# Bond Case Briefs

*Municipal Finance Law Since 1971*

**Articles posted by**

# Jamie Stewart

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**UTILITIES - CONNECTICUT**

## Summit Saugatuck, LLC v. Water Pollution Control Authority of Town of Westport

**Appellate Court of Connecticut - October 29, 2019 - A.3d - 193 Conn.App. 823 - 2019 WL 5538269**

Property owner sought review of determination by town's water pollution control authority denying owner's application for sewer extension to service proposed affordable housing development.

The Superior Court sustained owner's appeal and ordered conditional approval of application. Authority appealed.

The Appellate Court held that trial court impermissibly substituted its own discretion and judgment for that of authority by ordering conditional grant of application.

Although conditional approval of application for sewer extension to service proposed affordable housing development by water pollution control authority was viable and available option for agency, authority was not required to exercise option whenever possible, and thus, trial court impermissibly substituted its own discretion and judgment for that of authority by ordering conditional grant of application; authority exercised cautious approach of requiring developer to file new application once it could demonstrate that sufficient sewer capacity existed for planned development, unknown and unforeseen problems could potentially arise between time for approval and completion of sewer upgrades, and authority had settled policy to not grant conditional approval of applications.

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**MUNICIPAL ORDINANCE - FLORIDA**

## Classy Cycles, Inc. v. Panama City Beach

**District Court of Appeal of Florida, First District - November 13, 2019 - So.3d - 2019 WL 5945495**

Motorized scooter vendor brought action against city, challenging validity of ordinances which prohibited motorized scooter rentals.

The Circuit Court granted summary judgment in favor of city. Vendor appealed.

The District Court of Appeal held that:

- Ordinances were not arbitrary or unreasonable, and

- State traffic statute did not impliedly preempt ordinances.

Municipal ordinances which prohibited night rentals of motorized scooters, and which imposed a general prohibition against all motorized scooter rentals after a certain date, were not arbitrary or unreasonable for only prohibiting rental rather than operation of scooters, and therefore ordinances were valid pursuant to rational basis analysis; ordinances were enacted based on findings that sheer volume of daily scooter rentals and often reckless operation of scooters had placed an impracticable strain on city resources, negatively impacted tourist experience, and posed safety risks, and it was reasonable to conclude that scooter owners would be more experienced and safe than one-time renters.

State traffic statute did not impliedly preempt municipal ordinances which prohibited night rentals of motorized scooters, and which prohibited all motorized scooter rentals after a certain date, even though statute precluded passage of any conflicting city ordinances as well as ordinances on traffic matters absent authorization; ordinances did not regulate the method of scooter driving or apply penalties for improper scooter driving in conflict with state traffic statute, and statute provided for a local government's reasonable exercise of police powers to prohibit incompatible traffic from heavily traveled streets.

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**IMMUNITY - GEORGIA**

## Cannon v. Oconee County

**Court of Appeals of Georgia - October 30, 2019 - S.E.2d - 2019 WL 5588788**

Surviving parents brought wrongful death suit against county, alleging county was responsible for sheriff's deputy's actions in high-speed police chase that led to their daughter's death.

The county moved for summary judgment, and surviving parents filed a motion for sanctions and a motion to substitute sheriff as defendant. The Superior Court granted county's motion and denied surviving parents' motions. Surviving parents appealed.

The Court of Appeals held that:

- Sheriff's office constituted "local government entity" under statute waiving sovereign immunity for motor vehicle claims, and
- County sheriff would not suffer prejudice as result of being substituted as defendant.

Sheriff's office constituted "local government entity" under statute waiving sovereign immunity for motor vehicle claims, and thus sheriff's office, and not county, was proper party in wrongful death action brought by surviving parents' alleging sheriff's deputy's actions in high-speed car chase contributed to their daughter's death; sheriff's offices, which were separate from county itself, performed governmental services on local level.

County sheriff would not suffer prejudice as result of being substituted as defendant in surviving parents' wrongful death action against county, alleging sheriff's deputy's actions in high-speed police chase contributed to their daughter's death, for purposes of substitution relating back to original pleading date, where sheriff had received notice of action through his coordination with county through their vigorous defense of action, and sheriff should have known that, but for parents' mistake in identifying proper party, based on their misunderstanding of proper local government entity to sue, action would have been brought against him.

**PUBLIC RECORDS - MISSOURI**

## Wyrick v. Henry

**Missouri Court of Appeals, Western District - November 12, 2019 - S.W.3d - 2019 WL 5874668**

Records requester whose mother died after sustaining injuries in motor vehicle accident filed petition against city clerk seeking a declaration that clerk purposefully violated the Sunshine Law's open records requirement by failing to disclose the requested traffic records after requester sent a notice of claim city.

The Circuit Court granted partial summary judgment in favor of requester. Clerk appealed.

The Court of Appeals held that:

- As a matter of first impression, requested records did not possess, by their inherent nature, a clear nexus to litigation, and thus were not exempt from disclosure under the Sunshine Law;
- Substantial evidence supported trial court's finding that clerk knowingly and purposefully violated the Sunshine Law, as would allow imposition of civil penalty on city;
- Trial court's award of attorney's fee in the amount of $38,550 in favor of requester was not unreasonable;
  Substantial evidence supported imposition of civil penalties amounting to $4,000 against city for clerk's knowing and purposeful violation of the Sunshine Law; and
- Imposition of civil penalties in the amount of $4,000 against city did not prejudice city, and thus was appropriate.

Requested traffic records relating to accidents or complaints involving the intersection where requester's mother died after sustaining injuries in a motor vehicle accident did not possess, by their inherent nature, a clear nexus to litigation, and thus were not exempt from disclosure under the Sunshine law, even if the records might have been relevant, that is, discoverable or admissible, in potential litigation between city and requester who sent a notice of claim to city before making request for the records.

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**ZONING & PLANNING - PENNSYLVANIA**

## Protect PT v. Penn Township Zoning Hearing Board

**Commonwealth Court of Pennsylvania - November 14, 2019 - A.3d - 2019 WL 5991755**

Citizens' association sought judicial review of decision by zoning board, which denied association's challenge to constitutionality of zoning ordinance permitting unconventional natural gas development (UNGD) in township's low-density residential district.

The Court of Common Pleas upheld the ordinance. Association appealed.

