitors and that rational basis supported rate difference; PUC’s determination on rehearing, finding that carrier was willing and able to accept terms and conditions of competitors’ contracts and that no rational basis supported rate difference, indicated PUC did not intend reasoning for its prior findings to the contrary to extend to monopoly bottleneck services.

In finding that local carriers failed to submit evidence of any rational basis for discriminating against long-distance carrier with respect to rates for local exchange services, Public Utility Commission (PUC) did not impermissibly shift burden of proving unlawful discrimination to local carriers rather than long-distance carrier, where long-distance carrier had already established that there was no difference in the cost of providing services, such that PUC properly required local carriers to offer other justification for rate differential.

By deviating from scoping memorandum, which gave local carriers reason to believe long-distance carrier’s discrimination claim would fail if long-distance carrier were not willing and able to accept all terms of lower-rate agreements offered to its competitors, Public Utilities Commission (PUC), which held that long-distance carrier’s willingness and ability to accept terms related to switched access services were sufficient, did not prejudice local carriers, where PUC considered all issues described in scoping memorandum and acknowledged that while long-distance carrier was only willing and able to meet terms related to switched access services, such willingness and ability were legally sufficient in context of monopoly bottleneck service.

Holding by Public Utilities Commission (PUC) that costs of service did not constitute rational basis for differential rates set by local carriers for long-distance carrier versus competitors, and that certain other factors were irrelevant to rational-basis analysis, was not contrary to scoping memorandum, even though scoping memorandum gave local carriers reason to believe long-distance carrier’s discrimination claim would fail if there were non-cost-related considerations that supported different treatment, where PUC considered all issues described in scoping memorandum, which did not specify any particular factors that would be considered in rational-basis analysis.

Holding of Public Utilities Commission (PUC) that factors other than cost of services were irrelevant to analysis of whether rational basis existed for local carriers’ setting of higher rates for switched access services with respect to long-distance carrier versus its competitors, in contrast with scoping memorandum that listed non-cost factors as possible rational bases for different rates, did not prejudice local carriers, where local carriers did not identify any evidence they would have presented had they been aware PUC would conclude factors listed in memorandum did not constitute rational bases in light of record, and memorandum did not discourage or prevent local carriers, which did not assert different costs of service supported different rates, from presenting any such evidence.

Statutes prohibiting public utilities from refunding any portion of rates on file with Public Utilities Commission (PUC) and prohibiting discriminatory reparations for discriminatory rates did not preclude PUC from ordering refund to long-distance carrier as reparation for local carriers' discriminatory offering and provision of off-tariff discounts to certain of long-distance carrier's competitors; local carriers did not establish that other long-distance customers with similar claims did not have opportunity to file complaint with PUC, as would render reparations discriminatory, refund statute did not prohibit all awards permitted by reparations statute, and refund statute allowed "just and reasonable" refunds as reparations for rate discrimination when justified by special circumstances.

BALLOT INITIATIVE - COLORADO

Matter of Title , Ballot Title and Submission Clause for 2021-2022 #16

Supreme Court of Colorado - June 21, 2021 - P.3d - 2021 WL 2645511 - 2021 CO 55

Initiative opponents petitioned for review of Ballot Title Setting Board decisions in setting title, ballot title, and submission clause for initiative proposing to amend Colorado's criminal animal cruelty statutes by ending certain exemptions for livestock, creating a safe harbor for the slaughter of livestock with various conditions, and expanding the definition of "sexual act with an animal," a type of animal cruelty, alleging that initiative spanned multiple subjects in violation of single subject requirement.

The Supreme Court held that:

- Central theme of ballot initiative was to extend animal cruelty statutes to livestock;
- Initiative's safe harbor for slaughter of livestock did not violate single subject rule;
- Initiative's expansion of definition of "sexual act with an animal" violated single subject rule.

In determining whether ballot initiative violated single subject rule, central theme of initiative was to extend criminal animal cruelty statutes to livestock; initiative would remove animal cruelty statutes' exception for accepted animal husbandry practices utilized by any person in the care of companion or livestock animals, end exemption to certain sentencing provisions for treatment of livestock and other animals used in farm or ranch production of food, fiber, or other agricultural products when the treatment is in accordance with accepted agricultural animal husbandry practices, enact a safe harbor for slaughter of livestock from animal cruelty statutes, and expand definition of sexual act with an animal, a type of animal cruelty.

Initiative's safe harbor amendment to criminal animal cruelty statutes for slaughter of livestock, clarifying that slaughtering livestock would not count as animal cruelty if animals had lived a minimum number of years and they were killed in accordance with accepted animal husbandry practices that did not cause needless suffering, did not violate single subject rule; policy preventing killing of young livestock addressed treatment of living animals, rather than livestock death, risk of logrolling was low because creating safe harbor pointed in the same direction of increasing welfare of livestock and would not have surprised voters, and proposal was not particularly lengthy or complex.

Initiative's amendment to Colorado's criminal animal cruelty statutes by expansion of definition of "sexual act with an animal," a type of animal cruelty, violated single subject rule; provision would have modified standard of care for all animals by criminalizing new conduct, regardless of whether that conduct was directed at livestock or other animals, served at least two distinct and separate purposes, was not necessarily and properly connected to measure's central focus of incorporating livestock into animal cruelty statutes, and ran risk of surprising voters with a surreptitious change.

IMMUNITY - MISSOURI

Davis v. Buchanan County, Missouri

United States Court of Appeals, Eighth Circuit - July 20, 2021 - F.4th - 2021 WL 3042232

Mother of former inmate at county jail brought wrongful death action against county, member of sheriff's department, former county jail administrator, and former county sheriff, alleging that defendants had failed during three-day incarceration period to provide appropriate medical care for inmate's endocrine disorders.

The United States District Court for the Western District of Missouri denied county's motion to dismiss on immunity grounds and its subsequent motion for reconsideration, on theory that county had waived its sovereign immunity by "purchasing" insurance. County appealed.

The Court of Appeals held that, under Missouri law as predicted, county that entered into an inmate-health-services contract that required third party provider to "procure and maintain" various liability insurance policies and "to name the county as an additional insured," thereby "purchased" liability insurance.

Under Missouri law as predicted by the Eighth Circuit Court of Appeals, county that entered into an inmate-health-services contract with third party that was to supply health care to inmates at county correctional facility, a contract that, in addition to providing for such health care services, also required the third party to "procure and maintain" various liability insurance policies and "to name the county as an additional insured," thereby "purchased" liability insurance and waived its sovereign immunity for tort claims covered by that insurance; while county did not make direct payment to liability insurer, its payment of roughly $300,000 per year to third party for services that included the acquisition of liability insurance was in nature of a "purchase" of insurance, as that term was used in Missouri waiver-of-immunity provision.

SPECIAL ASSESSMENTS - NEBRASKA

Main St Properties LLC v. City of Bellevue

Supreme Court of Nebraska - July 16, 2021 - N.W.2d - 309 Neb. 738 - 2021 WL 3008959

Property owner filed petition to appeal city board of equalization decision to place liens on the property in order to collect costs that had been assessed for the demolition and removal of a structure on the property.

The District Court dismissed the petition based on lack of jurisdiction, and property owner appealed.

The Supreme Court held that district court had jurisdiction to consider property owner’s petition.

A “special assessment,” within meaning of statute providing that property owner may appeal “any special assessment” to the district court where the subject property is located includes and applies to a “special assessment” levied under authority of statute providing that a city or village may levy the cost for demolishing or repairing a nuisance as a special assessment.

District court had jurisdiction to consider property owner’s petition challenging special assessment which city levied to recover costs associated with demolishing a nuisance building on the property.

TORT CLAIMS - NEW JERSEY

H.C. Equities, LP v. County of Union

Supreme Court of New Jersey - July 19, 2021 - A.3d - 2021 WL 3027207

Commercial landlord brought action against county and county improvement authority, asserting claims for trade libel, defamation, and conspiracy, related to a report that contained allegedly false statements about condition of buildings it rented to the county, which allegedly thwarted landlord’s settlement with county for a dispute concerning the lease.

The Superior Court dismissed the action. Landlord appealed. The Superior Court, Appellate Division, reversed and remanded with directions. County and authority petitioned for certification, and petition was granted.

The Supreme Court held that:

- Landlord’s claims accrued and triggered the 90-day notice requirement under the Tort Claims Act on date of letter in which it identified county and authority as being liable for its injuries, and
- Landlord’s series of letters did not establish substantial compliance with Tort Claims Act’s notice requirement.

Commercial landlord’s claims for trade libel and defamation against county improvement authority, and for conspiracy against authority and the county, related to report of the condition of buildings leased to the county which allegedly contained false statements about the properties and allegedly thwarted landlord’s settlement agreement with the county for dispute concerning the lease, accrued, and therefore triggered the notice requirement under the Tort Claims Act, on date on date of landlord’s letter, directed to counsel for the authority, in which landlord stated that it viewed county and authority to be liable for its injuries, and landlord was thereby required to present its claims to the county and authority no later than 90 days from date of the letter.

Commercial landlord’s three letters, sent at different times to different recipients, did not establish substantial compliance with notice requirements of the Tort Claims Act, so as to allow claims for trade libel, defamation, and conspiracy against county and county improvement authority arising from allegedly false statements in report on condition of buildings leased to the county, since the Act clearly required one identifiable date on which the public entity received notice, the letters did not contain sufficient information to alert county and authority of claims landlord would assert, to give them time to investigate and to settle, even if letters were considered together, which would result in prejudice, and landlord provided no reasonable explanation why there was not strict compliance with the Act.

EMINENT DOMAIN - NEW YORK

Gabe Realty Corp. v. City of White Plains Urban Renewal Agency

Supreme Court, Appellate Division, Second Department, New York - June 30, 2021 - N.Y.S.3d - 195 A.D.3d 1020 - 2021 WL 2672758 - 2021 N.Y. Slip Op. 04134

Owners of some parcels of real property within an area to be condemned commenced proceeding seeking judicial review of urban renewal agency's determination to acquire their properties by eminent domain.

The Supreme Court, Appellate Division, held that authority's bare pleading of substandard conditions did not satisfy its obligation to provide an adequate basis for eminent domain condemnation of the subject properties.

Urban renewal authority's bare pleading of substandard conditions did not satisfy its obligation to provide an adequate basis for its conclusion that remediation of urban blight was a sufficient public benefit to support eminent domain condemnation of the subject properties, although the remediation of substandard or insanitary conditions was a proper basis for the exercise of the power of eminent domain, and agency completed a full environmental assessment form pursuant to the State Environmental Quality Review Act; agency relied only on conclusory assertions of blight based on a 25-year-old urban renewal plan that in itself lacked detail or documentation, and the environmental assessment failed to identify relevant areas of environmental concern.

EMINENT DOMAIN - NORTH DAKOTA

City of West Fargo v. McAllister

Supreme Court of North Dakota - July 22, 2021 - N.W.2d - 2021 WL 3083466 - 2021 ND 136

City filed quick-take eminent domain proceeding to acquire right-of-way across landowner's property for a sewer improvement project.

The District Court entered a condemnation judgment and certified judgment as final. Landowner appealed.

The Supreme Court held that trial court abused its discretion by certifying judgment as final without any analysis.

Trial court abused its discretion by certifying condemnation judgment in quick-take eminent domain proceeding as final, where court provided no analysis of factors for a request for certification, and none of the parties, nor the court, demonstrated how the case was not a standard interlocutory appeal, even though both parties argued that the only issue left to be decided was condemnee's costs and disbursements.

Strengthening Economy, Federal Aid, and Responsible Fiscal Management Helps Lead to Revenue Gains for Most States in Fiscal 2021.

Most states saw revenue growth in fiscal 2021 primarily resulting from a strengthening national economy and federal stimulus programs. The revenue gains in fiscal 2021 were in contrast to fiscal 2020, when states saw revenues decline after nine consecutive years of growth. Overall, revenues have outperformed projections from earlier in the pandemic (when most states enacted their fiscal 2021 budgets). Several factors help explain recent improvements in states' revenue outlooks, including: federal stimulus measures have put a lot of additional money into the economy, which helped to lessen state revenue losses; high-income earners have been relatively insulated from the pandemic's economic effects, which has limited impacts on personal income tax collections; the types of consumption most curtailed by the pandemic comprise a relatively small portion of states' sales tax bases; and the enabling of online sales tax collections following the U.S. Supreme Court decision in Wayfair v. South Dakota.

Fiscal 2021 revenue collections were also impacted by the shifting of the 2020 tax deadline from April 15 to July 15. According to NASBO's Spring 2021 Fiscal Survey of States, nineteen states reported that they recognized these delayed revenues due to the deadline shift in fiscal 2021 instead of fiscal 2020, depressing fiscal 2020 revenues and leading to greater growth in fiscal 2021.

As a result of the preceding factors, most states saw strong year-over-year growth in overall tax collections for fiscal 2021, with a number of states reporting double digit increases. Many states reported that revenue from all major taxes, including sales, personal income, and corporate income, experienced gains in fiscal 2021 compared to fiscal 2020. In addition, most states saw revenues exceed earlier projections leading to budget surpluses. States have begun identifying possible uses of their fiscal 2021 budget surpluses, including: bolstering rainy day funds; restoring prior spending cuts; increasing education funding; additional roads funding; increasing the Medicaid trust fund; additional contributions to retirement funds; paying down future obligations for employee and retiree health care; providing more money to cover the cost of unemployment benefits; repaying federal loans for jobless benefits; refundable income tax credits; property tax relief; and other tax reforms. NASBO's 2021 Budget Processes in the States report details states' legal requirements and policies for determining how to handle a general fund budget surplus in Table 15.

[Continue reading.](#)

NASBO

[Climate Risk is Hitting Home for State and Local Governments.](#)

Does the U.S. need a coordinated national response or will it be every city for itself?

In 1988, Congressional testimony from NASA's Dr. James Hansen helped cement the words "climate change" in the national consciousness. In 2015, nearly 200 countries met in Paris to pledge to address the problem. But 2020, the year the skies over San Francisco turned a sick shade of orange, the Earth's temperature hit its highest ever, the Atlantic hurricane season smashed records, and nearly every state west of the Mississippi suffered severe drought, may well be remembered as the year it finally hit home.

Across the U.S., state and local governments and the bond market that helps them do business are coming to grips with a situation that can't be ignored any longer. They're taking increasingly proactive, if piecemeal, steps toward making their communities ready for extreme weather and pollution scenarios that once seemed unimaginable.

"I feel like there's been a revolution in the past year in terms of thinking about climate change," said

Kevin DeGood, director of infrastructure policy at the left-leaning Center for American Progress. "What's that old saying — everything seems impossible until it happens, and then it feels inevitable?"

Continue reading.

marketwatch.com

By Andrea Riquier

July 30, 2021

Bipartisan Infrastructure Package Clears First Hurdle in Senate – Current Agreement Includes Multiple PAB Provisions.

Last night, the Senate voted 67-32 to move the bipartisan infrastructure agreement to debate without full legislative text – a key step in advancing the $1 trillion dollar package. This vote sets up an extensive debate process, kick-starting a week's worth of debate and more compromise, in an effort to get the package across the finish line in the Senate prior to sending across the Capitol to the House for an early fall vote. While this is an important first step in the legislative process, expect many hiccups to arise over the next few weeks.

The updated agreement includes multiple private activity bond provisions. These provisions include:

- The Rural Broadband Financing Flexibility Act (S.1676) is the template for adding broadband as an allowable use for private activity bonds (PABs). This would allow states to issue PABs to finance broadband deployment, specifically for projects in rural areas where a majority of households do not have access to broadband.
- Carbon Capture Improvement Act (S. 1829) allows carbon capture and direct air capture (DAC) technologies to be eligible for PAB financing. Private activity bond financing encourages commercial deployment, which is essential for bringing costs down and developing these technologies to scale. **These bonds would be outside the volume cap.**
- The framework increases the current cap of tax-exempt highway or surface freight transfer facility bonds from $15 billion to $30 billion as proposed by the bipartisan BUILD Act (S.881). Currently, $14,989,529,000 billion of the $15 billion caps has been issued or allocated. Increasing the cap will allow state and local governments to enter into additional public-private partnerships to supplement future surface transportation projects with private investment.

Update on Other Muni Provisions

The original bipartisan agreement included a provision that would create a new direct-pay bond the American Infrastructure Bond. The provision was removed as a way to find needed revenue to ensure the package would be "revenue neutral." This offer was publically rejected by both Republican and some Democratic negotiators, and we continue to work with our partners on the Hill and in the Administration promoting these key financing options. The next steps for the package at this time remain murky, with portions of the upcoming August recess likely to be cut short.

The MBFA and BDA have learned through conversations with senior Administration staff and key Capitol Hill contacts that muni provisions remain a priority for Congressional tax

writers as Democrats eye the next spending opportunity, the likely $3+ trillion-dollar budget reconciliation package later this summer.

These muni provisions under consideration include:

- The restoration of tax-exempt advance refundings;
- Raising the BQ limit;
- The direct-pay American Infrastructure Bond;
- Further consideration of expanding PABS.

Bond Dealers of America

July 29, 2021

No Muni Provisions in Latest Infrastructure Counter Offer – Bipartisan Infrastructure Talks Falter Searching for Offsets.

This weekend, bipartisan infrastructure negotiations continued with Senate Democrats and the White House presenting their "global offer," an extensive list of revenue compromises, **which includes removing all bond provisions from the agreement outline amongst other changes to the spending plan**.

The original bipartisan agreement included provisions that would raise the PABs cap for transportation purposes and create a new direct-pay bond the American Infrastructure Bond. The provisions were removed as a way to find needed revenue to ensure the package would be "revenue neutral." This offer was publicly rejected by both Republican and some Democratic negotiators, and we continue to work with our partners on the Hill and in the Administration promoting these key financing options. The next steps for the package at this time remain murky, with portions of the upcoming August recess likely to be cut short.

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These muni provisions under consideration include:

- The restoration of tax-exempt advance refundings
- Raising the BQ limit;
- The direct-pay American Infrastructure Bond;
- Further consideration of expanding PABS.

The MBFA is in the process of setting up virtual meetings with key Hill staff during August recess to discuss these and other municipal bond priorities for infrastructure. More details are expected later this week.

If you are interested in participating, please email Brett Bolton at brettbolton@munibondsforamerica.org

Bond Dealers of America

July 27, 2021

The Bipartisan Infrastructure Plan Avoids Tax Increases, Undermines User-Pay Principle, and Misses Chance to Modernize Obsolete Programs.

The Senate has begun deliberations over a bipartisan plan to provide $550 billion in new spending for a wide range of infrastructure projects, including roads, bridges, public transit, broadband, and the electrical grid. The good news is that lawmakers avoided raising taxes to cover the cost of the new spending and instead used some reasonable fees and asset sales. The bad news is that half of the offsets come from unused, debt-financed COVID-19 relief funds and the economic return on many of these investments is questionable.

Let's first review some of the budgetary offsets and then assess the economic value of the various infrastructure projects.

Continue reading.

Tax Foundation

by Scott A. Hodge

July 30, 2021

How the Infrastructure Proposal Would Fund Roads, Bridges and Public Transit.

The proposal puts $150 billion in new funding toward surface transportation and transit, but won't close the backlog in maintenance and capital costs.

Update: The Senate released the 2,700-page bipartisan infrastructure bill Sunday night. The text of the bill can be found here.

The bipartisan infrastructure package working its way through the Senate will provide nearly $150 billion in new surface transportation and transit funding, part of a broader $1.2 trillion plan the White House has called a "once-in-a-generation investment."

While the investment would rank among the largest in transportation infrastructure in the nation's history, experts say it will not uniformly close the gap in funding needed to address structural deficiencies.

Public transit systems, for example, have a $176 billion backlog in funding, according to a report by the American Society of Civil Engineers. The infrastructure package would provide $39 billion in funding for transit over five years. That's $10 billion less for public transit than was initially proposed in the initial infrastructure framework.

Continue reading.

Route Fifty

By Andrea Noble

JULY 30, 2021

Infrastructure Bill Advanced with $550 Billion in New Spending.

Vote caps weeks of negotiations, but challenges await in the House

The Senate on Wednesday voted to advance bipartisan infrastructure legislation, capping weeks of late-night negotiations and launching the next step in what has become one of President Joe Biden's key domestic priorities — even as challenges await the measure in the House.

By a 67-32 vote, the Senate moved to invoke cloture on a motion to proceed to the legislative vehicle for a bipartisan infrastructure plan with $550 billion in new spending. Seventeen Republicans, seven more than the 10 needed to invoke cloture in a 50-50 Senate, joined Democrats to vote to move forward.

Among the Republicans who voted to invoke cloture were members of the negotiating team, including Sens. Mitt Romney of Utah, Rob Portman of Ohio, Susan Collins of Maine and Lisa Murkowski of Alaska, as well as some relative surprises: Sens. Jim Risch of Idaho, Charles E. Grassley of Iowa, Shelley Moore Capito of West Virginia and Lindsey Graham of South Carolina.

The negotiators, who stood in a huddle on the floor, cheered at one surprise yes vote: John Hoeven of North Dakota. Collins grinned widely throughout the vote, while at one point, Sen. Kyrsten Sinema of Arizona, the lead Democratic negotiator, did what appeared to be a restrained happy dance.

Also voting yes was Minority Leader Mitch McConnell, who tweeted his support earlier in the day.

Doubts in House

Although Senate negotiators were celebratory in a post-vote news conference, the bill's future is already in question in the House, where Speaker Nancy Pelosi has vowed not to take it up until after the Senate approves a $3.5 trillion budget reconciliation package that includes many of Biden's other domestic priorities.

Democratic hopes for a package of that size dimmed a little Wednesday when Sinema said she won't support a price tag that high.

House progressives, meanwhile, say they're not willing to advance one without the other.

On Wednesday, Rep. Pramila Jayapal, D-Wash., the chair of the Congressional Progressive Caucus said, "Progressives have been clear from the beginning: a small and narrow bipartisan infrastructure bill does not have a path forward in the House of Representatives unless it has a reconciliation package, with our priorities, alongside it."

The final version was $29 billion lower than the original $579 billion legislative framework agreed upon by White House and Senate negotiators in June and would be a one-time supplemental appropriation.

A source familiar with the revisions said the lower topline number resulted in part from decreasing a one-time infusion into public transit systems from $48.5 billion to $39.2 billion. Negotiators also agreed to eliminate a $20 billion infrastructure bank.

Portman, the GOP's lead negotiator, described the legislation as a major infrastructure package that would be popular both inside and outside Washington. For weeks, 11 Republicans and 11 Democrats have been involved in the talks with White House officials.

"It's going to help with regard to our roads and our bridges and our ports and our waterways," Portman said. "It also helps expand the digital infrastructure of broadband."

In a statement Wednesday afternoon, Biden said the deal "signals to the world that our democracy can function, deliver, and do big things. As we did with the transcontinental railroad and the interstate highway, we will once again transform America and propel us into the future."

Offsets

A summary released by the White House said the spending would be "financed through a combination of redirecting unspent emergency relief funds, targeted corporate user fees, strengthening tax enforcement when it comes to crypto currencies, and other bipartisan measures, in addition to the revenue generated from higher economic growth as a result of the investments."

A list of offsets circulating among lobbyists and confirmed by congressional sources included $53 billion from some states returning unused enhanced unemployment insurance benefits, $20 billion from sales of future spectrum auctions, $56 billion in economic growth from a 33 percent return on investments and $2.9 billion from extending available interest rate smoothing options for defined benefit pension plans.

The offsets also included $49 billion stemming from a partial delay of a Trump-era rule limiting drug manufacturer rebates to pharmacy benefit managers, $8.7 billion from extending statutory sequester cuts to Medicare and $3 billion from requiring drugmakers to reimburse Medicare for certain wasted medications.

Another $205 billion would come from repurposing unused COVID-19 relief funds, although three lobbyist sources said that reportedly excludes money set aside for hospitals and medical providers.

Medical provider funds

Senate Finance Chair Ron Wyden, D-Ore., told reporters that people he spoke to, including White House staff, indicated the medical provider relief fund is off the table but stressed that wasn't totally clear yet.

"We woke up this morning in Oregon today with a headline of hospitalizations up 25 percent, so I've been very concerned about that," he told reporters.

Left out from the latest list is a ban on spread pricing, in which pharmacy benefit managers pocket the difference between what they charge insurance companies and what they paid for a drug. The provision was initially floated as a potential offset last week.

The White House summary listed spending provisions included in the deal, headlined by its $110 billion for roads, bridges and major projects.

The deal includes $39 billion for modernizing transit infrastructure and addresses a backlog of rail cars, stations and tracks that need replacement while improving accessibility, according to the summary.

The White House touted the historic nature of that spending despite the fact that some Democrats had been pushing for even higher levels. The deal also has $66 billion to address Amtrak's maintenance backlog, modernize its Northeast Corridor and expand rail service to other parts of the country.

Spending

The deal — which calls for $944 billion in new and baseline spending over five years, according to a GOP aide close to the negotiations — would devote $7.5 billion to building out a national network of electrical vehicle charging stations, a key agenda item for the Biden administration. It seeks to address climate change while creating domestic manufacturing jobs. The deal also would spend $2.5 billion each for zero-emission buses, low-emission buses and ferries.

It would spend more than $50 billion on improving the resiliency of U.S. infrastructure to protect against droughts, floods and other natural disasters, as well as cyberattacks.

It would spend $21 billion on cleaning up polluted areas, including money to reclaim abandoned mines and cap orphaned gas wells. And it would spend $73 billion on upgrading the nation's power infrastructure, emphasizing renewable energy sources.

It would provide $55 billion for drinking and wastewater infrastructure, with money specifically to replace poisonous lead service lines, and would invest $65 billion in improving access to broadband internet.

Sen. Thomas R. Carper, D-Del., the Environment and Public Works Committee chairman, voted Wednesday to take up the bill but criticized it for not going far enough in addressing environmental justice and climate change.

"That's why I will continue to fight for more to be done in our upcoming reconciliation bill and work to get assurances from the White House and Senate leadership to ensure that it includes the policy and the resources we need to take bold, transformative action to invest in climate change and environmental justice," Carper said in a statement. "There is no time to waste on this existential threat."

rollcall.com

By Joseph Morton, Jessica Wehrman, and Lauren Clason

Posted July 28, 2021 at 1:08pm, Updated at 9:29pm

Fitch: US Healthcare System to Expand, Adapt to Long-Term COVID-19 Fallout

Fitch Ratings-New York-28 July 2021: Fitch Ratings expects follow-on health implications related to COVID-19 to continue to drive elevated health system utilization long after the acute phase of the pandemic has concluded, likely leading to increasing costs and higher insurance premiums for decades. These costs will emerge from the necessary addition to mostly outpatient capacity that is expected to come on line as needed to deal with ongoing treatment of chronic conditions related to potentially permanent damage caused by COVID-19.

The magnitude of these effects is currently inestimable, and will include tangential health issues related to deferred diagnostic testing and treatment during the pandemic. As related conditions are likely to develop over time, Fitch does not anticipate these issues to directly affect the credit profile of issuers in the U.S. healthcare system.

In the near term, health insurers have been able to incorporate expanding COVID-19 claims data, estimates of infection trends and pent-up demand for previously deferred care into 2021 premium rates, which should benefit cost management and pricing this year and next. However, for healthcare providers, the expansion of the healthcare system over the long term will likely exacerbate traditional pressures on operating performance such as tight labor and wage markets for experienced staff, rising pharmaceutical expenses and supply costs in general.

Although the U.S. has glimpsed signs of the pandemic's potential end over the past couple of months, the ultimate story of the pandemic is still being told. The infection rate is once again trending up, presumably due to a combination of factors including a dramatic reduction in demand for new vaccinations, the rapid spread of the more infectious Delta variant in the U.S., as well as the reduction in mitigation measures.

Contacts:
Bradley S. Ellis, CFA
Senior Director, North American Insurance
+312 368-2089
Fitch Ratings, Inc.
One North Wacker Drive
Chicago, IL 60606

Kevin Holloran
Senior Director, U.S. Public Finance
Sector Leader, Not-For-Profit Healthcare
+1 512 813 5700
Fitch Ratings, Inc.
2600 Via Fortuna, Suite 330
Austin, TX 78746

Britton Costa, CFA
Senior Director, US Corporates
+1 212 908 0524
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY, 10004

Laura Kaster, CFA
Senior Director, Fitch Wire
North and South American Financial Institutions
+1 646 582-4497

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email:
sandro.scenga@thefitchgroup.com

S&P Updated Activity Estimates For U.S. Transportation Infrastructure Show Recovery For Air Travel Demand Accelerating And Public Transit Lagging.

Key Takeaways

- The combination of federal stimulus aid, vaccine progress, easing mobility restrictions, strong economic growth, and pent-up demand is improving the recovery curves for our activity estimates among certain asset classes like air travel, while the prospect of a continued or permanent shift to remote or hybrid work and the growth of online shopping will limit the recovery in public transit ridership for the foreseeable future.
- The U.S. public transit and airport sectors still face the longest recovery relative to other U.S. transportation subsectors, with our current baseline activity estimates for 2021 showing public transit recapturing 45% and airports 70% of pre-pandemic activity levels.
- We see public transit ridership recovering to only 80% of pre-pandemic levels by the end of 2023 and full U.S. systemwide enplanements not returning to near pre-pandemic levels until late 2023 or early 2024, with the international component lagging the broader domestic rebound.
- The threat of coronavirus variants or weakening consumer confidence could slow or stall the recovery for certain modes of transportation, like transit or air travel. However, S&P Global Economics forecasts that U.S. economic activity and growth will accelerate in 2021 as mobility increases and business activity catches up to the reopening demand surge.
- Any upgrades to individual transportation debt ratings lowered in the past 12-18 months will depend on our assessment of the staying power of current recovery trends along with issuer forecasts demonstrating a return to sustainable financial performance metrics consistent with their pre-pandemic levels.

Continue reading.

29 Jul, 2021

Fitch: Record US Cargo Port Volumes Cause Bottlenecks, Boost Revenue

Fitch Ratings-New York-29 July 2021: Record volume at US cargo ports has led much stronger financial performance than pandemic expectations, Fitch Ratings says. However, maintaining operational efficiency is more challenging as bottlenecks increase due to pressured supply chains, mismatched rolling stock, capacity-strained logistics networks and coronavirus shutdowns at Chinese ports. Ports will continue to see congestion pressures well into the upcoming peak shipping season, with throughput patterns not expected to normalize until the beginning of 2022.

West Coast ports have seen exceptionally high volumes through the pandemic, driven by robust goods consumption. The Port of Long Beach’s (POLB, AA/AA- Stable) total fiscal 2021 YTD 20-foot equivalent units (TEUs) through June have grown 33% over the same nine-month period a year prior. POLB saw a dip in its June 2021 throughput as a result of the shutdown of Yantian, one of China’s key export hubs, in May. Yantian recently resumed full operations, but the ripple effects will also be seen at other ports in summer throughput as it will take time to unwind the resulting cargo backup.

Port of Los Angeles’ (POLA, AA) YTD TEUs through May were up 48.2% versus the same period in 2020. Fitch-tracked West Coast port TEUs were up 37% through May 2021 from the same period in 2020, and up 17% from the same period in 2019. Port volumes generally track GDP, and Fitch expects 2021 US and China GDP growth of 6.8% and 8.4%, respectively.

Both POLA's and POLB's ability to handle larger ships, sizable local market shares and strong representation across shipping alliances continue to position them favorably amid shipping volatility. POLA showed strong financial results for the nine months ending March 2021, with operating revenues up 22% and operating expenses increasing modestly by 1% yoy. Operating income increased a robust 44% yoy.

Minimum annual guarantees accounted for 88% and 80% of POLB's and POLA's operating revenues in fiscal 2020, respectively, consistent with prior years, insulating the ports from trade-related revenue volatility. Counterparties have largely continued to honor their agreements despite coronavirus-related volatility. Volumes have heavily favored imports, generating challenges for US agricultural exports as shippers prefer to send empty containers to China rather than waiting for export loads, which are constrained by higher shipping costs. US lawmakers are drafting legislation to force ocean carriers to accept exports.

Although the San Pedro Bay Port Complex has more overall capacity than any other US port with faster routes to Asia, congestion has led some ships to be rerouted, benefiting ports such as Oakland as shippers add additional direct services. Some East Coast and Gulf Coast ports have also seen large increases in container volumes, with the Port of Savannah (GA) growing the fastest (up 31% through May 2021 versus 2020, and up 21% as compared with 2019). East Coast port TEUs were up 23% through May 2021 versus the same period in 2020, and up 16% from the same period in 2019. Cargo volume increases at these ports are constrained by capacity limitations, Panama Canal ship size restrictions and comparatively more congested inland transportation networks.

Congestion is expected to persist through YE 2021 and possibly into 2022, with peak shipping season beginning at the end of the summer with back-to-school and office shopping and continuing through the holiday season. Volume growth will ebb as supply catches up with demand toward YE 2021 and will likely continue at lower rates into 2022. Outbreaks of coronavirus variants that lead to revived restrictions and further shutdowns along the supply chain may further affect volumes. Margins could be pressured if congestion persists well into 2022 with decreases in yard efficiency and increases in labor costs.

Contacts:

Emma Griffith
Senior Director, Global Infrastructure & Project Finance
+1 212 908-9124
Fitch Ratings, Inc.
Hearst Tower
300 W. 57th Street
New York, NY 10019

Sarah Repucci
Senior Director, Fitch Wire
Credit Research & Risk Analytics
+1 212 908-0726

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email:
sandro.scenga@thefitchgroup.com

SIFMA Joint Trades Letter on the Adjustable Interest Rate (LIBOR) Act.

SUMMARY

SIFMA and joint trade associations provided comments to the Committee on Financial Services and Subcommittee on Investor Protection, Entrepreneurship and Capital Markets in support of the Adjustable Interest Rate (LIBOR) Act to address "tough legacy" contracts that currently reference LIBOR.

Read the Comment Letter.

SIFMA Supports Legislation Addressing Transition Away from LIBOR.

Washington, D.C., July 28, 2021 – SIFMA sent a letter to House Financial Services Committee Chairwoman Maxine Waters (D-CA) and Ranking Member Patrick McHenry (R-NC) expressing support for the Committee passing H.R. 4616, the Adjustable Interest Rate (LIBOR) Act, sponsored by Representative Brad Sherman (D-CA). SIFMA also looks forward to working with Congress on the legislation as the process goes forward.

"SIFMA supports H.R. 4616 because it addresses the variety of issues associated with the cessation of all tenors of U.S. dollar LIBOR and facilitates a smooth transition to alternative reference rates," said SIFMA president and CEO Kenneth E. Bentsen, Jr. "As a result of the discontinuation of LIBOR, trillions of dollars of contracts, securities, and loans that use LIBOR but lack adequate fallback language will be left outstanding. One specific subset, commonly referred to as 'tough legacy' contracts, has no clear path to amendment, thereby posing a significant risk to the financial system and the underlying borrowers and consumers, investors, and banks if such legislation is not passed. We thank Chair Waters, Chairman Sherman and members of the Committee for their work on this bill."

The letter further notes, "While the Alternative Reference Rates Committee (ARRC) has successfully developed language that was recently implemented in New York and Alabama, a variety of inconsistent, or non-existent, state legislation cannot provide the benefits of a uniform Federal law, including contract certainty, fairness and equality of outcomes, avoidance of years of litigation, and market liquidity. Such a patchwork could compromise the very intent to provide a smooth transition. The legislation would change the reference rate on certain financial contracts which reference LIBOR to the Secured Overnight Financing Rate (SOFR), or an appropriately adjusted form of SOFR. This will allow the contracts to continue to function as originally intended after LIBOR is discontinued, without the need to be amended or subject to litigation."

SIFMA also joined several other trade associations in sending a letter to Chairwoman Waters, Ranking Member McHenry, and Representatives Sherman and Huizenga which expresses broad industry support for H.R. 4616.

CONTACT:
Katrina Cavalli
212-313-1181
kcavalli@sifma.org

What Will It Take to Defend Public Water from Cyber Attacks?

Water may be among the least cyber-defended critical infrastructure sectors. Keeping it safe may include channeling more funds and training to tiny agencies and establishing voluntary guidelines.

Public water systems are exceptionally vulnerable to cyber attack, said senators during a U.S. Senate Committee on Environment and Public Works hearing July 21.

The White House has deemed sixteen industry sectors as essential to the nation's health, safety economy and/or security. Among them, the financial services sector has emerged with particularly robust defenses, while drinking water and wastewater systems may be among the most loosely protected.

Water systems on both coasts were hit by digital tampering efforts this year, in incidents that did not ultimately harm residents but which nonetheless raised alarm bells about the utilities' cyber preparedness. Criminals broke into a Bay Area California water facility's systems to delete programs involved in treating drinking water, a former employee allegedly used remote access to shut down a Kansas water system's cleaning and disinfection processes and hackers seemingly tried to poison Oldsmar, Fla., residents by elevating the amount of the lye used during water treatment — before staff detected and reversed that attempt.

Continue reading.

governing.com

July 27, 2021 | Jule Pattison-Gordon

MSRB Issues Guidance on Primary Offering Disclosure Form.

The MSRB issued a new FAQ to clarify the process for completing the MSRB's primary offering disclosure form (i.e., Form G-32).

In the FAQ, the MSRB explains that:

- Blue Sky restrictions are not required to be identified as a Restriction on Issue;
- contractual restrictions on the sale, resale, or transfer of securities must be identified as a Restriction on Issue;
- an underwriter should provide the name of a deal participant who is acting in the role of a municipal advisor, even where a municipal advisor is identified by another term;
- the underwriter should identify municipal securities as having a credit enhancement when the form of credit enhancement does not fall into the categories of "letter of credit" or "bond insurance";
- Form G-32 allows an underwriter to indicate that obligated person(s) for municipal securities are determined by objective criteria and may change; and
- underwriters are required to complete Form G-32 for municipal securities that are not eligible for the New Issue Information Dissemination Service.

Cadwalader Wickersham & Taft LLP

July 27 2021

FERC Revises Filing Requirements for Certain Small Hydroelectric Facilities.

On July 15, 2021, the Federal Energy Regulatory Commission ("Commission" or "FERC") issued a Final Rule amending its regulations pertaining to: (1) the information required to be filed with a notice of intent to construct a qualifying conduit facility and (2) the licensing requirements applicable to major projects up to 10 megawatts (MW). The Final Rule was issued to align the Commission's regulations with changes to the Federal Power Act ("FPA") that were made as part of the Hydropower Regulatory Efficiency Act ("HREA") of 2013.