The Commonwealth Court held that:

- Evidence was sufficient to establish that UNGD was compatible with purposes of zoning district;
- Evidence was sufficient to establish that overlay district was consistent with township's comprehensive plan and residential land use expectations;
- Evidence was sufficient to establish that ordinance protected residents' right to enjoy their

property and their right to a healthy environment under state constitution; and
- Association failed to establish that ordinance posed a substantial actual risk to environment or health of residents.

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**OPEN RECORDS - PENNSYLVANIA**

## City of Harrisburg v. Prince

**Supreme Court of Pennsylvania - November 12, 2019 - A.3d - 2019 WL 5883528**

City petitioned for review of determination of the Office of Open Records (OOR) that city was required, under Right-to-Know Law (RTKL), to supply requester with an unredacted donor spreadsheet for fund that city created to defray legal costs associated with defending challenges to local firearms ordinances.

The Court of Common Pleas reversed. Requester appealed. The Commonwealth Court affirmed. Allocatur was granted.

The Supreme Court held that:

- Donor spreadsheet was a financial record subject to disclosure under RTKL, but
- Donors needed notice and an opportunity to be heard before city balanced public interest in disclosure of names and address from donor spreadsheet against right to privacy.

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**MUNICIPAL ORDINANCE - WASHINGTON**

## Yim v. City of Seattle

**Supreme Court of Washington - November 14, 2019 - P.3d - 2019 WL 5997021**

Plaintiffs, individual landlords and a membership association providing screening services to its landlord members, brought action against city, challenging the constitutionality of the Fair Chance Housing Ordinance which generally precluded landlords from inquiring about a tenant or a prospective tenant's criminal history or from taking adverse action against the same based on criminal history, alleging it violated landlords' free speech and substantive due process rights.

The United States District Court certified question to Washington Supreme Court.

The Supreme Court held that:

- State law does not require heightened scrutiny with regard to state substantive due process challenges to laws regulating the use of property; state substantive due process claims are subject to the same standards as federal due process claims, and the same is true for substantive due process claims involving land use regulations, abrogating *Abbey Rd. Grp., LLC v. City of Bonney Lake*, 167 Wash.2d 242, 218 P.3d 180, *Allen v. City of Bellingham*, 95 Wash. 12, 163 P. 18, *Amunrud v. Bd. of Appeals*, 158 Wash.2d 208, 143 P.3d 571, *Asarco, Inc. v. Dep't of Ecology*, 145 Wash.2d 750, 43 P.3d 471, *Biggers v. City of Bainbridge Island*, 162 Wash.2d 683, 169 P.3d 14, *Christianson v. Snohomish Health Dist.*, 133 Wash.2d 647, 946 P.2d 768, *City of Olympia v. Mann*, 1 Wash. 389, 25 P. 337, and other cases, and
- The use of property is not a fundamental right for substantive due process purposes.

## Gov. J.B. Pritzker Rules Out Constitutional Change to Address Illinois' $134 billion in Unfunded Pension Liabilities.

Gov. J.B. Pritzker said Tuesday that a constitutional amendment voters will decide next year will help save the state's finances. He also dismissed any proposal to reduce the state's pension costs through a constitutional amendment to remove the state's pension protection clause.

During a wide-ranging fireside chat at the Economic Club of Chicago Tuesday, Pritzker promoted his constitutional amendment for a progressive income tax. Voters next year will be asked the binding question that Pritzker ushered through the legislature. Pritzker also campaigned on the issue of changing the state's existing flat income tax to a progressive system that has higher rates for higher earners.

During the discussion, Club Chair Debra Cafaro asked Pritzker why lawmakers shouldn't also let voters change the state's pension protection clause to control the growing cost of public sector pensions.

Continue reading.

**By Greg Bishop | The Center Square**

Nov 19, 2019

## Fitch Rtgs: Shape of Next US Economic Cycle Will Inform USPF Macro Stress

Fitch Ratings-New York-21 November 2019: The federal government's two primary tools to stimulate the economy, fiscal and monetary policy, may be constrained relative to previous cycles, potentially exacerbating cyclical US public finance (USPF) funding deficits and delaying the rebuilding of issuer reserves during and coming out of the next downturn, says Fitch Ratings. More limited possibilities for aggressive macro policy easing could culminate in a slower path of recovery after any future recession. This has the potential to affect the USPF cyclical stress assumption used at that time in our three to five year forward look analysis, but would not represent a change in criteria, as Fitch's criteria anticipates the potential modification of standard sector scenarios in a period of economic decline. Any such change would be communicated publicly and applied consistently from that point.

Fitch's USPF group embeds a forward-looking stress to test the resiliency of its ratings through the cycle by incorporating a multi-year scenario consisting of a theoretical cyclical moderate decline and recovery, specified in GDP terms. While Fitch does not anticipate a recession in the near term, given the long duration of the current recovery, it is useful to explore certain factors, such as the strength of the next recovery, that might inform if and when to modify USPF's standard stress scenario during and coming out of the next recession.

Policy makers may be more limited in the future to confront a future slowdown in the economy. Over the past four recessions, short-term interest rates fell by over five percentage points shortly before the onset of the recession to the low point experienced after the trough or during early recovery. Currently, treasury yields through the intermediate part of the curve are less than 2%, so such a decline would imply interest rates of between negative 3.5% and negative 4%, which is virtually impossible. Consequently, considering even slightly negative rates as the floor, rates can fall less than 2% at most, less than half the average decline relative to past recessions, to help confront a recession and spur consumer and business demand.

Continue reading.

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## Trump Tax Cut Sets Off Boom in Once Sleepy Corner of Muni Market.

- **Vanguard, Eaton Vance say they're buying more taxable munis**
- **Refinancing causes biggest spike in issuance since 2010**

At Eaton Vance's daily 8:45 a.m. meetings with fixed-income executives, a usually overlooked segment of the bond world has been coming up more often.

That's because a deluge of debt sales unleashed this year in the $485 billion taxable municipal-bond market is luring buyers unfamiliar with the world of public finance.

So traditional corporate-debt investors are getting crash courses on concepts like a general-obligation security pledge — which is basically just a promise to repay — and gauging how easy it will be to resell the securities when they need to raise cash. Others are dialing up their long-standing municipal-bond teams as they wade into a market that dangles higher returns and low odds of default, a standout at a time of negative interest rates overseas and frequent speculation about mounting credit risks in corporate America.

So Vishal Khanduja, who heads Eaton Vance's investment-grade portfolio management, and Craig Brandon, who leads the firm's municipal-bond investing, have been talking about taxable municipals more and more.

"In the morning meeting, the discussions have been lively over the last two months," said Khanduja, who has been buying taxable munis for his corporate-bond portfolios, as his team has in the past on occasion.

Continue reading.

**Bloomberg Markets**

By Amanda Albright

November 22, 2019, 5:52 AM PST

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## Muni Returns Will Remain Strong in 2020, BlackRock's Carney Says.

Sean Carney, BlackRock Inc.'s head of municipal strategy, discusses the outlook for the municipal bond market with JOHCM Senior Fund Manager Lale Topcuoglu and Bloomberg's Alix Steel on "Bloomberg Daybreak: Americas."

Watch video.

**Bloomberg Daybreak: Americas TV Shows**

November 21st, 2019, 8:02 AM PST

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## Economic Expansion Doesn’t Help Underfunded Public Pension Plans.

Tom Kozlik, head of municipal strategy at Hilltop Securities, discusses public pension funding liabilities. He speaks with Bloomberg’s Taylor Riggs on this week’s “Muni Moment” on “Bloomberg Markets.”

Watch video.

**Bloomberg MarketsTV Shows**

November 20th, 2019, 10:22 AM PST

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## U.S. States Boost Spending at Fastest Pace Since Recession.

- **Transportation sees the largest increase as projects revived**
- **Record economic expansion provides ‘now or never moment’**

America’s states are increasing their spending at the fastest pace since the end of the Great Recession.

Their budgets swelled by 5.9% in the 2019 fiscal year to about $2.1 trillion, the biggest annual increase since the recession ended in 2009, according to a report Thursday by the National Association of State Budget Officers. That’s up from a 3.7% pace in the year before as state officials pumped more money into transportation projects, pensions and reserves that will help them weather the next economic rout.

The figures show how the record-long expansion is reviving the finances of states that were hit hard by the fallout from the real estate bust. That shift has lifted the credit ratings of California, Washington and Michigan and driven down the yield penalties that investors demand to buy bonds of states such as Connecticut and Illinois.

Continue reading.

**Bloomberg Markets**

By Romy Varghese

November 21, 2019, 10:35 AM PST Updated on November 21, 2019, 10:50 AM PST

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## Climate Change Disasters And Your Municipal Bonds.

There are numerous details for municipal bond investors to stress over: unfunded pensions, other post-employment benefits (OPEBs) owed, cyberattacks and their ransom demands. But the big headlines consuming municipal bond investors today is climate change and man-made disasters—flooding, droughts, hurricanes, tornadoes, and wildfires. Even the conflicted bond rating agencies are writing about this dilemma and their financial impact on states, cities and counties that lay in the path of mother nature's wrath. You can add to this list the huge man-made blunders causing California's wildfires.

Most do-it-yourself municipal bond investors haven't thought about or begun to reject issuers that can be affected by fires, climate change and other natural disasters. They should.

You may already own municipal bonds where the issuer has suffered from cyclones, hurricanes and flooding and you've come out fine. But that doesn't mean you'll still be fine going forward. Granted, a catastrophe doesn't mean a bond will default but the numbers and frequency continue to mount.

These disasters will eventually impact municipal bond ratings, debt service coverage, and in some cases may actually cause defaults.

When you analyze your municipal bond portfolio you must consider location (coastal or inland). Study enhanced infrastructure projects like flood systems, levee systems, storm drains, brush clearings, emergency preparedness to access if the city, school district, or hospital can survive and continue making interest and principal bond payments in the wake of a disaster. Stay away from areas that constantly are in a state of drought such as California's Central Valley. Risks are now everywhere. This isn't an apocalyptic warning, it's reality.

Today In: Money
I'm no tree-hugger. But as a native Californian having lived through multiple earthquakes, I expect the big one will happen someday as will other multibillion-dollar climate events that are increasing in frequency.

The collateral damage for municipalities suffering such events can be overwhelming: economic disruption, citizens leaving and taking with them the sales taxes, property taxes and personal income tax revenues the cities and states rely on. Each is essential to pay the interest on their municipal bonds.

If you invest in essential projects, you'll be better off if a disaster occurs. Los Angeles County can survive without Long Beach Airport. But it cannot survive without Los Angeles International Airport—it's the heart of the economy and the arterial system for commerce. Los Angeles International Airport is essential and one of the main reasons I love the top ten large U.S. airport municipal bonds.

In the past, assistance programs from the federal and state governments have been the climate and wildfire disaster safety nets. But those safety nets cannot coax residents into staying as time and time again floods, fires, hurricanes and tornadoes wreck lives and damage property.

Is having insured municipal bonds a safety net? Only if the insurer runs the business properly, doesn't over-commit and is profitable. We saw little of the above during the man-made financial disaster of 2008-2009.

Eventually all these factors appear in the Official Statements when newly issued municipal bonds come to market. Still, after 40 years of dealing with bonds and individual investors, I've met only a handful of people who have ever read such offering documents.

Bottom line: Geographic diversification is helpful as is investing in multiple different issuers. Make sure your issuers aren't in harm's way when a disaster hits. Remember, stadiums, aquariums, museums, hockey rinks, libraries and concert halls are not essential and don't deserve your bond investment dollars. But airports, municipal water districts and sewers are indispensable and worthy of investment. Just use common sense.

If you own municipal bond funds, you'll need to read their quarterly reports for climate change and disaster commentary. If the bond mutual funds aren't commenting, then they aren't being prudent with your money. You might need to change horses to one that doesn't just value yield and total return—but equally values preservation of your capital.

**Forbes**

by Marilyn Cohen

Nov 17, 2019

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## When Summer Reading and Public Finance Tax Intersect – Tax-Exempt Bonds, Pop Culture, and the Town of Windthorst

Early in my career, I learned to dread telling people that I was a lawyer because when I explained the niche practice of public finance tax law, their eyes started to get sleepy, then their eyes started to glaze over. That was usually when I would blurt out "I help finance airports, hospitals, schools, and infrastructure across the country." So when I came across the *D Magazine* article, The Tiny Town Bankrolling Texas Institutions during my summer beach reading,[1] I nearly spilled my Aperol Spritz[2] all over my Excel spreadsheets.