Enacted in August 2013, the HREA amended section 30 of the FPA to create a subset of small conduit hydroelectric facilities that are excluded from the jurisdiction of the FPA. Under those amendments, any party proposing to construct a "qualifying conduit hydropower facility"—a facility that uses "only the hydroelectric potential of a non-federally owned conduit,"—must file a notice of intent with FERC, demonstrating that the proposed project meets certain qualifying criteria. In instances where a dam would be constructed as part of the facility, the Commission required an applicant's notice of intent to include a profile drawing showing that the conduit—rather than the dam—creates the hydroelectric potential. The Commission clarified this requirement in a 2015 order, Soldier Canyon Filter Plant, in which it concluded that the relevant factor in its consideration of qualifying conduit facilities is whether the facility would use water "within a conduit operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity," and that the presence of an upstream dam is not relevant to this determination, even where the head from the dam contributes to the facility's generating potential.

A separate provision of the HREA amended section 405 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), which provided that certain hydropower projects that produce 5 MW or less were exempted from the licensing requirements of Part I of the FPA. The HREA amended section 405 to increase the limit for exemptions to 10 MW.

On February 18, 2021, the Commission issued a Notice of Proposed Rulemaking ("NOPR") in which it proposed revisions to its regulations that would: (1) remove the requirement that a notice of intent to construct a qualifying conduit include a profile drawing depicting the source of hydroelectric potential, in cases where a dam would be constructed as part of the facility; and (2) extend the licensing requirements previously applicable to major projects up to 5 MW to major projects 10 MW or less, pursuant to the revised definition of a "small hydroelectric power project" enacted in the HREA 2013.

In its Final Rule, the Commission adopted the changes set forth in the NOPR. It noted that, based on the language in Soldier Canyon Filter Plant, the profile drawings of dams would no longer be required as part of the notice of intent submittal for qualifying conduits. The Final Rule also included changes to the licensing and amendment filing requirements in Parts 4 and 5 of the Commission's regulations to extend the requirements that previously applied to major projects up to 5 MW to major projects 10 MW or less, to be consistent with the revised definition of a "small hydroelectric power project" under the 2013 HREA. The Commission's Final Rule provided that such a change is appropriate to "expedite hydropower development by easing the burden of preparing an application for license and by assisting the Commission in more rapid processing of applications." As part of the

Final Rule, the Commission made revisions to 18 C.F.R §§ 4.40–41; 18 C.F.R. §§ 4.50–51; 18 C.F.R. §§ 4.60–61; 18 C.F.R. §§ 4.70–71; 18 C.F.R. §§ 4.200–202.

As of this drafting, the Final Rule had not yet been published in the Federal Register. The Final Rule will be effective 60 days after such publication.

Troutman Pepper – Elizabeth J. McCormick

July 26 2021

Federal Energy Regulatory Commission Advances Major Initiative to Overhaul Transmission Planning, Cost Allocation and Generator Interconnection Processes: Day Pitney

On July 15, 2021, in Docket No. RM21-17-000, the Federal Energy Regulatory Commission (FERC or the Commission) issued an Advance Notice of Proposed Rulemaking (ANOPR) pursuant to its authority under Section 206 of the Federal Power Act to consider various reforms to improve the electric regional transmission planning, cost allocation and generator interconnection processes.[1] The ANOPR was published in the Federal Register on July 27, 2021. Initial comments are due October 12, 2021 and reply comments are due November 9, 2021.

The ANOPR is an ambitious, early-stage rulemaking that seems to be an attempt to establish the necessary groundwork for potential reforms to transmission planning, cost allocation and the generator interconnection processes. The ANOPR touches on a wide array of issues and will certainly generate a multitude of comments from a wide range of stakeholders.

Need for Reform
The Commission identifies the continuing evolution of the wholesale electric industry since the issuance more than 10 years ago of major orders on transmission planning and cost allocation (Order Nos. 890 and 1000) and generator interconnection (Order No. 2003), including the changing generation fleet, the effects of state policies, the anticipation of future generation projects, and the ability of current processes to plan and pay for the transmission and generator interconnection as major factors in the potential need for reform. The Commission notes that "regional transmission planning processes may not adequately model future scenarios to ensure that those scenarios incorporate sufficiently long-term and comprehensive forecasts of future transmission needs."[2] The Commission concludes that a system that fails to account for future scenarios does not capture economies of scale and leads to infrastructure development that may not be efficient or cost-effective and may not satisfy the Commission's statutory mandate or its policies in Order Nos. 890, 1000 and 2003.

The Commission also notes that when Order No. 2003 was issued, it was less likely that interconnection customers would be responsible for significant transmission-related upgrades associated with the interconnection of their project. "Now, however, there is little remaining existing interconnection capacity on the transmission system … that may require new resources to fund [upgrades] that are more extensive and, as a result, more expensive." The Commission questions whether these upgrades benefit more than just the interconnection customer. Given that the Commission's cost allocation precedent requires that costs be allocated on a basis roughly commensurate with benefits, failing to adequately capture the benefits of a project could lead to unjust and unreasonable rates.

Proposed Potential Reforms[3]
Generally, the ANOPR reflects the Commission's goal to "ensure the development of regional transmission facilities needed to meet the transmission needs of the changing resource mix occurs in a more efficient or cost-effective manner, at just and reasonable rates" while maintaining reliability.[4] The Commission proposes several reforms consistent with this goal and makes numerous requests for comment related to these proposals. The proposals range across three main themes: (1) regional transmission planning and cost allocation processes, (2) identification of cost and responsibility for regional transmission facilities and interconnection-related network upgrades, and (3) enhanced transmission oversight.

Regional Transmission Planning and Cost Allocation Processes

The Commission proposes reforms to plan for the future needs of anticipated generation and to coordinate between the regional transmission planning, cost allocation and generator interconnection processes. First, the Commission discusses a few potential reforms to anticipate future generation and requests comment on the following, among other issues:

- Changing the modeling scenarios for transmission planning, proposing to examine factors using a longer-term outlook and to incorporate new factors such as state and local climate and clean energy regulation.
- Requiring transmission providers in each region to establish a process to identify geographic zones that would potentially support large amounts of renewable generation and to plan transmission investment to facilitate the integration of renewable generation in those zones.
- Incentivizing the development of regional transmission facilities that may offer a solution that is more efficient or cost-effective than a local alternative.
- Increasing interregional and state-to-state coordination that may be necessary for reforming the transmission planning and cost allocation processes.

Additionally, the Commission seeks comment on coordination between the regional transmission planning, cost allocation and generator interconnection processes.

Cost and Responsibility for Regional Transmission Facilities and Interconnection-Related Network Upgrades

The Commission devotes a significant portion of the ANOPR to a discussion of cost allocation and to the participant funding and crediting policy approaches to funding interconnection-related network upgrades.

With regard to cost allocation, the ANOPR notes that an existing cost allocation approach that considers only a single category of needs (reliability, economic or public policy) may fail to consider all relevant benefits and therefore fail to allocate costs commensurate with benefits. Thus, the Commission proposes to require a more "holistic" or "portfolio" approach for regional transmission planning.[5] The ANOPR does note, however, that this type of holistic approach may produce benefits that are very difficult to quantify, and it seeks comments on how to account for these benefits while still ensuring that both transmission and interconnection customers benefiting from the facilities pay their fair shares under the cost-allocation regime.

On the issue of funding, the ANOPR focuses on the current provisions for participant funding and crediting for interconnection-related network upgrades. The Commission suggests that the participant funding model, under which the interconnection customer pays all the costs of the network upgrades, may no longer be just and reasonable. The Commission proposes eliminating or reducing participant funding for such upgrades and, correspondingly, revisiting the crediting policy (under which the interconnection customer funds the interconnection facilities and the interconnection-related network upgrades subject to reimbursement for the network upgrades through transmission service credits). The Commission proposes the following alternatives to this form of funding and seeks comment on these alternatives:

- Each transmission provider provides upfront funding for all interconnection-related upgrades on its transmission system and, once the interconnection-related network upgrade is in service, rolls the cost of that interconnection-related network upgrade into its transmission service rate base paid by all customers.
- Interconnection customers contribute to the upfront funding of interconnection-related network upgrades through payment of a fee.
- Transmission providers provide upfront funding for only higher-voltage interconnection-related network upgrades, and interconnection customers fund the cost of interconnection-related network upgrades below the threshold and are reimbursed through transmission service credits pursuant to the crediting policy.
- The upfront costs of interconnection-related network upgrades are allocated to the interconnection customer on a percentage basis that could be less than 100%.

Enhanced Transmission Oversight

Finally, in recognition of the fact that other suggested proposals in the ANOPR could result in major transmission infrastructure upgrades, the Commission presented two potential approaches to enhance transmission oversight: (1) establish an independent transmission monitor on a regional or multiregional basis to review and provide input on transmission planning and spending, and (2) provide for an increased role for state involvement in regional transmission planning through structures like regional state committees. The Commission seeks comment on both of these proposals.

Commissioner Concurrences

The ANOPR was approved unanimously by all participating commissioners, but separate concurrences were issued.

In a joint concurrence, Chairman Glick and Commissioner Clements discussed the change in the resource mix in the United States and the pressing need for updates to the transmission planning process to accommodate renewable resources and state policies, while ensuring just and reasonable rates. Commissioner Danly wrote a separate concurrence to emphasize the potential limits of the Commission's jurisdictional authority for each of the ANOPR proposals and to bring attention to the potential effect on ratepayers. Commissioner Christie issued a concurrence emphasizing the importance of comments in this proceeding and supporting the Commission's approach in the ANOPR seeking comments on a broad range of proposals.

Conclusion

The ANOPR is an ambitious, early-stage rulemaking that has the potential to generate voluminous comments. Since the change in administration, the Commission has taken on many complex and aggressive issues, such as cybersecurity and reliability, the integration of distributed energy resources, and carbon pricing, and the priority to be placed on this issue is not entirely clear. The history of prior ANOPRs is mixed, with some not even advancing to proposed rules and others resulting in major reforms to existing rules and the creation of new rules on regional transmission planning, cost allocation and generator interconnection. Given the changing composition of the Commission and policymakers' emphasis on infrastructure, it seems more likely than not that some of this ANOPR will evolve into major rule changes for the industry.

[1] See Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection, Advance Notice of Proposed Rulemaking, 176 FERC ¶ 61,024 (2021) (ANOPR); see also 16 U.S.C. § 824e (requiring that the Commission ensure that transmission rates are just and reasonable and not unduly discriminatory or preferential). The ANOPR can be found at https://elibrary.ferc.gov/eLibrary/filedownload?fileid=15829875.

[2] ANOPR at P 31.

[3] The Commission notes specifically that it "has not predetermined that any specific proposal discussed herein shall or should be made or in what final form"; rather, it seeks comment on the proposals. ANOPR at P 4.

[4] ANOPR at P 70.

[5] ANOPR at P 86.

Day Pitney Advisory

Day Pitney Author(s) Margaret CzepielEvan C. Reese, IIIEric K. Runge

July 27, 2021

Frequently Asked Questions About MSRB Form G-32.

The MSRB is providing the following set of responses to frequently asked questions (FAQs) to enhance understanding of the process for completing Form G-32.

These FAQs do not create new legal or regulatory requirements or new interpretations of existing requirements and should not be interpreted by regulated entities or examining authorities as establishing new standards of conduct. This resource has not been filed with the Securities and Exchange Commission (SEC) and has not been approved nor disapproved by the SEC. Regulated entities, examining authorities, and others should not interpret this resource as establishing new or additional obligations for any person.

This resource should be read in conjunction with MSRB Rule G-32 and all related rules and interpretations. The full text of MSRB rules and interpretations can be found at https://msrb.org/Rules-and-Interpretations/MSRB-Rules.

1. Restrictions on Issue

Form G-32 requires information regarding when a subsequent "sale, resale, or transfer" of a municipal security is subject to certain qualifying terms or conditions (a "Restriction on Issue"). An example of a Restriction on Issue could be that a sale, resale, or transfer of a municipal security is contingent on a prospective purchaser meeting a requisite level of sophistication, as may be evidenced by investor affirmations about the investor's knowledge, experience, and capability to evaluate the merits and risks of the prospective purchase (e.g., similar or analogous affirmations as those of a 'Qualified Institution Buyer').

> **1.1 Would the state-by-state restrictions on the sale of certain municipal securities commonly referred to as "State Blue Sky Restrictions" need to be**

identified on Form G-32's field regarding *Restriction on Issue*?"
No, State Blue Sky Restrictions do not need to be identified on Form G-32 as a *Restriction on Issue*.

1.2 Would the contractual restrictions on the sale, resale, or transfer of municipal securities that are typically incorporated into the transactional documents (e.g., on the bond certificate itself and/or in the bond indenture or trust agreement) need to be identified on Form G-32 in the *Restrictions on Issue* field?
Yes, Form G-32 is intended to capture these types of contractual restrictions on the sale, resale, or transfer of municipal securities. Underwriters who believe the *Restrictions on Issue* field is applicable should check the box to indicate yes, there are such contractual restrictions, as for example, in a primary offering structured to meet the exemption requirements of Rule 15c2-12(d)(1)(i) for purchase by thirty-five investors or less (as further described therein).

2. Additional Syndicate Managers

Form G-32 requires information regarding each of the other co-managers in a syndicate.

2.1 Who should be identified as a co-manager?
For purposes of the *Additional Syndicate Managers* field on Form G-32 and the determination of which firms should be identified as a senior manager or co-manager, an underwriter completing Form G-32 should identify all the other underwriting firms that it understands to be participating in the syndicate account's offering, sale, and distribution, such as, for example, those firms acting as underwriters and listed in a final pricing wire and/or by the issuer in a final official statement.

2.2 Must the underwriter identify selling group members?
No, for purposes of the *Additional Syndicate Managers* field on Form G-32, the MSRB does not expect an underwriter to identify selling group members.

3. Name of Municipal Advisor

Form G-32 requires information regarding the name of each municipal advisor.

3.1 If a municipal advisor firm is described in the issuer's official statement as a "financial advisor" should an underwriter provide the name of that firm as a municipal advisor in Form G-32?
Yes, an underwriter completing Form G-32 should provide the name of a deal participant who the underwriter understands to be acting in the role of a municipal advisor, even in instances where a municipal advisor may be identified by a different term, such as financial advisor, in an official statement or offering memorandum.

4. Credit Enhancers and LEIs

Form G-32 requires information regarding the legal entity identify or "LEI" for credit enhancers when such LEI is readily available.

4.1 For purposes of Form G-32, should the underwriter identify the municipal securities as having a credit enhancement when the form of credit enhancement does not fall into the category of a letter of credit nor bond insurance?

Yes, the *Credit Enhancement* section on Form G-32 indicates whether the municipal securities have a form of credit enhancement. In situations where the form of credit enhancement does not fall into the categories of "letter of credit" or "bond insurance," the underwriter can select the "other" option. An underwriter should select the "other" category when the offering includes a different form of credit enhancement. For example, state intercept programs,1 other guarantees (like a state guarantee), federal or state agency guarantees,2 and/or standby bond purchase agreements should be identified as "other."

4.2 Must the underwriter attempt to provide the LEI when a municipal entity, federal agency, or other similar public entity is the entity providing credit enhancement?

Yes, an underwriter should input LEI information for credit enhancers into the *Credit Enhancement* section of Form G-32 when such information is "readily available," in other words, easily obtainable via a general search on the internet. The underwriter should attempt to provide an LEI for entities providing a credit enhancement that falls into the "other" category (such as those credit enhancements described in the response to frequently asked question 4.1).

5. Obligated Persons and LEIs

Form G-32 requires information regarding the LEI for obligated persons (other than the issuer of the municipal securities) when such LEI is readily available.

5.1 Does Form G-32 allow for situations where obligated persons are subject to objective criteria and may change?

Yes, the *Obligated Persons* section of Form G-32 allows an underwriter to indicate that the obligated person(s) for the municipal securities are determined by objective criteria and may not be known at the time of issuance or may subsequently change in the future, such as in the case of certain pooled financings. Instances when an underwriter understands that obligated persons are subject to objective criteria (and so may change), and the official statement identifies the obligated person(s) who initially meet the stated objective criteria, then the underwriter should identify such obligated person(s) and indicate that the municipal securities are subject to objective criteria. Instances when an underwriter understands that obligated persons are subject to objective criteria (and so may change), but the official statement does not identify any such obligated persons, the underwriter need only indicate that the municipal securities are subject to objective criteria.

6. Private Placements

An underwriter must submit information about private placements on Form G-32, including when the municipal securities are not eligible for the New Issue Information Dissemination Service ("Non-NIIDS-Eligible Offerings").

6.1 Are underwriters required to complete Form G-32 for Non-NIIDS-Eligible

Offerings, like certain private placements?
Yes, underwriters are required to complete Form G-32 for Non-NIIDS-Eligible Offerings, like certain private placements. Effective as of August 2, 2021, for a Non-NIIDS-Eligible Offering, an underwriter would continue to be required to manually complete the same data fields that it currently completes on Form G-32, with the addition of three new data fields regarding: (i) the original minimum denomination, (ii) whether the original minimum denomination of the offering could change, and (iii) whether there is a Restriction on Issue. For purposes of Form G-32, the term "underwriter," as defined by reference in Rule G-32 to SEC Rule 15c2-12, encompasses certain dealers acting as agents in the private placements of municipal securities. See File No. SR-MSRB-2020-08 (Oct. 13, 2020), at note 12 .

7. Submission Timing

Rule G-32's submission requirements depend on whether the new issuance is a *NIIDS-Eligible Primary Offering or a Non-NIIDS-Eligible Primary Offering*. See Rule G-32(b)(i)(A)(1) and Rule G-32(b)(i)(A)(2), respectively. For *NIIDS-Eligible Offerings,* the information auto-populated into Form G-32 is sourced from information submitted by an underwriter to NIIDS pursuant to MSRB Rule G-34 (which governs the content and timing of submissions to NIIDS to facilitate the timely reporting, comparison, confirmation, and settlement of transactions in a new issue). See Rule G-34(a)(ii).

7.1 For advance refundings, when must the CUSIP(s) and dollar amount(s) of the refunded securities be submitted on Form G-32?
In a primary offering generating proceeds to advance refund previously issued municipal securities (i.e., "Advance Refunded Bonds"), Form G-32 requires information regarding the dollar amount of each of the Advance Refunded Bonds being advance refunded and CUSIP information for those Advance Refunded Bonds (when applicable). This information must be submitted on Form G-32 at the earlier of either (i) the date of official statement submission or (ii) the closing date. *(Added July 30, 2021)*

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1. The MSRB understands that it is common for municipal securities issued by school districts to include a credit enhancement mechanism by which public funds in support of school district activities are redirected to satisfy debt service shortfalls.

2. The MSRB understands that it is common for municipal securities issued by housing agencies to incorporate certain guarantees or insurance provided by other federal and/or state agencies, like Ginnie Mae, Fannie Mae, or Freddie Mac.

Buckle Your Seatbelts: Tax Ramifications of the LIBOR Transition - Arent Fox

Although this article is focused on tax-exempt debt, the tax ramifications of the LIBOR transition are not limited to the municipal finance world, and the elimination of LIBOR may also have a significant impact on taxable debt, interest swap transactions and other transactions utilizing LIBOR.

For Our Complete Archive of LIBOR Analysis [Click Here]

General

In connection with LIBOR's impending demise, it became clear to many tax lawyers that numerous tax-exempt bond transactions face the risk of adverse tax consequences because the documents under which they were issued do not contemplate this transition and, therefore, must be amended to provide for a replacement ("fallback") index. This risk arises as a result of a basic tax principle – when a debt instrument is modified in a significant manner after it is issued, the debt is deemed exchanged for a new debt instrument. This exchange, or 'reissuance,' can trigger a tax recognition event to the borrower or bondholder (sometimes a bank or other institutional lender) and, if certain facts are present, may cause tax-exempt debt to lose its tax-exempt treatment under the Internal Revenue Code.

IRS Rev. Proc. 2020-44

General

Following the announcement that LIBOR would be phased out, the Internal Revenue Service (IRS) issued [Revenue Procedure 2020-44] aiming to: (1) facilitate the use of alternative reference rates recommended by (a) the [Alternative Reference Rates Committee] (ARRC) and (b) the International Swaps and Dealers Association (ISDA); and (2) provide that if adequate fallback language is used in loan agreements, the result will prevent a reissuance. The Rev. Proc. attempted to achieve this beneficial outcome by providing that the change in yield that results from the effectiveness of an appropriate alternative rate index would not itself be material, thus treating the effectiveness of such a fallback index as not a taxable exchange of property for other property differing materially in kind or extent for purposes of Treasury Regulation §1.1001-1(a).

Substantially Equivalent Value Test

Tax-Exempt Bond Rule

For municipal bonds, under existing regulations, changes to the terms of a tax-exempt bond transaction are not in themselves considered significant enough to trigger a reissuance if they result in a change in the yield on the bonds of less than 25 basis points. Rev. Proc. 2020-44 increases the circumstances in which this safe harbor applies to certain changes made to accommodate the end of LIBOR.

General Debt Instruments

The general rule under Rev. Proc. 2020-44 is that implementation of certain provisions in documents to replace LIBOR with a new benchmark index will not, by itself, result in reissuance because of the resultant changes in yield without regard to the 25 basis point rule if the fair market value of the altered instrument is substantially equivalent to the fair market value of the unaltered instrument. Given that LIBOR will cease to exist and, thus, there will be no way to measure a replacement index against LIBOR, and given that SOFR and many other replacement indices have not been in existence for long enough to predict their relationship to LIBOR in all interest rate environments, it is unclear how this equivalence requirement can practically be satisfied.

Accordingly, in many transactions we have asked, on behalf of our borrower clients, that a substantially equivalent test be used in amendments to debt instruments contemplating the LIBOR transition. However, banks have been very resistant to this suggestion because of (i) market uncertainty, (ii) lack of history with SOFR and many other replacement indices, and (iii) bank desire to control the rate setting process in connection with the LIBOR transition.

Rev. Proc. 2020-44 attempts to address this problem since it provides that the fair market value may be determined by any reasonable valuation method so long as that method is applied consistently. The question will then be whether a bank's sole discretion in setting of the new interest rate is a reasonable valuation method even if it is done consistently by each bank and consistently within the financial industry.

Integrated Hedges

While Rev. Proc. 2020-44 gives some relief in municipal bond transactions, it is also important to consider how the end of LIBOR will impact transactions that utilize hedges and, specifically, 'integrated hedges.'A debt instrument may be 'integrated' with a hedge for purposes of determining the yield on an instrument for tax purposes, and the amount and timing of taxpayer income, deduction, gain or loss if certain procedures are followed. When amending debt instruments to address the elimination of LIBOR, if an integrated hedge is not simultaneously amended in the same manner, the change to the debt instrument could itself qualify for exclusion from the reissuance rule but the transaction could still lose the benefit of the integrated hedge, and thus be treated as reissued nonetheless. This could lead to potentially unfavorable tax consequences.

The key to avoiding this tax risk will be amending the debt instrument and the hedge in the same manner and at the same time to deal with the LIBOR transition. However, interest rate hedge transactions are generally governed by ISDA documentation, whereas the changes to a debt instrument are dictated by agreements of the parties to the debt instrument – typically the issuer/borrower and the bank/lender. Matching the provisions adopted in contemplation of the phase-out of LIBOR in integrated transactions may be difficult, but may also be critical to avoid adverse tax consequences.

Dichotomy of Fallback Provisions

ARRC

No Recommended Benchmark

ARRC initially announced that the Secured Overnight Financing Rate (SOFR) would be its recommended new interest rate benchmark index for formerly LIBOR-based debt. However, ARRC subsequently announced that banks could utilize any interest rate benchmark they so choose. In the face of this revised ARRC announcement, most banks that we have dealt with that have confronted the LIBOR transition issue have, so far, proposed as a fallback solution that the bank would use a replacement index chosen in the bank's sole and absolute discretion, without any input from the borrower/issuer.

In most cases, under existing regulations and notwithstanding the Rev. Proc. 2020-44 safe harbor, when banks unilaterally choose the new benchmark in a variable rate financing prepayable at any time, a reissuance event could result. Thus, these unilateral pronouncements may fail to allow the lenders to take advantage of the favorable tax treatment (avoidance of reissuance) intended to be available under Rev. Proc. 2020-44 because, absent the safe harbor treatment offered by the Rev. Proc., it is impossible to predict whether the 25 basis point safe harbor will be met now for these benchmark replacement substitutions.

No Recommended Spread Adjustment

Even when SOFR (or an alternative benchmark) is utilized as a replacement index for LIBOR (thus securing Rev. Proc. 2020-44 safe harbor treatment), it is clear that a spread must be added to SOFR for it to yield effective interest rates similar to LIBOR prior to the transition. Although it has tried several times, ARRC has not developed a recommended spread adjustment. In light of this, and absent negotiations, bank transition documentation often state that the new recommended benchmark spread adjustment to equate LIBOR with the new benchmark is to be chosen in the bank's sole and absolute discretion, without any input from the borrower/issuer. This also will likely result in reissuance.

Fair Recommended Fallback Language

ARRC has published recommended fallback language to be used in loan agreements as well as in many other commercial agreements. However, our experience has shown that very few financial institutions are using the ARRC recommended fallback language.

ISDA

Required Fallback

For swaps and derivatives, ISDA has developed what some consider to be a more robust fallback language to specify the rate to be used upon a LIBOR cessation. Although the use of the ISDA fallback may be the scenario expected by the swap counterparties, it is not automatically effective in pre-existing swaps. Therefore, issuers and borrowers must either agree to adopt the ISDA fallback in existing swaps, or amend or replace existing swaps or other derivatives with other new bilateral agreements.

Required Response

In our view, entering into a new agreement or new amendment in the case of swaps facing the end of LIBOR without built-in fallbacks (currently, silence is the most common fact pattern), rather than just agreeing to the ISDA Protocol, is highly recommended, as the ISDA Protocol leaves, at the sole and absolute discretion of the bank: (i) the determination of the new benchmark index, and (ii) the timing of the LIBOR transition. In addition, the ISDA Protocol locks in the benchmark spread adjustment as of March 5, 2021, which may (or may not) be a fair spread adjustment today, much less a year from now. Further, the ISDA Protocol strips away certain existing legal rights of borrowers. Moreover, as noted above, harmonizing these changes with changes to the underlying debt instrument (and vice versa) may also be crucial.

Further Analyses

General

As noted, reissuance, with its potential adverse tax consequences, can be triggered by: (i) changes in the benchmark index referenced from LIBOR to SOFR (or another benchmark as the banks have not eagerly adopted SOFR) together with a benchmark spread adjustment that do not satisfy the requirements of Rev. Proc. 2020-44, and (ii) changes in the other fallback provisions (e.g., interest payment and calculation periods) which are innocuously referenced to as 'conforming changes.'

These changes could constitute an alteration of the terms of a debt instrument, be treated as a significant modification, trigger a tax realization event and, in some cases, result in a loss of tax exemption. Therefore, if borrowers and their lenders are to develop truly helpful LIBOR replacement fallback provisions, a main objective must be to avoid reissuance, which neither the ISDA nor the ARRC language achieves.

Associated Alterations

Rev. Proc. 2020-44 gives relatively broad protection from reissuance treatment for what are termed "associated alterations" done in connection with the change of the reference rate. It further permits, without causing reissuance, a one-time payment to correlate the old fair market value with the new fair market value, in the event an adjustment to the spread or to the rate is not enough to make the debt instruments economically substantially equivalent immediately prior to, and subsequent to, the LIBOR transition. Again, how this will be satisfied is not enumerated in the Rev. Proc. and remains unclear.

Conclusion

Accordingly, borrowers should take particular note of the tax risks summarized here and not merely accept bank proposed changes, particularly because in most bank documents, a change in taxes or regulatory requirements for a particular loan that have negative consequences to the bank are passed on to the borrower.

In a similar vein, in many transactions on behalf of our borrower clients, we have requested that negative implications to the end of LIBOR be retained by the bank, in no small part because (i) this LIBOR transition is taking place as a result of bank manipulations of LIBOR and not from any actions of borrowers and (ii) of the banks' insistence on unilateral decision-making on alternative index and spread selection causing tax risk not created by the borrower. As with other suggested changes to the 'industry-standard' documentation, this position has not been generally accepted by the banks, though it would keep the issuers/borrowers in a similar economic position pre- and post-LIBOR transition.

Consequently, all LIBOR transition documentation should be carefully analyzed prior to execution, even if represented as 'industry-standard,' so as to avoid, among other things, adverse tax consequences borne by the borrower.

Arent Fox, LLP

by Alyssa Gould, Les Jacobowitz & Richard Newman

July 28, 2021

House Financial Services Committee July 2021 Markup: SIFMA Comment Letter

SUMMARY

SIFMA respectfully submits this letter to the House Financial Services Committee in connection with its full committee markup on July 28, 2021. Included are SIFMA's views on H.R. 4616, the Adjustable Interest Rate (LIBOR) Act; H.R. 4617, to require the Securities and Exchange Commission to carry out a study on payment for order flow; H.R. 4618, the Short Sale Transparency and Market Fairness Act; H.R. 4619, to amend the Securities Exchange Act of 1934 to prohibit trading ahead by market makers, and for other purposes; H.R. 935, the Small Business Mergers, Acquisitions, Sales, and Brokerage Simplification Act; and H.R. 2265, the Financial Exploitation Prevention Act.

Read the Comment Letter.

TAX - MAINE

Madison Paper Industries v. Town of Madison

Supreme Judicial Court of Maine - July 6, 2021 - A.3d - 2021 WL 2793717 - 2021 ME 35

Taxpayer, which owned paper mill and hydro-electric power plants, petitioned for review after State Board of Property Tax Review upheld denial by town board of assessors of taxpayer's request for property tax abatement.

The Superior Court affirmed decision. Taxpayer appealed.

The Supreme Judicial Court held that:

- Two of taxpayer's arguments were subject to review for clear error;
- Board's decision to uphold town's valuation of paper mill assets based on current use was warranted;
- Board did not improperly assess mill in determining highest and best use;
- Board's finding that assessment had not involved double-counting of value of energy produced by plants was consistent with evidence; and
- Board properly applied statute in determining that town's assessment and taxpayer's appraisal were within 10% of each other.

Arguments of taxpayer, operator of paper mill and hydro-electric power plants that sought property tax abatement, that State Board of Property Tax Review committed legal error by deciding that power plant assets should have been valued based on highest and best use, but that mill assets should have been valued based on current use, and that Board committed legal error in deciding that difference between assessed property value and taxpayer's asserted value was within range designated as accurate within reasonable limits of practicality raised primarily factual, not legal, challenges to Board's decisions, and thus such arguments were subject to review for clear error, even though operator proposed de novo standard of review.

Decision of State Board of Property Tax Review to uphold town's valuation of taxpayer's paper mill assets, which were located partially in town, based on assets' current use as operating mill, rather than based on assets' liquidation or salvage value, was warranted, even though taxpayer asserted that liquidation or salvage value was assets' highest and best use; Board pointed out that, at time of property tax assessment, mill was state-of-the-art facility that operated in the black, that its owners were not in financial difficulty, and that owners had announced mill's closure without communicating cooperatively with town, and Board found that mill had been closed and its equipment and machinery sold as scrap under restrictions because owners no longer wanted to operate mill, but that owners' decisions should not have dictated mill's highest and best use.

State Board of Property Tax Review, in determining highest and best use of taxpayer's paper mill, for purpose of determining mill's just value, and thus proper property tax assessment, did not improperly assess mill; Board simply rejected taxpayer's appraisal of mill as incredible, starting with taxpayer's view of mill assets' highest and best use as being liquidation value, which was within Board's prerogative as fact-finder, and determined that taxpayer failed to prove that judgment of assessors was so irrational or unreasonable that property was substantially overvalued.

Finding of State Board of Property Tax Review that assessment of taxpayer's paper mill and hydroelectric power plants had not involved double-counting of value of energy produced by plants was consistent with evidence, even though taxpayer asserted that value had been counted once by including value of energy in valuation of plants as “merchant power plants” and again by attributing value of energy supplied to mill as “avoided cost”; while Board found that 40% of mill’s energy requirement that plants provided constituted avoided cost to mill, such finding did not necessarily mean that town, in assessing property tax, factored avoided cost into assessment of mill assets, and individual who provided assessment calculations as guidance relied on cost approach, which did not count value of energy as avoided cost equivalent to income.

State Board of Property Tax Assessment properly applied statute indicating that, in proceedings related to protested assessment, it is sufficient defense of assessment that it is accurate within reasonable limits of practicality, except when proven deviation of at least 10% from relevant assessment ratio exists, in determining that town’s assessment of value of portion of taxpayer’s hydro-electric power plants that was within town and value offered in taxpayer’s appraisal were within 10% of one another; while Board used town’s valuation that excluded equipment that was exempt from taxation pursuant to Business Equipment Tax Exemption (BETE) program, such equipment was not included in protested assessment, and BETE statute required town to value and assess BETE-eligible assets only for purposes of reimbursement.

[Citigroup to Take Over Atlantic City Water Park Bond Sale; Groundbreaking for Project This Fall.]

ATLANTIC CITY — Citigroup Inc. will soon take over as the underwriter of the $95 million municipal bond sale that will finance the construction of a water park at the Showboat hotel, according to a report from Bloomberg.

The Atlantic County Improvement Authority, which voted 8-0 in March to authorize the issuance and sale of revenue bonds to finance the water park, will return to the issue at a meeting at 10 a.m. Thursday, according to an agenda on its website.

Jessica Prada, administrative assistant for the Improvement Authority, told Bloomberg it will hold a special session Thursday to vote on Citigroup’s appointment. The previous underwriter, Janney Montgomery Scott, is being replaced after failing to sell the unrated bonds, according to the report.

Bart Blatstein, CEO of Tower investments, developer of the water park, said Tuesday the project will break ground “around this fall.”

“We’re super excited about it,” Blatstein said. “The success of our arcade, The Lucky Snake, has shown there is a tremendous interest for nongaming and family activities in Atlantic City.”

In a presentation to the Improvement Authority board in February, Blatstein said the water park would be “best in class” and the first year-round family entertainment resort in Atlantic City.

Based on the resolution passed by the authority, the authority would issue the bonds for the project; repayment of the debt service would come through revenue generated by the water park and entertainment complex.

Before voting for the bonds though, the authority asked about the possible risks and downside of issuing the bonds. Blatstein and Tower Investments attorney Jeffrey Winitsky assured the board that neither the authority nor taxpayers faced any risk, according to the minutes of the Feb. 25 meeting.

The money being sought would cover construction costs and would also fund a debt-service reserve should revenue on the project be short or delayed, Winitsky told the board.

The Casino Reinvestment Development Authority granted site plan approval for the park in early 2021. The authority also granted the project an Entertainment Retail District designation. As part of the designation, the project will receive $2.5 million per year for 20 years in sales tax rebates.

Winitsky said a new underwriter would "give the transaction a fresh perspective and marketing effort," the report said.

pressofatlanticcity.com

by Ahmad Austin

Jul 27, 2021

[Munis In Focus: Water Parks & Infrastructure (Bloomberg Radio)]()

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

[Listen to audio.]()

Bloomberg Radio

July 30, 2021

[Munis In Focus: YTD Muni Issuance (Bloomberg Radio)]()

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

[Listen to audio.]()

Bloomberg Radio

July 26, 2021

[CDFA Rural Development Finance Webinar Series: Best Practices for Rural Development Finance Agencies]()

Tuesday, August 31, 2021 | 2:00 PM – 3:00 PM Eastern

Best Practices for Rural Development Finance Agencies

There are hundreds of development finance agencies working in concert to support rural

communities. They exist at all levels of government, in communities of all sizes, and provide financing programs to address multiple capital needs. How do you find a development finance agency that is the right fit for your rural community? During the third installment of the CDFA Rural Development Finance Webinar Series, discover best practices of development finance agencies to help you identify the right partner for your projects.
Moderator(s)

Click here to learn more and to register.

CDFA-TEDC Webinar: Driving Investment into Texas' Rural Opportunity Zones

September 7, 2021 | 1:00 – 2:30 PM Central

Click here to learn more and to register.

CDFA Federal Financing Webinar Series: The Federal Role in Financing Broadband

Tuesday, September 14, 2021 | 2:00 PM – 3:30 PM Eastern

The Federal Role in Financing Broadband

Next-generation technology will increasingly rely on 5G networks. Communities with small economies and insufficient capacity to fund and operate their own broadband networks will become underserved and left behind. Federal agencies such as the National Telecommunications and Information Administration (NTIA), the USDA, and the Federal Communications Commission (FCC) have financing programs available to help bridge the gap communities face when assembling capital to invest in their broadband networks. During this installment of the CDFA Federal Financing Webinar Series, experts will discuss how federal financing tools can be used to fund 5G broadband networks.

Click here to learn more and to register.

OZ Exit Plans and Structural Risks.

What are the advantages of a Qualified Opportunity Fund that is structured as a REIT instead of a partnership? How does the level of diversification in a fund impact its risk/return profile?

Peter Ciganik is Managing Director at GTIS Partners, a global real estate investment firm based in New York.

Episode Highlights

- How the REIT structure may be advantageous for real estate investments with extended holding

periods.
- Why exit strategy planning is important in determining the bottom line returns that OZ investors realize.
- How opportunity zone funds are attracting investors to real estate as an asset class for the first time.
- The potential benefits of diversification when investing in real estate, and the risks associated with single-asset strategies.
- The structural regulatory benefits that come with multi-asset strategies.
- Why rising costs pose challenges for real estate development in the current environment.
- How the opportunity zone program is achieving its objective of catalyzing community investment.

Listen to audio.

Opportunitydb.com

by JIMMY ATKINSON

JULY 28, 2021

Evolution of Tax Increment Financing: Indiana, Kentucky, Ohio, and West Virginia - Frost Brown Todd

Tax increment finance (TIF) legislation continues to evolve in many states within the Frost Brown Todd footprint. Below are summaries of recent legislative changes in Indiana, Kentucky, Ohio and West Virginia. These changes may provide additional opportunities for local governments or developers looking to utilize TIF to complete their capital stacks. In addition, the changes may provide additional financing opportunities for existing districts and projects.

Indiana

The General Assembly of the State of Indiana passed limited modifications to the TIF statutes and related provisions during this session. Some of the more relevant amendments to TIF and redevelopment commissions were included in House Bill 1271. The bill was the omnibus legislation for the Department of Local Government Finance (DLGF). It was signed into law by Governor Eric Holcomb on April 8, 2021, and included, among many other things, the following:

Negotiated Bond Sales – The bill extended the sunset provision permitting sales of general obligation, revenue (including tax increment revenue), or special tax bonds at negotiated sales until July 1, 2023.

Allocation Areas – There were several amendments providing that one parcel may not be included in multiple allocation areas. This provision, however, does not apply retroactively to parcels currently located in multiple allocation areas.

Annual Notification to DLGF – The bill shifted responsibility for annual notification to DLGF of the amount of excess tax increment revenue from the redevelopment commission of the local governmental unit to the county auditor.