Continue Reading

**By Taylor Klavan on November 25, 2019**

**The Public Finance Tax Blog**

**Squire Patton Boggs**

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## With Overall State Spending Up, Transportation Sees Notable Gains.

**At least 18 states raised spending on transportation programs by 10% or more in fiscal 2019, based on estimates in a new report.**

State government spending across the U.S. increased to an estimated $2.1 trillion in fiscal year 2019, with the amount of money going toward transportation notably growing, according to a report that the National Association of State Budget Officers released on Thursday.

Overall spending was up from $2 trillion in fiscal 2018. That means spending grew in 2019 at an estimated rate of 5.7%, slightly above a 33-year average of 5.6%, NASBO said. The findings were included in the latest edition of the group's State Expenditure Report.

Brian Sigritz, NASBO's director of state fiscal studies, said the spending increases can be traced to some extent to more robust tax collections states have seen in the past two years. General fund revenues were more sluggish during fiscal years 2016 and 2017.

“The relatively strong national economy, that has led to gains in state revenues,” Sigritz said.

Amid these windfalls, some states are putting more money toward transportation.

During 2019, NASBO’s report indicates that 18 states increased spending of state funds on transportation by at least 10%. Overall state transportation spending, including proceeds from bonds and federal funds flowing to states, grew at a rate of 8.9%.

Transportation spending by states in 2019 was roughly $172 billion, about 8% of total expenditures.

Sigritz pointed out that there are both Democratic and Republican states that have prioritized transportation in the past five years or so.

In some places this has meant raising gas taxes, imposing fees on electric vehicles and adding toll lanes. Some of the revenue from sources like these is now working its way through budgets.

NASBO tracks spending in seven program areas, all of which saw estimated increases in spending during fiscal 2019, which ended on June 30 for most states.

Along with transportation, the area where spending grew the most was an “all other” category that can include a range of items, such as pension contributions, employee pay raises, “rainy day” or reserve fund savings, and expenses tied to natural disasters.

Seventeen states spent at least 10% more state funds in this “all other” category in fiscal 2019, while the overall growth rate was 7.5%. What share of this spending went toward specific areas, like pensions or rainy day funds for instance, isn’t outlined in the NASBO report.

Education and Medicaid continue to be big cost drivers for states. Excluding federal funds and bonds, in fiscal 2019 about 25% of state spending went toward K-12 programs and 13% went toward higher education, while about 16.4% was allocated to Medicaid.

When including federal funds, Medicaid accounted for nearly 29% of state spending in fiscal 2019.

Medicaid has increased as a share of state spending since the Great Recession and after the Affordable Care Act, or Obamacare, was enacted, growing from around 20% in 2008 to its current level, although in 2019 it fell slightly as a proportion of state spending.

The Affordable Care Act gave states the option to expand Medicaid to cover more people. The program, which provides health insurance coverage for low income Americans, is “counter-cyclical,” meaning costs tend to go down when the economy is better.

A copy of NASBO’s report can be found here.

**Route Fifty**

by Bill Lucia

November 21, 2019

## Lessons from FINRA's 2019 Report on Examination Findings and Observations.

**The Financial Industry Regulatory Authority published its 2019 Report on Examination Findings and Observations (2019 Report) on October 16, 2019. This marks the third annual report of FINRA findings, but in a departure from the prior reports, the 2019 Report distinguishes "findings" (determinations that a firm or registered person has violated SEC, FINRA or other relevant rules) from "observations" (suggestions as to how a firm might improve its control environment, communicated separately from a formal examination report).**

The 2019 Report focuses on a number of findings and observations, involving: sales practice and supervision; firm operations; market integrity; and financial management. In addition, the 2019 Report provides examples of effective practices, which can help firms improve their supervision, compliance and risk management programs. This OnPoint discusses key findings from the 2019 Report, as well as FINRA's observations regarding how firms might have avoided related weaknesses and risks.1

**Sales Practice and Supervision**

The 2019 Report focuses on a variety of supervision issues, as well as: suitability; digital communication; anti-money laundering (AML); and Uniform Transfers to Minors Act (UTMA) and Uniform Grants to Minors Act (UGMA) accounts. Noteworthy examination findings and observations include:

Continue reading.

**Dechert LLP**

by K. Susan Grafton, Elliott R. Curzon and Jennifer O'Brien

November 18, 2019

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## Ohio Supreme Court Rejects Residency Requirements for Public Construction.

Public construction in Ohio, as in most states, is subject to a myriad of statutory and administrative rules and requirements, many of which can impact a contractor's manner of performance, profitability and in some cases its eligibility to be awarded work. With respect to the issue of eligibility, a public authority mandating that contractors employ a specific number or percentage of its residents as a threshold requirement to perform public improvements is a particularly onerous limitation. Residency preferences or restrictions of this nature can effectively preclude or greatly limit the eligibility of contractors located in other political subdivisions to perform public construction work This, in turn, reduces competition, could potentially compel the use of unskilled construction workers and could result in increased costs for the construction of public improvements.

In a decision which benefits Ohio and out-of-state contractors as a whole, the Ohio Supreme Court has determined that residency preferences for public improvements imposed by municipalities under their home-rule authority are no longer valid based on R.C. 9.75, enacted in 2016, which prohibits a public authority from requiring a contractor to "employ as laborers a certain number or percentage of individuals who reside within the defined geographic area or service area of the public authority." Cleveland v. State, Slip Opinion No. 2019-Ohio-3820 (Sept. 24, 2019).

This case was initiated by the City of Cleveland, which sought to enjoin the enforcement of R.C. 9.75 as an infringement on its municipal home-rule authority, and which it claimed was otherwise unconstitutional. The residency requirement at issue, The Fannie Lewis Law, was enacted in 2003. The law was intended to alleviate unemployment and poverty in Cleveland by providing more employment opportunities to city residents on local public improvements. Specifically, the law required public-construction contracts in an amount of $100,000 or more to include a provision mandating that city residents perform a minimum of 20 percent of the total construction work hours under the contract. It also required the construction contract to specify penalties for a contractor's failure to comply with this contractual term. Those penalties included damages of up to 2.5% of the final total amount of the contract as well as the possibility of the city withholding payments, terminating the contract or disqualifying the contractor from future bids.

In reaction to these types of residency requirements, the General Assembly enacted R.C. 9.75 premised on its authority to provide for the general welfare of employees under the Ohio Constitution. R.C. 9.75 invalidates such requirements and provides, in part:

(B)(1) No public authority shall require a contractor, as part of a prequalification process or for the construction of a specific public improvement or the provision of professional design services for that public improvement, to employ as laborers a certain number or percentage of individuals who reside within the defined geographic area or service area of the public authority.

(B)(2) No public authority shall provide a bid award bonus or preference to a contractor as an incentive to employ as laborers a certain number or percentage of individuals who reside within the defined geographic area or service area of the public authority.

R.C. 9.75(B)(1-2).

The trial court permanently enjoined the enforcement of R.C. 9.75, finding that the statute "does not provide for the comfort, health, safety, and welfare of its employees; rather, [it] seeks only to dictate the terms by which municipalities may contract for workers in construction projects within their realm." The trial court also concluded that R.C. 9.75 violated the Home Rule Amendment of the Ohio Constitution as the statute impermissibly limited the city's exercise of local self-government. On appeal, the Eighth District Court of Appeals affirmed this decision, determining that "R.C. 9.75 does not relate to the right of an individual to choose where to live or a matter implicating the general welfare of all employees," and further determined that R.C. 9.75 constituted an attempt to preempt the established powers of local self-government.

The Ohio Supreme Court rejected the lower court decisions and found that "the ordinance regulates the employment of workers hired under public-works contracts by requiring those contracts to exact binding promises dictating the eligibility of a worker to be hired on a construction project." According to the Supreme Court, by imposing a quota for the employment of Cleveland's residents, "the Fannie Lewis Law directly impacts hiring, the most basic condition of employment, for workers on public-improvement projects. In doing so, the city of Cleveland has legislated within a field subject to regulation by the General Assembly pursuant to Article II, Section 34." The Court further noted that the legislature expressly stated the intent of R.C. 9.75 was to "provide for the comfort, health, safety, and general welfare of those employees [working on Ohio's public-improvement projects],” and the Court refused to second-guess such a plain statement of legislative intent. The Court, therefore, determined that R.C. 9.75 is a valid exercise of the power granted by the Ohio Constitution, and it supersedes the Fannie Lewis Law, a local ordinance enacted by a municipality pursuant to its home-rule authority.

With respect to public construction projects, this decision is a definite win for contractors in general. While this decision invalidates similar residency preferences throughout the State of Ohio, contractors should be mindful that not all municipalities may be aware of this decision and they should be prepared dispute such requirements if imposed on a public improvement project. Outside of Ohio, similar regulations may exist and contractors should identify such requirements and determine whether they are enforceable.

by Lowell T. Woods Jr.

November 18, 2019

**Taft Stettinius & Hollister LLP**

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## [The Bond Buyer to Celebrate 2019's Deal of the Year Honorees at Annual Gala.]

**18th Annual Awards Ceremony to be held on December 4 at the Conrad New York Downtown.**

NEW YORK, Nov. 22, 2019 /PRNewswire-PRWeb/ — The Bond Buyer has announced its finalists for the 18th Annual Deal of the Year Awards. Those honored will be recognized on December 4 at the annual Bond Buyer’s Awards Gala at the Conrad New York for their outstanding achievement in municipal finance.

This year’s awards include the addition of three new categories, ESG/Green, Public-Private Partnership (P3), and Innovation. The total number of categories of deals eligible for awards has been increased to 10; all 10 of these winners are also finalists for the national Deal of the Year Award, which will be presented at the NYC ceremony.

“This year’s lineup reflects the full range of communities and public purposes this market comprises,” said Mike Scarchilli, Editor in Chief of The Bond Buyer. “The deals honored vary in size, complexity and structure — as were the nominations we received, which were deeper and more diverse than ever. We’re excited to honor these creative and resourceful institutions and highlight their incredible achievements. ”

Submissions for the awards were open to all transactions that closed between October 1, 2018 and September 30, 2019. Those ultimately deemed finalists were selected by The Bond Buyer’s editorial board. Judging criteria included the following: creativity, the ability to pull a complex transaction together under challenging conditions, the ability to serve as a model for other financings, and the public purpose for which a deal’s proceedings were used.

A full list of finalists can be found below:

- Innovative Financing: Cities of Dallas and Fort Worth, Texas
- ESG/Green Financing: Los Angeles County Metropolitan Transportation Authority

- Public-Private Partnership Financing: Virginia Small Business Financing Authority
- Health Care Financing: CommonSpirit Health
- Smaller Issuer Financing: Vermont Municipal Bond Bank
- Northeast Region: Battery Park City Authority
- Midwest Region: Indianapolis Local Public Improvement Bond Bank
- Southwest Region: City of Austin
- Southeast Region: Solid Waste Authority of Palm Beach County, Florida
- Far West Region: San Diego Association of Governments

In addition to recognizing the Deal of the Year finalists, the December 4 gala will include the presentation of the Freda Johnson Award for Trailblazing Women in Public Finance to two public finance professionals, one from the public sector and the other from the private. The 2019 recipients are Ritta McLaughlin, most recently the MSRB's Chief Education Officer and Courtney Shea, the owner and managing member of Columbia Capital Management, LLC.

"The Bond Buyer has developed as an essential resource for municipal finance and real time market data. We are so honored to be presenting these prestigious Deal of the Year awards for the 18th annual year," said Gemma Postlethwaite, CEO of SourceMedia. "I am also truly pleased to recognize Ritta McLaughlin and Courtney Shea for their leading-edge work as public finance professionals."

For more details on each finalists and their award winning initiative, please visit bondbuyer.com. The National Deal of the Year recipient will be announced at the December 4 gala and will be listed on bondbuyer.com that evening.

About The Bond Buyer
The Bond Buyer is the only independent information resource serving the entire municipal finance community. Its comprehensive paid-subscription package of news, analysis and data is unique in the industry, serving a complete spectrum of senior industry professionals, through its website, e-newsletters and alerts, and daily print edition.

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## Seeing Green: Investing in Municipal Green Bonds to Support Local Climate Projects.

New York – Responsible investment vehicles seek to align investments with investors' values through programs and projects that contribute to local communities in a positive way. Green municipal bonds offer investors the opportunity to support climate-aligned projects in such sectors as transportation, water and waste infrastructure, pollution control and renewable energy, which includes wind and solar power.