The above is a short summation of some of the legislation passed by the General Assembly that affects TIF and redevelopment commissions. The 2022 General Assembly session will likely yield more changes to Indiana's TIF statutes and related provisions.

Kentucky

During the 2021 legislative session, the Kentucky legislature passed an amendment to Section 65.7047 of the Kentucky Tax Increment Financing Act. The amendment, effective June 29, 2021, places certain preliminary requirements on cities and counties that are establishing or modifying local development areas over previously undeveloped land. The amendment requires the city or county to engage a "qualified independent outside consultant or financial adviser" to prepare a report that analyzes data related to the project and the proposed development area.

The component parts of the required report include:

1. the estimated approved public infrastructure costs;
2. an assessment of the feasibility of the project;
3. the estimated amount of local tax revenues that will be generated by the project over the term of the local development area;
4. the estimated amount of local tax revenues that will be displaced as a result of the project;
5. the estimated amount of old revenues that would have been generated in the local development area in the absence of the project; and
6. a determination that the project will not occur "but for" the existence of the local development area.

The amendment also addresses improvements to local development areas that will be financed through the issuance and sale of increment revenue bonds or "TIF bonds." Where such bonds will be issued and sold, the required report must also include projected financing costs as well as the relationship of the estimated revenues to the financing needs of the project.

Finally, with respect to the legislative approval of a local development area, the amendment provides that the ordinance approving the development area must include the estimated net positive fiscal impact as set forth in the required report.

Ohio

The Ohio General Assembly recently passed several bills that will impact the implementation and administration of TIF districts in Ohio. Below is a summary of key updates that will be of interest to local governments, developers, and other community stakeholders.

Amendments to Sections 5709.40 and 5709.41 of the Ohio Revised Code – The biennium budget bill, signed into law by Governor Mike DeWine on July 1, 2021, includes amendments to Sections 5709.40 and 5709.41 of the Ohio Revised Code, which are the tax increment provisions that govern the establishment of TIF districts in municipal corporations. The amendments incorporate the following updates:

- ***Off-Street Parking Facilities:*** A Section 5709.40(A)(8) amendment updates the definition of "public infrastructure improvement" to expressly include "off-street parking facilities" as a qualifying expenditure of TIF service payments. This update will give municipalities more certainty with respect to their participation in the financing of projects that incorporate structured parking.
- ***Exemption Period Commencement Flexibility Allowing Designated Tax Year or Value:*** A Section 5709.41(D) amendment gives municipalities greater latitude when designating the commencement date for a TIF exemption under an authorizing ordinance. Under the updated provision, municipalities may elect to have a TIF exemption commence with any tax year specified

in the TIF ordinance other than a tax year that precedes the effective date of the ordinance. Alternatively, the amendment permits municipalities to refrain from designating a tax year for the commencement of a TIF exemption and to instead utilize an improvement value as the basis for commencing a TIF exemption. For projects that incorporate multiple parcels, the amendment permits a municipality to establish different commencement dates for each parcel identified in the authorizing ordinance. These updates bring Section 5709.41 in alignment with the parallel provisions under Section 5709.40.

Minimum Service Payment Obligations Under Section 5709.91 – Substitute Senate Bill 57 was signed by Governor DeWine on April 27, 2021 and will be effective on August 3, 2021. This legislation approves several updates to Section 5709.91 of the Ohio Revised Code with respect to the status of "minimum service payment obligations" as they pertain to real property located in TIF districts. "Minimum service payment obligations" are payment obligations that supplement a property owner's obligation to make statutory service payments under Section 5709.42 and related provisions of the Ohio Revised Code. The updates to Section 5790.91, include the following changes pertaining to minimum service payment obligations:

- ***Covenant Running with the Land:*** Recorded agreements or instruments memorializing a property owner's consent to a minimum service payment obligation shall constitute a covenant running with the land and be binding against subsequent owners of the property;
- ***Insurable Interest****:* Minimum service payment obligations constitute an insurable interest for purposes of issuing title insurance in Ohio;
- ***Collected Like Property Taxes:*** Minimum service payment obligations may be certified to the county auditor and shall be collected in the same manner as real property taxes; and
- ***Security Mechanism for Financing:*** Minimum service payment obligations may be established to ensure sufficient funds to "finance expenditures" authorized under Chapters 725, 1728, and 5709. This update provides for broad authority to utilize "minimum service payment obligations" as compared to the prior provision which limited the use of "minimum service payment obligations" to ensuring sufficient funds to finance expenditures attributable to "public infrastructure improvements" and "housing renovations."

These changes provide greater flexibility and increased opportunity for local governments to incorporate the "minimum service payment obligations" into the financing of projects.

Payment Limitation on TIF District Extensions – Certain TIF districts in Ohio may be eligible for an extension of the exemption period. As a reminder, the ability to extend TIF districts in 2020 is gone, but TIF districts may still be extended in 2021 and beyond. For extensions after January 1, 2021, service payments may not exceed $1,500,000 for all calendar years prior to the calendar year immediately preceding the adoption of the extension amendment.

West Virginia

The West Virginia legislature continued passing amendments to the West Virginia Tax Increment Financing Act during the 2021 legislative session. The Act was previously amended during the 2004, 2014, 2016 and 2018 legislative sessions. The 2021 amendments primarily address:

1. extending the termination date of certain districts;
2. procedures to combine two districts;
3. the maturity date of certain refunding bonds; and
4. agreement for payments in lieu of taxes for properties within districts.

The amendments discussed below were effective on July 9, 2021.

Extension of Termination Date of Certain Districts – County commissions or municipalities may extend the termination date of certain districts for up to five years or to December 31, 2050, whichever is earlier. Only districts for which tax increment financing obligations were issued prior to December 31, 2020 may be extended. The extension of the term of a district may not occur simultaneously with the modification of the boundaries of the district. The local government proposing the extension is required to hold a public hearing, obtain the approval of the director of the West Virginia Department of Economic Development, and, if applicable, obtain the approval of any municipality in which a portion of a district is located.

Combining Districts – The amendments to the Act clarified: (i) the base assessed value of the property of a district resulting from the combination of two prior districts and (ii) the termination date of a combined district. The base assessed value of property in a combined district is the base assessed value of such property in each of the prior separate districts. The termination date of a combined district is the termination date of the district that had the latest termination date prior to the combination of the districts. This provides the opportunity to create a new district adjacent to an existing district, and following the combination of the two districts, the termination date would be nearly 30 years.

Payments in Lieu of Taxes – Prior to the most recent amendments to the Act, agreements for payments in lieu of taxes with respect to property in a district were required to have any such payments be equal to the property taxes that otherwise would have been due. The amendments permit agreements for payments in lieu of taxes to be negotiated among the public entity owning the property, the lessee of the property, and the applicable local levying bodies. These changes provide flexibility to provide property tax incentives for projects within a district. In addition, these changes provide for a written agreement to address the amount of property taxes to be deposited in the tax increment financing fund for the term of the agreement which eliminates assessment risk for any property covered by such an agreement.

Frost Brown Todd LLC – Carrie J. Cecil , Emmett M. Kelly, Emma H. Mulvaney, Donald L. Warner III and Beau F. Zoeller

July 28 2021

S&P Pension Brief: Single-Employer Pension Plans Are Straining Illinois Municipalities' Credit Quality

Key Takeaways

- Weak statutory funding requirements below actuarial recommendations postpone meaningful funding progress for many local governments' individual pension plans.
- Limited revenue-raising flexibility and weak demographic trends will likely compound pension pressures for poorly funded local plans.
- The consolidation of downstate and suburban public safety plans likely will provide some savings to these plans, but minimal help to address near-term cost pressures and could add contribution volatility risk.
- Although carve-outs in the statutory funding requirements have been made to provide Chicago with budgetary relief, the city faces budgetary pressure from its large unfunded liabilities, and costs are expected to escalate.

[Continue reading.](#)

27 Jul, 202

[City of El Paso's Use of Non-Voter Approved Debt Raises Concerns, Public Finance Experts Say.](#)

As the city of El Paso prepares to issue another multimillion dollar round of non-voter approved debt, experts say the practice raises red flags and will have long-term impacts for generations of taxpayers.

The El Paso City Council recently approved beginning the process of issuing $96 million in certificates of obligation, or debt that can be issued without voter approval if the amount does not exceed $100 million. A public hearing is scheduled for Aug. 24, when the City Council will vote on whether to approve the issuance of the debt.

The council also approved issuing about $93 million in certificates of obligation in April, and since 2019 has issued two separate $100 million rounds of the debt for a variety of city projects and included funding for emergency vehicles for the police and fire departments.

[Continue reading.](#)

El Paso Matters

by Elida S. Perez

July 28, 2021

[Santa Rosa Mulls Bond Offering to Knock Down Pension Liabilities.](#)

Santa Rosa City Council is considering selling more than $100 million of bonds to raise cash for its growing pension debt, a step that could ease budgeting in years to come but carries enough risk that some municipal financing experts warn against it.

The costs of expensive earlier pension plans and losses the California Public Employees' Retirement System accrued during the 2008 financial crisis will come to a head in the next 10 years, as annual payments Santa Rosa makes to the agency increase each year to peak at almost $43 million in 2031.

Paying off those debts affects daily life in the city. Every dollar dumped into pension debt is one less dollar city officials have for programs or for reacting to problems that range from crime to natural disasters.

To curb the payments, Santa Rosa's chief finance officer Jan Mazyck has proposed the city use an investment mechanism known as pension obligation bonds. The bonds could raise cash at low interest rates and dump that cash into pension funds — a move that both lowers pension debt and increases the funds' earning power by providing more money to invest.

At a July 20 city council study session, members expressed interest in the strategy and directed

Mazyck to bring back a more specific proposal. The council will not need to go to voters with a ballot measure in order to issue the pension bond offering, which could go as high as $200 million and are likely to amount to at least $110 million, Mazyck said.

For success, the city will need the pension funds to outperform the interest rates paid to investors who buy the bonds. Given low interest rates that have persisted through the pandemic, Mazyck says chances of doing so are high. She has said the bonds could be issued at an average of 3.5% interest but well could be lower.

“It’s not fail proof but it is a reasonably fail proof environment,” she said in a Tuesday interview. While interest rates are low, financial markets have been performing well. CalPERS itself raked in a 21% return on its investment portfolio over the last fiscal year.

But issuing the bonds increases the city’s vulnerability to a market crash. Sustained stock market losses — from a fresh recession, for example — would leave the city owing not just the pension payments but also the interest payments on its bonds.

Failure would mean even more money going to pay off investment losses, and less money for government services.

Because of such eventualities, the Government Finance Officers Association, a trade group made up of more than 20,000 federal, state and local government public finance officers, suggests local governments stay away from pension obligation bonds.

Pension obligation bonds “are complex instruments that carry considerable risk,” the trade group’s committee on retirement and benefits administration said in February.

The Federal Reserve keeping interest rates at near rock bottom levels has led to a flurry of government entities issuing the bonds, prompting a written statement from government finance officers’ group. The risks “remain true regardless of economic cycles,” according to the statement.

The city pays around $30 million each year toward the unfunded portions of its pension funds. It pays about another $20 million annually toward the pension funds of its current employees.

Pension payments are for the most part an untouchable cost for governments — city officials can’t legally reduce the retirement benefits previous employees held.

Because of efforts by CalPERS to “smooth” out the repayment of losses accrued during the 2008 recession, city finance officials say that over the next 10 years Santa Rosa will pay another $110 million, above the $30 million in annual payments, to unfunded pension liabilities.

She would like to see the city sell bonds of at least that amount, she said. The city does not have to sell $110 million worth of bonds at once, however, Mazyck said, allowing it to be strategic with interest rates.

Selling the bonds in stages, and as part of a broader strategy to confront budget woes, reassured council members worried about too much risk through a complicated financial tool.

“There’s no magic solution, because if there were, other cities would be doing it,” council member Tom Schwedhelm said.

THE PRESS DEMOCRAT

by ANDREW GRAHAM

July 28, 2021

Jeffrey Baker, Municipal Bond Analyst for 43 Years, Dies at 71.

- **Started at Chase Manhattan, retired from JPMorgan in 2015**
- **Was former chairman of two municipal-market industry groups**

Jeffrey Baker, a municipal bond analyst for 43 years who spent his entire career with one firm and its successors, has died at the age of 71.

He died Monday of cancer at his home in River Edge, New Jersey, according to his wife of 46 years, Ann.

Baker joined Chase Manhattan Bank in 1972 and retired from JPMorgan Chase & Co. in 2015.

"It was his first job out of school," said Ann Baker.

Baker was chairman of the Municipal Analysts Group of New York in 1993, and chairman of the National Federation of Municipal Analysts in 1997.

In 1994, he received the organization's Industry Contribution Award, with Katherine Bateman and Bill Oliver, for their "active involvement as NFMA representatives with other industry groups and the SEC, as well as their development of the 15 recently released Secondary Market Disclosure Forms."

Baker "gave freely of his time and expertise," recalled Steve Schrager, a fellow municipal bond analyst and long-time friend. "He sought out and mentored younger analysts, contributing to their professional growth."

Another friend, Mark Tenenhaus of RSW Investments, recalled Baker as a devoted fan of the New York Jets football team. "His tailgates were legendary."

Baker majored in finance at New England College in Henniker, New Hampshire, and got his MBA from Fairleigh Dickinson University.

In addition to Ann, he is also survived by his daughter, Lynne, and son-in-law Matt Weber, and two grandchildren, Benjamin and Zoe. He was predeceased by a son, Scott, in 1996.

There will be a service for Baker on Thursday at 11 a.m. at Temple Avodat Shalom in River Edge.

Bloomberg Business

By Joseph Mysak Jr

July 28, 2021, 8:41 AM PDT

- GASB Issues Proposal to Enhance Concepts for Notes to Financial Statements.
- GASB Proposes Omnibus Statement Addressing Wide Range of Practice Issues.
- S&P U.S. Public Finance Mid-Year Outlook: Beyond COVID?
- Fitch ESG in Credit White Paper 2021.
- Interesting eminent domain case out of Texas here.
- And finally, Detention: With Extreme Prejudice is brought to us this week by *Khoury v. Miami-Dade County School Board*, in which the court noted that "… the School Board developed an unwritten policy of improperly detaining people under the Baker Act." The Baker Act allows for involuntary 72-hour stays at the local spa, also know as "your friendly neighborhood psychiatric facility." Yup, you read that correctly – the School Board. What could possibly go wrong? Apparently all it took was, "exhibiting 'concerning' and 'odd' behaviors." BCB promptly filed an amicus brief, due to the fact that our entire workforce faced the imminent threat of a direct flight over the proverbial cuckoo's nest, as the only behaviors ever observed 'round these parts are distinctly "odd" and "concerning."

LEGAL SERVICES - ALABAMA

Fuston, Petway & French, LLP v. Water Works Board of City of Birmingham

Supreme Court of Alabama - June 30, 2021 - So.3d - 2021 WL 2678325

Law firm brought action against client, which was a city water works board, and asserted claims of breach of contract and breach of the covenant of good faith and fair dealing, which arose from board's vote to terminate contract pursuant to which law firm represented board.

The Circuit Court dismissed the claim of breach of the covenant of good faith and fair dealing and later entered summary judgment for the board on the claim of breach of contract. Law firm appealed.

The Supreme Court held that:

- Contractual provision requiring that there be a supermajority in order for board to terminate the contract was against public policy and therefore invalid, and
- The contract was for legal services as opposed to nonlegal services.

Contractual provision requiring that there be a supermajority in order for city water works board to terminate the three-year contract, pursuant to which a law firm provided legal services to board, was against public policy and therefore invalid.

Contract between law firm and city water works board was for legal services as opposed to nonlegal services, as was relevant to determining if contractual provision requiring that there be a supermajority in order for board to terminate the contract before the end of its three-year duration was against public policy; despite argument that agreement provided that law firm administer board's purported contract-compliance program, which allegedly would have been a nonlegal service so as to allow law firm to maintain breach-of-contract claim against board for terminating the contract as to the contract-compliance program's administration, nothing in the record showed that board adopted such a program.

PUBLIC UTILITIES - CALIFORNIA

[Save Lafayette Trees v. East Bay Regional Park District]

Court of Appeal, First District, Division 3, California - June 30, 2021 - Cal.Rptr.3d - 2021 WL 2677595 - 21 Cal. Daily Op. Serv. 6705

Neighbors and interest group filed an amended petition/complaint seeking to vacate regional park district's approval of a memorandum of understanding with natural gas utility allowing for the removal of 245 trees from park district land.

The Superior Court sustained defendants' demurrers without leave to amend and dismissed the lawsuit, and neighbors and interest group appealed.

The Court of Appeal held that:

- Tolling agreement with regional park district regarding California Environmental Quality Act (CEQA) challenge was not binding on utility;
- Date on which CEQA's 180-day statute of limitations was triggered was date of public hearing;
- Statutory exception prohibiting a regional park district from interfering with public property that is either "owned or controlled" by city did not require park district to comply with municipal tree protection ordinance;
- Park district's board was not bound by district ordinance providing rules and regulations for the general public's use of district land; and
- District's actions were all quasi-legislative actions to which constitutional due process rights of notice and hearing were inapplicable.

Tolling agreement between petitioners and regional park district regarding petitioners' California Environmental Quality Act (CEQA) challenge to district's approval of a memorandum of understanding with natural gas utility regarding removal of trees on park land was not binding on utility; utility was both a necessary party and an indispensable party without whom the CEQA cause of action could not proceed, and utility, as a named party, was entitled to either assert or waive the statute of limitations defense to the amended petition/complaint.

Date on which 180-day statute of limitations under the California Environmental Quality Act (CEQA) was triggered for petitioners' challenge to park district's agreement to allow gas utility to remove 245 trees from park land was date of public hearing at which park district committed to a definite course of action by issuing a resolution authorizing the acceptance of funding from utility for the cost of the tree replacement and maintenance, even if meeting agenda and description of the resolution did not indicate that trees would be removed; memorandum of understanding, executed over the following two days, was consistent with the resolution and the project as outlined in the staff report submitted to the park district's board of directors.

Statutory exception prohibiting a regional park district from interfering with public property that is either "owned or controlled" by city did not require park district to comply with municipal tree protection ordinance before entering into memorandum of understanding with gas utility to allow gas utility to remove 245 trees from park land within city; rather, exception merely prohibited district from taking control of city parks and recreational facilities, such as a municipal golf course.

Regional park district's board was not bound by district ordinance providing rules and regulations for the general public's use of district land, and thus ordinance did not apply to memorandum of understanding between park district and gas utility allowing utility to remove 245 trees from park district land; park district's administration of district land was subject to separate "Operating Guidelines."

Actions of regional park district's board of directors in holding a public hearing, issuing a resolution, and entering into a memorandum of understanding with gas utility allowing utility to remove 245 trees from park district land were all quasi-legislative actions, not quasi-adjudicatory ones, to which constitutional due process rights of notice and hearing were inapplicable; decisions were not limited to a consideration of the interests of nearby property owners, but, rather, board was tasked with considering utility's request in the context of how the proposed tree removal and replacement and future maintenance operations would impact the park district's mission, and decision required the board to assess a broad spectrum of community costs and benefits not limited to facts peculiar to the individual case.

IMMUNITY - FLORIDA

[Khoury v. Miami-Dade County School Board]

United States Court of Appeals, Eleventh Circuit - July 7, 2021 - F.4th - 2021 WL 2817612

Detainee brought § 1983 action against public school board and public school police officers, asserting claims for municipal liability against board and claims against officers for false arrest, excessive force, and First Amendment retaliation.

The United States District Court for the Southern District of Florida entered summary judgment for board and officer. Detainee appealed.

The Court of Appeals held that:

- Officer was not entitled to qualified immunity for false arrest claim;
- Fact issues precluded summary judgment on First Amendment retaliation claim; and
- Board did not have municipal liability under § 1983.

Public school police officer had no arguable probable cause to conclude that detainee was a danger to herself or others as required to involuntarily commit her for a mental health examination under Florida's Baker Act and thus, he was not entitled to qualified immunity from detainee's § 1983 false arrest claim, where although detainee had been acting strangely while filming vehicles she believed to be parked illegally and acted irrationally by screaming she was being attacked by the officer, she was not violating the law or harming anyone by filming, nor was she a threat to any of the witnesses.

Genuine issue of material fact as to whether there was a causal connection between public school police officer's retaliatory actions in involuntarily committing detainee and forcing her to undergo a mental health examination under Florida's Baker Act in connection with incident related to detainee's filming of what she believed to be illegally parked cars on school property and the adverse effect on speech precluded summary judgment on detainee's First Amendment retaliation claim against officer.

Detainee failed to provide sufficient evidence that public school board had a custom or practice of committing people who did not qualify for an involuntary mental health examination pursuant to Florida's Baker Act and thus, board did not have § 1983 municipal liability for alleged violation of her First and Fourth Amendment rights for public school police officer's actions in committing her for a mental health examination under the Baker Act in relation to an incident that occurred while she was filming cars she believed to be illegally parked on school property; despite detainee's allegations of other incidents involving the Baker Act detentions, those incidents were either too remote in time or did not show a constitutional violation.

PUBLIC UTILITIES - HAWAII

[Matter of Hawaiʻian Electric Company, Inc.]

Supreme Court of Hawaiʻi - June 29, 2021 - P.3d - 2021 WL 2660470

Environmental organization sought review of Public Utilities Commission's (PUC) decision to not re-open its order approving power purchase agreement (PPA) in which electric utility agreed to purchase wind energy generated on proposed wind farm.

The Supreme Court held that:

- Court had jurisdiction to rule on jurisdictional issue;
- Organization's request to re-open via relief from judgment rule was not a collateral attack on order;
- Organization was a "person aggrieved" with standing to appeal;
- Relief from judgment rule was not available to re-open order to address impact of project on greenhouse gas emissions;
- Alleged lack of a timely incidental take license over Hawaiʻian hoary bat did not void PPA as a basis to re-open order; and
- Blog article from popular science magazine about decreased wind energy prices did not warrant re-opening of order.

Supreme Court possessed jurisdiction, at a minimum, to rule on jurisdictional issue raised in environmental organization's appeal of Public Utilities Commission's (PUC) decision to not re-open its unappealed order approving power purchase agreement (PPA) between electric utility and wind energy generator following contested case proceeding in which organization was granted participant status, where objector asked Court to consider whether rule governing motions for relief from judgment or order provided authority to re-open PUC's order due to substantially changed circumstances.

Environmental organization's request, made via the relief from judgment rule, to re-open Public Utilities Commission's (PUC) order approving power purchase agreement (PPA) between electric utility and wind energy generator following contested case proceeding in which organization was granted participant status was not an impermissible collateral attack on order, where motion was submitted in same proceeding that generated the order.

Environmental organization was a "person aggrieved" with standing to appeal Public Utilities Commission's (PUC) decision to not re-open PUC's unappealed order approving power purchase agreement (PPA) between electric utility and wind energy generator following contested case proceeding in which organization was granted participant status, where organization's motion for relief from the order was brought within the same proceeding.

Public Utilities Commission (PUC) properly declined to use the relief from judgment rule, which was asserted by environmental organization that had participant status, as a basis to re-open PUC's order approving power purchase agreement (PPA) between electric utility and wind energy generator in order to address impact of project on greenhouse gas (GHG) emissions, where absence of a GHG emissions analysis was readily apparent in order when it was filed, organization could have timely moved for rehearing or reconsideration of order, and organization also could have timely appealed order.

Any failure of electric utility or wind energy generator to timely obtain an incidental take license

(ITL) over Hawaiʻian hoary bat did not void their power purchase agreement (PPA) and Public Utilities Commission's (PUC) order approving PPA within meaning of the relief from judgment rule, and therefore PUC was not required to re-open its order, via that rule, pursuant to request of environmental organization that had participant status in contested case proceeding; the "voiding" of PPA and PUC's order that organization sought to prove did not involve defects in jurisdiction or a due process violation.

Blog article from popular science magazine summarizing Department of Energy's (DOE) report that wind energy prices nationwide had fallen did not provide extraordinary circumstances necessary to re-open Public Utilities Commission's (PUC) order approving power purchase agreement (PPA) between electric utility and wind energy generator on the basis, under the relief from judgment rule, that it was no longer equitable for order approving higher wind energy prices to have prospective application, where Hawaiʻi was excluded from DOE's report due to unique issues facing wind development in state.

VOTER INITIATIVES - MAINE

[Portland Regional Chamber of Commerce v. City of Portland]

Supreme Judicial Court of Maine - July 6, 2021 - A.3d - 2021 WL 2795844 - 2021 ME 34

Regional chamber of commerce brought action against city alleging that voter-initiated legislation establishing emergency minimum wage in city violated direct initiative provisions of State Constitution and city's direct initiative ordinance.

The Superior Court granted summary judgment against chamber. Chamber appealed and intervenors cross-appealed.

The Supreme Judicial Court held that:

- Emergency minimum wage provision did not violate direct initiative power under State Constitution;
- Provision did not violate direct initiative ordinance; and
- Effective date of provision was date that new minimum wage rate came into effect.

Voter-initiated legislation establishing emergency minimum wage in city related to municipal affairs, and therefore it did not violate direct initiative provisions of State Constitution; local minimum wage was among the issues encompassed by municipal legislative authority.

Voter-initiated legislation establishing emergency minimum wage in city related to municipal affairs, and therefore it did not violate city's direct initiative ordinance; local minimum wage was among the issues encompassed by municipal legislative authority, and direct initiative ordinance was a predominantly procedural provision that merely facilitated the substantive law and that could evolve separate and apart from the procedure.

Effective date of voter-initiated legislation establishing emergency minimum wage in city was date that new minimum wage rate came into effect, where legislation did not explicitly state an effective date for emergency minimum wage provision and emergency provision cross-referenced another section to establish the effective minimum wage rate for purposes of computing emergency minimum wage.

CIVIL ASSESSMENTS - MARYLAND

Angel Enterprises Limited Partnership v. Talbot County

Court of Appeals of Maryland - July 9, 2021 - A.3d - 2021 WL 2885857

Following administrative proceeding arising from imposition of civil penalty on landowners for their violations of county code, county filed petition for judicial review of decision of county board of appeals, which determined that daily accrual of fines was stayed during pendency of administrative appeal.

The Circuit Court reversed in part. Landowners appealed. The Court of Special Appeals affirmed in part and vacated in part. Landowners filed petition for writ of certiorari.

The Court of Appeals held that:

- The jurisdiction conferred upon a local board of appeals by Express Powers Act does not include original jurisdiction or administrative adjudicatory review of civil fines or penalties or other civil assessments, and
- Civil assessments issued by county compliance officer were not "adjudicatory orders" over which county, a charter county, could confer jurisdiction upon its board of appeals pursuant to Express Power Act.

The jurisdiction conferred upon a local board of appeals by Express Powers Act does not include original jurisdiction or administrative adjudicatory review of civil fines or penalties or other civil assessments.

Civil assessments issued by county compliance officer on landowners for violations of county code associated with clearing of trees and building of driveway were not "adjudicatory orders" over which county, a charter county, could confer jurisdiction upon its board of appeals pursuant to Express Power Act; assessments did not command landowners to take a specific action but rather purported to enforce abatement orders by imposing daily civil penalty until such time as landowners complied with separately-issued orders.

MUNICIPAL ORDINANCE - MISSOURI

Langford v. City of St. Louis, Missouri

United States Court of Appeals, Eighth Circuit - July 6, 2021 - F.4th - 2021 WL 2793564

Protestor brought action against city, seeking injunctive and declaratory relief and alleging that ordinance prohibiting obstructing or delaying movement of pedestrian or vehicular traffic violated her free speech rights, was overbroad as applied to her and facially, and was void for vagueness in violation of the Due Process Clause of the Fourteenth Amendment.

Both sides moved for summary judgment. The United States District Court for the Eastern District of Missouri granted protestor's motion and denied the city's cross-motion, and the city appealed.

The Court of Appeals held that:

- Municipal ordinance that prohibited any person from "position[ing]" himself or herself "in such a manner as to obstruct the reasonable movement of vehicular or pedestrian traffic" was not, on its

face, unconstitutionally overbroad in violation the First Amendment;
- Ordinance was not, on its face, unconstitutionally vague; and
- Police officers did not invidiously discriminate against protestor based on her speech, in alleged violation of her First Amendment rights, in arresting her for violating a traffic ordinance.

Municipal ordinance that prohibited any person from “position[ing]” himself or herself “in such a manner as to obstruct the reasonable movement of vehicular or pedestrian traffic” was not, on its face, unconstitutionally overbroad in violation the free speech rights of protestor who, upon returning from public march down the same street over which she had previously traveled, refused to obey the directions of police officers who were attempting to clear the street after the conclusion of the march, who had directed her to move from the street to the sidewalk; ordinance was not addressed to speech, but to conduct, and furthered the city’s legitimate interest in ensuring the free and orderly flow of traffic on its streets and sidewalks.

Municipal ordinance that prohibited any person from “position[ing]” himself or herself “in such a manner as to obstruct the reasonable movement of vehicular or pedestrian traffic” was not, on its face, unconstitutionally vague in violation the due process rights of protestor who, upon returning from public march down the same street over which she had previously traveled, refused to obey the directions of police officers who were attempting to clear the street, and who had directed her to move from the street to the sidewalk; ordinance used terms that were widely used and well understood, and the mere fact that officers would need to use some degree of judgment in determining whether a person had positioned herself in a manner that obstructed the reasonable flow of traffic did not render the ordinance unconstitutional.

Police officers did not invidiously discriminate against protestor based on her speech, in alleged violation of her First Amendment rights, in arresting her for violating a traffic ordinance that prohibited any person from “position[ing]” himself or herself “in such a manner as to obstruct the reasonable movement of vehicular or pedestrian traffic”; protestor was the only one in group of protestors who, upon returning from public march down the same street that she had previously traveled, ignored the commands of police officers who were attempting to clear the street by moving from the street to the sidewalk.

OPEN MEETINGS - OHIO

State ex rel. Ames v. Portage County Board of Commissioners

Supreme Court of Ohio - July 14, 2021 - N.E.3d - 2021 WL 2944137 - 2021-Ohio-2374

Petitioner filed a mandamus action against county board of commissioners and county solid waste management district (SWMD) commissioners alleging the board violated the Open Meetings Act and the Public Records Act.

The parties filed cross-motions for summary judgment. The Court of Appeals granted the board’s motion and denied petitioner’s motion. Petitioner appealed.

The Supreme Court held that:

- Evidence established that SWMD was a valid entity created by statute, and thus board of county commissioners did not violate the Open Meetings Act by separately conducting SWMD business during recesses of the board’s regular meetings;
- A genuine issue of material fact existed as to whether the use of a consent agenda during SWMD

meetings violated the Open Meetings Act; and
- Petitioner was entitled to mandamus relief on his claim that the county board of commissioners violated the Open Meetings Act by failing to produce full and accurate minutes from SWMD meeting in response to petitioner's public-records request.

Evidence established that solid waste management district (SWMD) was a valid entity created by statute, and thus board of county commissioners did not violate the Open Meetings Act by separately conducting SWMD business during recesses of the board's regular meetings; statutes expressly authorized a board of county commissioners to create a SWMD, when a board of county commissioners established a SWMD it also served as the district's board of directors, and the General Assembly defined a SWMD as a political subdivision unto itself, separate from a county, though governed by the board of county commissioners that created it.

A genuine issue of material fact existed as to whether the use of a consent agenda during solid waste management district (SWMD) meetings violated the Open Meetings Act, as the use of a consent effectively closed the SWMD meetings because it prevented members of the public in attendance at the meetings from knowing which resolutions were being approved and hearing any deliberations on those resolutions, precluding summary judgment in mandamus action seeking to compel county board of commissioners to prepare, file, and maintain accurate minutes for SWMD meetings.

Petitioner was entitled to mandamus relief on his claim that the county board of commissioners violated the Open Meetings Act by failing to produce full and accurate minutes from solid waste management district (SWMD) meeting in response to petitioner's public-records request; the meeting minutes stated a list of expenditures totaling $1,794.42 was "attached hereto as Exhibit 'A' and incorporated herein by reference," and it was undisputed that Exhibit A was not attached to the official minutes prepared by the board's clerk or included with the documents produced to petitioner in response to his public-records request.

EMINENT DOMAIN - TEXAS

[Hidalgo County Water Improvement District No. 3 v. Hidalgo County Water Irrigation District No. 1]

Court of Appeals of Texas, Corpus Christi-Edinburg - May 27, 2021 - S.W.3d - 2021 WL 2149828

Water improvement district filed condemnation proceeding against water irrigation district to obtain permanent subterranean easement to install water pipeline through irrigation district's property.

The County Court at Law granted irrigation district's plea to the jurisdiction and dismissed for want of subject matter jurisdiction based on governmental immunity. Improvement district appealed.

The Court of Appeals held that:

- As matter of first impression, governmental immunity applied in condemnation proceeding, and
- Legislature did not waive irrigation district's immunity by granting power to improvement district to condemn "any land."

Condemnation proceeding's status as quasi in rem action did not deprive water irrigation district of governmental immunity from suit in water improvement district's action seeking permanent subterranean easement to install water pipeline on irrigation district's property, even though governmental immunity did not apply to in rem actions under Expedited Declaratory Judgment Act (EDJA); condemnation proceeding, unlike an EDJA action, involved forced transfer of property interest, allowing suit would threaten separation-of-powers principles that underlie immunity by giving trial court control over irrigation district's choice not to allow improvement district to build pipeline, and governmental entities were immune from a "suit for land," a class of suits that included condemnation actions.

Statute that granted power to water improvement district to acquire "any land" by condemnation did not clearly and unambiguously waive governmental immunity of irrigation district that owned land over which the improvement district sought, through condemnation action, to obtain permanent subterranean easement to install water pipeline; reference to acquiring "any land" was at most ambiguous, as it could be interpreted, with respect to public land, as general grant of power to condemn such land in the event that a specific waiver of governmental immunity existed, rather than as being a waiver of governmental immunity, statute made sense without finding waiver, and all ambiguities had to be resolved in favor of retaining immunity.

S&P U.S. Public Finance Mid-Year Outlook: Beyond COVID?

Key Takeaways

- Credit stability has returned for U.S. public finance and we expect it to continue for the remainder of the year.
- Strong economic growth has translated to positive revenue performance for most issuers and the economic outlook for the rest of the year is favorable.
- The unprecedented federal response to the pandemic with multiple rounds of stimulus has supported the economy and finances of issuers.
- Active management by issuers has supported credit quality across all sectors and will continue to be important as COVID-19 lingers and other ESG related risks present fiscal challenges.

Continue reading. [Registration required.]

22 Jul, 2021

Feds Reveal Programs For $3B in Local Economic Development Funds.

State and local governments will have access to the money, which is flowing from the Economic Development Administration.

A federal economic development agency provided more details on Thursday about how it plans to invest $3 billion in American Rescue Plan Act funds, money that state and local governments will be able to tap into. Department of Commerce Secretary Gina Raimondo during a press conference described the suite of programs as one of the largest economic development initiatives in the department's history and said it would create jobs.

"Millions of Americans continue to struggle. … Ensuring that these $3 billion are distributed equitably is core to our investment strategy," she said. "We know that equity is good for workers, good for business, and good for the economy."

The Economic Development Administration, housed within Commerce, said the new Investing in America's Communities initiative will provide:

[Continue reading.](#)

ROUTE FIFTY

By Jean Dimeo

JULY 22, 2021

[The Federal Windfall That Cities Can't Afford to Waste.](#)

Washington is sending cities a gigantic fiscal gift. They have to produce results. The danger is that the money will be squandered. Republicans are watching all that generosity with skepticism.

Urban advocates have long sought more federal money for cities. Now, they are getting it – bigtime. The aid being provided to cities under the coronavirus relief act represents a major test of the thesis that federal aid can be transformative for urban America. Cities should make the most of this opportunity. If they can use these funds to move the needle on substantial change, this would create a strong case for future aid. But if the money is simply frittered away, there's no reason to expect such extensive help in the future.

The American Rescue Plan contains $350 billion in funding for state and local governments. This includes $45.6 billion for large metropolitan areas. The quantity of funds for these bigger metro areas is significant. Birmingham, Ala., is getting $141 million, Phoenix nearly $400 million, Chicago a bit less than $2 billion.

These are very large sums, particularly when county-level funding is also taken into account. In the merged government of Louisville-Jefferson County, Ky., the "city" is collecting $240 million, plus another $149 million in "county" funding, a bit less than $400 million total. The independent city of St. Louis is getting almost $500 million.

While the rules around how this money can be spent are not entirely clear, there is no mistaking the scope of the grants. Louisville's annual budget is about $1 billion. That means its allocation is equivalent to 40 percent of its entire annual budget.

It is imperative that cities use this money to produce tangible and material benefits. The all too real danger is that instead it will be wasted. An example is excessive "state of good repair" spending on public transit. The highly respected global transit analyst Alon Levy has described state of good repair as "a racket permitting agencies to spend vast sums of money with nothing to show for it."

It is very possible that cities will end up spreading their funding across a variety of programs such that billions of dollars are spent, but the material impact is limited, either in physical improvements or moving the needle on social or economic progress.

What should the money be spent on? There are many potential ways that this funding could be directed to making a big impact. It could be used to pay for a major residential street and sidewalk program, thus wiping out a major portion of a city's infrastructure maintenance backlog. Or it could put a new or renovated playground within walking distance of most kids in the city. It could create more supportive housing units for the homeless. The details will vary from city to city and will depend on federal guidelines around what can be done with the money. The key is to focus on delivering real, material change that is proportionate to the large sums invested.

The imperative to spend the money well is increased by the way that Democrats structured the aid to favor deep blue cities. Money to metropolitan areas was allocated using HUD formulas that greatly privileged deep blue central cities over red or purple suburbs.

For example, in Indiana, South Bend, Evansville, Carmel and Fishers are all about the same size in population. But Evansville is getting $64.5 million and South Bend $58.9 million, while Carmel is getting $7.5 million and Fishers only $6.9 million. The former two vote strongly Democratic while Carmel and Fishers are more conservative suburbs. On a rough per capita basis, Evansville is getting $546 per person and South Bend $577, but Carmel only $74 per person and Fishers $72. This is a difference of about 7.5 times per capita. School funding from the recovery act has been even more lopsided.

With Democrats having shoveled the bulk of the money into their own strongholds, Republicans at both the federal and state level will rightly be looking at this generosity with skepticism. Quite apart from political considerations, however, they should be watching to see whether the money does any real good. If it does, they should be willing to look beyond politics and provide more investment funds to places that have spent previous money wisely. If it doesn't, if these very large sums deliver little to show for them, there's no reason for cities to expect more money like this ever again.

governing.com

Aaron M. Renn

July 22, 2021

Fitch: Relentless Cyber Attacks to Pressure NFP Hospitals' Operations

Fitch Ratings-Austin/New York-22 July 2021: Ever-increasing cyberattacks on the US public healthcare sector will place material revenue and expense pressures on not-for-profit (NFP) hospitals and health systems, Fitch Ratings says. The healthcare sector has seen a historic increase in the number and severity of cyber assaults over the past 18 months. The sector is viewed as a target-rich environment due to the large amount of sensitive data that healthcare entities maintain for patient care and operations.