**Green bond issuance**

Green bonds are standard municipal bonds whose proceeds are used specifically to fund environmentally beneficial projects, as well as social and governance improvements.1 These bonds can encompass not only climate-related issuers in public power, water and sewer, but also issuers in the education, health care and affordable housing sectors of the market.

Green-labeled issuance remains small. In 2017, there was $12 billion of green bond issuance in the US municipal market, an increase of 85% over the $6.5 billion of municipal green bond issuance in 2016.2 Total par declined to $4.9 billion in 2018 — a drop of 50% from 2017 and 33% less than was issued in 2016 — reflective of lower municipal issuance overall.

Continue reading.

**Eaton Vance**

by Lauren Kashmanian

*Municipal Portfolio Manager*
*Eaton Vance Management*

November 20, 2019

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## Future Returns: ESG Investing in Nonprofit Municipal Debt

The environmental, social, and governance (ESG) investing trend has taken a leap forward recently from a stock-centered approach to include fixed income, but it has largely overlooked debt issued by community-based organizations that can have direct, measurable impact on pressing local issues.

Municipal bonds issued by small nonprofit groups working to bring about change in their communities can satisfy investors' growing appetite for impact investing ideas while paying yields ranging from 4.5% to 6%, says Buck Stevenson, managing director and portfolio manager at Silvercrest Asset Management Group in New York.

In contrast to green municipal bonds issued by large entities such as the Massachusetts Water Resources Authority or San Francisco Public Utilities, many smaller municipal bonds with the potential for social rather than environmental impact—the "S" in ESG—have been strikingly absent from the values-based investing dialogue, Stevenson says, adding that he is working hard to change that.

"We are educating our clients that you don't have to look far to do good in your community," he says. "We're talking about issuers that fly under the radar—you wouldn't know them unless you were in their local area."

**Nonprofits Fill Vital Needs With Debt**

Community hospitals, charter schools, and organizations providing mental health care and veterans services are among the groups that are typically structured as nonprofit organizations with 501c(3) status, and can issue debt to raise funds for improvements, new facilities, equipment, and other needs.

These services fill a critical need and are nothing new, "but they've never been looked at as an impact investment, which is what they really are," Stevenson says. "We're not reinventing anything; we're trying to highlight the good that these financings do to communities. You can visit facilities and see exactly what your investment built."

Consider the New Dawn Charter School in the Carroll Gardens neighborhood of Brooklyn, N.Y. The school's mission is to draw kids back to school who have fallen out of the education system. Earlier this year, the school issued $20.6 million in 30-year debt to buy and renovate a new facility. The yield: a tax exempt 5.37%.

"This is a very good investment, and to top it off, the school focuses on finding kids who have dropped out and could have had problems down the road," Stevenson says. "It has 300 students with an 80% matriculation rate."

Another example in Silvercrest's portfolio is the Hopeway Foundation, a Charlotte, N.C., area provider of both outpatient and inpatient mental health services that focus on substance abuse rehabilitation, post-traumatic stress syndrome for veterans, and other issues.

A 30-year bond paying 6% is being used to renovate structures on 12 acres and attract top professionals. Hopeway has built referral services in its area, so when hospital services fall short, doctors can refer patients to its facilities.

These munis are considered to be riskier than investment-grade issues, because they are nonrated. But that's typically because they are such small deals, "not because the credit is no good," Stevenson says. "If you're talking about a $20 million deal or a $7 million deal, to pay an extra $100,000 to get a rating doesn't make sense."

**Making Sure the Deals are Strong**

Due diligence is where Silvercrest's credit research team pulls its weight. Stevenson wants to see a solid balance sheet with manageable debt levels, strong demand, and sustainable revenues. He avoids rules of thumb when it comes to what constitutes too much debt, particularly for health-care facilities because their compensation methods vary. Medicare reimburses at a higher level than Medicaid, for example—so a manageable level of debt will vary depending on the composition of reimbursements, among other factors.

Beyond a financial analysis, Stevenson wants to see a good answer to the question, "Does this facility need to be there?" he says. "If there is a problem and people work together to solve it, that's an important factor that's not going to show on a balance sheet."

Strong community support is a powerful driver of these organizations' success and an important sign to investors that an issuer has the potential to make good on its debt. For example, when the folks in King Fisher, Okla.—a city with a population of roughly 4,900—voted overwhelmingly to raise the local sales tax by 1% to help support their local 25-bed hospital, the resounding support caught Stevenson's attention. The hospital's debt, issued to rebuild its facility, is currently a part of Silvercrest's portfolio.

**Really, All Munis Have a Social Bent**

Taking a step back from these smaller issuers, which account for about $220 billion, the $3.7 trillion municipal bond market in general can be viewed as strong investments for values-based investors. Muni bonds, by definition, bring about improvements in water systems, infrastructure, schools, and other aspects of daily life.

But it can be harder to feel as connected with, say, a massive international airport renovation than with solving a problem in a community you feel connected to. Says Stevenson, whose firm has relationships with 30 small broker dealers around the country that help scout out smaller deals, "these munis are the 'S' in ESG."

**Barron's**

By Karen Hube

Nov. 19, 2019 11:29 am ET

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## MSRB Investor Guide to ABLE Programs.

Read the MSRB's new investor guide for a better understanding of how ABLE programs work.

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## GFOA Releases New Financial Foundations Book.

Financial Foundations for Thriving Communities introduces GFOA's new Financial Foundations Framework. Organized into five pillars, the Framework shows you how to improve your financial position now and create a strong foundation for a thriving community over the long-term. Each pillar includes different leadership strategies and/or institutional design principles. Understanding that local governments cannot order people to collaborate, leadership strategies help inspire pride and public support for a strong financial foundation. Institutional design principles, meanwhile, are the "rules of the road." They provide the context for leadership strategies and ensure continuity of good financial practices through changes in leadership. Using case studies from many local governments, the book will help you develop a plan for implementing the Financial Foundations Framework in your community.

Purchase Online.

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## State Tax Debates Could Use Some (Customized) State Economic Data.

Politicians love to make claims about tax policy. This tax cut will create jobs! That one forced the school district to fire teachers!

But too often such claims are not supported with evidence. So the State and Local Finance Initiative made an interactive tool that gives you—whether you're a policymaker, journalist, researcher, or voter—the power of data. The updated State Economic Monitor lets users graph, analyze, and share statistics on state employment, earnings, gross domestic product (GDP), and housing—and for just the states you're interested in.

Before you take it out for a spin, I'll show you how the updated tool can provide evidence for three tax policy issues. Hopefully, you'll then use it to make customized graphs for your next memo, presentation, or tweet about state tax policy.

Continue reading.

**Tax Policy Center**

by Richard C. Auxier

November 12, 2019

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## SEC Enforcement Annual Report: Retail Focus Raises Regulatory Risk for Investment Advisers

The US Securities and Exchange Commission (SEC) Division of Enforcement recently issued its 2019 Annual Report (ENF Annual Report), which you can read in full here. Of course, the headline is always how many cases did the Enforcement Staff bring and how much money did they collect and distribute and, for fiscal year 2019,1 the Staff was likely relieved to announce that on each score they had, well, scored.

The Baker McKenzie Financial Regulation and Enforcement team will provide a deeper dive in the Enforcement Division's fiscal year 2019, the cases of note and a look ahead to 2020, but we wanted to offer some initial takes on our review of ENF Annual Report.

Fiscal year 2019 represented the best year that the Enforcement Division has had since 2016, as the chart below demonstrates.

Continue reading.

**Baker McKenzie**

by Jennifer L. Klass, Amy J. Greer, Peter K.M. Chan, Jerome Tomas and Kristal Petrovich

November 20 2019

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**TAX . - VIRGINIA**

## Virginia International Gateway, Inc. v. City of Portsmouth

**Supreme Court of Virginia - October 31, 2019 - S.E.2d - 2019 WL 5607827**

Taxpayer, believing that assessments for its real and personal property were above fair market value, filed separate applications to correct the real estate and personal property assessments.

City filed counterclaim to the real property application, contending that fair market value was actually several hundred thousand dollars more than the assessment. The trial court consolidated the two cases for trial. The Circuit Court dismissed both of taxpayer's applications, as well as the city's counterclaim, and taxpayer appealed.

The Supreme Court held that:

- Trial court abused its discretion when it excluded real estate appraiser's expert testimony, and
- Taxpayer did not rebut presumption of correctness of city's valuation of taxpayer's personal

property.

In taxpayer's action, contesting city's real estate and personal property assessments, trial court abused its discretion when it excluded real estate appraiser's expert testimony; appraiser held active New York real estate appraisal license, he secured temporary Virginia appraisal license, and during this period of active licensure, he updated his initial valuation and brought it into compliance with standards governing real estate appraisals in Virginia, he completed his final appraisal report within period of active licensure, and his testimony addressed only the appraisal for which he was licensed.

There was sufficient evidence to support trial court's ruling that taxpayer did not rebut the presumption of correctness of city's valuation of taxpayer's personal property, and accordingly, trial court did not err in declining to adjust the personal property assessment; city assessed taxpayer's personal property at 50% of original value, city not only came forward with evidence of the assessment's correctness in the form of expert's independent appraisal, it also presented evidence that taxpayer's appraisal of the property was flawed, and city put on evidence that taxpayer's methodology was flawed because of its failure to adhere to recognized valuation approaches.

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## Electronic Disclosure, RIN 1210-AB90: SIFMA Comment Letter

SUMMARY

SIFMA provides comments to the Department of Labor in response to their proposal for a new, additional safe harbor for the use of electronic media by employee benefit plans. SIFMA strongly supports the Department moving forward with finalizing this proposal.

Read the Comment Letter.

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## Fitch Ratings: Review Completed for New Jersey Public Universities

Fitch Ratings-Chicago-25 November 2019: Fitch Ratings has completed its review of ratings on five public universities in New Jersey that were placed Under Criteria Observation (UCO) following the publication of revised U.S. College and University Rating Criteria in June. This review resulted in the following rating actions:

–The College of New Jersey, downgraded to 'A+' from 'AA-'; Outlook revised to Stable from Negative;
–Montclair State University, downgraded to 'A+' from 'AA-'; Outlook Stable;
–New Jersey City University, downgraded to 'BBB' from 'A-'; Outlook revised to Negative from Stable;
–Stockton University, affirmed at 'A-'; Outlook Stable;
–William Paterson University, downgraded to 'A-' from 'A'; Outlook revised to Negative from Stable.

Although four of the five ratings were downgraded, for all but one institution (Montclair), the downgrade was driven by changes in underlying credit characteristics rather than implementation of the revised criteria. Montclair's rating change was the result of both credit and criteria considerations. Fundamental credit considerations included a competitive demand environment and challenging demographic characteristics, broad reliance on student-fee generated revenue, and effectively flat state operating support which has not kept pace with expense growth. Importantly, Fitch expects that state support will remain generally flat for the foreseeable future, which may contribute to further pressure on margins. While other specific credit considerations played a role, the ratings reflect an increasingly competitive environment contributing to constrained ability to increase tuition rates and reduced expense flexibility, compounded by the presence of significant long-term liability burdens. High debt loads at most institutions are in part a result of historically minimal state capital support, and Fitch expects that the higher level of state capital support in the past few years will not continue.

Within our criteria framework, Fitch considers leverage only in the context of the institution's revenue and operating profile. While leverage is measured inclusive of all long-term debt and pension obligations, consideration of this metric is strengthened by the state of New Jersey's (IDR of A/Stable) consistent support of pension contributions for university employees, despite the absence of any legal requirement to do so. We also note that the state has taken some action to improve funding of its pension obligations, which should reduce the reported liabilities of the plans incrementally over time. At the same time, Fitch notes that increasing its pension contributions to the actuarial requirement may ultimately squeeze the state's other funding priorities in times of pressure, presenting some risk of volatility in state support of public higher education.

Overall, Fitch has reviewed substantially all 28 institutions placed UCO with release of the revised criteria. Of those, about two thirds saw rating changes with a nearly 60/40 split of upgrades to downgrades. Of the rating changes, approximately 30% were the sole result of the reframing of the criteria while the remainder were a combination of criteria and credit driven actions.

For more information on the individual rating actions, or for more information on the revised criteria, please go to www.fitchratings.com.

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Additional information is available on www.fitchratings.com

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## Green Banks and Green Bonds are Bringing Billions to Utilities for the Energy Transition.