Cyber-crime accelerated during the pandemic as cyber criminals took advantage of the crisis, causing immense disruption to the healthcare sector at a time when it was facing enormous patient care demands. Ransomware pay-outs and efforts to protect or "harden" healthcare systems and cyber defenses are affecting hospital financial flexibility by increasing on-going operating expenses. Attacks may also hinder revenue generation and the ability to recover costs in a timely manner, particularly if they affect a hospital's ability to bill patients when financial records are compromised or systems become locked. The recovery time and costs associated with breaches of critical data not only pose significant financial burdens but also hamper the ability of healthcare institutions to provide care, which could ultimately have human costs.

The US Department of Health and Human Services estimates that sizable cyber breaches in 2020 exposed patient data of more than 22 million Americans. Cyberattacks against US healthcare entities rose by over 55% in 2020 compared with the previous year according to the cloud security firm Bitglass. Attacks also increased in sophistication and scale, with more than a 16% increase in the average cost to recover each patient record in 2020 versus 2019. Restoration of systems to pre-attack status took an average 236 days.

Hospital and health system databases are a treasure trove of critical and sensitive patient data, which are highly sought after by cyber criminals for ransomware and double extortion schemes. In the US, patient data is considered confidential, and the maintenance and disclosure of such data are governed by patient confidentiality laws, e.g., Health Insurance Portability and Accountability Act (HIPAA), on the federal and state levels. Cyber breaches that disclose patient information carry the risk of loss of consumer confidence, litigation costs and federal enforcement actions due to regulations around patient confidentiality.

Remote work for nonessential staff opened up opportunities for infiltration, as did the sector's increased use of integrated technology, such as smart medical monitoring devices, telehealth and other virtual care capabilities. Software for such devices and heavy medical equipment such as CT scanners and MRI machines are often proprietary and designed with patient care and not necessarily cyber risk in mind. Thus, such software may not always be fully integrated in the institutional cyber defense framework. Additionally, the large costs of such equipment generally mean that institutions, particularly smaller hospitals, may rely on these devices for many years, even with outdated or unsupported software, leading to gaps in institutional security systems.

Fitch includes cybersecurity in its analysis of the sector and as part of its corporate-wide Environmental, Social and Governance (ESG) framework. Cyber risk is both a social risk in terms of safety and security, and a governance risk in terms of management effectiveness. A hospital's ESG Relevance Score would be elevated if cyber risk were deemed to be material to the rating.

Fitch ESG in Credit White Paper 2021.

Read the White Paper.

20 Jul, 2021

The Future of ESG Strategy in Municipal Finances.

We often hear phrases like environmentally friendly, social and equitably beneficial, and financial transparency when it comes to assessing the forward-looking strategy of companies in both the private and public sector. However, in recent years, we have been hearing these phrases cross into local and state government operations such as debt issuances and other financial reporting.

The acronym ESG refers to 'Environmental, Social, and Governance Evaluation' often focuses on a local government's ability to sustainably manage the future risks and opportunities related to its current governance structure along with opportunities to reduce its carbon footprint through the green projects/initiatives that will have a positive social or environmental impact; for example, renewable energy projects, smart infrastructure, affordable housing, and clean transportation.

In this article, we will take a closer look at the ESG efforts related to local government operations, the review of rating agencies, and how it can be mutually beneficial for both issuers and investors.

Continue reading.

municipalbonds.com

by Jayden Sangha

Jul 21, 2021

SEC Commissioner Pierce Criticizes Proposed ESG Regulations: Mintz Levin

Yesterday, SEC Commissioner Pierce–one of two Republicans serving as an SEC Commissioner–delivered a speech criticizing the "potential ESG rulemaking."

Specifically, Commissioner Pierce propounded ten theses questioning the SEC's focus on this issue:

"I. ESG as a category of topics is ill-suited, and perhaps inherently antithetical, to the establishment of clear boundaries and internal cohesion.

II. Many ESG issues lack a clear tie to financial materiality and therefore do not warrant inclusion in SEC-mandated disclosure.

III. The biggest ESG advocates are not investors, but stakeholders.

IV. ESG rulemaking is high-stakes because so many people stand to gain from it.

V. "Good" in ESG is subjective, so writing a rule to highlight the good, the bad, and the ugly will be hard.

VI. An ESG rulemaking cannot resolve the many debates around ESG models, methodologies, and metrics.

VII. Emotions around ESG issues may push us to write rules outside our area of authority.

VIII. ESG issues are inherently political, which means than an ESG rulemaking could drag the SEC and issuers into territory that is best left to political and civil society institutions.

IX. ESG disclosure requirements may direct capital flows to favored industries in a way that runs counter to our historically agnostic approach.

X. An ESG rulemaking could play a role in undermining financial and economic stability."

Notably, many of these critiques–which are explored in depth in her speech–identify potential legal flaws with the SEC's approach to ESG rulemaking (e.g., "many ESG items may not be material to the issuer making the disclosure . . . ."), which could provide a roadmap to future challenges to any such regulations. The venue of the speech is also noteworthy–Commissioner Pierce delivered it at the Brookings Institution, a respected think tank that is generally perceived as non-partisan, indicating that this issue is seen as worthy of debate, and not merely where each side retreats to its partisan corner.

This speech is merely the latest volley in a longstanding war of words between the Republican and Democratic SEC Commissioners concerning whether the SEC should promulgate rules concerning ESG disclosures, and, if it does so, the nature of such disclosures. The particular significance of this speech is twofold. First, Commissioner Pierce identifies legal theories that could be used to challenge this SEC rulemaking (e.g., that the SEC acted ultra vires) should the ESG disclosure regulations be enacted. Second, Commissioner Pierce has continued to challenge the propriety (as well as the extent) of this potential ESG rulemaking by the SEC even after the SEC requested public comment on the proposal and Chairman Gensler identified ESG financial disclosures as a top priority for the Biden Administration's SEC. In other words, Commissioner Pierce's continued dissent indicates that this regulatory arena will continue to be the site of frequent battles between these opposing viewpoints.

> Rather than embarking on a prescriptive ESG rule that departs from and undermines our agency's limited, but important, role, we could work within our existing regulatory framework. We could put out updated guidance to help issuers think through how the existing disclosure regime already reaches many ESG topics and to address frequently asked questions that arise in connection with the application of the existing disclosure regime.[61] We also might consider whether we can give any Commission-level comfort about forward-looking statements along the lines of what former Chairman Clayton, Corporation Finance Director Bill Hinman, and Office of Municipal Disclosure Director Rebecca Olsen did in connection with COVID-19.[62] Finally, we can work with investment advisers using ESG strategies and products to ensure that investors understand what that adviser's brand of ESG means in theory and practice.[63]

Mintz – Jacob H. Hupart

July 22 2021

Going Green Could Be the Next Big Thing in Municipal Bonds.

The municipal bond market is one of the largest segments of the overall bond market, and it's a favored destination for investors seeking steady, low-risk income.

Muni bonds are not, however, often thought of as creative or inventive. That could be changing, and could carry with it implications for the VanEck Vectors Green Bond ETF (NYSEArca: GRNB). GRNB, the original exchange traded fund focusing on green bonds, currently doesn't feature much exposure to government debt, just 5.8% according to issuer data, but that figure could increase over time.

"While dozens of green-bond strategies have emerged over the last several years, significantly fewer have arisen with a specific focus on the municipal market," writes Morningstar analyst Gabriel Denis. "This may be surprising for some given that the U.S. muni market, where many issuers have been offering debt that supports environmentally responsible infrastructure projects for decades, appears a natural fit for green bonds."

Green Space in the Muni Arena

Green bonds are a small, but growing part of the fixed income market. Explaining that growth and investors' increasing enthusiasm for such debt, green bonds are issued by companies or governments for the sole purpose of funding environmentally friendly projects.

For example, a state that wants to develop a new wind farm can issue green bonds to that effect, and it's possible those bonds will eventually be included in GRNB's roster.

"The green-bond market within the U.S. has grown quite rapidly over the last few years. According to the Climate Bond Initiative, a nonprofit that certifies green bonds, total U.S. green-bond issuance grew from $12.8 billion over the 2015 calendar year to $61.5 billion over 2020," adds Denis.

The bulk of green bonds are taxable issues from companies, essentially making those bonds corporate debt, but last year, green munis accounted for almost a third of the market – a figure that's forecast to grow alongside the broader green debt arena. As that happens, GRNB's muni exposure could increase.

If that happens, it would jibe with GRNB's mostly low-risk roster. Over three-quarters of the fund's holdings carry investment-grade ratings and of that group, over 51% are rated AAA, AA, or A, confirming robust credit quality and low credit risk.

"The green-bond market within the U.S. has grown quite rapidly over the last few years. According to the Climate Bond Initiative, a nonprofit that certifies green bonds, total U.S. green-bond issuance grew from $12.8 billion over the 2015 calendar year to $61.5 billion over 2020," concludes Morningstar's Denis.

ETF TRENDS

TOM LYDON

JULY 22, 2021

Green Muni Bonds Are Blooming Slowly.

What does the market for green muni bonds look like, and where is it going?

Investors today can expect to see a plethora of gardening-related puns when reading about the blossoming green-bond market. Green bonds, fixed-income instruments whose use of proceeds are specifically linked to the undertaking of environmentally sustainable projects, have surged in size over the previous decade. We dug into this topic in our recent white paper, including assessing the growth of the green-bond market itself, how asset managers both in the United States and in Europe are seeking to take advantage of this new market, and whether these bonds belong in your portfolio.

While dozens of green-bond strategies have emerged over the last several years, significantly fewer have arisen with a specific focus on the municipal market. This may be surprising for some given that the U.S. muni market, where many issuers have been offering debt that supports environmentally responsible infrastructure projects for decades, appears a natural fit for green bonds. Why are there not more green-bond muni strategies for investors to consider? Should tax-free investors keep their eyes peeled for such an option? Here, we dig further into the green-muni-bond market to learn more.

Green Munis: Growing, but Still a Tiny Part of a Niche Market
As with many areas of the world, the green-bond market within the U.S. has grown quite rapidly

over the last few years. According to the Climate Bond Initiative, a nonprofit that certifies green bonds, total U.S. green-bond issuance grew from $12.8 billion over the 2015 calendar year to $61.5 billion over 2020.[1] The majority of this issuance stems from taxable issuers, including from major securitized players like Fannie Mae and from corporations like Apple and Coca-Cola. Yet muni bonds are no small part of this market: of the $61.5 billion of total issuance over 2020, 25% ($15 billion) stemmed from muni issuers.[2] This too represents a substantial increase over the same period; in a 2017 analysis, Nuveen Asset Management cited Bloomberg data showing that green muni issuance was just over $4 billion over calendar 2015.[3]

This growth is impressive but represents merely a drop in the bucket of total U.S. muni issuance. According to the Securities Industry and Financial Markets Association, the U.S. muni market reached just shy of $4 trillion outstanding at the end of 2020, with $485 billion alone issued over 2020[4]; the $15 billion in green muni debt cited earlier represents just 3% of that total issuance. Most of this debt is held directly by individual investors or through mutual fund strategies. Additionally, the market remains fragmented and less liquid than the U.S. corporate bond market as there are about 1 million outstanding muni securities, and only between 30,000 and 40,000 of them trade on an average day.

Certifying Green Munis Remains Tricky

Investors should also note that there’s currently substantial uncertainty in the market over how to determine which muni bonds are truly “green.” “Greenwashing,” wherein companies advertise stronger environmental, social, and governance standards than they are truly practicing, is a serious concern for sustainability-minded investors across asset classes. Within munis, part of the problem is that most muni issuers have arguably been working alongside green principles long before green bonds emerged as an asset class. Organizations like CBI, which offers its own certification service for green bonds, and the International Capital Markets Association, which since 2014 has published a set of voluntary reporting principles for green bonds, seek to minimize the risk of greenwashing by providing issuers a framework through which to prove their proceeds are going to environmental projects. A plethora of second-party opinion organizations, including Kestrel Verifiers and Morningstar-owned Sustainalytics, have emerged over the same period offering to substantiate which issuers are offering truly “green debt.” Many muni issuers, whether or not they are intentionally adhering to these frameworks, might be issuing debt that qualifies for consideration but are just not seeking out those green designations. A substantial part of the muni market over the past several decades has been debt issued by states and local authorities to finance construction of capital infrastructure projects, including improvements to water mains, new water and sewer treatment facilities, renewed roads and bridges, and energy-efficient electric utilities. Many of these projects would likely fulfill the use-of-proceeds requirement of a green mandate but just aren’t labeled as such.

Even so, caution is warranted in determining which muni bonds are truly green. In a 2019 opinion piece in the *Bond Buyer*, Dana Villanova and Monica Reid of Kestrel Verifiers noted that while the ICMA and CBI encourage issuers to undergo independent external reviews, muni issuers are still able to “self-label” their debt as being green, and there is no mechanism for removing the green label from a muni bond that does not meet its original output goals as long as the funds are used for their original purpose.[5] With these factors under consideration, both CBI certification and additional verification from SPOs have become quite popular in the taxable green-bond market as investors seek ways to determine which bonds are truly following ICMA and other green-bond principles.

Within munis, however, this type of work remains somewhat stunted in comparison. The managers of Wells Fargo Municipal Sustainability (WMSAX), a strategy focused on investing in muni bonds with strong ESG characteristics, noted that CBI certifications and SPO verifications are rarer in the muni market given the budgetary restraints of the issuers themselves. U.S. municipalities, the majority of which are smaller agencies, often operate with limited budgets, and staff and may struggle to justify the added expenses of tracking bond proceeds and preparing annual disclosures to meet green certification requirements. This problem is compounded by the fact that green muni bonds themselves don't appear to trade with the same price premium (often dubbed a "greenium") exhibited by taxable issuance. To varying degrees of intensity, many market observers have noted that when issuers issue both a green and a nongreen bond with otherwise identical characteristics, the green bond will trade with a higher price (and thus lower yield) than its nongreen equivalent. Generally, this would suggest that investors are willing to be compensated less in their quest for investing sustainably, and issuers can expect to pay less over time for a green bond than a nongreen bond. Wells Fargo, for their part, stated that it did not see evidence for a greenium within the muni market. Furthermore, in a 2020 study entitled "Where's the Greenium?", David Larcker and Edward Watts, Stanford and Yale academics writing for the *Journal of Accounting and Economic*s, concluded that investors appeared unwilling to pay more for green munis than their traditional equivalents and suggested that there was no greenium within the muni market.[6] While muni issuers may have an incentive to self-label their bonds as being green in some circumstances, the financial incentive to undergo a formal certification and verification process through a third-party appears less clear.

All things considered, investors may therefore want to take the headline growth of the green muni market with a grain of salt. Even with third-party certification and SPO verification, there is room for additional due diligence to ascertain which green bonds are truly meeting sustainability objectives across the broad fixed-income market. Given the additional certification challenges within munis, investors should be doubly cautious while considering this asset class.

What Are Your Investing Options?

Perhaps in part because of these challenges, the investing universe for green muni strategies remains limited in 2021. As of July 2021, there are only two strategies available to U.S. investors that focus exclusively on green muni bonds: Franklin Municipal Green Bond (FGBKX), incepted in October 2019, and Green California Tax-Free Income (CFNTX), incepted in December 1985 but rebranded as a green-bond fund in 2019. Franklin Municipal Green Bond defines green bonds as those funding projects linked to environmental sustainability. The fund's prospectus, however, acknowledges that while the managers may consider external reports (such as those provided by CBI certification or by an SPO) while determining which bonds are green, ultimately they can choose to invest in any issuers they determine as meeting their stated requirements of a green bond. The strategy has a limited record given its relative youth and remains small: The fund's AUM was just $8 million as of May 2021, and it held only 55 individual securities as of that date. Green California Tax-Free Income is larger and has a longer track record but has applied ESG screens to its investment process only since 2019; while the strategy seeks to be a "green-bond fund" according to its prospectus, it can invest in any issues it judges as meeting its proprietary ESG screens.

These two strategies, both actively managed, do not have any passive competitors. The market for green muni indexes remains quite slim, with the S&P U.S. Municipal Green Bond Index being the only one extant as of July 2021. This index tracks muni bonds which are judged to be green via a certification from CBI. VanEck mentioned this index in the context of its launch of VanEck Vectors Green Bond ETF (GRNB), which tracks the S&P U.S. Select Green Bond Index. The managers there determined that while the universe of U.S.-domiciled, CBI-certified taxable green bonds (which the latter index tracks) was broad and developed enough to support a passive product, the muni market remained too small and concentrated to support a muni-focused product. The amount of issuers in the green muni bond index versus the broader S&P Municipal Bond Index underscores that fact: Whereas the S&P Municipal Bond Index tracked more than 200,000 constituents for a total market cap of $2.7 billion as of June 2021, the S&P U.S. Municipal Green Bond Index tracked just over 2,850 constituents for a market cap of $53 million.[7]

The path forward for the green muni bond investor is uncertain, with both the current strategy options and the incentives for green muni bonds limited. Yet there is optimism that the market for both green muni bonds and for the strategies that invest in them will grow substantially in the years to come. Lauren Kashmanian of Parametric Portfolio Associates, in an interview with Bloomberg News, anticipated that total green muni debt issuance could balloon to $30 billion-35 billion in the wake of additional federal stimulus for U.S. infrastructure.[8] Should the market continue to expand, however, green muni investors should consider their options with a discerning eye and seek to invest with managers with proven teams, sensible processes, and low fees.

[1] Climate Bond Initiative. 2021. “Sustainable Debt: Global State of the Market 2020.” https://www.climatebonds.net/resources/reports/sustainable-debt-global-state-market-2020

[2] Ibid.

[3] Liberatore, S., & Levy, J. 2017. “Green Muni Bonds: Responsible Investing in a Centuries-Old Asset Class.” TIAA. https://www.tiaa.org/public/pdf/C29869_TGAM_whitepaper_muni_bonds.pdf

[4] Securities Industry and Financial Markets Association. “U.S. Municipal Bonds: Issuance, Trading Volume, Outstanding, Holders.” https://www.sifma.org/resources/research/us-municipal-bonds-statistics/

[5] Villanova, D., & Reid, M. 2019. “What’s in a Municipal Green Bond?”, The Bond Buyer. https://www.bondbuyer.com/opinion/whats-in-a-municipal-green-bond

[6] Larcker, D., & Watts, E. 2019. “Where’s the Greenium?”, J. Accounting and Econ., Vol. 69, No. 2–3, P. 101312. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3333847

[7] S&P Dow Jones Indices.

[8] Moran, D. 2021. “Biden Spending Plan Seen Jolting Muni Green-Bond Sales to Record,” Bloomberg News. https://www.bloomberg.com/news/articles/2021-04-20/biden-spending-plan-seen-jolting-muni-green-bond-sales-to-record

morningstar.com

by Gabriel Denis

Jul 19, 2021

BDA Fixed Income Insights Digital Magazine – Summer 2021

The BDA's quarterly digital magazine, Fixed Income Insights, is now available.

It can also be viewed on the new BDA app, which can be downloaded in the Apple store, Google play store, and Amazon app store.

This month's edition contains articles by the industry's top contributors and relevant topics:

- **Cover Story** – A conversation with US Senator Roger Wicker (R-MS) on Infrastructure and Municipal Bonds
- **Municipal Markets** – Articles from DPC Data and Hilltop Securities
- **Taxable Markets** – Kevin McPartland of Greenwich Associates
- **BDA Member Profile** – Ted Karn, President and Founder of The Karn Group

To view the new summer edition online, please click here. If you are unable to access the online version, a pdf can be found here.

If you have any questions or about the magazine or the new app, please contact Rebecca Rodriguez at rcrodriguez@bdamerica.org

Bond Dealers of America

July 20, 2021

One Last Obstacle to an Infrastructure Deal: Public Transit Funding

Negotiators looking to finalize a $1 trillion bipartisan infrastructure deal say they're getting close, but funding for transit remains a hangup — and frustrations are starting to show as the talks drag on.

Republicans and Democrats are at odds over funding for highways and public transit. The bipartisan negotiators had seemingly agreed for the most part on an increase in funding for public transit, but Sen. Pat Toomey (R-PA), the top Republican on the Banking Committee, which has jurisdiction over transit, reportedly objected. Now Republicans are looking to change a long-standing 80-20 split of money going to roads versus that going to rail and bus systems, according to reports.

"The split — giving transit one dollar for each four that highways get — has its roots in the 1980s, but has only been sustained by an uneasy truce between lawmakers,' The Washington Post's Ian Duncan reports. "Republicans have sometimes proposed scaling back transit funding, while Democrats have hoped to increase its share. The dispute has arisen again as a group of senators tries to wrap up the infrastructure package."

Republicans reportedly want to cut the transit share from 20% to 18%, arguing that transit agencies already got some $70 billion in Covid relief funds and that the funding split in recent years has seen more than 82% go to highways.

An infrastructure bill without transit? Sen. Rob Portman (R-OH) suggested dropping transit funding from the infrastructure package entirely. "Transit funding has not yet been resolved. That's important, but if we can't resolve it then we could leave that out. I hope not," he said, according to The Hill. Portman, the lead GOP negotiator on the deal, told reporters that Democrats "are not being reasonable in their requests right now.

Sen. Chris Coons (D-DE), an ally of President Joe Biden's, told CNN Friday that he would support the package even if it excluded the transit portion because Democrats could add transit funding to the budget reconciliation package they plan to pass. But other Democrats have made clear they won't go for that.

Democratic Sens. Sherrod Brown of Ohio and Tom Carper of Delaware said Thursday that they won't vote for a package that lowers transit funds. "Robust funding for transit must be included in the legislation," they said in a statement. "We will not support any package that neglects this fundamental part of our nation's infrastructure." Brown reportedly accused Republicans of stalling the talks in an effort to derail Biden's agenda.

Why it matters: "The question of transit funding underscores different ideas among Republicans and Democrats about what infrastructure spending should achieve," writes the Post's Ian Duncan. "Democrats argue that boosting transit funding would encourage more Americans to use buses and trains, reducing carbon emissions from cars and tackling congestion without building new road lanes."

The bottom line: The transit issue isn't the only remaining difference, making it unclear if negotiators will be able to finalize a deal by early next week. But given how far they've gotten, it's far too soon to think any of the remaining hurdles will scuttle a deal.

Yahoo Finance

by Yuval Rosenberg

July 23, 2021

Multifamily Private Activity Bond Issuance Reached Record High of $16.4 billion in 2019.

Overview

The Council of Development Finance Agencies (CDFA) reports that in 2019 housing finance agencies issued a record $16.4 billion in multifamily private activity bonds (PABs), a $1.69 billion or11.5% increase from 2018. Furthermore, $9.48 in single family mortgage revenue bonds were issued, a $2.12 billion or 22.4% gain from 2018. A combined $25.9 billion in multifamily and single-family housing bonds were issued; while this was a $3.81 billion increase in numeric terms, it was a reduction as a proportion of total PAB issuance ($30.8 billion), falling from 91.5% in 2018 to 84.1% in 2019. Six states reported no multifamily PAB issuance (another two states failed to report), repeating 2018's historic low. This number has been trending down since 2011 when 32 states issued no multifamily PABs.

Continue reading.

Novogradac

Published by Peter Lawrence on Tuesday, July 20, 2021 – 12:00am

FERC Revises Filing Requirements for Certain Small Hydroelectric Facilities.

On July 15, 2021, the Federal Energy Regulatory Commission ("Commission" or "FERC") issued a Final Rule amending its regulations pertaining to: (1) the information required to be filed with a notice of intent to construct a qualifying conduit facility and (2) the licensing requirements applicable to major projects up to 10 megawatts (MW). The Final Rule was issued to align the Commission's regulations with changes to the Federal Power Act ("FPA") that were made as part of the Hydropower Regulatory Efficiency Act ("HREA") of 2013.

Enacted in August 2013, the HREA amended section 30 of the FPA to create a subset of small conduit hydroelectric facilities that are excluded from the jurisdiction of the FPA. Under those amendments, any party proposing to construct a "qualifying conduit hydropower facility"—a facility that uses "only the hydroelectric potential of a non-federally owned conduit,"—must file a notice of intent with FERC, demonstrating that the proposed project meets certain qualifying criteria. In instances where a dam would be constructed as part of the facility, the Commission required an applicant's notice of intent to include a profile drawing showing that the conduit—rather than the dam—creates the hydroelectric potential. The Commission clarified this requirement in a 2015 order, Soldier Canyon Filter Plant, in which it concluded that the relevant factor in its consideration of qualifying conduit facilities is whether the facility would use water "within a conduit operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity," and that the presence of an upstream dam is not relevant to this determination, even where the head from the dam contributes to the facility's generating potential.

A separate provision of the HREA amended section 405 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), which provided that certain hydropower projects that produce 5 MW or less were exempted from the licensing requirements of Part I of the FPA. The HREA amended section 405 to increase the limit for exemptions to 10 MW.

On February 18, 2021, the Commission issued a Notice of Proposed Rulemaking ("NOPR") in which it proposed revisions to its regulations that would: (1) remove the requirement that a notice of intent to construct a qualifying conduit include a profile drawing depicting the source of hydroelectric potential, in cases where a dam would be constructed as part of the facility; and (2) extend the licensing requirements previously applicable to major projects up to 5 MW to major projects 10 MW or less, pursuant to the revised definition of a "small hydroelectric power project" enacted in the HREA 2013.

In its Final Rule, the Commission adopted the changes set forth in the NOPR. It noted that, based on the language in Soldier Canyon Filter Plant, the profile drawings of dams would no longer be required as part of the notice of intent submittal for qualifying conduits. The Final Rule also included changes to the licensing and amendment filing requirements in Parts 4 and 5 of the Commission's regulations to extend the requirements that previously applied to major projects up to 5 MW to major projects 10 MW or less, to be consistent with the revised definition of a "small hydroelectric power project" under the 2013 HREA. The Commission's Final Rule provided that such a change is appropriate to "expedite hydropower development by easing the burden of preparing an application for license and by assisting the Commission in more rapid processing of applications." As part of the Final Rule, the Commission made revisions to 18 C.F.R §§ 4.40–41; 18 C.F.R. §§ 4.50–51; 18 C.F.R. §§ 4.60–61; 18 C.F.R. §§ 4.70–71; 18 C.F.R. §§ 4.200–202.

As of this drafting, the Final Rule had not yet been published in the Federal Register. The Final Rule will be effective 60 days after such publication.

Troutman Pepper – Elizabeth J. McCormick

July 26 2021

OZ Investing in the New Economy.

Do record stock market levels, the high inflation environment, and the new economy pose an opportunity for Opportunity Zone investors?

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July 21, 2021

Citigroup Set to Take Over N.J. Water Park Bond Sale.

• Janney removed after unrated muni deal failed to sell
• Developer seeks to draw families to East Coast gambling hub

Citigroup Inc. is poised to take over as the underwriter of a $95 million municipal-bond sale that will finance the construction of an indoor water park in Atlantic City, New Jersey, replacing previous underwriter Janney Montgomery Scott.

The Atlantic County Improvement Authority, the agency that is issuing the debt on behalf of a private developer, is scheduled to meet in a special session on Thursday to vote on Citigroup's appointment, according to Jessica Parada, administrative assistant at the authority.

The decision to replace Janney was made after the Philadelphia-based underwriter was unable to sell the unrated bonds despite surging investor demand for high-yield debt.

It's rare for borrowers in the municipal-bond market to change underwriters just as a deal is set to price. At the time, developer Bart Blatstein's counsel, Jeffrey Winitsky, a lawyer at Parker McCay, said that a new underwriter would "give the transaction a fresh perspective and marketing effort."

Citigroup spokesperson Scott Helfman declined to comment. Blatstein said Janney is still going to be part of the transaction. A spokesperson for Janney declined to comment.

The planned 100,000-square-foot theme park, located adjacent to Blatstein's Showboat hotel, marks an effort to draw more families to Atlantic City, whose tourism industry has struggled for years after other East Coast states legalized gambling.

The park will include a looping "lazy river," multiple water slides, three pools and five bars, including a swim-up bar and a two-level treehouse bar. A feasibility study projected attendance at 626,523 in its first year of operation and 773,523 in year five. Admission would range from $99.99

for adults to $69.99 for children, with off-peak rates and hotel package discounts. The park was expected to be ready by May 31, 2022.

Bloomberg Markets

By Joseph Mysak Jr

July 26, 2021, 8:16 AM PDT Updated on July 26, 2021, 9:43 AM PDT

Fitch: Job Growth for California Metros May Stumble Due to Delta Variant

Fitch Ratings-New York-21 July 2021: Employment growth is positioned to spike for most metros throughout the country as vaccinations continue and social-distancing measures are rolled back, though Fitch Ratings latest U.S. Metro Labor Markets Tracker points to California as a potential hot spot in the coming weeks.

Monthly employment growth has been on a steady upward trajectory for California, where imposed lockdowns may have been more stringent. However, 'the growing spread of the delta variant has led to the return of mask mandates in Los Angeles and is one to watch as further restrictions could slow the pace of employment recovery in the affected metros,' said Senior Director Olu Sonola.

While most regions of the country showed notable growth in jobs, the Midwest's median recovery rate for major metros fell to 66% in May from 68% in April. Cleveland was the Midwestern major metro with the largest decline in May at five percentage points below April. Eight out of nine major metros in the Midwest had employment recovery rates above 50%, with the exception being Chicago. The Midwest's median Fitch-adjusted unemployment rate rose to 8.8% in May from 8% in April. All three Midwestern metros where Fitch-adjusted unemployment rates rose in May are in Ohio (Cincinnati, Cleveland, and Columbus).

Leisure and hospitality remain a lingering sore spot for job growth. Though cities like Miami and New Orleans are seeing relatively strong improvement from prior months, Miami has only recovered 62% of leisure and hospitality employment while New Orleans has recovered 42%. Interestingly, Las Vegas, which has the highest leisure and hospitality employment concentration among major metros, has seen job recovery stall lately compared to other cities.

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

Contact:

Olu Sonola
Senior Director
+1 212 908-0583
Fitch Ratings, Inc. Hearst Tower 300 W. 57th Street New York, NY 10019

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email: sandro.scenga@thefitchgroup.com

Additional information is available on www.fitchratings.com

[Introduction to the American Rescue Plan Act Funds for Water Bill Assistance and Infrastructure Projects: GFOA Webinar]

August 12, 2021 |. 1 p.m.-2:15 p.m. ET

Details:

Legislative activity on Capitol Hill in the year 2020 was dominated by the development of multiple aid packages in response to the outbreak of COVID-19. To address the vital need for widespread access to drinking water & wastewater utilities, Congress has authorized billions to assist households and utilities with water utility affordability and stormwater infrastructure projects. Join experts from the Government Finance Officers Association (GFOA) and Environmental Finance Center Network (EFCN) for an introduction to the American Rescue Plan Act (ARPA, the Low-Income Housing Water Assistance Program (LIHWAP), and Emergency Rental Assistance Program (ERAP) to learn what to expect when dealing with these federal assistance programs.

Click here to learn more and to register.

Overview of Public Procurement: GFOA Webinar

August 12, 13 & 16 | 2-4:45 p.m. ET

Click here to learn more and to register.

Intro Public-Private Partnership (P3) Finance Course: CDFA Webinar

August 11-12, 2021 | Daily: 12:00 – 5:00 PM Eastern

Overview

The Intro Public-Private Partnership (P3) Finance Course examines this emerging development finance model with a focus on how development finance agencies can adopt P3 principles to address a variety of projects. This course covers basic P3 concepts, key players involved in transactions, asset valuation, contract negotiation, risk assessment, revenue stream development, and feasibility analysis. In addition, several P3 projects from across the country will be presented, and P3 experts will analyze the successful elements in each deal.

Interest in P3 financing is growing as state and local governments face tough budget decisions along with declining federal investment in infrastructure. Several state and local agencies have used P3 to finance real estate developments, schools, parking garages, public transit, affordable housing, water facilities, and more. During the Intro P3 Finance Course, industry experts discuss the common characteristics and drivers of P3 financing's throughout the country and explain the various structures of these deals.

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

Click here to learn more and to register.

IRS Extends Continuity Safe Harbor For ITC And PTC Projects.

Renewable energy developers breathed a sigh of relief Tuesday when the Internal Revenue Service and Department of the Treasury issued guidance extending the safe harbor for wind and solar projects to qualify for the investment tax credit (ITC) and production tax credit (PTC).

Citing delays related to the COVID-19 pandemic, the extension provides relief to developers struggling with the interconnection delays, supplier backlogs, and contractor constraints that have been plaguing the industry. Notice 2021-41 extends the Continuity Safe Harbor for projects that began construction in 2016 through 2020 and clarifies the methods that taxpayers can use to satisfy the Continuity Requirement.

Under prior IRS guidance, taxpayers have two options to demonstrate that a project has begun construction under Section 45 or Section 48(a)(5) of the Internal Revenue Code – the Physical Work Test or the Five Percent Safe Harbor. Both methods require continuous progress toward completion of the facility once construction has begun (Continuity Requirement). The Continuity Requirement can be satisfied in two ways, either by (1) satisfying the test applicable to the method used to establish start of construction, or (2) satisfying the Continuity Safe Harbor.

Continuity Safe Harbor Extension

The Continuity Safe Harbor allows a facility to be deemed to have satisfied the Continuity Requirement if the facility is placed in service within a certain amount of time after start of construction is established.

Notice 2021-41 provides that for any qualified energy project that began construction under either the Physical Work Test or the Five Percent Safe Harbor, the timeline to achieve placed in service and still satisfy the Continuity Safe Harbor is extended, as follows:

- Projects that began construction in 2016, 2017, 2018, or 2019, the Continuity Safe Harbor is satisfied if the project is placed in service by the end of the calendar year that is six years after the year construction began.
- Projects that began construction in 2020, the Continuity Safe Harbor is satisfied if the project is placed in service by December 31, 2025.

Satisfaction of Continuity Requirement

Projects that fail to be placed in service within the timeline allowed to satisfy the Continuity Safe Harbor can nevertheless still satisfy the Continuity Requirement.

Prior IRS guidance allowed a taxpayer to satisfy the Continuity Requirement by establishing facts sufficient to demonstrate compliance with the test associated with the method that was used to establish start of construction. The Continuous Construction Test had to be satisfied if start of construction was established under the Physical Work Test, or, if start of construction was established under the Five Percent Safe Harbor, the taxpayer had to satisfy the Continuous Efforts Test. Notice 2021-41 revises prior guidance by clarifying that regardless of the method used to establish start of construction, if the taxpayer satisfies either the Continuous Construction Test or the Continuous Efforts Test, the Continuity Requirement has been satisfied.

Husch Blackwell LLP

July 1, 2021

New Jersey Private School With $67,850-a-Year Tuition to Tap Tax-Free Bond Market.

- **The Lawrenceville School to sell debt for campus complex**
- **Bond deal features big-name trustees, large endowment**

An elite New Jersey boarding school is hitting the $4 trillion municipal-bond market with a bond deal that comes with a bit of prestige.

The Lawrenceville School is selling $56 million of tax-free and taxable debt next week to help finance a complex that will include a pool, hockey rink, dining facility and fitness center. Located just down the road from Princeton University in Lawrenceville, New Jersey, the school founded in 1810 boasts a $632.9 million endowment and a who's who of trustees led by Jonathan Weiss, chief executive officer of corporate and investment banking at Wells Fargo & Co.

Lawrenceville, considered one of the best boarding schools in the U.S., is joining borrowers like a botanical garden in Pennsylvania and the territory of American Samoa by seizing on low interest rates and insatiable investor demand for muni bonds. The borrowing will help finance the $179 million complex dubbed the Tsai Field House, which was backed by donors like billionaire Joseph Tsai, executive vice chairman of Alibaba Group Holding Ltd., who is an alumnus of the school and trustee.

The complex on the 700-acre campus is "going to transform our school for decades and generations of students," said Ben Hammond, the school's chief financial officer. Other notable alumni include former Walt Disney Co. head Michael Eisner, late Salomon Brothers CEO John Gutfreund and musician Huey Lewis.

Elite boarding schools occasionally raise money in the muni market, which helps them finance projects on their picturesque campuses. They're often armed with strong credit ratings thanks to strong demand from students, big endowments and alumni support. Lawrenceville, with just over 830 students during the 2020-21 school year, benefits from an "excellent brand" and exceptional donor support, according to a report by Moody's Investors Service, which rated the bonds Aa2.

Roberto Roffo, a managing director and portfolio manager at SWBC Investment Company, said the school will do well in the muni market thanks to its strong credit and status as a "mini Harvard."

"If I were looking for high-grade, this would be a beautiful bond to buy," said Roffo, who said he's looking to lower-rated credits instead.

The school is known for being an early adopter of the Harkness method in its classrooms, which emphasizes discussion among students. Bond documents note many of its students go on to attend top-tier colleges like Princeton, New York University and Georgetown University.

The majority of students board on campus at the school, which charged boarding tuition of $67,850 for the 2020-21 school year. In fall 2020, people of color comprised about 52% of the student body and about 30% of students received need-based financial aid.

Having such high-profile supporters helped the school during the pandemic. Bond documents note the school did not receive a loan through the Paycheck Protection Program, saying a benefactor "instead" offered a line of credit to avoid cutting staff.

While the school doesn't name the donor, a financial statement included with bond documents says the Joe and Clara Tsai Foundation provided an $8 million line of credit to the school in November. A spokesperson for the school declined to comment.

Lawrenceville also launched a capital campaign in May with the goal of raising $425 million, and it's already raised $367 million in cash and commitments as of June 30, bond documents note. As of June 2020, the school's endowment per student was approximately $598,000, bond documents say.

The school is expecting to return to normal operations in the upcoming school year, and students and employees are required to be vaccinated against Covid-19. As of June 15, student applications are up 16% from the prior year.

The first phase of construction on the bond-financed field house is expected to be completed next year, according to the school. The next phase will renovate the existing one. Hammond said it helps to enter the bond market at a time when interest rates are low.

"We're watching the markets like everyone else, feeling very fortunate about our timing, which feels lucky to us," he said.

Bloomberg Markets

By Amanda Albright

July 22, 2021, 9:30 AM PDT

GASB Issues Proposal to Enhance Concepts for Notes to Financial Statements.

Norwalk, CT, July 20, 2021 — The Governmental Accounting Standards Board (GASB) today issued a proposed Concepts Statement to guide the Board when establishing note disclosure requirements for state and local governments. The document is part of the GASB's response to the results of its research reexamining existing note disclosure requirements.

The proposed concepts primarily are intended to provide the GASB with criteria to consistently evaluate notes to financial statements in the standards-setting process. They also may help stakeholders to understand the fundamental concepts underlying future GASB pronouncements.

The Revised Exposure Draft (RED), *Communication Methods in General Purpose External Financial Reports That Contain Basic Financial Statements: Notes to Financial Statements*, proposes concepts such as:

- The purpose of notes to financial statements

- The intended users of note disclosures
- The types of information that should be disclosed in notes
- The types of information that are not appropriate for note disclosures.

A key element of the proposed Concepts Statement is the concept of essentiality. The RED would establish that notes to financial statements are essential to making economic, social, or political decisions or assessing accountability. The RED also identifies the characteristics that indicate information is essential to users:

- Users utilize the information in their analyses for making decisions or assessing accountability or would modify those analyses to incorporate the information if it were made available.
- The information has or would have a meaningful effect on users' analyses for making decisions or assessing accountability.
- A breadth or depth of users utilize or would utilize the information in their analyses for making decisions or assessing accountability.

The GASB issued an Exposure Draft (ED) on this topic in early 2020. The Board has issued this RED to incorporate feedback received from stakeholders on the previous ED and to seek feedback on the resulting proposed revisions, which the Board believes will improve the final concepts.

The Revised Exposure Draft is available for download at no charge on the GASB website, www.gasb.org. Stakeholders are encouraged to review and provide comments by October 15, 2021.

GASB Proposes Omnibus Statement Addressing Wide Range of Practice Issues.

Norwalk, CT, July 19, 2021 — The Governmental Accounting Standards Board (GASB) has proposed guidance addressing various accounting and financial reporting issues identified during the implementation and application of certain GASB pronouncements or during the due process on other pronouncements.

The issues covered by the Exposure Draft, *Omnibus 20xx*, include:

- Accounting and financial reporting for exchange or exchange-like financial guarantees
- Classification and reporting of certain derivative instruments that are neither hedging derivative instruments nor investment derivative instruments
- Clarification of certain provisions of:
- Statement No. 87, *Leases*
- Statement No. 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements*
- Statement No. 96, *Subscription-Based Information Technology Arrangements*
- Extending the period during which the London Interbank Offered Rate (LIBOR) is considered an appropriate benchmark interest rate for the qualitative evaluation of the effectiveness of certain interest rate swaps
- Accounting for the distribution of benefits as part of the Supplemental Nutrition Assistance Program (SNAP)
- Disclosures related to nonmonetary transactions
- Pledges of future revenues when resources are not received by the pledging government
- Updating certain terminology for consistency with existing authoritative standards.

The Exposure Draft is available on the GASB website, www.gasb.org. The GASB invites stakeholders to review the proposal and provide comments by September 17, 2021.

07/19/21

MSRB Holds Quarterly Board Meeting and Elects New Officers.

Washington, DC – The municipal market's self-regulatory organization held its quarterly Board of Directors meeting in Washington, DC, on July 21-22, 2021. The Municipal Securities Rulemaking Board (MSRB) elected new officers and adopted a new organizational vision, long-term strategic direction and supporting budget for Fiscal Year 2022 that will advance its mission in the upcoming fiscal year and beyond.

Also at its meeting, the Board considered and advanced several market regulation initiatives, received updates on multi-year technology and data activities, and authorized staff to prepare a request for information on Environmental, Social and Governance (ESG) considerations in the municipal market.

Board Leadership

The Board announced today that it has elected Patrick Brett, Managing Director and Head of Municipal Debt Capital Markets at Citi in New York, to serve as FY 2022 Chair of the Board. Meredith L. Hathorn, Managing Partner, Foley & Judell, L.L.P. in Baton Rouge, LA, will serve as Vice Chair. Officer terms are one year. The Board will soon announce the incoming class of four new Board members whose terms will begin October 1, 2021.

"Both Patrick and Meredith exemplify the commitment to public service and market knowledge that are hallmarks of great Board leaders," said MSRB CEO Mark Kim. "I am delighted to be working alongside Patrick and Meredith to advance the MSRB's bold new strategic plan grounded in our Congressional mandate to protect investors, issuers and the public interest."

Strategic Planning

The Board defined the MSRB's mission, vision and values and adopted a long-term strategic plan aimed at strengthening market efficiency and transparency. The MSRB will publish its strategic plan for the next four years in advance of the new fiscal year, which begins on October 1, 2021.

"We spent the last year listening to our stakeholders and formulating the Board's vision for the market that helps bring progress and opportunity to communities across the country," Kim said. "I'm looking forward to continuing that dialogue and sharing our strategy for how we can deploy the tools of regulation, technology and data in impactful ways to serve the public interest."

Market Regulation

The Board advanced the following initiatives through the rulemaking process:

- **Filing proposed amendments to MSRB Rule G-10:** After considering comments received during its public request for comment, the Board determined to seek approval from the Securities and Exchange Commission (SEC) of a proposed rule change to streamline the delivery of disclosures to investors and to amend Rule G-48 to exempt sophisticated municipal market

professionals (SMMPs) from the disclosure requirement.
- **Filing proposed modernization of MSRB Rule G-34:** Based on stakeholder feedback, the Board authorized staff to seek SEC approval of proposed amendments to align the text of the MSRB's rule on obtaining CUSIP numbers with current market practices.
- **Additional comment on draft solicitor municipal advisor rule:** The Board discussed comments received on a public request for comment on draft MSRB Rule G-46 and determined to publish a second request for comment on a revised draft rule addressing feedback from commenters.
- **Filing proposed amendments on the application of Regulation Best Interest:** The MSRB will seek SEC approval of proposed amendments to MSRB rules to apply aspects of the SEC's Regulation Best Interest requirements to bank dealers. The MSRB also will seek approval to amend Rule G-48 to address changes to the responsibility to perform a quantitative suitability analysis when making a recommendation to certain SMMPs.

The MSRB plans to advance these rulemaking initiatives over the next several months. Previously, the Board authorized staff to issue a request for comment on next steps in modernizing MSRB Rule G-27 on dealer supervision, which the MSRB plans to do later this summer for a 90-day comment period.

Professional Qualifications and Compliance

The Board received an update on the implementation of the Series 54 examination for municipal advisor principals. Municipal advisor principals must take and pass the exam by November 12, 2021. On November 13, 2021, issuers and the public may view a listing of individuals who have become qualified with the Series 54 exam. View the MSRB's Series 54 resource page.

The Board also discussed the development of compliance resources for dealers and municipal advisors. The Board's FY 2021 Compliance Advisory Group helps identify those areas where compliance assistance is warranted and will be most impactful.

Technology and Data

The Board continues to monitor efforts to leverage cloud technology to modernize the MSRB's critical market transparency systems, including the Electronic Municipal Market Access (EMMA®) website. The Board also previewed a prototype data quality dashboard that is being developed to enhance the MSRB's data governance and oversight capabilities.

"As our market becomes increasingly data-driven, we recognize that enhancing data quality will significantly enhance the ability of market participants to make informed decisions," Kim said.

ESG Initiatives in the Municipal Market

The Board continues to discuss how ESG considerations are influencing market practices and has authorized staff to prepare a draft request for information from the public. The request for information would be intended to inform the MSRB's understanding of this evolving area in the market and how the MSRB might approach ESG trends in the context of its mission to protect investors, municipal issuers, and the public interest.

MSRB Budget and Operations

The Board approved a $43 million operating budget for FY 2022, reflecting a 4% increase over FY 2021. The Board also approved designating an additional $7.5 million of organizational reserves to increase the Board's Designated Systems Modernization Fund, bringing the total level of funding for this multi-year effort to $17.5 million to modernize the MSRB's suite of market transparency technology systems. The full budget will be published this fall.

The MSRB today is announcing that it has named Omer Ahmed as Chief Financial Officer to oversee the budget and financial stewardship of the organization. Ahmed previously served as Chief Risk Officer. Nanette Lawson, who has been serving in the dual capacity of Chief Operating Officer and CFO, will focus exclusively on COO responsibilities, including management of the MSRB's regulatory, technology and data divisions as well as finance, risk, human resources and administration.

More information regarding the Board's governance, membership, and Committees and advisory groups is available at https://www.msrb.org/About-MSRB/Governance/MSRB-Board-of-Directors.

Date: July 23, 2021

Contact: Leah Szarek, Chief External Relations Officer
202-838-1300
lszarek@msrb.org

As Bond Yields Plunge, the Case for Owning Individual Bonds Over Funds Grows.

If you have a client with a goal to earn a specific level of income every year, how does it look when the payout on her bond funds declines with interest rates? Or, what if interest rates rise, and the fund's value drops instead?

For these reasons, some advisors favor buying individual bonds for clients instead of bond funds. Now seems a particularly compelling time to employ this strategy.

Rates on most bonds are so low that finding safe individual ones that yield a little extra that you can hold until maturity makes sense, especially if rates kick back up again. (Bond prices move inversely with rates so that existing bonds' yields can match those of newly issued ones with higher payouts.) That way, an investor won't lose any principal.

Year to date the average bond fund in Morningstar's popular Intermediate Core Bond category is down 0.6%, while the Long-Term Bond category is down 0.8%. That isn't appealing for investors seeking a steady fixed payout and return of their principal at their goal's end date. “Interest rates are near all-time lows, but a bond fund is a bet that interest rates will fall,” says Stan Richelson, a Bluebell, Pa.-based advisor and co-author of Bonds: The Unbeaten Path to Secure Investment Growth.

Richelson and his wife Hildy — his fellow advisor and president of Scarsdale Investment Group — often buy individual municipal bonds with high credit ratings for clients and ladder their portfolios by holding issues of different maturities. That way, if rates rise as bonds with shorter maturities mature, clients get their principal back and it can be reinvested in new bonds with higher yields. They generally hold bonds until maturity so there is no potential for a loss from a rate shift, like in a bond fund. Because they're buy-and-hold investors, they also don't encounter the trading costs of mutual funds buying and selling bonds constantly as new money flows into a fund or old money exits.

Many clients also like the transparency and consistency of buying individual muni bonds, especially from their home state where they can get not only a federal but a state tax exemption. By contrast, many single-state funds only invest in the largest states like California and New York and often aren't the purest or safest plays in those states. "If you looked at these single-state funds, you'd never buy them now because they have huge numbers of low-rated bonds," Richelson says. "In the past, they were loaded with Puerto Rico [which defaulted on its debt] and Virgin Island bonds because they had a tax exemption, like the same state."

Building a bond portfolio requires more time and research than buying a single fund. The Richelsons have invested in individual bonds and written about bonds for some 30 years. The less experienced may require outside help. "It's way easier just to put somebody in a bond fund or an ETF," says advisor David Haverstick at Ables, Iannone, Moore & Associates, which has built individual bond and stock portfolios for clients since its founding in Savannah, Ga., in 2003. "You can click the button and be done with it. For us, we think the specific [bonds and stocks] that we can bring to clients' portfolios is where our value is. But you have to have time, and the resources to be able to do that," he says.

Despite his experience, Haverstick still relies on outside research and analyst reports to pick primarily individual corporate bonds for clients. Though he won't disclose his analytical sources, free bond research is available at most brokers and more detailed research can be bought from ratings services like Moody's Analytics and S&P Global Ratings.

The main concern with an individual bond portfolio is default or credit risk since such portfolios generally aren't as diversified as funds. Although Haverstick doesn't have a standard bond account size, he says the larger the better, since a portfolio can diversify into more bonds. As for Richelson, he says the high-quality muni issues he generally buys—which are often state issues or general obligations, as opposed to local revenue bonds dependent on a single project, such as a hospital's or school's finances—telegraph problems well in advance of a potential default. For instance, he sold out of Illinois municipal bonds seven years ago, based on its history of problems funding government employee pensions. Only in 2020's pandemic did the state's debt get downgraded to near-junk-bond levels.

Moreover, because states have the ability to raise taxes to pay debts, defaults have been rare. Since 1970, the default rate for high-quality or investment-grade muni bonds has only been 0.1%, versus 2.3% for similarly rated corporate bonds.

If picking bonds is too much work, one alternative is to invest clients' assets in a private account of individual bonds run by a professional money manager. For instance, Pimco, one of the world's largest bond fund managers, also runs private accounts for high-net-worth investors in its Global Wealth Management division, which oversees $381 billion (as of March 31). The minimum account size to build a basic muni or corporate bond ladder is $150,000 but as high as $1 million for more active strategies, says Mark Thomas, an account manager at Pimco's Global Wealth Management group. "The minimums are important, because we need to make sure that we get access to a diversified pool of assets," he says.

Outsourcing adds an extra layer of fees for clients. How much depends on the level of account customization. "Fees are commensurate to the work we're doing," Thomas says. If the account is a buy-and-hold bond ladder, fees "generally compare pretty well to ETFs, and on the active [bond] account side, they would be comparable to our active mutual funds."

In other words, if clients want individual bond portfolios, there are competitively priced solutions.

Barron's

By Lewis Braham

July 20, 2021

SECF Fines UBS $10m Over Alleged Adviser 'Misdirection' of Investments.

The US Securities and Exchange Commission today (20 July) fined UBS Financial Services Inc more than $10m over charges that its financial advisers misdirected certain exchange-traded products to retail investors.

According to the SEC's order, over a four-year period, UBS improperly allocated bonds intended for retail customers to parties known in the industry as "flippers," who then immediately resold or "flipped" the bonds to other broker-dealers at a profit.

The order found that UBS registered representatives knew or should have known that flippers were not eligible for retail priority.

In addition, the order finds that UBS registered representatives facilitated over 2,000 trades with flippers, which allowed UBS to obtain bonds for its own inventory, thereby circumventing the priority of orders set by the issuers and improperly obtaining a higher priority in the bond allocation process.

"Retail order periods are intended to prioritize retail investors' access to municipal bonds and we will continue to pursue violations that undermine this priority," said LeeAnn G. Gaunt, chief of the Division of Enforcement's Public Finance Abuse Unit.

The SEC previously brought charges of municipal bond offering "flipping" and retail order period abuses in August 2018, in December 2018, in September 2019, and in April 2020.

Without admitting or denying the findings, UBS consented to a cease-and-desist order that finds it violated the disclosure, fair dealing, and supervisory provisions of Municipal Securities Rulemaking Board Rules G-11(k), G-17, and G-27, and also failed reasonably to supervise within the meaning of Section 15(b)(4)(E) of the Securities Exchange Act of 1934.

The order imposed a $1.75m penalty, $6.74m in disgorgement of ill-gotten gains plus over $1.5m in prejudgment interest, and a censure.

In related actions, the SEC instituted settled proceedings today against UBS registered representatives William S. Costas and John J. Marvin.

The SEC's order found that Costas and Marvin negligently submitted retail orders for municipal bonds on behalf of their flipper customers and that Costas also helped UBS bond traders improperly obtain bonds for UBS's own inventory through his flipper customer.

internationalinvestment.net

by Mark Battersby

July 2021

- Broker-Dealer Settles FINRA Charges for Systemic Supervisory Failures.
- Economists Find Underreporting of Municipalities' Private Debt Obligations.
- Why There's Rising Interest in Giving More Updates to Bondholders.
- The Art and Science of Prepaying Bonds.
- BLX/Orrick 2021 Post-Issuance Compliance Workshop – Hybrid Event: Registration Now Open
- The NABL Workshop: Hybrid 2021
- And finally, Perhaps We Shouldn't Have Mined The Sandbox? is brought to us this week by *Gabbard v. Madison Local School District Board of Education*, in which the Ohio Supreme Court was enlisted to settle a tiff between a local school district and the state regarding the qualifications and training required for school personnel to carry concealed weapons on school grounds. Or, as the court phrased it, "…to convey into and possess in a school safety zone deadly weapons or dangerous ordnance for the safety of the district's students." Believe we're on the same page w/r/t the "deadly weapons," but the mind reels at the possibilities invoked by the inclusion of "dangerous ordnance." But, as we all know, the only thing that stops a bad guy with gun is a Home Economics teacher with a Howitzer.

EMINENT DOMAIN - ALABAMA

South Grande View Development Company, Inc. v. City of Alabaster, Alabama

United States Court of Appeals, Eleventh Circuit - June 21, 2021 - F.4th - 2021 WL 2525190

Real estate developer brought § 1983 action alleging that city's rezoning of parcel owned by developer constituted regulatory taking without just compensation in violation of Fifth Amendment.

Following decisions on motions in limine to exclude certain evidence, the United States District Court for the Northern District of Alabama entered judgment, upon a jury verdict, in favor of developer in the amount of approximately $3.5 million. City appealed.

The Court of Appeals held that:

- Action was ripe for adjudication, notwithstanding that developer did not seek variance from city ordinance;
- Testimony about city's motivation for ordinance that rezoned parcel owned by real estate developer was not relevant;
- Admission of irrelevant evidence about city's motivation was harmless error;
- City's challenge to certain valuation evidence was not preserved on appeal; and
- Foreclosure evidence was not relevant.

LIABILITY - GEORGIA

Metropolitan Atlanta Rapid Transit Authority v. Ingram

Court of Appeals of Georgia - June 25, 2021 - S.E.2d - 2021 WL 2621448

Passenger in vehicle that collided with metropolitan transit authority bus brought negligence action against transit authority and bus driver.

Transit authority and bus driver moved to dismiss or, in the alternative, to transfer venue pursuant to Metropolitan Atlanta Rapid Transit Authority (MARTA) Act. The State Court denied motion. Court of Appeals granted motion for interlocutory review brought by transit authority and bus driver.

The Court of Appeals held that transit authority and bus driver were joint tortfeasors.

Metropolitan transit authority and driver of transit authority bus were "joint tortfeasors," and thus provision of Georgia Constitution that indicated that suits against joint tortfeasors residing in different counties could be tried in either county, and not provision of Metropolitan Atlanta Transit Authority Act (MARTA) that required that any action to enforce suit against transit authority be brought in particular county, applied in action brought by passenger of vehicle that collided with bus against transit authority and bus driver; driver was employee of transit authority acting within scope of employment at time of collision.

SCHOOLS - OHIO

Gabbard v. Madison Local School District Board of Education

Supreme Court of Ohio - June 23, 2021 - N.E.3d - 2021 WL 2557315 - 2021-Ohio-2067

Parents of students filed action against school board and related defendants, seeking permanent injunction precluding school district from implementing resolution allowing authorization of several district employees to carry concealed firearms into school safety zones and seeking declaratory judgment that resolution was unlawful.

The Court of Common Pleas granted school board's motion for summary judgment. Parents appealed. The Twelfth District Court of Appeals affirmed in part, reversed in part, and remanded. School board filed discretionary appeal, which the Supreme Court accepted.

The Supreme Court held that:

- Training-or-experience requirement for school personnel to be armed while on duty applied to school employees, including teachers, administrators, and other staff members, and
- Exception to statute criminalizing possession of deadly weapon in school safety zone for those authorized by board of education did not permit board to circumvent training-or-experience requirement.

Training-or-experience requirement in statute prohibiting a school from employing a person as a special police officer, security guard, or other position in which such person was armed while on duty unless the person had satisfactorily completed basic peace-officer training or had 20 years of experience as a peace officer applied to school employees, including teachers, administrators, or other staff members, who went armed while on the job, and not only to employees who served in safety or security positions that inherently required employee to be armed; statute did not tie application of training-or-experience requirement to duties of employee's position, and General Assembly could have expressly limited statute to those employed in police capacity but did not.

Statute criminalizing possession of deadly weapon in school safety zone except by certain categories of people, including persons who acted in accordance with written authorization from board of education, did not permit school board to circumvent statute prohibiting a school from permitting an employee to be armed while on duty unless the person had satisfactorily completed basic peace-officer training or had 20 years of experience as a peace officer; criminal statute addressed only effect of school board's prior authorization on armed person's exposure to criminal liability and not circumstances of appropriate authorization, and had General Assembly perceived any conflict in criminal and training-or-experience statutes, it could have addressed it in statutory language.

PUBLIC UTILITIES - OHIO

In re Complaint of Allied Erecting & Dismantling Company, Inc. v. Ohio Edison Company

Supreme Court of Ohio - July 8, 2021 - N.E.3d - 2021 WL 2828917 - 2021-Ohio-2300

After electric company discovered it had failed to read one of the six electric meters at corporation's facility for three years, and sent corporation a bill for the three year period, corporation filed a complaint.

The Public Utilities Commission ordered corporation to pay the back bill. Corporation appealed.

The Supreme Court held that:

- Public Utilities Commission's alleged failure to enforce tariff or statute did not render the Commission's order adopting electric company's back bill, which was not based on initial load reading after unbilled period, unreasonable, and
- Tariff provision did not preclude electric company from using estimates to create a back bill.

PUBLIC CONTRACTS - WASHINGTON

Conway Construction Company v. City of Puyallup

Supreme Court of Washington - July 8, 2021 - P.3d - 2021 WL 2835360

Construction company brought action against city seeking a declaration that city's termination for default of parties' road construction contract was improper and should be converted to a termination for convenience.

The Superior Court found that city's termination was for convenience and awarded construction company damages, including attorney's fees. The Court of Appeals affirmed in part and reversed in part. Construction company and city both sought discretionary review, which was granted.

The Supreme Court held that:

- City was not entitled to terminate parties' contract based on defective work;
- City acted unreasonably or in bad faith when it withheld satisfaction with construction company's proposed remedy for defective work;
- City's termination of contract was not properly for default, and thus would be converted to a termination for convenience;
- As a matter of first impression, city was not entitled to an offset for defective work discovered after termination;
- Construction company was not entitled to statutory attorney's fees; and
- Construction company was entitled to contractual attorney's fees.

[Muni Risks Papered Over by Federal Aid Threaten to Reappear.]

- **‘Some of this sunshine is artificial,’ investor Venditti says**
- **Money managers’ dilemma is that cash keeps pouring in**

The influx of federal aid to U.S. municipal-bond issuers has papered over longstanding credit risks that threaten to come back to bite investors when the relief runs dry.

States, local governments and other borrowers are receiving $350 billion through the American Rescue Plan, a short-term infusion meant to cover revenue lost to the pandemic or offset its economic toll. The aid, combined with a rebound in tax revenue, has boosted confidence across the municipal market and helped some lower-rated credits reach lofty valuations.

Some investors say parts of the market — from states and cities with chronic fiscal strains to small private colleges grappling with affordability and demographic pressures — still face abundant challenges. The risk, the money managers say, is that fiscal headwinds such as underfunded pensions and budget deficits will resurface and weigh on portfolios after the aid is spent.

The federal funds “stabilized every balance sheet of every municipality everywhere, but eventually the money will bleed out,” said Nicholos Venditti, a senior portfolio manager at Wells Fargo Asset Management Corp. “I’m largely bullish on munis, but I don’t think investors should ignore that some of this sunshine is artificial.”

Wall Street strategists are already talking about the rally in munis running out of gas. The bonds have offered an oasis in 2021, at a time when most parts of fixed income have delivered losses. The outperformance is due in part to a push by the Biden administration to hike taxes on the wealthy, bolstering demand for tax-exempt funds that have been luring heaps of cash.

The dilemma for asset managers is that they have to put the money to work in the face of ever-rising prices on even the riskiest debt. There’s been a big reward to trading down in credit quality. Junk and non-rated munis have earned 7.1% this year, compared with 1.7% for the broad muni market, Bloomberg Barclays index data show. Treasuries have lost 2.3%.

‘So Expensive’

Investors have to decide how much more spreads can narrow, Venditti said. When the aid runs out, bonds sold by the more challenged issuers will likely trade back to values more consistent with their underlying risk, producing losses, he said.

“You don’t need a default to have a bad day as a muni investor,” he said. “Just because they’re going to survive doesn’t mean you want to buy them today, because they’re just so expensive.”

Case in point: At one point this month, yields on 10-year Illinois general-obligation bonds were barely 50 basis points above those on top-rated debt, the lowest gap in Bloomberg data going back to 2013 and almost 400 basis points narrower than in May 2020.

The state, among those logging better-than-expected revenue collections, has been allocated $8.1 billion of aid from the federal rescue plan. It had its credit rating upgraded by Moody’s Investors Service and S&P Global Ratings in recent weeks, bringing it back from the brink of junk. Yet it’s still the lowest-rated state, its pensions are only roughly 40% funded and it’s bleeding residents.

Not Buying

Eve Lando, a portfolio manager at Thornburg Investment Management, said she's not buying Illinois bonds at current levels.

"They have been helped definitely by the stimulus, but I feel like people overbuy there thinking that it can only go up," she said. "I don't think it reflects the correct state of affairs."

Lando said that when she and her team evaluate bonds, they "discount" the stimulus aid a borrower may have gotten, to make sure the credit can stand on its own.

Chicago is another issuer that has seen yields decline in the face of fiscal woes. Citigroup Inc. analysts say that while they've historically been bullish on the city, they've recently turned more hesitant because of its unfunded pension liability and a limited ability to raise revenue given its already-high combined state and local sales-tax rate.

"Now, we run the risk of becoming bearish on Chicago" despite the federal aid package, the group led by Vikram Rai wrote in a mid-year outlook report late last month. The junk-rated city received $1.9 billion in relief funds. "It is a legislative success story in the near-term, but structural issues are yet to be tackled."

'Priced to Perfection'

For Craig Brothers, a portfolio manager at Bel Air Investment Advisors, the relief funds afford a reprieve, but the structural challenges some governments face are evident. He said he's avoiding reaching down in credit quality, a view that Mellon Investments Corp. is taking as well.

"Everything is just really priced to perfection," Brothers said.

The stimulus has had a "tremendous" impact on the municipal market, said Susan Courtney, head of the municipal-bond team at PGIM Fixed Income. "But with certain credits that had specific challenges pre-pandemic, those still exist. They don't just go away."

Bloomberg Mrkets

By Danielle Moran

July 14, 2021, 9:30 AM PDT Updated on July 14, 2021, 12:17 PM PDT

— With assistance by Michael B Marois

[The Art and Science of Prepaying Bonds.]

It is always a good thing when you can replace your existing home mortgage loan with one having a lower interest rate. My original mortgage loan in 1981, for my house I still live in, had an interest rate of 16.25%. Fortunately, I was able to refinance it a few times into lower and lower interest rates, and finally – one of the few benefits of getting older – I paid it off!

If you are a governmental entity, the same thing is true when you refund your existing bonds with lower interest rate refunding bonds. In 1981, tax-exempt municipal bonds were bearing interest at 13%. For a governmental issuer, the ability to prepay debt is one of the most important terms in a financing; the issuer should look askance at any structure that materially limits the ability of the issuer to refinance its debt.

First Call Date. The ability of the issuer to prepay bonds is referred to in the legal documents as an "optional redemption." There are certain basic conventions. A bond issue typically has a "no call" period during which the bonds cannot be optionally redeemed. In most cases the "first call date" is about 10 years after the bonds are issued. In my state of Pennsylvania, small bond issues under $10 million in principal amount often have a five-year first call date. This "no call" period ensures the bond purchaser that it will be able to take advantage of its interest rate for a minimum set period of time without worrying about having its bond optionally redeemed by the issuer.

The Price of the Call. Most municipal bonds, when they reach their first call date, are redeemable "at par." That means the bonds are prepaid at 100% of the principal amount plus any accrued interest to the redemption date. Some bonds, particularly for issuers with lower credit ratings, are prepayable at "par plus a premium." For example, a nursing home bond issue may have a 10- year no call period, then be callable at 103% of principal amount in year 11, 102% of principal amount in year 12, 101% of principal amount in year 13, and at par in year 14 and thereafter (in all cases plus accrued interest to the redemption date). From the issuer's perspective, a redemption premium makes the refunding more expensive and requires rates to go even lower before a refunding makes economic sense.

Issuer Beware: Noncallable Bonds. In the world of finance, everything has a price. If you as an issuer are willing to forgo any optional redemption right (that is, the bond purchasers know their bonds will never be optionally redeemed), then you will probably be able to sell your debt at lower interest rates than an issue with a normal call feature. That is initially good for the issuer, but the issuer will never be able to take advantage of potentially even lower rates in the future. There is nothing more frustrating to an issuer than to have noncallable, high interest rate bonds in a declining interest rate environment.

Issuer Beware: CABs. In the late 1990's the hot technique du jour was capital appreciation bonds or "CABs". Normal fixed- rate municipal bonds pay accrued interest semiannually. CABs have no periodic interest payments. Interest accrues on the CABs, but the principal amount and all accrued interest are not payable to the bondholder until the maturity date of the bond. CABs are noncallable and they carry a "yield penalty" to the issuer (the investor wants higher interest to compensate for no payments received prior to maturity). After the CABs are issued, if you are an issuer who needs to pay off its existing debt (to eliminate a trust indenture with problematic covenants, or to be able to sell a sewer system financed with the CABs), the existence of your CABs is a major financial and legal headache.

Issuer Beware: Make-whole calls. The corporate bond world has different prepayment conventions. Rather than pricing a call at par or at par plus a fixed percentage premium, corporate bond calls are usually priced using a "make-whole" premium. The premium is calculated using a formula that gives the bondholder the benefit of a declining interest rate environment. If the rate environment is declining, then the amount of the make-whole premium increases when the issuer optionally redeems the bond. This is essentially the deal: "Go ahead issuer, you can optionally redeem this bond, but you will do so at a price that will make the bondholder whole based on current market conditions. That means you will lose the savings you would otherwise achieve in the refunding."

Governmental issuers sometimes find it advantageous to issue taxable bonds rather than tax-exempt bonds (usually because certain uses of bond proceeds do not conform to the tax-exempt bond regulations, or because the issuer wants to do an advance refunding it cannot do on a tax-exempt basis (see below)). In such cases, their call features will usually employ the make-whole prepayment structure, because the potential bond purchasers are used to, and want, the corporate bond structures. But if a governmental issuer is issuing tax-exempt debt, it should be wary of anyone who recommends using a make-whole prepayment structure. This is particularly true when an issuer is obtaining a tax-exempt loan from a bank – often the bank will ask for a make-whole prepayment structure.

Issuer Beware: Synthetic fixed-rate bonds. In the decade after the heyday of CABs, the new product du jour was interest rate swaps. Where do I begin on this topic? Here was the pitch: "Hello, issuer – instead of issuing regular fixed rate bonds at 5.00%, issue variable rate bonds and enter into a variable-to-fixed rate interest rate swap, and you will end up with a "synthetic fixed rate" of 4.75%." These structures were based on certain market assumptions and involved novel risk allocations. When the Great Recession hit in 2008 and 2009, the market assumptions went kaput, and supposedly "remote" risks came home to roost with a vengeance on issuers. For purposes of this article, the relevant point is: interest rate swaps can be very expensive to get out of. If the issuer wants to terminate a swap, it could have to pay a large termination fee calculated in a similar fashion to the make-whole calls described above. It may make it practically impossible to prepay the variable rate bonds and associated swap.

The Important Point: Issuer beware. I am a bond lawyer not a municipal advisor. I do not pretend to understand all the mathematical and market nuances involved in these matters. But I have seen issuers be seriously hamstrung by bonds that do not have traditional fixed-rate bond prepayment features. Issuers should be wary of anyone who shows up at their door selling "noncallable bonds" or "CABs" or "make-whole calls" or "interest rate swaps" or "synthetic fixed rate bonds." This does not mean that these products are always bad. They might be good in specific situations for specific issuers. But they can be so complicated that the issuer is unlikely to know the difference between good and bad without assistance. If you, as an issuer, hear these magic words uttered, it is time to call in your municipal advisor to help you sort through them. And if you are dealing with a swap, make sure your municipal advisor has expertise in swaps as well as bonds.

Variable-rate bonds. Most of the concepts described above relate to fixed rate municipal bonds. In the 1980s, municipal issuers, tired of high fixed rates, started issuing variable rate bonds. These bonds typically can be put on short notice by the bondholders to the issuer to be remarketed, and they bear interest at a much lower variable rate. Variable rate debt is typically prepayable by the issuer at par plus accrued interest at any time with no "no call" period. But the variable rate debt can become difficult to prepay if it is tied to a swap (see synthetic fixed rate bonds above).

The issuer should also consult closely with its municipal advisor on any variable rate debt structures. There was a Wall Street-created variant of variable rate debt called "auction rate bonds" that went completely kaput in the Great Recession. Once again, issuer beware!

Bond Pricing and Prepayment. When fixed rate bonds are priced during their initial issuance, they can be sold at par (at 100% of principal amount), at a discount (less than 100% of principal amount) or at a premium (over 100% of principal amount). The rate on a bond is called the "coupon rate". A bond sold at a discount may have a coupon rate of 4.00%; but because the bondholder buys it at a discount (less than 100 cents on the dollar), the bond has a yield to the bondholder higher (say, 4.10%) than the coupon rate. A bond sold at a premium may have a coupon rate of 4.00%; but because the bondholder buys it a premium (more than 100 cents on the dollar), the bond has a yield to the bondholder lower (say, 3.90%) than the coupon rate.

Many municipal bonds are purchased by municipal bond funds. For reasons related to the marketing of those funds, the funds do not like to buy bonds with low coupon rates. So, the funds may say, "I want to buy this bond at 4.00% even though the market rate is lower, and I'm willing to pay a premium to buy the bond at that coupon rate." With rates going lower and lower in the last few decades, many refunding bonds have been marketed with relatively high coupon rates and lots of premium. As a result, when five or 10 years later we come up to the first call date, the artificially high coupon rates on the existing bonds means they can be refunded at a substantial savings. That is why, even if market rates went lower in small increments over the five to 10 years, the savings could still be substantial.

Current Refundings and Advance Refundings. A current refunding is a refunding in which the refunded bonds are redeemed within 90 days of the issuance of the refunding bonds. An advance refunding is a refunding in which the refunded bonds are redeemed more than 90 days after the issuance of the refunding bonds. In either case, the redemption usually occurs as soon as possible after the refunded bonds' first call date.

When an advance refunding occurs, for a period of time until the first call date on the refunded bonds, there are two sets of bonds outstanding with respect to the original project. So, if an issuer issues $10 million of bonds with a ten-year call to finance a capital project, and then four years later issues $10 million of bonds to advance refund the original bonds, the result is that for the next six years there are about $20 million of bonds outstanding relating to a $10 million capital project. If both series of bonds are tax-exempt, the U.S. Treasury hates this – bondholders are getting twice the tax-exempt interest benefit they should be getting for a $10 million project.

When I was a young bond lawyer in 1981, I told the senior partner I worked for that I was nervous because we were doing so few bond deals that year. He told me, "Don't worry, Dave, every new deal we do in this 13% interest rate environment, we will be able to advance refund three or four times over the next decade." I remember one advance refunding deal in which, between the sale date and the closing date, interest rates were taking such a dive that it already made sense to advance refund the advance refunding bonds we had not yet closed.

The U.S. Treasury and Congress clamped down on tax-exempt advance refundings, first in the 1986 tax act, and then again a few years ago to totally eliminate them. There is now a movement in Congress to liberalize the advance refunding rules again. Back to the future.

Issuers should recognize that their ability to prepay debt they are entering into is an extremely important term, and they should consult with their municipal advisors to achieve the most liberal prepayment term consistent with the type of financing they are doing. This becomes important when, down the road, the issuer wants to take advantage of a lower interest rate environment, or the issuer needs to get out of certain existing debt for other business reasons.

By David Unkovic

BY SOURCEMEDIA | MUNICIPAL | 07/19/21 12:09 PM EDT

OMB Backs Off Change to 'City' Definition.

The threshold to be considered a 'metropolitan statistical area' will not be doubled

The Office of Management and Budget on Tuesday backed off from a proposed change to the federal definition of "city" that could have scrambled billions of dollars in federal spending for more than 100 communities across the country.

Each decade, OMB tweaks the definition of "metropolitan statistical area," but it hit a sore spot in January when it proposed doubling the threshold from 50,000 to 100,000 people. Members of

Congress, business leaders and communities themselves pushed back, arguing the agency's proposed change would have an impact on programs ranging from housing to health care.

In a news release Tuesday, OMB said it would announce in a Federal Register notice on Friday that it would back off the proposed doubling of the threshold and instead make "modest revisions" to 2010 definition standards.

At a House Budget Committee hearing last month, acting OMB Director Shalanda Young acknowledged the resistance the agency has received, saying that "this issue shows bipartisanship is alive."

Originally a statistical marker, the MSA has grown into a designation used in funding decisions for hundreds of federal programs, including Community Development Block Grant programs, which distributed $3.4 billion this fiscal year.

The National League of Cities and other organizations have argued that OMB hasn't done enough research on the potential impact of changing the MSA threshold, which could cause a ripple effect and disrupt Department of Transportation grants, Medicare reimbursements, rent calculations and more.

The Senate Homeland Security and Governmental Affairs Committee was scheduled to mark up a bill on the issue Wednesday that would mandate that OMB study the effects of the change.

Committee Chairman Gary Peters, D-Mich., one of the bill's sponsors, in a statement Tuesday praised OMB for dropping the "potentially harmful proposal."

"Communities of all sizes across Michigan and the United States are counting on federal resources to recover from the ongoing unprecedented public health and economic crisis," he said.

Nearly two dozen senators raised concerns about the issue in a March letter to OMB.

A federal interagency Metropolitan and Micropolitan Statistical Area Standards Review Committee, which recommended OMB make the change, argued that the country's population has more than doubled since the standards were established in 1950, making them due for an update.

The final register notice from the White House agency noted that the vast majority of comments opposed the proposed change.

The new MSA definition will not touch the 50,000 threshold but will make other adjustments to the definition. OMB will adopt a public update schedule for changes and make more use of the American Community Survey conducted by the Census Bureau, according to the notice.

The MSA threshold issue has not gone away, however, as the agency said it intends to take another look at the definitions after the 2030 census.

"Recognizing the committee's concern that MSA thresholds have not kept pace with population growth, OMB will work with the Standards Review Committee to conduct research and stakeholder outreach to inform the 2030 standards update," the OMB news release said.

The Hill

By Michael Macagnone

Posted July 13, 2021 at 6:34pm

Cities Awash in Rescue Cash Seek to Use It to Pay Down Debts.

- **Cities, lobbying groups ask Treasury to loosen limits on aid**
- **Biden stance reflects effort to ensure funds boost the economy**

America's states and cities are receiving $350 billion from Washington, an unprecedented move to head off a fiscal crisis that could have derailed the economic recovery.

But at least two dozen local governments and lobbying groups are pushing President Joe Biden's administration to allow the federal funds to be used for something the Treasury Department hadn't envisioned: paying down debt or socking it away.

Among them is Oceanside, a 176,000-person city on the Southern California coast. Michael Gossman, assistant city manager, wants to be able to use the federal aid to replenish reserves drawn down last year so the city could increase services for the homeless and deliver meals to the elderly during the pandemic.

"It's not that we're asking for a blank check," he said.

The push shows a small rift that's opened as the economy surges back from the pandemic, saving governments from facing the type of crippling budget deficits that lingered for years after the last recession. With their finances broadly on the mend, some officials want to use it to replenish depleted savings accounts or pay off debt run up last year to stay afloat as much of the nation shut down. That's put them at odds with Treasury regulations seeking to ensure the funds are plowed back into the economy.

Bounty of Cash

Marc Goldwein, senior vice president for the Committee for a Responsible Federal Budget, a nonpartisan think tank, said push-back against the administration's rules reflect the fact that governments were given more "than they know what to do with."

Overall, states and cities have been eager to put the aid to work, using it to fund direct relief for small businesses, upgrades to water and sewer infrastructure, and even local experiments with universal basic income. And the wide range of spending on which the aid can be used can easily free up locally generated funds for paying down debt or bolstering savings. Both Illinois and New Jersey, for example, have used unexpectedly large tax collections to chip away at their debts.

Even so, cities including Philadelphia and lobbying groups like the National League of Cities have asked the Biden administration to relax some of the restrictions. Treasury officials could make changes to its rules after accepting comments that are due Friday.

Stoking the Recovery

The Treasury's initial guidance emphasizes potential uses of the money like rehiring workers and helping lower-income and minority communities hardest hit by the pandemic. It also included a variety of restrictions, including a ban on using it to offset tax cuts. Those rules were designed to encourage states and cities to spend the money quickly, said Dan White, director of public sector research for Moody's Analytics.

Putting the money in rainy day funds is "not going to do anything to increase GDP or job growth today," White said.

It's unclear how much of an economic impact it would have if the Treasury rolled back some of the limits. But many governments sold debt in the early days of the pandemic as they prepared for tax revenues to tumble. In the second half of 2020, for example, at least one quarter of state and local government debt sales over $100 million included a material element of deficit financing, according to Municipal Market Analytics.

"We had to balance our books. We had to issue debt," said Gary Dickson, town supervisor for West Seneca, New York, which took out a loan of $600,000 last year.

While he said the aid is "fungible," giving the town flexibility to pay off the loan with other funds, loosening the restrictions would make things easier, he said.

Philadelphia's finance director, Rob Dubow, told Treasury that helping local governments rebuild their finances would prepare them for the next economic downturn, according to a letter to the department. Philadelphia, which drew heavily on reserves during the pandemic, is projecting that its general-fund balance will fall to a surplus of $78.7 million from $438 million before the pandemic, according to a city spokesperson.

Rebecca Rhynhart, the city's controller, wants part of the rescue funds earmarked for future tax shortfalls. She said other funds should be used for combating gun violence, reducing poverty, addressing the opioid epidemic and business growth.

"We need to make sure we are fiscally sound," she said. "At the same time, significant amounts of money needs to be used for investments to tackle these challenges."

Chicago has seen a political debate over how to best divvy up the aid. Before the Treasury rules were released, Mayor Lori Lightfoot's administration floated using it to pay down a loan taken to help close a nearly $800 million deficit and cancel a debt refinancing plan, which together would take up almost half of the $1.9 billion in recovery funds the city expects to receive.

She's faced pressure from progressive politicians like Alderwoman Rossana Rodriguez Sanchez, who said it would be a waste to pay down debt given a spike in violence and an uneven recovery that's leaving behind people of color and lower-income communities.

"This is the moment to make an argument for the massive injection of resources," she said.

Bloomberg Politics

By Amanda Albright and Shruti Singh

July 16, 2021, 8:00 AM PDT

— With assistance by Madeline Campbell, and Michelle Kaske

[Expectations for Municipals and Infrastructure.]

Congress continues to take steps towards introducing bipartisan infrastructure legislation. This week, Senators are expected to meet and discuss potential pay-for planning to finish drafting the legislative package by next week. News of some muni provisions being included in the initial outline is a step in the right direction, however many questions remain regarding the potential legislation's reliance on private and state, and local investment as well as what additional provisions may be added to the draft.

While this likely package presents a great opportunity to advance BDA and MBFA priorities, it is potentially the first of many infrastructure spending bills that Congress will work to pass during the remainder of 2021.

What does this mean for municipals in 2021? Below is a legislative update of the status of individual muni priorities.

Expectations for Municipal and Infrastructure

New Direct Pay Bond Exempt from Sequestration

Included in the bipartisan infrastructure agreement, a new category of tax-preferred financing for state and local governments to be known as American Infrastructure Bonds (AIBs). Similar to the previous Build America Bonds program, AIBs would be an alternative to tax-exempt financing. The Senate American Infrastructure Bond is exempt from sequestration and has a flat 28% reimbursement rate while the House is not while varied reimbursement. There is a general consensus that the new AIB will be included in any infrastructure package passed, however, sequestration provisions remain in flux.

**Included in Bipartisan Infrastructure Agreement

Expand the Usage of PAB's

As a priority for the Administration, the expansion of PABs for transportation purposes was included in the initial bipartisan agreement. This follows the calls from the Biden Administration for an increase in the PAB limit for transportation infrastructure, doubling the limit to $30 billion dollars. There is legislation in the Senate that would expand the usage of affordable housing amongst other provisions. PABs for GSE use has also been a popular discussion item, but little legislative text has been produced and this has yet to be tied to the existing proposal.

** Included in Bipartisan Infrastructure Agreement

Restoration Tax-Exempt Advance Refundings

As a top legislative priority for the municipal market, the restoration of tax-exempt advance refundings remains in a strong position for advancement this year. The legislative text was reintroduced by the House Municipal Finance Caucus earlier this year (the bill was identical to the version introduced in the 116th Congress) and absorbed in the later introduced LIFT Act. Following the House release, Senators Wicker (R-MS) and Stabenow (D-MI) introduced the LOCAL Infrastructure Act which much like the House companion, would fully restore tax-exempt advance refundings to their pre-2018 form.

**Not Included in Bipartisan Infrastructure Agreement-Slight Possibility for Inclusion in Final Draft–Stronger Likelihood for Inclusion in Additional Infrastructure Package

Raise BQ Debt Limit

Much like AR, legislation was introduced in the House this Congress and absorbed into the LIFT Act. However, there has yet to be a Senate companion introduced, a potential hurdle in advancement.

**Not Included in Bipartisan Infrastructure Agreement–Slight Possibility for Inclusion in Final Draft–Average Likelihood for Inclusion in Additional Infrastructure Package

Bond Dealers of America

July 13, 2021

The Washington Weekly: Deal or No Deal?

Following the 4th of July holiday recess, the Senate is back in Washington, DC, and has already failed to meet its self-imposed deadline to turn the bipartisan infrastructure agreement into legislative text–a key next step in the legislative progress. While this may not be detrimental to the long-term prospects of the deal, every day that passes further complicates the tightrope act that Congressional Democrats are embarking on.

Following news of a delayed release of the bipartisan package, this week Senate Budget Chairman Bernie Sanders (I-VT) released budget instructions for the potential infrastructure budget reconciliation bill that includes an additional $3.5 trillion of spending. The plan will likely include portions of the American Jobs Act and the American Families Act that are unable to be agreed upon in the bipartisan agreement amongst many other provisions such as the expansion of Medicaid.

Few details exist beyond the broad outline that the budget agreement presents, however, this package will provide an additional opportunity for BDA and MBFA priorities that may not be included in the bipartisan package.

While the draft legislative text has yet to be produced for either potential package, included in the original bipartisan outline were two muni provisions:

- **A new BAB like a direct-pay bond, the American Infrastructure Bond, with a flat 28% reimbursement rate likely exempt from sequestration (not included in the text, but the bills Sponsor Sen. Wicker (R-MS) says that is his intention), and**
- **Expansion of PAB limit for transportation infrastructure, doubling the limit to $30 billion dollars**

The BDA and MBFA continue to press our partners on Capitol Hill to include key additional provisions in either package including:

- **The reinstatement of tax-exempt advance refundings, and**
- **Raising of the BQ debt limit tying to inflation.**

House and Senate Democratic Leadership as noted above continue working on a two-track approach: ensuring that the bipartisan agreement remains intact while developing the massive budget reconciliation package without losing a single vote of their narrow Senate majority. On the Republican side, Senate Minority Leader Mitch McConnell (R-KY) appears ready to allow passage of the bipartisan package, while messaging against the massive reconciliation package–an effort to gain traction heading into the 2022 election cycle.

At this time, it is too early to predict the outcomes of each package, however, we remain confident that munis will continue to receive ample consideration and are in a good position for passage.

Bond Dealers of America

July 16, 2021

Fitch Revises US Air Traffic Assumptions Upward For Airlines and Airports.

Fitch Ratings-Austin/New York/Chicago-12 July 2021: We are revising upward our forward-looking US air traffic assumptions due to the strong rebound in domestic air travel driven by increased US vaccinations and a surge in US leisure air traffic since March 2020, Fitch Ratings says. Travel volumes are expected to see additional growth in 2H21 and beyond, as business and international travel climbs from pandemic lows.

Risks remain for the industry, primarily uncertainties around the pace and timing of air traffic recovery, the potential impact of virus variants, and lagging business and international travel. However, the financial risk to airports that are on Negative Outlook has considerably diminished due to improving passenger volumes, effective management oversight of budgets and the three rounds of federal aid that appear to be sufficient to cover revenue losses. Growing revenues will help cover costs and restore metrics to levels consistent with current rating levels. Several airports were revised to Stable Outlook during 1H21, and more airports could be positioned for a restoration of a Stable Outlook due to the new traffic assumptions.

In contrast, most US airlines continue to have Negative Outlooks, reflecting the relatively greater impact that the pandemic had on airline balance sheets compared with airports. While most airlines have Negative Outlooks, there have been a few stabilizations, and we believe that domestic- and leisure-focused carriers are poised to benefit from stronger US domestic traffic in 2H21. Additional ratings stabilization for the airlines will depend on their ability to sustainably return to positive cash flow and address pandemic-related debt balances.

Continue reading.

S&P U.S. Higher Education Rating Actions, Second-Quarter 2021

Table of Contents

S&P Global Ratings maintained 67 ratings and took 42 rating actions in the U.S. not-for-profit higher education sector in the second quarter of 2021. The 42 rating actions are broken out as follows:

- Three downgrades
- Five upgrades
- 22 outlook revisions to stable
- Six outlook revisions to negative

- Two outlook revisions to positive
- Four new ratings

Of the 22 outlooks revised to stable, 15 had been revised to negative in April 2020 as part of S&P Global Ratings' response to the heightened social and economic risks associated with the COVID-19 pandemic. In addition, in the second quarter of 2021, we lowered the rating on Methodist University to 'BB' with a stable outlook; the outlook had been revised to negative from stable in April 2020.

Continue reading.

14 Jul, 2021

S&P: U.S. Highway User Tax Bonds Prove Resilient

Key Takeaways

- Credit trends have been stable, despite variations in the price of fuel, temporarily lowered driving activity during the pandemic, increasingly restrictive federal gasoline mileage standards, and potential future loss of revenue due to electric vehicles (EVs), plug-in hybrid electric vehicles (PHEVs), hybrid electric vehicles (HEVs) and other technologies.
- Stable credit quality stems from strong debt service coverage and additional bonds tests, stable fuel consumption trends despite price swings, active management by states in raising tax rates when necessary, and a mix of pledged stable revenue sources beyond fuel taxes, such as license and registration fees.
- We believe states will find alternative sources of pledged revenue to the extent gas tax revenue flowing into state highway funds declines, such as by imposing vehicle mileage or other taxes, or by direct transfers of general tax revenue.
- Recent changes to highway user tax bond outlooks have been the result of the linkage to state general obligation credit quality under our priority lien criteria.

Continue reading.

14 Jul, 2021

S&P U.S. Charter Schools Rating Actions, Second-Quarter 2021

During the second quarter of 2021 (April 1-June 30), S&P Global Ratings changed its rating or revised its outlook on 29 U.S. charter schools (seven of these were new ratings that were initially assigned) while maintaining 80 ratings. Rating actions spanned across all rating levels.

Positive rating actions matched negative rating actions in the second quarter, reflecting the mixed recovery picture as schools end an unprecedented 2020-2021 school year. Most of the ten negative rating actions, which included two downgrades and eight negative outlook revisions, were characterized by ongoing enrollment declines, often preceding, but perhaps exacerbated by, the pandemic. For charter schools, these demand pressures often translate to slimmer operations and weaker balance sheets.

The second quarter's ten positive rating actions tell a different story. These schools earned successful charter renewals, grew cash, strengthened coverage, or improved demand metrics. New charter school ratings in 2021 rival last year, with 13 new ratings assigned year-to-date, compared to 23 new ratings assigned in 2020. S&P Global Ratings revised the charter school sector view back to stable in March 2021 following the steady improvement in economic conditions and the third round of federal stimulus monies. We believe ESSER I, II, and III funds will likely bolster schools' operations in the coming fiscal years. Federal aid to states should also flow through to our rated charter schools, supporting steady-to-growing per-pupil funding in the near term, which we view positively.

The following tables summarize S&P Global Ratings' quarterly rating actions, outlook revisions, and maintained ratings for U.S. charter schools. The rating actions, outlook revisions, and maintained ratings are based on our "U.S. Public Finance Charter Schools: Methodology And Assumptions" criteria, published Jan. 3, 2017, on RatingsDirect.

Continue reading.

13 Jul, 2021

The NABL Workshop: Hybrid 2021

NABL is bringing back its in-person meetings with **The Workshop: Hybrid 2021, October 13-15, 2021, at The Fairmont Hotel in Chicago**. It's time for you to mark your calendar as "busy" and register for the conference early. The event will have limited in-person seating due to COVID-19, so it's important to secure your spot now. In-person registration will be filled on a first-come, first-served basis. We are also providing a virtual option for The Workshop.

If you join NABL as a member and register for The Workshop **by Friday, August 20**, you will save more than $200 off the conference rate, and your membership will extend through December 31, 2022! The cost for joining plus The Workshop is $1,140 (nonmember registration, without joining, is $1,345). As a member, you will receive significant discounts on all CLE webinars and conferences through 2022, plus receive access to member-only areas of the website.

This year's conference will include:

- The Opening General Session, "The Growth of ESG in Public Finance," will cover the growing trend in public finance to capitalize on green investing and frameworks around environmental, social, and governance (ESG) factors. The session will feature different thought leaders in the industry who will discuss ESG trends and considerations in the public finance market.
- NABL's Annual Meeting, where you will hear from NABL's 2021-22 President, Ann D. Fillingham, Dykema Gossett PLLC, and NABL members will vote for NABL's Officers and Board of Directors.
- A new session "The Role of Issuer's Counsel in a Bond Issue – Before, During and After Bond Issuance" that will explore the role of issuer's counsel before, during and after bond issuance, and will focus on the in-house issuer perspective.
- There will also be 23 breakout sessions over three days including Hot Topics in Tax Law, Hot Topics in Securities Law, and three ethics sessions.

Check out this year's line-up! The meeting will offer up to 11.25 live CLE credit hours for those who attend in-person or virtually. For in-person registrations, NABL will send an email with the hotel reservation information to secure your hotel room.

In-Person Registration Requirement: All in-person attendees must be fully vaccinated prior to attending the conference. Registered attendees will need to email a PDF of their COVID-19 vaccination record card as proof to NABL at registration@nabl.org, by Friday, **September 3, 2021**. If you register for in-person and don't provide proof by September 3, your in-person registration will default to a virtual registration.

Join and Reserve Your Spot Now for The Workshop: Hybrid 2021!

Municipal CUSIP Request Volumes Climb for Fifth Straight Month.

NEW YORK, July 13, 2021 /PRNewswire/ — CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for June 2021. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity over the next quarter, found a significant monthly increase in request volume for new municipal identifiers and a slight decline in request volume for new corporate identifiers.

CUSIP identifier requests for the broad category of U.S. and Canadian corporate equity and debt declined 3.3% in June from last month. The monthly decrease was driven largely by U.S. corporate debt identifier requests, which declined by 5.7%. On a year-over-year basis, corporate CUSIP requests were down 6.4%.

Monthly municipal volume increased for a fifth straight month in June. The aggregate total of all municipal securities – including municipal bonds, long-term and short-term notes, and commercial paper – rose 14.3% versus May totals. On an annualized basis, municipal CUSIP identifier request volumes were up 7.2% through June. New York led state-level municipal request volume with a total of 226 new CUSIP requests in June, followed by Texas with 211 and California with 108.

"Municipalities continue to issue new debt offerings at a rapid clip, especially during the peak short-term notes season, suggesting opportunistic capital raising in a largely favorable rate environment," said Gerard Faulkner, Director of Operations for CGS. "The recent slowdown in corporate activity has been notable, however, and will be important to watch over the course of the coming months."

Requests for international equity and debt CUSIPs were mixed in June. International equity CUSIP requests were down 9.2% versus May. International debt CUSIPs increased by 14.3% on a monthly basis.

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

Munis In Focus: Stretched Valuations (Radio)

Eric Kazatsky, Senior Municipal Strategist for Bloomberg Intelligence, discusses the latest news from the municipal bond market. Hosted by Paul Sweeney and Matt Miller. (Taylor Riggs fills in for Matt Miller)

Listen to audio.

Bloomberg Radio

July 16, 2021

[What’s Next for Municipal Bonds After a Strong First Half of the Year?]

As summer hits its stride, here are some musings about municipal bond performance to mull over as you unwind at the beach or on the couch (no judging!).

Market review and outlook

During the first half of the year, municipal bonds (munis) shrugged off the rise in long-term U.S. interest rates and crushed their taxable counterparts. Expectations for higher taxes in 2022 that could be included in a potential stimulus package have kept demand high, while muni net supply was constrained the last few months.

However, we believe it will be tough for munis to deliver the same outperformance versus taxable bonds during the second half of the year. Why? Muni yields started the year at much higher levels versus Treasuries (representing value); this differential is much less now, diminishing the relative value of munis versus Treasuries. The driving force for the rest of the year should continue to be technical demand, driven largely by the U.S. government’s fiscal plan (more on this below). Barring a total derailment of the infrastructure and social-stimulus packages, we can expect this demand to stay high and muni yields to remain tight to Treasuries, with returns approximating muni market yields. Any strong selloff in munis is likely to quickly snap back as investors jump in to capture value.

Continue reading.

advisorperspectives.com

by Albert Jalso of Russell Investments, 7/15/21

[Could Banking Magic Save Cities From Climate Disaster?]

A flawed but historically robust emergency response to the Covid-19 pandemic by Congress and our nation’s central bank helped America avoid the second Great Depression that so many prominent economists feared. Still, few progressives are declaring mission accomplished: The Biden administration and Democratic legislators are mired in political trench warfare over how to pay for desperately needed infrastructure and a climate change package.

President Biden has so far ruled out any measure that would increase deficit levels. And Republicans are arguing against any new taxes on the affluent or businesses. Because many states and cities now report surpluses rather than the yawning deficits that were predicted last year, most conservatives say Congress should use as-yet unspent local aid dollars from spring’s American Rescue Plan to pay for the infrastructure, rather than issue new spending.

The standoff is a microcosm of a much larger dilemma that we’ll be stuck with for years: For America to tackle climate change, it most likely needs not only to expand federal efforts but also to build up state and local governments’ capacities to make their cities more eco-friendly and build things like new flood walls or drainage systems. Yet for such efforts to be politically viable, policymakers probably have to avoid burdening people with unpopular middle-class tax hikes. (This knowledge has led President Biden to pledge, first as a candidate and now as president, that he will never increase taxes on families earning under $400,000 annually.)

Continue reading.

The New York Times

By Alex Yablon

July 16, 2021

Mr. Yablon, a journalist who writes about policy and economics, is a contributing opinion writer for Business Insider.

Economists Find Underreporting of Municipalities' Private Debt Obligations.

The underreporting of bank debt remains a sizable risk for holders of municipal bonds two years after Securities and Exchange Commission rule changes designed to improve transparency.

That was the conclusion of scholarly research performed by three economists and presented Monday at the Brookings Municipal Finance Conference. The paper authored by Federal Reserve Board economists Ivan Ivanov and Nathan Heinrich, as well as by Tom Zimmermann of the University of Cologne, examined the effectiveness of regulations designed to improve the transparency of private debt and concluded the requirements have limited effectiveness.

“We need to worry about it,” Ivanov said during a webcast presentation of the research. “We need to be able as a market to observe these.”

Roughly 50% of issuers are now required to disclose private debt under the 2019 amendments to the SEC?s Rule 15c2-12, the researchers found. Those rules require disclosure of the incurrence of a financial obligation of the issuer or obligated person, if material, as well as any agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, if these are material.

Bond investors need to be aware of other obligations because such debts could potentially impair bondholders, particularly if the debt is explicitly senior to the outstanding bonds.

The authors used subscription services and confidential data, and also hand-collected information from over 2,300 filing documents. In each filing, they searched for the obligation amount, interest rate and maturity, noting whether the filing was new or amending an existing obligation, and whether the filing included a term sheet summarizing the obligation.

The authors found that private debt was significantly underreported, using their data to determine when a filing was required and whether an associated disclosure appeared on EMMA.

“In the vast majority of bank loan events where disclosure is required, the associated issuer makes no disclosure on the EMMA system,” the researchers discovered. “For example, out of the 4,813 such bank loan events, only 935 events corresponding to 156 entities are associated with mandatory disclosures filings on the EMMA system.”

Further, the authors found, there was a wide range in the quality of these disclosures, with most offering up the size of the obligation but many excluding important information about the terms of such obligations.

The economists suggested that low issuer sophistication and familiarity with 15c2-12 might partly explain the underreporting.

Emily Brock, the director of the federal liaison center at the Government Finance Officers Association also noted during the conference that some issuers might not be aware of the rule. Brock said there is an opportunity for the whole muni market to improve the state of disclosure.

“We can use this opportunity to see what EMMA can be,” Brock said.

She also said it’s important to note that issuers lean heavily on counsel to help them make the determination about materiality, a concept that can be difficult to pin down. The SEC has generally declined to elaborate on when an obligation or event is material, not wanting to go beyond the Supreme Court?s ruling that something is material if there is “a substantial likelihood” that the disclosure would have been viewed by a “reasonable investor” as having significantly altered the “total mix of information” used to make an investment decision.

The Brookings conference continues through Wednesday.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 07/13/21 01:18 PM EDT

S&P Pension Spotlight: California

Key Takeaways

- CalPERS’s recent modification of plan and methodologies assumptions for city, county, and state employees could result in faster funding of liabilities and higher funded ratios at the expense of higher contribution costs for municipalities in the near-term.
- Pension plans are moderately funded for most cities and counties that participate under CalPERS’ statewide pension plans.
- While we expect pension costs will rise for almost all local governments, issuers’ ability to absorb these costs varies across the state.
- Escalating pension costs in the medium term may spur demand for pension obligation bond issuances with a goal of reducing pension costs overall and smoothing pension cost payments over the long-term.

Continue reading.

13 Jul, 202

Why There’s Rising Interest in Giving More Updates to Bondholders.

Investors and others would like to see more timely information about developments with

municipal borrowers' finances. "Voluntary disclosure" can help, experts say.

When state and local governments borrow through the municipal bond market to pay for road construction, waterworks upgrades or other projects, they take on obligations to report information about their finances to investors until the debt is paid off.

But issuers often don't release annual financial statements they're required to disclose until well after their fiscal year ends, making it hard to get an up to date picture about what's happening with their finances. This gap between budget cycles and these disclosure filings can stretch six or even nine months and some investors and others think the delay is too long.

Beyond the annual financial reports, under Securities and Exchange Commission rules, borrowers also have to publicly file ongoing notices about certain events, like delinquent payments, unscheduled draws on debt service reserves, or credit ratings changes.

In recent years, there's been growing interest in what's known as "voluntary disclosure," where state and local governments proactively release information related to their finances and relevant for investors, even though they are under no obligation to do so.

"Voluntary disclosure is taking it a step further and truly is what it sounds like. It's voluntary," said David Erdman, Wisconsin's capital finance director, during a Government Finance Officers Association conference taking place online through next week.

Erdman pointed out that after a state or local government finishes issuing bonds and the proceeds are in-hand and construction is underway on a project, it can feel as though the deal is done. But until the bonds are paid off, that's not really the case.

While the bonds are still outstanding, investors might be looking to assess the value of the debt, or to sell it on the "secondary market." But infrequent financial disclosures by governments mean the official information they have to make decisions can be incomplete or scarce.

Erdman likens the situation here to someone trying to buy a used car, who can only find information about the vehicle that's a year or more old. "You wouldn't know what the current miles are, you wouldn't know if there's any recent accidents," he said.

"Same thing goes with a municipal bond," Erdman added, "more information needs to be out there and that's where voluntary information kicks in."

A good example of when disclosures to investors like this can make sense is the Covid-19 pandemic, which stirred historic uncertainty about state and local governments' finances, the expenses they were taking on to respond to the crisis, and how it was affecting revenues.

There are other situations as well. For instance, a cyberattack, or a natural disaster like a flood or hurricane, might be the kind of event that investors want more details about to have a better understanding of how it's affecting a bond issuer's finances.

GFOA points out that going beyond disclosure requirements can be a part of investor relations programs and is one measure that state and local bond issuers can take to promote efficiency in the municipal bond market and to improve how their debt sales are received.

"In today's municipal market there is a heightened focus on the quality and transparency of disclosure practices by issuers," GFOA notes.

Presenting information in context

Jacquelynne Jennings, a partner at the law firm Schiff Hardin LLP (emphasizing she was speaking for herself and not the company) said that the SEC has shown an interest in greater financial disclosures by municipal borrowers.

“They would like for municipalities to more mirror the corporate markets and provide information quarterly, which is not going to happen, but at least more frequently than annually,” she said.

Erdman said he’s concerned that if municipalities and others don’t ramp up disclosure efforts, the SEC might push additional regulations on the muni market—possibly to a degree that some issuers might turn to bank loans rather than bonds to meet their capital needs.

That said, for governments that only sell bonds every few years, voluntary disclosures may not be worth the effort. “The state of Wisconsin is a large, frequent issuer and there’s probably some investor relations benefit for us doing this,” Erdman said.

But even for medium size issuers, who are issuing bonds on an annual basis, he added, providing voluntary information to the market on a regular basis can have benefits.

Also, voluntary disclosure doesn’t have to just be for bad news. It can highlight notable developments that have to do with things like revenue growth or infusions of federal funds.

Another area where voluntary disclosure can make sense is around issues that have to do with environmental, social and governance, or ESG, criteria. GFOA describes these factors as areas that can affect a community’s long-term sustainability. Examples include things like exposure to climate risks, demographic changes, or pension liabilities.

“ESG is all the rage right now in the market,” said Timothy Ewell, chief assistant county administrator for Contra Costa County, California. “In California, wildfires are the thing now.” He noted that a GFOA’s committee is working to assemble best practices and templates that jurisdictions can use to disclose ESG information to the bond market.

Jennings discussed how if finance officials fall short sharing timely information with bond market participants, investors may look elsewhere to assess what’s going on and that could mean turning to statements by politicians or press reports that don’t give a full picture.

“A lot of times doing this voluntary disclosure is the best chance that you have,” she said, “to present the facts in their proper context.”

ROUTE FIFTY

by BILL LUCIA

JULY 15, 2021

Insurance Commissioner, Acting as Liquidator of RRG, Is Not a “Governmental Authority.”

When is an insurance commissioner not a governmental authority? A federal district judge reminds us that a state insurance commissioner, when acting as receiver of an insolvent insurer, acts in a different capacity to his governmental role. This principle can cause an insurance commissioner to fall outside a contractual definition of “governmental authority” even where the definition contains inclusive language on multiple capacities.

In a decision handed down on June 21, 2021, in *Trinidad Navarro, Insurance Commissioner of Delaware v. Allied World Surplus Lines Insurance Company*, Judge Kari A. Dooley of the U.S. District Court for Connecticut held that a claim made by Commissioner Navarro as liquidator of a risk retention group (RRG) was not a “governmental claim” within the meaning of an insurance policy. According to the court, the commissioner was acting as a “private receiver” for the insurer’s benefit. (The court did not distinguish between an RRG and an insurer.) Assuming it is not reversed or overturned, the decision could provide new guidance to future litigants in disputes over the nature and scope of insurance receiverships.

Carrier Solutions Risk Retention Group, Inc. (CSRRG) was a Delaware-domiciled RRG managed by service provider USA Risk Group (West) Inc. (USA Risk). In 2010, facing insolvency, CSRRG was placed in liquidation proceedings by Delaware chancery court in accordance with Delaware’s statutory insurance insolvency scheme, with the then-Delaware commissioner appointed as liquidator. (Navarro became commissioner after his 2016 election.)

USA Risk was insured against professional liability risks under an Allied World Surplus Lines Insurance Company (Allied World) policy. The policy imposed distinct limits of liability for ordinary “claims” against USA Risk on the one hand, and “governmental claims” on the other, defined as a claim or investigation (in pertinent part) “brought by any federal, state or municipal agency, insurance department or other governmental or quasi-governmental authority, in any capacity, whether in its own right, on behalf of an individual or entity, or by an individual or entity on the agency’s or authority’s behalf.”

In May 2012, the Delaware commissioner as receiver sued USA Risk alleging that USA Risk had caused or contributed to CSRRG’s insolvency. USA Risk submitted a claim to Allied World under the professional liability policy. After bearing USA Risk’s litigation expenses for about three years in the case brought by the receiver, around July 2015 Allied World withdrew its defense and contended that it had satisfied its $25,000 limit of liability applicable to “governmental claims.” In response, the receiver took the position that his claim was not a “governmental claim” and thus eligible for the policy’s more generous policy limit of $3,000,000.

CSRRG and USA Risk settled their litigation for $1,000,000. CSRRG thereupon, as USA Risk’s assignee, sued Allied World in federal district court in Connecticut, where Allied World (and a predecessor insurer that had issued the policy initially) had administrative offices. CSRRG sought to recover damages arising from Allied World’s failure to continue its defense of the claim after around July 2015. Allied World moved to dismiss the case on the grounds that the receiver’s claim against USA Risk constituted a “governmental claim” under the Allied World policy and that, therefore, Allied World was liable for no more than $25,000.

Allied World argued that the insurance commissioner is a governmental authority and therefore, CSRRG’s claim against Allied World categorically is a “governmental claim.” The commissioner, in turn, argued that he was acting not in his capacity as government official but rather as a “private receiver” on behalf of CSRRG. (The commissioner also argued in the alternative that, even if the claim would otherwise be classified as a governmental claim, an exclusion in the definition, for claims by a governmental authority in its role as a customer, would not apply. The court explained that it did not need to reach this question because it was holding that the “governmental claim” definition was unavailing in the first place.)

According to the court, the law of Vermont (where the policy was issued) and the law of Connecticut would not differ on the interpretive question before it. Therefore the court found it unnecessary to specify which state's law governed. (The court also analyzed Delaware case law in its opinion, without stating expressly that Delaware law controlled.) While noting possible ambiguity in the policy's definition of "governmental claim," the court explained that neither the commissioner nor Allied World was arguing that the policy language was ambiguous. The court would make an interpretive ruling based solely on the language itself.

Judge Dooley explained that she found the commissioner's position (that he is not a governmental authority in this instance) "persuasive." CSRRG's liquidation order issued by the Delaware chancery court had vested in the commissioner all rights and interests in all of CSRRG's property and empowered the commissioner to act generally on behalf of CSRRG for the benefit of its members, policyholders, creditors and other stakeholders. The commissioner's action against Allied World was functionally an action by a private party, CSRRG.

The court did not cite any previous insurance policy or other contract that had been so interpreted in a judicial forum and did not invoke any other textual predicate for its decision. The court relied mainly on decisions by state courts, including Delaware courts, holding more generally or in other contexts that an insurance commissioner acts in two different capacities. For example, Judge Dooley cited a New York case in which the state insurance liquidation bureau (an arm of the insurance department) was immune from state audits of government bodies. A Pennsylvania case was cited for the proposition that a regulator's prior actions qua regulator could not be asserted against her as an affirmative defense in an action brought by her as receiver. A Kentucky court had held that the commissioner as receiver fell outside the state's open public records act.

The court rejected the commissioner's argument concerning the allegedly plain language of the policy ("any . . . governmental or quasi-governmental authority, in any capacity. . . ." (emphasis added)) and the commissioner's exclusive role as receiver. In other words, the commissioner was contending that he is the only official authorized by law to act as receiver, and therefore the policy's use of the term "in any capacity" must capture this role. The court held that, on the contrary, the term "governmental claim" must exclude the receiver's capacity. The court did not explain its specific basis for construing "in any capacity" to mean, in essence, something less than all possible capacities.

Whether *Navarro* will change how insurance receivers are perceived by the courts in contractual situations involving terms such as "governmental authority" remains to be seen. For the time being, it does seem as though Judge Dooley has broken at least some new ground in explaining that an insurance policy's definition of "governmental claim," even where referring to any capacity of a governmental body, must categorically exclude a commissioner's statutory and exclusive role as a receiver.

Kramer Levin Naftalis & Frankel LLP – Daniel A. Rabinowitz

July 15 2021

Broker-Dealer Settles FINRA Charges for Systemic Supervisory Failures.

A broker-dealer settled FINRA charges for systemic failures, including failing to establish (i) a reasonable supervisory system for its mutual fund and municipal bond businesses, and (ii) a reasonable system of supervisory controls to verify its surveillance systems.

In a Letter of Acceptance, Waiver and Consent, FINRA found that the firm's automated surveillance system, which identified and flagged for review Class A Share switches, did not provide the critical data needed to evaluate the suitability of a transaction, such as the holding periods of the Class A Shares. FINRA found that the firm allowed its supervisors to clear alerts that were missing information significant to a suitability determination after obtaining an explanation from the registered representative but without further investigation.

FINRA also found that the firm (i) did not address suitability reviews specific to municipal bonds in its written supervisory procedures and (ii) failed to conduct a heightened review of a broker's short-term trading of Puerto Rican municipal bonds, which carried additional risks due to the restructuring of Puerto Rican debt. As a result, the firm violated FINRA Rule 3110 ("Supervision") and MSRB Rules G-27(b) and (c).

With regard to supervisory controls, FINRA stated, the firm's annual tests did not examine whether the system for supervising two active business lines (mutual funds and municipal bonds) was reasonably designed to achieve compliance with FINRA and MSRB suitability rules, in violation of FINRA Rule 3120 ("Supervisory Control System") and MSRB Rule G-27(f).

The above-mentioned conduct is also a violation of FINRA Rule 2010 ("Standards of Commercial Honor and Principles of Trade").

To settle the charges, the firm agreed to (i) a censure, (ii) a $750,000 fine (including $225,000 for the MSRB Rule G-27 violations) and (iii) an undertaking to certify the implemented supervisory systems.

Cadwalader Wickersham & Taft LLP

July 14 2021

TAX - NEW JERSEY

Winberry Realty Partnership v. Borough of Rutherford

Supreme Court of New Jersey - June 28, 2021 - A.3d - 2021 WL 2639787

Taxpayers brought action under § 1983 and state Civil Rights Act against borough and borough's tax collector alleging violation of right of redemption arising from tax collector's refusal of taxpayers' attempt to redeem tax sale certificate before entry of final foreclosure judgment on their home.

The Superior Court granted summary judgment for borough and tax collector. Taxpayers appealed. The Superior Court, Appellate Division, affirmed in part and reversed in part. Parties filed petition and cross-petition for certification, which were granted.

The Supreme Court held that:

- Tax collector was not entitled to qualified immunity, and
- Borough had potential municipal liability for tax collector's conduct.

Borough's tax collector did not act in an objectively reasonable manner and thus was not entitled to qualified immunity from taxpayers' civil rights suit alleging violation of right of redemption arising from tax collector's refusal of taxpayers' attempt to redeem tax sale certificate before entry of final foreclosure judgment on their home, where tax collector withheld, or made no effort to secure, the information necessary for taxpayers to vindicate their substantive right to reclaim home under Tax Sale Law, apparently due to taxpayers' noncompliance with tax collector's policy requiring a written redemption request, and tax collector flatly refused to accept redemption payment at a point when right to redeem tax sale certificate had not been cut off.

Borough's tax collector had final policymaking authority on matters relating to redemption of tax sale certificates such that borough could be liable under § 1983 and state Civil Rights Act for her conduct that allegedly violated civil rights of taxpayers in refusing their attempt to redeem tax sale certificate before entry of final foreclosure judgment on their home; Tax Sale Law identified a tax collector as sole person with authority to accept payment to redeem a tax sale certificate and, by her own account, tax collector implemented unwritten policies and procedures governing redemption during her tenure as tax collector including requirement of written redemption calculation requests before that practice was directly authorized by statute.

Opportunity Zones and the Return to Cities, with Riaz Taplin

Are there misperceptions in the market? Do investors overreact to sentiment? And is there an opportunity for level-headed contrarian view Opportunity Zone investors?

Riaz Taplin is principal and founder of Riaz Capital, an Oakland, California based real estate management firm focused on developing workforce housing in California's urban Opportunity Zones.

Click here to my conversation with Riaz.

Episode Highlights

- The investment thesis behind creating workforce housing in urban markets.
- Real estate market fundamentals and misperceptions, particularly in the California Bay Area.
- Early indicators of a return to urban areas: how 250,000 people returning to the Bay Area over a very short period may coincide with a collapse in supply, leading to a price spike.
- The impact that tax reform may have on the Opportunity Zones marketplace.
- How the Opportunity Zone incentive may be ideally suited to capitalize on ongoing demographic macro trends.
- Highlights of Opportunity Zone projects that Riaz Capital is developing and why they appeal to investors.

OPPORTUNITYDB

JIMMY ATKINSON

JULY 14, 2021

Factors Influencing Capital Inflows For Tax-Exempt Municipal Bond Funds.

Summary

- Tax-exempt municipal bond funds (including both conventional funds and ETFs) have recorded 19 straight weeks of estimated net inflows.
- Money market funds attracted $23.6 billion over that Lipper fund-flows week, and the VIX ended at 28.43 (currently around 17.01)-safe to say uncertainty was more abundant in the market at the time.
- The first week in March aside, tax-exempt municipal bond funds have recorded weekly inflows of more than $1 billion in 70.4% of the weeks this year.

Continue reading.

Seeking Alpha

Jul. 16, 2021

Tax-Increase Talk Prompts Wealthy to Splurge on Muni Bonds.

Municipal bond investments hit new highs in 2021 as Democrats consider proposals to raise taxes

Wealthy Americans eyeing potential tax increases are helping drive record amounts of money into municipal bond funds.

In the first six months of 2021, U.S. municipal bond funds attracted an estimated $56.9 billion in net new money—the most for any first half of the year going back to 1992, according to data from Refinitiv Lipper.

Advisers to high-income investors say the potential for higher taxes has been a focus of conversation in recent months, drawing attention to munis.

Continue reading.

The Wall Street Journal

By Karen Langley

July 19, 2021

Novogradac 2021 Affordable Housing Tax Credit and Bond Conference.

September 30 – October 1st, 2021, Hutton Hotel, Nashville TN & Online

Click here to learn more and to register.

Municipal Advisor Principal Qualification Exam: MSRB Reminder

Municipal advisor firms must ensure their municipal advisor principals are properly qualified.

The November 12, 2021 compliance deadline to take and pass the Municipal Advisor Principal Qualification (Series 54) Exam is approaching.

Learn more.

BLX/Orrick 2021 Post-Issuance Compliance Workshop - Hybrid Event: Registration Now Open

October 28-29, 2021
Hybrid Event At the Vdara Hotel and Spa and Virtual

REGISTRATION NOW OPEN:

Click here to register for limited IN-PERSON attendance
Click here to register for VIRTUAL attendance

A Comprehensive Overview of Post-Issuance Tax Law and SEC Secondary Market Disclosure for 501(c)(3) Organizations and State and Local Government Issuers Who Utilize Tax-Exempt Financing

The 2021 Workshop will be a hybrid event, with very limited in-person attendance and a livestream option. In-person attendance will be limited to 32 attendees, based upon the conference facilities and social distancing guidelines. In addition, through the livestream option, we will make available all the content on a virtual platform with the ability for participants to interact with the presenters and with other attendees throughout the workshop. Both the in-person and livestream options will allow participants to replay any of the sessions for up to 30 days after the event.

Our desire is to host an event for the community that provides timely and relevant information while following Orrick’s recommended protocols and is safe for both the attendees and for our team. The livestream option represents an exciting way for us to bring our content to a much broader audience.

Please note: Due to the limited in-person capacity, live attendance at the Vdara will be restricted to one person per organization.

COVID-19 Safety Protocols for In-Person Attendance

Our goal at this event is to promote healthy behaviors and maintain a healthy environment for all participants. Accordingly, we will adhere to the following preventative measures for those attending the Workshop in person and while at Workshop events:

- Wear a mask
- Stay at least 6 feet away from others
- Wash your hands
- Use hand sanitizer
- Stay home when appropriate or exhibiting any symptoms

These safety protocols are subject to change. Please check back for updates.

In addition, for information on the Vdara’s Seven-Point Safety Plan, please click here.

PROGRAM DESCRIPTION

The BLX/Orrick Workshop offers timely discussions of topics related to post-issuance compliance and tax law for the public finance and 501(c)(3) communities who borrow on a tax-exempt basis. With open forums allowing for attendee participation, BLX and Orrick professionals will lead the program and assist participants with understanding the IRS and SEC regulations and requirements relating to tax-exempt debt. The sessions encourage audience participation and address questions from participants relating to real life situations. The BLX and Orrick team strives to make the discussion of tedious tax laws understandable and relatable.

At the Workshop, learn valuable information relating to the following:

- Best practices for post-issuance tax compliance
- Private business use rules and regulations
- IRS safe harbor compliance for management and service contracts
- IRS safe harbor compliance for sponsored research agreements
- Using "floating equity" to mitigate private business use
- IRS Schedule K Secondary market disclosure and Rule 15c2-12 amendments
- Arbitrage rebate and yield restriction compliance

FINAL AGENDA – Please check back for updates.

BLX SENIOR REPRESENTATIVES & ORRICK TAX PARTNERS TO PRESENT AT THE WORKSHOP

All Workshop participants will have the opportunity to interact directly with BLX Representatives and Orrick Partners throughout the Workshop.

CLICK HERE for more information on Orrick.

WORKSHOP MATERIALS

Electronic, downloadable versions of all Workshop materials will be accessible via a secure log in site 3 days prior to the start of the Workshop so that all attendees may save and view the materials on their own device.

Please note, for in-person attendees, hard copies of Workshop materials will NOT be provided. Please download and save the electronic materials to your device prior to the Workshop or print off and bring copies of the materials with you.

CPE and MCLE Credits offered

HOTEL INFORMATION

BLX has secured a limited number of rooms at a special discounted rate of $135* (plus applicable fees) at the Vdara. The last day to book a room will be October 6, 2021. To reserve your room, click here.

GENERAL SCHEDULE – For Travel Planning Purposes

Thursday, October 28th
7:00 am – 8:00 am Registration & Breakfast
8:00 am – 12:00 pm Workshop Sessions

12:00 pm – 1:00 pm Lunch
1:00 pm – 5:30 pm Workshop Sessions
5:30 pm – 7:00 pm Cocktails (details to be determined)

Friday, October 29th
7:30 am – 8:00 am Breakfast
8:00 am – 12:00 pm Workshop Sessions
12:00 pm Workshop Concludes

WORKSHOP PRICING

Nonprofit organizations:

- In-person: $695
- Virtual: $595 (includes 12 sessions)

Issuers / governmental organizations:

- In-person: $695
- Virtual: $545 (includes 11 sessions)

Other professionals**:

- In-person: $1,095
- Virtual: $995

An invoice with payment instructions will be sent once registration is received.

**** Who May Attend**

In general, this educational workshop is for representatives from nonprofit organizations and state and local governments. In addition, the Workshop will be open for certain Industry Professionals. For information on Industry Professional attendance, please contact Cynthia Quezada Sixtos at csixtos@blxgroup.com.

Refunds, Cancellation and Concerns

For in-person registrations, requests to refund registration fees must be received in writing by October 1, 2021 and will be subject to a $100 cancellation fee. No refunds will be granted after October 1.

For virtual registrations, requests to refund registration fees must be received in writing by October 24 and no cancellation fee will apply. No refunds will be granted after October 24.

Refunds or cancellations of hotel bookings need to be requested from the Vdara and are subject to their policies.
For additional information or any questions on the Workshop and/or invoicing, please contact:

Cynthia Sixtos
csixtos@blxgroup.com
or call 213-612-2207

*** Hotel Fees**

A Daily Resort Fee of $39.00 plus the current applicable Clark County room tax for the Vdara of 13.4% will be charged in addition to room rates.

DISCLOSURES

ATTORNEY ADVERTISING: Prior results do not ensure a similar outcome.

BLX is a subsidiary of Orrick. BLX does not provide legal services.

Alabama Weighs Covid Aid for Prisons After Wall Street's Rebuff.

- **Earlier state effort to borrow from Wall Street fell apart**
- **State was sued by Justice Dept. in 2020 over prison conditions**

Alabama asked the U.S. Treasury Department whether Covid-19 relief aid can be used to fund correctional system projects, months after the state was unable to tap Wall Street for financing to build two new prisons.

The Alabama Department of Corrections asked Treasury to allow certain prison infrastructure projects as an eligible use of federal aid, according to a July 15 dated letter to the Treasury. The letter sent by Commissioner Jefferson S. Dunn was sent as part of a comment period on federal rules guiding how to spend the $350 billion American Rescue Plan aid that states and municipalities are receiving.

The request to the Treasury department comes months after the state attempted to borrow from the capital markets to raise funds for two new prisons to be owned by CoreCivic Inc. and leased to the state corrections department. The financing drew sharp rebuke from investors and activists and ultimately fell apart after Barclays Plc, the original underwriter, backed out.

It's unclear whether the state wants to use its federal aid to fund those new prisons. Spokespeople at Governor Kay Ivey's office and the corrections department did not respond to requests for comment.

After a multi-year investigation, the Alabama Department of Corrections and the state were sued by the Department of Justice in December for failing to protect male prisoners from violence and unsanitary conditions. Ivey, the architect of the CoreCivic partnership, said the new facilities would help the state improve its prison system.

The state is receiving $2.1 billion of aid as part of the Treasury's Coronavirus State and Local Fiscal Recovery Funds, meant to help state and local governments fight the pandemic and foster economic recovery. The Treasury's guidelines on how the money can be used is broad, allowing governments to fund everything from stimulus checks to water and sewer infrastructure projects.

The federal guidelines also emphasize using the money to promote equity and targeting the aid to underserved populations. The Alabama Department of Corrections letter said its prison population was disproportionately impacted by the pandemic, saying that Covid-19 stalled things like educational programs.

The state said that allowing certain infrastructure projects to be funded through federal aid would help it respond to the disproportional impact of the pandemic on correctional systems and people who are incarcerated.

After the original financing fell apart, lawmakers floated other options including selling bonds for new facilities that would be owned by the state and using federal stimulus funds to help finance the project, according to AL.com.

“From ADOC’s perspective, any ambiguity associated with the Interim Rule should be clarified and additional guidance provided for correctional systems and incarcerated populations to ensure ADOC realizes the benefit and full use of State Fiscal Recovery Funds,” the state said in the letter.

Bloomberg Business

By Amanda Albright and Danielle Moran

July 16, 2021, 9:36 AM PDT

D.A. Davidson Closes Bonds on Second-Ever Limited Property Tax Public Infrastructure District.

Transit-Oriented Community to Support Sustainable and Balanced Growth in Payson City, Utah

SALT LAKE CITY–(BUSINESS WIRE)–D.A. Davidson is pleased to announce the company’s Special District Group has priced $24 million of tax-exempt bonds in the second-ever limited property tax Public Infrastructure District (PID) financing in Utah.

Red Bridge PID No. 1 will use the bond proceeds to finance critical water, sewer and road infrastructure to serve the Red Bridge Station community as well as key growth areas on the west side of Payson City, Utah. The community is planned for more than 1,000 homes, consisting of primarily multifamily residences. The site is also planned for a number of retail and other general commercial projects, including the potential expansion of the Mountainland Technical College (MTECH) and is in the long term planning for a new Utah Transit Authority Frontrunner and Bus Rapid Transit station (BRT).

“We are proud to partner with the Red Bridge Station development team in conjunction with the City of Payson on this financing. This transit-oriented community is a significant collaborative effort between the developer and Payson to create new zoning, higher density and a PID to finance the critical infrastructure that will get Red Bridge Station off the ground,” said Brennen Brown, managing director at D.A. Davidson, Special District Group. “As we continue our expansion in Utah, this landmark community is a perfect example of how public financing through Utah PIDs is an effective tool to unlock sustainable and balanced growth for communities statewide.”

D.A. Davidson’s Special District Group has experienced significant growth this past year in Utah and Colorado, successfully completing more than 100 transactions, totaling more than $2 billion to fund public infrastructure to support development projects.

“D.A. Davidson’s Special District Group made infrastructure funding of Red Bridge Station happen through their unmatched expertise and financial tools,” said Joe Spencer, project manager and chairman of Red Bridge PID. “Together we developed a unique financing structure and closely collaborated every step of the way. We simply could not have done it without the D.A. Davidson team and are looking forward to our vision becoming a reality.”

A nationally recognized market leader, the D.A. Davidson Special District Group is a team of capital markets professionals principally focused on financing public infrastructure for land development through the issuance of municipal bonds. Powered by decades of industry experience, the team drives groundbreaking solutions with hands-on partnership from project inception to completion.

Construction within the community is anticipated to commence in fall of 2021 and full buildout of the community is anticipated in 2026. For more information, please contact sdgmd@dadco.com.

About D.A. Davidson Companies

D.A. Davidson Companies is an employee-owned financial services firm offering a range of financial services and advice to individuals, corporations, institutions and municipalities nationwide. Founded in 1935 and headquartered in Montana, with corporate offices in Denver, Los Angeles, Portland and Seattle, the company has approximately 1,400 employees and offices in 28 states.

Subsidiaries include: D.A. Davidson & Co., the largest full-service investment firm headquartered in the Northwest, providing wealth management, investment banking, equity and fixed income capital markets services, and advice; Davidson Investment Advisors, a professional asset management firm; D.A. Davidson Trust Company, a trust and wealth management company; and Davidson Fixed Income Management, a registered investment adviser providing fixed income portfolio and advisory services.

For more information, visit dadavidson.com.

July 13, 2021 11:54 AM Eastern Daylight Time

[Preston Hollow Capital Completes Bond Funding for Farms of New Kent Development in Virginia.]

DALLAS–(BUSINESS WIRE)–Preston Hollow Capital ("PHC"), an independent specialty municipal finance company based in Dallas, today announced the successful issuance of two new series of tax-exempt refunding bonds totaling $90 million, the proceeds of which cure the previously defaulted Series 2006 Bonds and adds new liquidity intended to fuel and accelerate residential and commercial growth within the Farms of New Kent Development ("the Development"). The Development is a planned, mixed-use community comprised of four separate land tracts situated on 2,113 acres of land within New Kent County, approximately 20 miles east of Richmond, Virginia and 25 miles west of Williamsburg. When complete, the Development is expected to contain 2,525 diverse residential units, including approximately 1,550 age-restricted units, commercial and retail space. The community is complemented by amenities in the Development, including the Viniterra Winery, Talleysville Brewing Company, and the Club at Viniterra – an 18-hole championship golf course designed by Rees Jones.

Ramiro Albarran, Managing Director at Preston Hollow Capital, said, "We are deeply gratified that our work with both the County and project homebuilders, Ryan Homes and DR Horton, has revived what was a stalled effort and catalyzed an exciting and vibrant community in New Kent County. The refunding we have announced today is a key milestone in our long-term commitment to the community, and we are excited to see the future continue to unfold."

Additional development activity at The Development includes the following:

- **The Arbors**– This D.R. Horton-led development includes the construction of over 300 additional residential family homes in an existing neighborhood that has now grown to over 200 families.
- **The Groves**– Similarly, Ryan Homes has commenced home building on the first phase of The Groves, an active-adult, age-restricted community which is part of 1,164 lots under contract for sale to Ryan Homes. The Groves will augment the existing 155-home Four Seasons age-restricted neighborhood with additional amenities and connectivity. Ryan Homes started its marketing activities and recently closed on the lots for construction of the initial four model homes.
- **Clubhouse and Related Amenities** – Construction of an 8,000 square foot luxury clubhouse with resort-style pool, and an extensive walking and hiking path trail system is underway.

Patricia A. Page, who serves as a Member of the Board of Supervisors for District #3, which includes the Farms of New Kent, added, “I am extremely encouraged by the relationship with Preston Hollow and I’ll continue to work closely as The Arbors and The Groves move from a rendering to a beautiful community reality.”

In 2006, the original developers through Farms of New Kent Community Development Authority issued $85 million Series 2006 special assessment bonds to finance the construction of certain roads, water and sewer system extensions and other public improvements for the Development. The majority of this infrastructure was completed in 2009. Subsequently, some of the original developers defaulted on their payments of special assessments, ultimately leading to a default of the Series 2006 bonds in 2013 and eventual transfer of approximately 900 acres of the Development’s land to the Series 2006 bond trust.

PHC acquired all the defaulted Series 2006 bonds in 2017 and 2018 and instituted its plan to restart residential and commercial development. Since that time, PHC has worked with the Series 2006 Trustee, the Farms of New Kent Community Development Authority, New Kent County, Ryan Homes and D.R. Horton, among others, to reestablish land development and commence homebuilding throughout the community.

About Preston Hollow Capital

Preston Hollow Capital provides specialized impact financing solutions for projects of significant social and economic importance to local communities in the United States. As a team, we bring a decades-long track record of helping communities achieve their financial, sustainability and community impact goals. We do so through a unique partnership model, rigorous and disciplined credit underwriting and creative investment structuring built around delivering speed, certainty, and flexibility to our borrowers.

Contacts
Greg May, Preston Hollow Capital
214.389.0835
gmay@phcllc.com

July 14, 2021 10:25 AM Eastern Daylight Time

- NFMA White Paper on Guidance & Insights Regarding Emergency Event Disclosure Affecting State & Local Governments: COVID-19 Focus
- National Public Finance Guarantee Corporation, et al. v. UBS Financial Services Inc., et al: SIFMA Amicus Brief

- SIFMA US Municipal Bonds Statistics.
- Eminent domain case from the US Supremes here.
- Supreme Court of Ohio case on the taxability of airport owned and operated by state university here.
- And finally, Keeping It Classy, Phil is brought to us this week by *Beasley v. Georgia Department of Corrections*, in which Phil Beasley ran into a bit of bother and subsequently sued the Georgia Dept. of Corrections for "creating a public nuisance." Mr. Beasley pointed out in his complaint that – although physically unharmed by the nuisance – he continued to suffer symptoms such as "sadness" following the event. Ya' see, Phil had come to a stop behind a prison transfer bus when these two charmers burst out the bus and jacked Phil's ride. What followed was three days of manhunts, car chases, gun battles, and home invasions. Not to mention the two corrections officers who died on the bus. That's some nuisance. But let's be sure to keep the focus where it belongs: Phil's Very Bad Day of Sadness and Nuisance.

EMINENT DOMAIN - FEDERAL

PennEast Pipeline Company, LLC v. New Jersey

Supreme Court of the United States - June 29, 2021 - 141 S.Ct. 2244 - 21 Cal. Daily Op. Serv. 6471

Natural gas company filed actions under Natural Gas Act (NGA) to condemn properties owned by State of New Jersey for construction of interstate gas pipeline.

The United States District Court for the District of New Jersey denied State's motion to dismiss and granted company's requests for orders of condemnation and preliminary injunctive relief for immediate access to the properties. State appealed. The United States Court of Appeals for the Third Circuit vacated and remanded. Certiorari was granted.

The Supreme Court held that:

- Court of Appeals below had jurisdiction over State's appeal, and
- Actions brought by natural gas companies pursuant to the NGA to condemn rights-of-way in which a State has an interest do not offend state sovereignty.

State of New Jersey's appeal of district court's grant of natural gas company's requests for orders condemning state-owned land, pursuant to Natural Gas Act (NGA), to construct interstate gas pipeline was not collateral attack on certificates of public convenience and necessity issued to company by Federal Energy Regulatory Commission (FERC) to build the pipeline, and thus, State's appeal did not have to be filed in Court of Appeals hearing challenges to FERC's certificate order, which had exclusive jurisdiction to affirm, modify, or set aside that order; State's argument on appeal that NGA did not delegate the right to file condemnation actions against nonconsenting States did not seek to modify FERC's order, but instead asserted a defense against company's condemnation proceedings.

Natural Gas Act (NGA) provision authorizing natural gas companies that hold certificates of public convenience and necessity from Federal Energy Regulatory Commission (FERC) to acquire, through eminent domain, any right-of-way needed to build natural gas pipeline was passed specifically to solve the problem of States impeding interstate pipeline development by withholding access to their own eminent domain procedures.

Condemnation actions brought under the Natural Gas Act (NGA) provision authorizing natural gas companies, which hold certificates of public convenience and necessity from the Federal Energy Regulatory Commission (FERC) to build an interstate pipeline, to condemn all necessary rights-o--way, including land in which a State holds an interest, do not offend state sovereignty, because the States consented at the founding to the exercise of the federal eminent domain power, whether by public officials or private delegatees.

IMMUNITY - GEORGIA

Beasley v. Georgia Department of Corrections

Court of Appeals of Georgia - June 22, 2021 - S.E.2d - 2021 WL 2548838

Citizen and his wife brought action against Georgia Department of Corrections (GDOC), which arose from an incident in which two inmates killed the two corrections officers who were transporting them, confronted citizen, who had stopped his vehicle behind halted prison bus, at gunpoint, and stole his vehicle, alleging that officers created a public nuisance by failing to abide by certain departmental policies in transporting inmates and seeking damages for emotional distress under the Georgia Tort Claims Act (GTCA).

The trial court granted GDOC’s motion to dismiss on sovereign-immunity grounds. Plaintiffs appealed.

The Court of Appeals held that:

- Citizen’s asserted damages were solely caused by assault and battery perpetrated by inmates, and thus action fell under assault-and-battery exception to GTCA’s waiver of sovereign immunity, entitling GDOC to sovereign immunity;
- Citizen’s asserted damages were personal injuries, as opposed to a taking of personal property via a public nuisance for which GDOC could be held liable, thus supporting GDOC’s entitlement to sovereign immunity; and
- GDOC was entitled to sovereign immunity for its alleged creation of a public nuisance.

ZONING & PLANNING - MISSISSIPPI

Board of Supervisors of Hancock County v. Razz Halili Trust

Supreme Court of Mississippi - June 24, 2021 - So.3d - 2021 WL 2587103

Trust brought action challenging decision by county zoning board to deny trust’s application to use its property as a marina.

The Circuit Court reversed. Board appealed.

The Supreme Court held that:

- Board’s denial of trust’s application was arbitrary and capricious, and
- Board’s denial of trust’s application was not supported by substantial evidence.

Zoning board’s denial of trust’s application to use its property as a marina was arbitrary and capricious, despite board’s assertion that trust’s proposed use of property to load and unload shipments of oysters was prohibited based on definition of a “seafood processor” under state licensing statute; marina was allowed as a matter of right in zone where property was located, whether trust's proposed use of property would classify it as a seafood processor under licensing statute was irrelevant to whether trust was engaged in seafood processing prohibited under local zoning ordinance, and there was no evidence that definition of a marina or prohibited use of seafood processing precluded unloading and loading oysters.

Zoning board's denial of trust's application to use its property as a marina was not supported by substantial evidence, despite board's assertion that trust intended to use property to process seafood, which was a prohibited use in zone where property was located; all evidence presented to board in trust's application and board meetings indicated that trust was applying to operate a marina as defined by local zoning ordinance, specifically that trust intended to use property to receive shipments of oysters, to unload oysters, to load them into refrigerated trucks, and to ship them out of state, and board was presented with no evidence that trust's intended use of property constituted a prohibited processing use under ordinance.

EMINENT DOMAIN - NEBRASKA

Sanitary and Improvement District No. 67 of Sarpy County v. Department of Roads

Supreme Court of Nebraska - June 25, 2021 - N.W.2d - 309 Neb. 600 - 2021 WL 2603414

County sanitary and improvement district brought inverse condemnation action against state arising from re-routing of highway.

The District Court dismissed on the pleadings. Sanitary and improvement district appealed.

The Supreme Court held that sanitary and improvement district, a state political subdivision, lacked standing to bring inverse condemnation action against state.

County sanitary and improvement district was not a person having private property, and thus it was not the real party in interest and lacked standing to bring inverse condemnation action against state arising from re-routing of highway.

LAND USE & DEVELOPMENT - OKLAHOMA

Immel v. Tulsa Public Facilities, Authority

Supreme Court of Oklahoma - June 22, 2021 - P.3d - 2021 WL 2548600 - 2021 OK 39

Taxpayers brought action seeking declaratory judgment that city's public facilities authority and city could not sell 8.8 acres of park land to a prospective private developer for the construction of a commercial shopping center because the land was held in a public trust expressly as a park for the people.

The District Court granted authority's and city's motions for summary judgment. Taxpayers appealed.

The Supreme Court held that:

- Taxpayers had standing to bring action in equity, rather than qui tam, seeking declaratory judgment against authority and city;

- Authority and city were prohibited from selling tract of park to developer, unless the public use had been abandoned or the park had become unsuited for continued use;
- Factual issue existed as to whether tract of park had been lawfully abandoned, and as such relinquished, by authority and/or city, as would have authorized its sale without special legislative authority, thus, precluding summary judgment in taxpayers' action; and
- Factual issue existed as to whether the expenditure of public funds by authority and city, namely, sale of tract of park and allocation of tax funds for infrastructure development to same developer met the constitutional public purpose requirement for investment of public funds in private enterprises, thus, precluding summary judgment in taxpayers' action.

Taxpayers had standing to bring action in equity, rather than qui tam, seeking declaratory judgment that city's public facilities authority and city could not sell 8.8 acres of park land to a private developer for the construction of a commercial shopping center because the land was held in a public trust expressly as a park for the people; taxpayers asserted that the $570,000 in city funds to be paid to prospective private developer would have been an illegal expenditure.

City's public facilities authority and city were prohibited from selling tract park to prospective private developer, unless the public use had been abandoned or the park had become unsuited for continued use, despite the fact that legal title had been transferred via a quit claim deed from city to a public trust; the park land was held by authority, a public trust, for the use and benefit of the citizens as a public park, the park land was held in a governmental capacity for use by the public, such that it could not be sold without special legislative authority, and it was undisputed that there was no special legislative authorization empowering authority and city to sell that tract of the park to a private developer for commercial use.

Genuine issue of material fact existed as to whether tract of park which city's public facilities authority and city was attempting to sell to private developer for construction of a commercial shopping center, had been lawfully abandoned, and as such relinquished, by authority and/or city, as would have authorized its sale without special legislative authority, thus, precluding summary judgment in taxpayers' action seeking declaratory judgment that authority and city could not sell that tract to prospective private developer.

Genuine issue of material fact existed as to whether the expenditure of public funds by city public facilities authority and city, namely, sale of tract of park for 20% of its market value to private developer and allocation of a half million dollars in tax funds for infrastructure development to same developer met the constitutional public purpose requirement for investment of public funds in private enterprises, thus, precluding summary judgment in taxpayers' action seeking declaratory judgment that authority and city could not sell that tract to prospective private developer.

IMMUNITY - PENNSYLVANIA

Degliomini v. ESM Productions, Inc.

Supreme Court of Pennsylvania - June 22, 2021 - A.3d - 2021 WL 2546382

Bicyclist who was injured when he rode into unmarked and un-barricaded sinkhole on city street during charity bike ride brought negligence action against city, among other parties.

Following jury verdict in favor of bicyclist, the Court of Common Pleas denied city's motion for post-trial relief and granted bicyclist's motion for delay damages. City appealed. The Commonwealth Court reversed. Bicyclist petitioned for discretionary review.

The Supreme Court held that pre-injury exculpatory release granting city immunity from duty to maintain city streets violated public policy, and was thus invalid.

Enforcement of pre-injury exculpatory release to grant city immunity in negligence action by bicyclist who was injured when he rode into unmarked and un-barricaded sinkhole during charity bike ride would have jeopardized health, safety, and welfare of public at large by removing any incentive for city to exercise minimal standards of care due to maintain public streets in reasonably safe condition for reasonably foreseeable uses, thus rendering release invalid as it violated public policy principles definitively stated in Political Subdivision Tort Claims Act; city's duty to exercise reasonable care in discharging its independently-derived and essential function of street repair arose long before event, when city had actual notice or could reasonably have been charged with notice of existence of sinkhole.

ZONING & PLANNING - SOUTH CAROLINA

Croft as Trustee of James A. Croft Trust v. Town of Summerville

Supreme Court of South Carolina - June 16, 2021 - S.E.2d - 2021 WL 2448236

Residents and public interest groups sought judicial review of decision by town board of architectural review approving construction of proposed development project.

The Court of Common Pleas affirmed. Residents and public interest groups appealed. The Court of Appeals affirmed. Residents and public interest groups filed petition for writ of certiorari, which was granted.

The Supreme Court held that:

- Appeal from decision affirming board's approval of project was moot;
- Exception to mootness doctrine for issues capable of repetition, yet evading review, did not apply; and
- Public interest exception to mootness doctrine did not apply.

Appeal from decision affirming decision by town board of architectural review approving construction of proposed development project was moot; issue was whether developer could build the project as approved by the board, controversy ended when developer decided not to build project while appeal was pending, and decision rendered for either party would not provide any practical relief and would be a purely academic exercise by appellate court.

Exception to mootness doctrine permitting appellate court to decide merits of moot appeal for issues capable of repetition, yet evading review, did not apply to appeal filed by residents and public interest groups challenging decision affirming approval of proposed development project by town board of architectural review on grounds of purported Freedom of Information Act (FOIA) and town ordinance violations, which was rendered moot when developer decided not to build project while appeal was pending; although issues related to purported FOIA and ordinance violations were capable of repetition, they did not evade review, since appeal did not become moot because there was insufficient time to challenge board's approval before controversy ended.

Public interest exception to mootness doctrine did not apply to permit appellate court to decide merits of appeal filed by residents and public interest groups challenging decision affirming approval of proposed development project by town board of architectural review on grounds of purported Freedom of Information Act (FOIA) and town ordinance violations, which was rendered moot when developer decided not to build project while appeal was pending; while it was important that citizens had the ability to stay informed of the activities of public bodies, there was no imperative or manifest urgency requiring appellate court to issue opinion on application of FOIA and town ordinances to board's activity.

SIFMA US Municipal Bonds Statistics.

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

YTD statistics include:

Issuance (as of June) $228.2 billion, +8.5% Y/Y
Trading (as of June) $9.3 billion ADV, -33.8% Y/Y
Outstanding (as of 1Q21) $4.0 trillion, +2.7% Y/Y

Download XLS

July 6, 2021

States Finalize Fiscal 2022 Budgets (Updated 7/9)

As of July 9, 46 states have enacted a full-year budget for fiscal 2022. States have been enacting fiscal 2022 budgets during a time when fiscal conditions continue to strengthen as the economy recovers from the pandemic and additional federal aid flows to state and local governments. As noted in NASBO's Spring 2021 Fiscal Survey of States, 40 out of 50 states saw revenue declines compared to pre-pandemic projections over the two-year period from fiscal 2020 to fiscal 2021. However, most states' enacted fiscal 2022 budgets include an increase in both state spending and revenue.

Forty-six states began their fiscal years on July 1. New York starts its fiscal year on April 1; Texas begins on September 1; and Alabama and Michigan start their fiscal years on October 1. Forty-eight states are enacting a new budget for fiscal 2022. Virginia and Wyoming, which both enacted two-year budgets for fiscal 2021 and fiscal 2022 in calendar year 2020, approved budget adjustments to their biennial budgets. Kentucky, which would normally have passed a two-year budget in calendar year 2020, passed a one-year budget only for fiscal 2021 due to revenue uncertainty created by COVID-19, and enacted a new budget for fiscal 2022 this year. Of the 48 states passing a new budget for fiscal 2022, 17 states are enacting a biennial budget for both fiscal 2022 and fiscal 2023.

Below is additional information on the states that have yet to enact a full-year budget for fiscal 2022:

1. **Massachusetts** – The legislature finalized the budget of July 9, and the governor has ten days to act on the bill.
2. **Michigan** – The state's fiscal year does not begin until October 1. The legislature is finalizing the

budget.

3. **North Carolina** – The Senate passed the budget on June 25 and the House is now considering the bill. State law allows spending to continue at current levels until a new budget is enacted.
4. **Oregon** – The governor is completing acting on agency budget bills. The state is currently operating under a continuing resolution for the unsigned bills.

Please click here for links to proposed and enacted budgets, as well as prior budget summaries.

NASBO

By Brian Sigritz

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

View the Current List.

S&P: COVID-19 Activity In U.S. Public Finance

Here are links to coronavirus-related activity in U.S. public finance. This file will be updated regularly.

Download

Fitch Ratings Revises Outlook for U.S. Colleges and Universities to Stable.

Fitch Ratings-Chicago-07 July 2021: U.S. colleges and universities are heading into the second half of this year with more cautious optimism as they plan for largely in-person instruction heading into the 2021–2022 academic year, according to Fitch Ratings in a new report.

Fitch has revised both the sector and Rating Outlook to Stable with affirmations likely to dominate rating activity for colleges and universities in the coming months.

'The $76 billion federal stimulus offset tuition and auxiliary losses associated with the coronavirus pandemic, as well as unplanned coronavirus expenses,' said Fitch Senior Director Emily Wadhwani. 'The application pipeline is growing, especially for top choice schools, while improved revenue prospects for state budgets could lead to improved auxiliary and student fee revenues in the coming academic year as students return to campus.'

Areas of risk still remain. The benefits of federal stimulus continue to prop up operations and have aided in improving state budget conditions and funding expectations. Some near-term downgrades are possible for institutions with persistent and insurmountable operating and cash flow pressures due to constrained revenues from enrollment, auxiliary systems, fundraising and state appropriations.

Enrollment will be a key area to watch, with undergraduate enrollment likely to recover somewhat this fall. A rise in test-optional admissions has led to a meaningful increase in applications, though FAFSA application rates have lagged, forcing some institutions to extend their application deadlines. A more uncertain fall 2021 admissions cycle may disproportionately affect regional public colleges/universities and less selective private institutions.

‘Although the risk of a resurgence in the pandemic remains, colleges and universities are generally better positioned to navigate these conditions after a year of hybrid delivery,’ said Wadhwani.

‘Fitch Ratings 2H21 Outlook: U.S. Public Finance Colleges and Universities’ is available at ‘www.fitchratings.com.’

Contact:

Emily Wadhwani
Senior Director
+1-312-368-3347
Fitch Ratings, Inc.
1 North Wacker Drive
Chicago, IL 60601

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email: sandro.scenga@thefitchgroup.com

Additional information is available on www.fitchratings.com

Fitch: Post-Coronavirus Pressures to Worsen Credit Gap for U.S. Colleges

Fitch Ratings-Chicago/New York-07 July 2021: Elevated revenue pressure and slowing tuition growth will exacerbate an already widening credit gap for U.S. colleges and universities, according to Fitch Ratings in its annual medians report for the sector.

The annual change in net tuition revenue was the lowest in recent history at 1.9% for private institutions, and the median student fee percentage of total revenue fell to 34.5% for public institutions, its lowest since fiscal 2011. Colleges rated ‘BBB’ and below are the most vulnerable to rating pressure in the coming months. According to Fitch Senior Director Emily Wadhwani, ‘These colleges are often smaller in enrollment size, have limited endowments and tend to attract more local and regional students.’

Conversely, median ratings were steadier at ‘AA’ for public institutions and ‘A–’ for private institutions. Notably, the ‘A’ rating category had some of the strongest operating and cash flow margins in fiscal 2020, as this group has very little healthcare-oriented services, which were significantly pressured by the pandemic at the end of fiscal 2020.

Liquidity has improved while leverage is holding steady for colleges, both of which have helped the sector in recent months. The Biden administration’s American Rescue Plan (ARP), American Jobs Plan (AJP) and American Families Plan (AFP) has also helped to blunt the pandemic’s impact for colleges, but this temporary aid will run off beyond 2022. Most revenue from of the three federal stimulus rounds to higher education will be recognized in fiscal years 2021 and 2022.

‘While federal stimulus provided a significant boost to the sector, the likelihood of additional direct aid authorizations in the event of a resurgence in the pandemic is unlikely,' said Wadhwani.

Fitch's 'Fiscal 2020 Median Ratios for U.S. Colleges and Universities' is available at 'www.fitchratings.com'.

Contact:

Emily E. Wadhwani
Senior Director, USPF
+1-312-368-3347
Fitch Ratings, Inc.
One North Wacker Drive
Chicago, IL 60606

Susan Carlson
Director
+1-312-368-2092

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email: sandro.scenga@thefitchgroup.com

Additional information is available on www.fitchratings.com

How the West's Searing Heat Wave Could Affect Muni Bonds.

It probably isn't the first asset class investors think about with regard to climate change and scorching temperatures, but municipal bonds may be worth closely monitoring as soaring temperatures punish the western part of the U.S.

Still, the iShares National Muni Bond ETF (NYSEArca: MUB) is modestly higher over the past month. All things considered, that's a solid showing, particularly against the backdrop of 44 million Americans living in drought-ravaged regions. As Charles Schwab's Cooper Howard points out, severe droughts and other heat-related conditions could carry negative implications for some issuers of municipal debt.

"The drought and severe heat wave could lead to negative credit implications for some muni issuers, but we anticipate that most issuers will be able to adequately manage through the risks," notes Howard. "The drought and heat wave could impact issuers in numerous ways, such economic disruption leading to reduced revenues, increased expenses due to recovery efforts, damage to physical infrastructure, increased energy demands, and the potential for outmigration."

That's relevant for investors considering MUB or any number of municipal bond exchange traded funds because California, as one of the largest issuers of municipal debt, is often among the biggest state exposures in muni ETFs. It's one of five states – the others are New York, Texas, Florida, and Illinois – that combine for half of outstanding muni bonds.

California's current drought is so severe that some almond farmers are simply giving up. Additionally, there's ongoing debate about water rights in the Golden State, as some towns are without water entirely and customers in other locations are complaining about the quality of their drinking water.

Fortunately, California's drought won't kill the case for municipal bonds, particularly for investors accessing these bonds via broad-based ETFs.

"We do not expect the drought to affect returns for the broad municipal bond market. Historically, no issuer that Moody's rates has ever defaulted, or missed an interest or principal payment, due to a natural disaster, which includes wildfires. Moreover, the geographical diversity of the muni market helps to mitigate the impact of the severe heat and the drought," notes Howard.

California is home to one of the largest state budget surpluses in the country, which could help it avoid muni defaults, if they arise by way of droughts and wildfires. Another avenue for investors to consider is to focusing on shorter-duration munis.

"Focusing on shorter-term bonds can help to reduce the risk that outmigration and an erosion of the tax base may have on muni issuers," according to Howard.

ETF TRENDS

by TOM LYDON

JULY 7, 2021

Congress Fails Schoolkids Struggling to Learn Online.

The pandemic exposed the gaps in the U.S. broadband infrastructure.

The Covid-19 pandemic exposed the weaknesses of the U.S. broadband infrastructure — a problem that hit schoolchildren especially hard. Millions of them had to struggle through online learning with little internet access, or none at all.

The compromise infrastructure package announced last month by a bipartisan Senate committee and supported by President Joe Biden includes $65 billion for much-needed broadband expansion. That would help solve the problem, but gaps would remain.

In wide swaths of the U.S., many children live in households without internet access at home; in some places the number exceeds 50%. Among those that have access, download speeds often do not meet the Federal Communication Commission's minimum standard for broadband, defined as download speeds of 25 megabits per second and upload speeds of 3 mbps.

Continue reading.

Bloomberg Opinion

By Andrea Gabor

July 9, 2021, 4:00 AM PDT

How Governments Can Leverage Federal Funds to Partner With Local

Nonprofits.

The American Rescue Plan allows states and localities to funnel federal relief dollars to nonprofit organizations, which the National Council of Nonprofits says could be key to local economic recovery.

State and local governments can use federal coronavirus relief funds to partner with nonprofit organizations in their communities, aiding local recovery efforts by expanding existing programs or creating new ones, the National Council of Nonprofits advises in a new report.

“Nonprofits and governments are natural partners, serving the same constituents in the same communities,” the document says. “Partnerships between the sectors allow for leveraging of resources, relationships, and strengths to serve those communities even better.”

The report seeks to serve as a resource for government officials who may not know that the guidelines for relief funds distributed through the American Rescue Plan Act specifically allow for assistance to nonprofit organizations. That funding is desperately needed, as most nonprofits have seen increased need from constituents while also facing layoffs and reduced donations during the pandemic, said Tiffany Carter, policy counsel at the National Council of Nonprofits and the report’s lead author.

Continue reading.

Route Fifty

By Kate Elizabeth Queram

JULY 2, 2021

Fitch Ratings Updates Public Finance and Global Infrastructure ESG Dashboard.

Fitch Ratings-New York/London-08 July 2021: Fitch Ratings has updated the interactive ESG dashboard for public finance and global infrastructure and its interactive ESG relevance heatmap for 2Q21.

The dashboard is a tool that shows the distribution of Fitch’s ESG Relevance Scores (ESG.RS) for 2,750 issuers and transactions across the Global Infrastructure Group (Infrastructure), International Public Finance Local and Regional Governments (IPF LRG), IPF Government Related Entities (IPF GRE), and U.S. Public Finance Tax Supported (USPF Tax) and USPF Revenue sectors.

The heatmap shows the highest ESG.RS for a given ESG issue that applies to a minimum percentage of rated issuers within a given sector.

We updated scores for 529 issuers and transactions in 2Q21. IPF LRG had 117 issuers updated with two entities with a decrease from a ‘4’ to a low impact (‘3’) in the environmental and social categories.

USPF Tax had 280 updates with two entities seeing increased ESG.RS to ‘4’ in governance issues for ‘Rule of Law, Institutional & Regulatory Quality, Control of Corruption’. USPF Revenue had 316 updates, with seven increases to an ESG.RS of '4' or '5'. Most of the changes were seen in governance issues, followed by environmental and one in social issues.

Infrastructure had 99 updates with one entity decreasing from a '4' to a low impact ('1' to '3') in governance.

IPF GRE had 56 updates and remained stable in ESG.RS changes.

The reports, 'ESG Public Finance Interactive Dashboard – 2Q21' and 'Public Finance ESG Relevance Heatmap – 2Q21', are available at fitchratings.com.

Marcy Block
Senior Director, Sustainable Finance
Fitch Ratings, Inc.
Hearst Tower
300 W. 57th Street
New York, NY 10019
+1 212 908-0239

Kwok Wan
Associate Director, Sustainable Finance
+44 20 3530 1593

Media Relations: Athos Larkou, London, Tel: +44 20 3530 1549, Email: athos.larkou@thefitchgroup.com

Additional information is available on www.fitchratings.com

Covid Stimulus Offers Trove of Cash for Infrastructure.

Talks over a spending deal are dragging on in Washington. The good news is, the fine print in the latest pandemic relief package already sets up an influx of funds for critical projects.

When it comes to fixing the nation's crumbling roads and sewers, all eyes are on a $579 billion bipartisan framework brokered by the White House last month. Like most things in Washington, the path forward for that spending bill is riddled with political potholes. The good news for manufacturers, though, is that the U.S. has actually already signed off on a potentially meaningful influx of fresh infrastructure spending through the latest $1.9 trillion Covid stimulus program passed in March.

The American Rescue Plan — Congress's sixth bout of fiscal stimulus to combat the pandemic by my count — is better known for its $1,400 stimulus checks and the extension of enhanced unemployment benefits. But the package also includes $123 billion in K-12 education-related spending and $350 billion in state and local aid, among other things. The first priority for this money is fighting the virus and its myriad effects on the economy, but infrastructure-related expenditures — such as air-conditioning upgrades and investments in improving the quality of drinking water — are also among the acceptable uses for those two buckets of funds. Because the total appropriations are so large, even a partial contribution to water and education-facility projects could translate into a level of extra infrastructure spending that's comparable or larger than what was included in the 2009 financial crisis bailout, Bank of America Corp. analyst Andrew Obin wrote in an April report.

[Continue reading.](#)

Bloomberg Opinion

By Brooke Sutherland

July 9, 2021, 6:00 AM PDT

[Infrastructure Legislation And Its Impact On The Municipal Market.](#)

Summary

- While political forces could alter their course, we believe that passage of these infrastructure bills would have a positive impact on the municipal market.
- If enacted into law, taxes for high income earners are likely to increase, which could fuel additional demand for tax-free municipal bonds, particularly in high tax states.
- In short, we believe infrastructure legislation would provide investors with new and expanded investment opportunities and issuers with additional opportunities to issue debt in a cost-effective manner.

[Continue reading.](#)

Seeking Alpha

Jul. 09, 2021

[What Regional Leaders Want From Biden's Infrastructure Bill.](#)

Federal infrastructure policy has the power to transform America's cities and suburbs, including where they grow and who benefits from federal investments. But leaders in Washington can't achieve that transformative impact without understanding the needs of regional leaders who grapple with infrastructure challenges every day.

Today, we are living with the legacies of the federal government's last grand infrastructure vision developed over the past century. Transportation investments such as the interstate highway system and port expansions boosted business competitiveness and accelerated the development of suburban housing, but also uprooted families and increased pollution. The National Flood Insurance Program and other environmental regulations aimed to reduce climate risks in neighborhoods, but often failed to insulate households from harm—particularly, homes constructed in flood plains and sensitive coastal areas. Too often, 20th century federal policies incentivized metropolitan economies to expand outward but did not offer enough flexible resources to help independent jurisdictions coordinate regional strategies.

Now with a major congressional negotiation on infrastructure underway and a new presidential administration in place, federal leaders have a historic opportunity to revisit past policies to better support today's metropolitan leaders and their contemporary ambitions. That process, though, must start with a clear understanding of what regional leaders need—and not just infrastructure agencies, but also the business leadership and community groups that all collaborate to build competitive, inclusive, and resilient economies.

Continue reading.

The Brookings Institution

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

Thursday, July 8, 2021

‘Trying to Strangle Local Governments:’ What Happens When States and Their Cities Become Adversaries?

‘The relationship and potential antagonism between a city and its state is widely underinvestigated,’ says one public-finance analyst

Last September, presenting his proposed 2021 budget, Milwaukee Mayor Tom Barrett laid out a somber picture of his city’s finances.

Even before COVID-19 hit, Barrett said, “our budget challenges reached a crescendo.” Just weeks earlier, the city sustained a debt-rating downgrade, in part because it was spending down reserves.

“We’ve [spent those reserves] to maintain our vital services without any growing revenue,” Barrett continued. “This, of course, is a direct result of our relationship with the state of Wisconsin and legislature in particular.”

Continue reading.

MarketWatch

By Andrea Riquier

July 8, 2021

A Look at What’s Driving Muni Bonds in 2H 2021.

Municipal bonds have always been an attractive fixed income asset class thanks to their tax-advantaged status and government safety net – especially for investors that fall into higher tax brackets. These benefits have become even more pronounced with potential capital gains tax increases for high earners and rising inflation.

According to Municipal Market Analytics, investors snapped up more than $40 billion worth of muni bonds during the first half of the year, which was the most over the same period since 2008.

Let’s look at these trends and three reasons they are poised to continue into the second half of the year.

Stabilizing Quality

Moody's Investors Service raised its outlook for state and local governments to "stable" from "negative" after the $1.9 trillion pandemic relief bill passed in March, saying that the funds would stabilize state finances and help avoid local government funding cuts. The upgrade helped draw many investors back into muni bonds after the sell-off.

State governments have also been able to raise billions of dollars on highly favorable terms in recent months. For example, Illinois saved millions of dollars when it borrowed $1.26 billion in mid-March, paying just 1.09% compared to 3.42% on comparable bonds. These sales have helped increase supply, while refinancing has improved credit ratings.

Rising Interest Rates

Interest rates have been on the rise over the past year. For instance, 10-year Treasury yields have risen from a low of nearly 0.5% during the middle of last year to about 1.75% earlier this year. In addition, annual inflation rates have been running at about 5%, thanks to a nearly 50% increase in lumber prices and a 30% increase in energy prices.

Municipal bonds aren't nearly as sensitive to interest rates as Treasuries or corporate bonds. This is because many investors hold the bonds until maturity, creating stickier prices unless rates truly start to accelerate. The tax-advantaged status of muni bonds also offsets some interest rate risks, as many investors prefer to avoid taxes – even if rates rise.

Taxes & Incentives

The Biden administration's proposed tax changes could make municipal bonds even more attractive to investors. In particular, the president's proposal to hike top capital gains rates to 39.6% could make after-tax muni yields attractive. After all, the after-tax yield of a 5% muni bond is closer to an 8% corporate bond for investors in the 35% tax bracket.

The latest bipartisan infrastructure plans could incentivize municipalities to issue more public-private bonds, private activity bonds and direct-pay bonds on the supply side. While Build America Bonds have been popular since 2009, there is substantial demand for additional types of bonds that could offer higher interest rates than general obligation issues.

Risks Remain

There are many different types of municipal bonds. Each bond has its issuer, structure, creditworthiness, income potential and other factors that investors must consider. During today's low-yield environment and supply-demand imbalance, investors cannot rely on high-quality municipal bonds to meet income requirements.

High-quality state general obligation bonds may not have a lot of upside in today's environment, which means investors may have to seek out sectors where post-pandemic recoveries still offer the potential for improvements. These higher-yielding opportunities provide more cushion against rising rates but come at potentially greater risk.

The Bottom Line

Municipal bonds have always been an attractive asset class due to their unique tax advantages and government safety net. That said, with rising interest rates, improving credit quality and the prospect of higher taxes, these bonds have become even more attractive in recent months, setting the stage for further outperformance during 2H 2021.

Other trends could continue driving the sector higher beyond 2021. For example, the rise of impact investments has boosted interest in climate and social change muni bonds, from bonds funding K-12 schools in underserved communities to alternative energy investments. These trends could accelerate in 2022 and beyond.

dividend.com

by Justin Kuepper

Jul 07, 2021

[Janney Set to Be Ousted From Stalled N.J. Water Park Muni Deal.]

- **Developer seeks to draw families to East Coast gambling hub**
- **Debt sale pushed back as underwriter pitched deal to buyers**

Janney Montgomery Scott LLC is set to be ousted as the underwriter of $95 million of municipal bonds that will finance the construction of an indoor water park in Atlantic City, New Jersey, after the sale failed to close as planned.

Developer Bart Blatstein said in an interview Monday that he would like to hire Citigroup Inc., which he termed "better equipped to handle such a large and unique transaction." The bonds would be issued through the Atlantic County Improvement Authority, which would have to approve the new appointment.

Such a change in underwriters after a deal has already been set to price is rare in the municipal bond market, where recently even the riskiest securities have easily found buyers as cash pours into high-yield funds. The Atlantic City bonds were initially set to be sold in late May but were shifted to so-called day-to-day status, a step underwriters take when they need more time to drum up buyers.

"Investor demand has not been as robust as hoped," Jeffrey Winitsky, a lawyer at Parker McCay, the developer's counsel, wrote in an email on Wednesday. He said the deal was pulled with the expectation that a new underwriter would be hired to "give the transaction a fresh perspective and marketing effort."

Citigroup is the municipal market's second-largest underwriter and, like other big Wall Street banks, has a broad national reach. The Philadelphia-based Janney is a regional investment bank ranked 31 this year, underwriting a fraction of what Citigroup has, according to data compiled by Bloomberg.

The project marks a wager by the Philadelphia developer that more families can be lured to the struggling gambling city, which has seen its one-time monopoly on gambling in the East Coast steadily erode as other states legalized casinos. That forced several to shut down in Atlantic City and drove New Jersey to rescue the city from bankruptcy in 2016.

But Blatstein said he's optimistic about the city's prospects. "I'm incredibly bullish on Atlantic City," he said, adding that he expected to buy $10 million of the new bonds.

Citi spokesperson Scott Helfman said via email that the bank had no comment. Janney spokesperson Bradd DelMuto also said via email that the bank had no comment.

The original deal for the 100,000-square foot "Island Water Park" was unrated and being offered only to accredited investors and qualified institutional buyers capable of bearing the risk, according to the preliminary offering memorandum dated May 18 and posted on the MuniOS website. The bonds will be repaid with revenue from the park's operations.

The theme park will include a looping "lazy river," multiple water slides, three pools and five bars, including a swim-up bar and a two-level treehouse bar. The feasibility study attached to the original deal, by William L. Haralson & Associates, projected attendance at 626,523 in its first year of operation, rising to 773,523 in year five. Admission would range from $99.99 for adults to $69.99 for children, and there would be off-peak rates and hotel package discounts. The park was expected to be ready by May 31, 2022.

Bloomberg Business

By Joseph Mysak Jr

July 7, 2021, 8:49 AM PDT

Yankees Spat With Nuveen Over Spaces Delays Parking Deal.

- **City says club wanted last minute change to bond restructuring**
- **Deal would remove obstacle to new soccer arena in the Bronx**

A deal to restructure $240 million of municipal bonds sold for underutilized parking garages at Yankee Stadium is on hold because of a spat over parking spaces.

New York last month delayed a Bronx Borough Board vote on a preliminary deal to resolve the long-running default after the New York Yankees sought to change key terms just days before the meeting, city officials said. The team wanted Nuveen LLC, the majority holder of debt for the underused garages, to guarantee 5,500 parking spaces for events, a provision that wasn't included in a term sheet signed by Nuveen, the Yankees and the city.

"After years of negotiations with the Yankees and other parties, we are disappointed they will not commit to promises already made to the city and the community," said Rachel Loeb, president and chief executive officer of New York's Economic Development Corporation in a statement. "The underutilized parking lots around Yankee Stadium can be so much more than they are today, and the South Bronx deserves a plan to build a healthier and stronger community."

The debt restructuring would remove an obstacle to the construction of a new soccer arena for Major League Soccer's New York City Football Club as part of a $1 billion development project. Municipal bonds issued in 2007 to finance the construction of three garages and the renovation of other parking facilities at the new baseball stadium have been in default for eight years. The garages never generated enough revenue to pay the debt or rent to the city as fans preferred public transportation or ride-sharing services or sought out cheaper spots to park.

The preliminary agreement called for the city to split the current lease for 13 parking facilities near the stadium between Nuveen and Maddd Equities, which has proposed building the 25,000-seat soccer arena, affordable housing and a hotel on parking lots near the stadium.

Maddd would pay bondholders $46.3 million for its share of the current lease and bondholders would retain the lease for the remaining four parking garages and two lots, which have 5,611 spaces, according to the city, a number the Yankees dispute. Nuveen, which held $156 million of the parking debt as of May 31, intends to hire a firm to operate the remaining facilities.

The parking garage bonds last traded June 7 in blocks at 82 cents on the dollar. The trades, which came days after the preliminary restructuring deal was disclosed, were almost 70% higher than May.

City officials said that from the start Nuveen told the Yankees that the investment firm wouldn't provide additional rights beyond those in the current lease. However, Yankees president Randy Levine maintains that city had provided a guarantee for the number of spaces to be used at team events.

"I am extremely disappointed and heartbroken over the city's reneging on guaranteeing parking spots for Yankee stadium events and the community," Levine said in a telephone interview. "The whole purpose of the bond issuance was to provide for parking spots for Yankee stadium events and the community."

Jessica Greaney, a Nuveen spokeswoman, said Nuveen remains committed to a deal "set forth in the term sheet and looks forward to a continued strong relationship with the Yankees and the City." The parties have been working on a plan to build the soccer stadium and resolve the bond default for more than two years.

City officials also said they were committed to reaching a resolution with the parties that benefits the Bronx and the city. New York delayed a Bronx Borough Board vote on the lease until the fall to give the parties more time to negotiate.

Bloomberg Markets

By Martin Z Braun

July 8, 2021, 9:17 AM PDT Updated on July 8, 2021, 2:12 PM PDT

Munis In Focus: Latest On Stalled N.J. Waterpark Deal (Radio)

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

Listen to audio.

Bloomberg Radio

July 9, 2021

High-Yield Munis Still Have 'Room to Go': Columbia Threadneedle's Stienstra

Catherine Stienstra, head of municipal investments at Columbia Threadneedle Investments, says BBB rated and other high-yield municipal bonds could still have "room to go" on "Bloomberg Markets: The Close." (Source: Bloomberg)

[Watch video.]

Bloomberg Markets: The Close

July 7th, 2021, 1:28 PM PDT

TAX - OHIO

[O'Keeffe v. McClain]

Supreme Court of Ohio - June 30, 2021 - N.E.3d - 2021 WL 2671329 - 2021-Ohio-2186

Property owner sought judicial review of a decision of the Board of Tax Appeals affirming tax commissioner's denial of owner's complaint challenging an exemption from property taxation for parcel on which state university operated a full-service airport.

The Supreme Court held that:

- University had burden of proving its entitlement to exemption;
- Exemption could be predicated on operational relationship between use of airport and university's activities;
- University established its right to exemption; and
- Hangars and offices leased for private use did not have to be split-listed as taxable.

State university had the burden of proving its entitlement to an exemption from property taxation for parcel on which the university operated a full-service airport, in action challenging the exemption brought by another property owner.

State university could predicate an exemption from property taxation for parcel on which the university operated a full-service airport on the operational relationship between the use of the airport and the university's activities, subject to a primary-use test.

State university established its right to an exemption from property taxation for parcel on which the university operated a full-service airport; student flight education, course in airport management, and course in airport planning and design were examples of how university's operating a public airport directly served educational purposes, of the approximately 100 employees who maintained airport operations, 35 were student employees, and there were two research facilities on the property, namely, a gas-turbine lab and an aerospace-research center.

Hangars and offices leased for private use on parcel on which state university operated a full-service airport did not have to be split-listed as taxable; statute governing exemption from taxation for property of a state university did not say that property had to be used exclusively in an operational relationship with university activities, but instead the statute used the phrase "used for the support of" the university, which encompassed the receipt of income from ancillary activities on the property.

TAX - GEORGIA

[Jones v. City of Atlanta]

Court of Appeals of Georgia - June 25, 2021 - S.E.2d - 2021 WL 2621445

Water and sewer customer, on behalf of a class similarly situated, sought review of decision of appeals board for the city department of watershed management finding that it lacked jurisdiction to rule on legality of city ordinances authorizing department to impose a franchise fee and a payment in lieu of taxes (PILOT), which customer alleged were illegal taxes for which he and similarly situated customers were entitled to a refund.

The Superior Court granted city's motion to dismiss, finding that it lacked subject matter jurisdiction over customer's claims due to customer's failure to meet 30-day deadline for applying for a writ of certiorari, and, alternatively, granted city's motion for judgment on the pleadings, concluding that the fees were not illegal taxes. Customer appealed.

On transfer from the Supreme Court, the Court of Appeals held that:

- Limitation period in statute governing refunds of erroneously or illegally assessed taxes, rather than 30-day limitation period for seeking a writ of certiorari, applied to customer's suit seeking review of appeal board's decision, and
- Customer exhausted his administrative remedies.

Limitation periods in statute governing refunds of erroneously or illegally assessed taxes, providing that "no suit may be commenced until the earlier of the governing authority's denial of the request for refund or the expiration of 90 days from the date of filing the claim" and "under no circumstances may a suit for refund be commenced more than five years from the date of the payment of taxes or fees at issue," rather than 30-day limitation period for applying for writ of certiorari, applied to suit seeking review of agency's decision on water and sewer customer's claim for refund of franchise fee and payment in lieu of taxes (PILOT) paid to city department of watershed management; tax refund statute did not reference certiorari procedure or its 30-day limitation period.

Water and sewer customer, who claimed that franchise fee and a payment in lieu of taxes (PILOT) paid to city department of watershed management were illegal taxes for which he was entitled to a refund, exhausted his administrative remedies, where customer received a final decision from appeals board for department, pretermitting whether department was proper "governing authority" with whom to challenge tax, and customer's remaining course of action was to seek judicial review of appeal board's decision.

National Public Finance Guarantee Corporation, et al. v. UBS Financial Services Inc., et al: SIFMA Amicus Brief

Court:
Puerto Rico Appeals Court

Amicus Issue:
Whether plaintiffs claim that they reasonably relied upon the due diligence conducted by underwriters, where underwriters included standard industry disclaimers to the effect that underwriters do not guarantee the accuracy or completeness of the information in the offering documents, can survive a motion to dismiss.

Counsel of Record:
Orrick, Herrington & Sutcliffe LLP

- Richard A. Jacobsen
- Daniel A. Rubens
- Siobhan Atkins

Read the SIFMA Amicus Brief.

NFMA White Paper on Guidance & Insights Regarding Emergency Event Disclosure Affecting State & Local Governments: COVID-19 Focus

White Paper on Guidance & Insights Regarding Emergency Event Disclosure Affecting State & Local Governments: COVID-19 Focus Released

- White paper, dated June 2021
- Press release, dated July 6, 2020

Eaton Vance's Trachtenberg to Retire After Decades Trading Munis.

- **Co-chair of Municipal Bond Women's Forum recalls career arc**
- **Love for trading started at United California Bank in the '70s**

When she was starting out in the 1970s, Debe Trachtenberg discovered she loved everything about working on bond-trading desks — but gaining a foothold in the male-dominated industry required a good bit of grunt work for young women at the time.

Now she's set to retire in September after more than four decades in fixed income, having founded the municipal trading desk at Eaton Vance Management and earned a reputation as an advocate for women in finance and a mentor for younger colleagues.

Trachtenberg, 67, got her start in municipal debt helping United California Bank participate in local governments' short-term note auctions. Back then, cities would advertise debt offerings in The Bond Buyer newspaper. But there was a catch: The sales took place in person, nationwide. So Trachtenberg's job was to call local banks in various states to recruit someone willing to go to the auction and submit a bid in person.

That bank was where Trachtenberg first gained an appreciation for the buzz and pace of the trading desk.

"I just loved the sound of everything," she said.

Trading appealed to Trachtenberg in part because of her aptitude with numbers and her memorization skills, something she honed playing Italian card games like Briscola with her family while growing up in Brooklyn, New York.

She found those talents came in handy in municipal trading given the need to remember figures like credit spreads and coupons, not to mention during volatile events like the 2020 pandemic-induced market chaos and the 2008 recession, she said.

Trachtenberg traded munis for dealers including Dean Witter Reynolds before moving to Fidelity

Investments, and then Eaton Vance in 1997. She now oversees municipal trading for the firm, which manages $18 billion in municipal debt and about $176 billion overall.

Advocate for Women

The muni industry has changed dramatically from the days of in-person bond auctions, in terms of both process and culture.

At 22, Trachtenberg says she and other women at her bank were tasked with handing out lunch to coworkers. Then one day she decided she wouldn't perform that chore anymore because she deemed other responsibilities to be more important.

"'At some point,' I said, 'I have to put my foot down,'" she recalled.

She's now known in the industry for being involved in groups like the Municipal Bond Women's Forum. The group hosts an annual gathering that features networking events and panels at a time when women are still struggling to break into the top ranks in some areas of finance.

Trachtenberg was one of the forum's early advocates while others expressed doubts that it would work, said Rachel Perlman, director of institutional sales at Boenning & Scattergood and chairwoman of the group.

"Debe kind of looked at me and said, 'You just keep on moving. Tune them out,'" Perlman said. "She was a real cheerleader."

Trachtenberg, the forum's co-chairwoman, said she sees mentoring as key to helping diversify the industry. Over the years she says she's mentored people like Kevin Dyer, a trader at MFS Investment Management, and Sara Chanda, a portfolio manager at Breckinridge Capital Advisors. Both previously worked at Eaton Vance.

She's also passed her love of trading — and her affinity for numbers — down to her children: Her daughter trades municipals and her son trades cryptocurrency.

Looking Forward

After retirement, she'll continue to be involved with the forum and work with organizations like the Matthew Larson Foundation for Pediatric Brain Tumors. She's also looking forward to tending her garden at her home in Scituate, Massachusetts, and to a trip to Italy planned for soon after she leaves her job.

She's confident that Eaton Vance's state and local-debt group is in good hands with longstanding senior traders like Christopher Berry and Simone Santiago. The company this year also hired Alisa Fitzgerald and Don Schatz as senior traders on the municipals team. Cynthia Clemson and Craig Brandon are co-directors of municipal investments.

The team was excited about Fitzgerald's hiring, because no woman had interviewed for a trading role that opened up previously.

"We were all over the moon," Trachtenberg said. "Women have really come into their own in municipals."

Bloomberg

By Amanda Albright

July 6, 2021, 10:15 AM PDT

- Amendments to Rule G-10 Notification Requirement for Dealers: SIFMA Comments
- BDA Supports Proposed Changes to MSRB Rule G-10
- S&P ESG Brief: Cyber Risk Management In U.S. Public Finance
- Regulating Public Utility Performance: The Law of Market Structure, Pricing and Jurisdiction, Second Edition – ABA
- 2021 P3 Airport Summit.
- CDFA Publishes New Private Activity Bond Volume Cap Data and Resource Center.
- A "Good" Tax-Advantaged Bond Bill Tells Issuers Whether They Can Refund: Squire Patton Boggs
- Somewhat interesting eminent domain case from the U.S. Supreme Court here.
- Somewhat interesting municipal insurance case here.
- And finally, Great Moments in Forensic Science is brought to us this week by *State v. Wright*, in which a small town police officer received a tip that, "a male nicknamed 'Beef' was selling drugs." The officer began secretly collecting Beef's trash. He then enlisted the technological might of the state crime lab to identify the suspicious material he had recovered. According to the Supreme Court of Iowa, "The crime lab confirmed that the poppy seeds were poppy seeds." The State of Iowa's entire criminal investigation system was subsequently brought to its knees when Beef discarded the remains of an everything bagel.

EMINENT DOMAIN - CALIFORNIA

Pakdel v. City and County of San Francisco, California

Supreme Court of the United States - June 28, 2021 - S.Ct. - 2021 WL 2637819 - 21 Cal. Daily Op. Serv. 6305

Partial owners of a multi-unit residential building organized as a tenancy-in-common brought § 1983 action against city, its board of supervisors, and its department of public works, alleging a city ordinance effected an unconstitutional regulatory taking by conditioning the conversion of the building to a condominium arrangement on the partial owners offering the tenant in their unit a lifetime lease.

The United States District Court for the Northern District of California granted defendants' motions to dismiss for lack of subject matter jurisdiction and for failure to state a claim. Owners appealed. The United States Court of Appeals for the Ninth Circuit affirmed, and denied rehearing en banc.

Upon granting certiorari, the Supreme Court held that owners did not have to comply with administrative procedures for seeking relief, in order to satisfy finality requirement for bringing regulatory taking claim.

Partial owners of a multi-unit residential building organized as a tenancy-in-common did not have to comply with city's administrative procedures for seeking relief, in order to satisfy finality requirement for bringing their § 1983 action alleging city ordinance effected an unconstitutional regulatory taking by conditioning the conversion of the building to a condominium arrangement on the owners offering the tenant in their unit a lifetime lease; having denied the owners' requests for an exemption from the ordinance, there was no question about the city's position, as the owners either had to execute the lifetime lease or face an enforcement action.

IMMUNITY - GEORGIA

Young v. Johnson

Court of Appeals of Georgia - June 14, 2021 - S.E.2d - 2021 WL 2410699

Driver of vehicle that was hit by city vehicle being driven by motorist, a city employee, brought negligence action against city and motorist.

The trial court granted city's and motorist's motion to dismiss based on sovereign immunity. Injured driver appealed.

The Court of Appeals held that driver's failure to explicitly plead a waiver of city's sovereign immunity barred her from bringing negligence action against city and motorist.

Failure of driver of vehicle that was hit by city vehicle being driven by motorist, a city employee, to explicitly plead a waiver of city's sovereign immunity, barred her from bringing negligence action against city and motorist; driver did not explicitly plead a waiver of city's sovereign immunity in her complaint, she failed to amend her complaint to allege such a waiver, she did not raise sovereign immunity in any of her filings in the court below, she failed to respond to city's motion to dismiss based on sovereign immunity, and she did not otherwise contest the motion to dismiss.

CRIMINAL LAW - IOWA

State v. Wright

Supreme Court of Iowa - June 18, 2021 - N.W.2d - 2021 WL 2483567

Following denial of his motion to suppress, defendant was convicted in the District Court of possession of controlled substances, and he appealed. The Court of Appeals affirmed, and defendant appealed.

The Supreme Court held that:

- Officer "seized" garbage bags and papers and effects contained therein;
- Officer engaged in "search" when he opened garbage bags he had seized;
- Garbage bags and their contents were "papers" and "effects" protected by state constitution's prohibition against unreasonable searches and seizures;
- Defendant did not abandon all right, title, and interest in property he put in garbage bags; and
- Officer's warrantless seizure of bags and examination of their contents violated state constitution's prohibition against unreasonable seizures and searches.

POLITICAL SUBDIVISIONS - MAINE

Fair Elections Portland, Inc. v. City of Portland

Supreme Judicial Court of Maine - June 17, 2021 - A.3d - 2021 WL 2460648 - 2021 ME 32

Voters group sought judicial review of city council’s decision not place a citizen-initiated ballot question on the ballot as a proposed charter amendment and asserted independent claims seeking declaratory judgment and injunctive relief, as well as violations of state and federal law pursuant to § 1983.

The Superior Court affirmed city council’s decision. Voters group appealed.

The Supreme Judicial Court held that:

- As a matter of first impression, the Home Rule Act authorizes municipal officers to review a proposed charter modification to determine whether it constitutes a revision rather than an amendment;
- As a matter of first impression, distinction between a charter amendment and a charter revision for purpose of the Home Rule Act is in terms of breadth and in terms of depth; and
- City council’s failure to make findings of fact to explain its decision precluded meaningful judicial review.

The Home Rule Act authorizes municipal officers to review a proposed charter modification to determine whether it constitutes a revision rather than an amendment, even where the petition presenting the proposed modification does not include the statute’s optional language regarding requests for revision of the charter.

For purposes of the Home Rule Act, the distinction between a charter amendment and a charter revision is one of scope, in terms of breadth of what would be affected and depth of what would be altered, in that a proposed amendment would not, if enacted, materially affect the municipality’s implementation, in the course of its operations, of major charter provisions that are not mentioned in the proposed amendment, and in terms of depth, an amendment would not, if enacted, make a profound and fundamental alteration in the essential character or core operations of municipal government; if a petition proposes a change to the charter that is either so broad or so profound, or both, as to justify a revisitation of the entire charter by a charter commission, the proposal is for a revision.

City council’s failure to make findings of fact to explain its decision not place a citizen-initiated ballot question on the ballot as a proposed charter amendment precluded meaningful judicial review; given that whether a particular charter proposal would be an amendment or a revision focused on the proposal’s effect on the current municipal charter and operations, city council’s adjudication of that question was highly fact-specific, but the record contained no statement of city council’s basis in law and fact for whether or not it deemed the petition to propose a revision rather than an amendment of the charter, and without that, the court could not determine whether the rejection of the petition involved legal error, abuse of discretion, or findings not supported by substantial evidence.

ZONING & PLANNING - NORTH CAROLINA

[Cheryl Lloyd Humphrey Land Investment Company, LLC v. Resco Products, Inc.]

Supreme Court of North Carolina - June 11, 2021 - S.E.2d - 2021-NCSC-56 - 2021 WL 2387933

Vendor of undeveloped land brought action for tortious interference with prospective economic advantage against owners of open-quarry mine that was adjacent to a portion of the land, asserting mine owners made misrepresentations during town's rezoning hearings concerning dangers posed by mining operations, inducing purchaser to exclude from purchase the portion of property that was adjacent to the mine.

The Superior Court granted mine owners' motion to dismiss for failure to state a claim. The Court of Appeals reversed. Mine owners appealed.

The Supreme Court held that alleged misrepresentations made by mine owners during town's rezoning hearings constituted protected petitioning activity.

Alleged misrepresentations made by owners of open-quarry mine that was adjacent to a portion of undeveloped land during town's rezoning hearings concerning dangers posed by mining operations, which statements allegedly induced land purchaser to exclude from purchase agreement with vendor the portion of property that was adjacent to the mine, constituted petitioning activity protected by the First Amendment to the United States Constitution and the North Carolina Constitution.

ZONING & PLANNING - RHODE ISLAND

Middle Creek Farm, LLC v. Portsmouth Water & Fire District

Supreme Court of Rhode Island - June 16, 2021 - A.3d - 2021 WL 2447820

Subdivision developer brought action against town water and fire district for declaratory and injunctive relief, contending that district was required to provide water services to subdivision lots which were partially in town and partially in neighboring town.

District filed motion to dismiss for failure to join indispensable parties. The Superior Court denied district's motion and granted developer's motion for summary judgment. District appealed.

The Supreme Court held that:

- Term "inhabitants" in district's charter meant anyone who owned real estate and paid taxes to the district, and
- Owners of other 53 properties partially located in town and partially located in neighboring town were not indispensable parties.

Term "inhabitants" in town water and fire district's charter, authorizing distribution of water to the inhabitants of the district, meant anyone who owned real estate and paid taxes to the district, rather than simply to parcels with residences within town boundaries; charter references not only a "house" but also a "building, tenement or estate," charter also gave district the power and authority to mandate that "any estate" connect to an abutting main, and it would be absurd to allow district to tax businesses such as golf courses or farms which lacked residential components or buildings while not providing water to such businesses.

Owners of other 53 properties partially located in town and partially located in neighboring town were not indispensable parties to subdivision developer's declaratory judgment action against town water and fire district seeking extension of water to subdivision lots partially located in town and partially located in neighboring town; none of the other owners had a direct claim upon the subject of the action such that joinder of that party would cause it to lose anything by operation of the judgment rendered, nor did they have an actual, present, adverse, and antagonistic interest in the judgment, and any risk that district would have to litigate the underlying issue every time a property straddling the borderline filed an application for water service was purely speculative.

INSURANCE - SOUTH CAROLINA

[Reeves v. South Carolina Municipal Insurance and Risk Financing Fund]

Supreme Court of South Carolina - June 16, 2021 - S.E.2d - 2021 WL 2448359

Personal representative of decedent's estate brought declaratory judgment action against municipal insurer seeking interpretation of extent of coverage for municipality and municipal police officers, following settlement entered for wrongful shooting death.

The Circuit Court granted personal representative's motion for summary judgment in part and denied it in part, and granted insurer's motion for summary judgment in part and denied it in part. Both parties appealed. The Court of Appeals affirmed in part and reversed in part. Insurer's petition for writ of certiorari was granted.

The Supreme Court held that:

- Municipality's negligent acts of hiring, retaining, and supervising police officer, and officer's use of deadly force, were separate occurrences;
- No duplication clause did not apply to municipality's negligent acts of hiring, retaining, and supervising police officer, and officer's use of deadly force;
- Undefined term "Coverage Limit" had to be construed against insurer as synonymous with "liability limit"; and
- "Limit of Liability" portion of policy did not limit claims.

Municipality's negligent acts of hiring, retaining, and supervising police officer, and officer's use of deadly force, were separate occurrences under terms of law enforcement liability indemnity coverage that defined "occurrence" as wrongful act that resulted in bodily injury, resulting in separate claims for separate damages.

No duplication clause in insurance policy that limited law enforcement liability indemnity coverage for any claim applicable to more than one section of contract did not apply to municipality's negligent acts of hiring, retaining, and supervising police officer, and officer's use of deadly force, since claims involved only law enforcement liability.

No duplication clause in insurance policy that limited law enforcement liability indemnity coverage for all claims or suits involving substantially same injury or damage, or progressive injury or damage, did not apply to municipality's negligent acts of hiring, retaining, and supervising police officer, and officer's use of deadly force.

Undefined term "Coverage Limit" in insurance policy providing law enforcement liability indemnity coverage had to be construed against insurer as synonymous with "liability limit," which was defined as "$1,000,000" "Per Occurrence."

"Limit of Liability" portion of insurance policy providing law enforcement liability indemnity coverage stating "Only a single limit or Annual Aggregate will apply, regardless of the number of persons or organizations injured or making claims, or the number of Covered Persons who allegedly caused them, or whether the damage or injuries at issue were continuing or repeated over the course of more than one Coverage Period" did not limit claims that municipality was negligent in hiring, retaining, and supervising police officer and officer wrongfully used deadly force, since that section did not contain “Annual Aggregate” and undefined “single limit” term provided it was “Liability Limit” of “$1,000,000” “Per Occurrence.”

“Limit of Liability” portion of insurance policy providing law enforcement liability indemnity coverage stating “liability for any one occurrence/wrongful act will be limited to $1,000,000 per Member regardless of the number of Covered Persons, number of claimants or claims made” did not limit claims that municipality was negligent in hiring, retaining, and supervising police officer and officer wrongfully used deadly force, since there were multiple occurrences-wrongful acts.

EMINENT DOMAIN - TEXAS

Jim Olive Photography v. University of Houston System

Supreme Court of Texas - June 18, 2021 - S.W.3d - 2021 WL 2483766 - 64 Tex. Sup. Ct. J. 1411

Professional photographer brought action against public university, alleging unlawful taking based on university’s unauthorized use of copyrighted aerial photograph of city on university’s webpages.

The District Court denied university’s plea to the jurisdiction. University filed interlocutory appeal. The Houston Court of Appeals vacated and dismissed. Photographer petitioned for review, which was granted.

The Supreme Court held that university’s alleged copyright infringement was not a per se taking.

Alleged copyright infringement by public university, via unauthorized use of copyrighted aerial photograph of city on university’s webpages, was not a “per se taking,” despite argument that university deprived photographer of the most important stick in his bundle of rights, that being his exclusive right to control his work; university did not take possession or control of copyright, photographer retained key legal rights that constituted property, university did not assume physical control of copyright, photographer could seek injunctive relief to prevent or restrain infringement of a copyright, and university’s infringement did not deprive photographer of right to dispose of copyrighted work.

States Finalize Fiscal 2022 Budgets: NASBO

As of July 1, 44 states have enacted a full-year budget for fiscal 2022. States have been enacting fiscal 2022 budgets during a time when fiscal conditions continue to strengthen as the economy recovers from the pandemic and additional federal aid flows to state and local governments. As noted in NASBO’s Spring 2021 Fiscal Survey of States, 40 out of 50 states saw revenue declines compared to pre-pandemic projections over the two-year period from fiscal 2020 to fiscal 2021. However, most states’ enacted fiscal 2022 budgets include an increase in both state spending and revenue.

Forty-six states began their fiscal years on July 1. New York starts its fiscal year on April 1; Texas begins on September 1; and Alabama and Michigan start their fiscal years on October 1. Forty-eight states are enacting a new budget for fiscal 2022. Virginia and Wyoming, which both enacted two-year budgets for fiscal 2021 and fiscal 2022 in calendar year 2020, approved budget adjustments to their biennial budgets. Kentucky, which would normally have passed a two-year budget in calendar year 2020, passed a one-year budget only for fiscal 2021 due to revenue uncertainty created by COVID-19, and enacted a new budget for fiscal 2022 this year. Of the 48 states passing a new budget for fiscal 2022, 17 states are enacting a biennial budget for both fiscal 2022 and fiscal 2023.

Below is additional information on the states that have yet to enact a full-year budget for fiscal 2022:

1. **Massachusetts** – The governor signed a temporary budget for the month of July.
2. **Michigan** – The state's fiscal year does not begin until October 1. The legislature is finalizing the budget.
3. **North Carolina** – The Senate passed the budget on June 25 and the House is now considering the bill. State law allows spending to continue at current levels until a new budget is enacted.
4. **Oregon** – The governor is completing acting on agency budget bills. The state is currently operating under a continuing resolution for the unsigned bills.
5. **Rhode Island** – The House approved the budget on June 24 which is now headed to the Senate. The state will enter fiscal 2022 authorized to spend 1/12 of fiscal 2021's budget amount each month.
6. **Wisconsin** – The Senate approved the budget on June 30 and the governor is currently reviewing the budget bill. The state is operating under spending levels from the previous two-year budget cycle.

Please click here for links to proposed and enacted budgets, as well as prior budget summaries.