**The financial mechanisms are bringing investors to renewables and distributed energy as utilities, co-ops and munis move away from uneconomic legacy assets.**

Hundreds of billions of dollars in untapped new money can finance the U.S. power system's transition away from legacy fossil assets to renewables and distributed generation.

Utilities like Duke Energy and Xcel Energy have issued billions in green bonds to fund renewables development. Green banks in New York, Connecticut and other states are backing investments in distributed resources and energy efficiency. It appears much more institutional money wants in on the green opportunity.

"Green bonds are a capital-raising mechanism that a wide range of institutions could use to raise capital," Coalition for Green Capital Executive Director Jeff Schub told Utility Dive. "A green bank is an institution [capitalized by public funds] that invests capital in clean energy projects. [They] are complementary, capital raising and capital deploying."

Continue reading.

**Utility Dive**

by Herman K. Trabish

Nov. 19, 2019

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## Will Investors And Insurers Sink Or Save Florida?

New research shows that some 150 million people across the globe are now living on land that will be below the high-tide line by 2050.

That far-off date, huge number and uncertain location are probably too abstract and distant to matter to most, but here's another way to look at it: You, friends or loved ones might already be living too close to the rising high-tide line in Florida. What's more, the fate of Florida's citizens, homes, towns, businesses and overall economy depend on decisions being made right now on 30-year mortgages and bonds that will be critically impaired by that 2050 high-tide line.

Once investors and insurers decide that the value of too many 30-year mortgages face an unacceptable level of risk, many mortgages (including yours?) will go underwater or even be thrown into default. Even worse for the rest of Florida, financing for new long-term mortgages, utility debt offerings, and municipal bonds for schools, roads, bridges, sewers, etc., will dry up. That in turn will deflate real estate values overall and crush the backbone of the Florida economy—and send Florida into a deep and costly tailspin.

Continue reading.

**Forbes**

by Chunka Mui

Nov 18, 2019

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## [S&P U.S. Not-For-Profit Health Care Rating Actions, October 2019]

[View the Rating Actions.]

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## [IRS Publishes 2020 Pension Plan Limitations: Day Pitney]

IRS recently announced the cost-of-living adjustments applicable to certain dollar limitations for employee pension benefit plans for 2020. The resulting dollar limits are as follows:

- The annual benefit limit for defined benefit plans is increased from $225,000 to $230,000.
- The annual addition limit for defined contribution plans is increased from $56,000 to $57,000.
- The annual limit with respect to the exclusion for elective deferrals to a 401(k), 403(b) or 457(b) plan is increased from $19,000 to $19,500.
- The limit on annual contributions to an individual retirement arrangement (IRA) remains unchanged at $6,000. The dollar limit for an additional catch-up contribution to an IRA for individuals age 50 or older remains unchanged at $1,000.
- The annual limit on compensation that can be taken into account under a qualified retirement plan is increased from $280,000 to $285,000.
- The dollar limit for defining key employees in a top-heavy plan is increased from $180,000 to $185,000.
- The dollar amount for determining the maximum account balance in an employee stock ownership plan (ESOP) subject to a five-year distribution period is increased from $1.105 million to $1.150 million. The dollar amount used to determine the lengthening of the five-year distribution period is increased from $225,000 to $230,000.
- The dollar limit for catch-up contributions for 401(k) plans for individuals age 50 or older is increased from $6,000 to $6,500. In addition, the dollar limit under SIMPLE plans and SIMPLE IRAs for catch-up contributions for participants who are age 50 or older remains unchanged at $3,000.
- The limitation used in the definition of “highly compensated employee” is increased from $125,000 to $130,000.

A complete list of applicable pension plan limitations can be found [here].

If you have any questions about the cost-of-living adjustments or any other employee benefits or executive compensation matter, please contact a member of Day Pitney’s Employee Benefits and Executive Compensation practice group.

**Publisher: Day Pitney Alert**

Day Pitney Author(s) David P. DoyleKathy A. LawlerLiza J. HechtThomas F.J. O’Mullane

November 7, 2019

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## [EIG Opportunity Zones Activity Map.]

[View the map.]

## New Approaches to Large-Scale Green Stormwater Infrastructure Investment Build Climate Resilience.

More frequent and intense rainstorms. Elevated heat and humidity. High water levels and increased shoreline erosion. The realities of climate change, combined with aging and outmoded stormwater infrastructure, create a crisis for Great Lakes stormwater managers.

The good news is many of these challenges can be mitigated through the construction of green stormwater infrastructure–constructed wetlands, porous concrete, and bioswales that help treat stormwater and take the pressure off traditional gray infrastructure like sewers, pipes, pumps, and tunnels. But communities are challenged to fund and implement projects at the scale needed to address the crisis.

Fortunately, new thinking and approaches to funding and constructing green stormwater infrastructure are emerging. These methods, which combine market principles with community benefits, are upending the traditional economics and practice of building green stormwater infrastructure and are bringing climate resilience within reach.

Continue reading.

P3 GREAT LAKES INITIATIVE | THURSDAY, NOVEMBER 21, 2019

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## S&P Bulletin: New York MTA's Proposed $51 Billion Capital Program Indeterminate As A Credit Risk

SAN FRANCISCO (S&P Global Ratings) Sept. 18, 2019–S&P Global Ratings said today that it cannot yet determine if the New York Metropolitan Transportation Authority's (MTA) Sept. 16 announcement of its proposed $51.5 billion fiscal 2020-24 capital program will affect S&P Global Ratings' A/Negative long-term rating and underlying rating (SPUR) on the MTA's transportation revenue bonds (TRBs) outstanding. Given the new program's preliminary nature, which still requires approval, timing of its implementation and impact to MTA key credit metrics is not yet available. Potential operating cost savings from MTA's Transformation Plan may offset potential higher debt service expenses from debt-financing the proposed program, if approved. The proposed capital program is 70% larger than the current fiscal 2015-19 program, and, according to the plan, as much as $35 billion, or 68%, will be debt financed, including as much as $15 billion secured with future revenue from implementation of congestion pricing. While we already consider the MTA's all-in debt burden of approximately $40 billion (as of fiscal 2018) very high, the proposed plan could almost double the MTA's consolidated debt burden and place additional pressure on liquidity and already thin debt service coverage metrics, as calculated by S&P Global Ratings on an all-in, net revenue basis. Mitigating this risk is the MTA's ongoing work on its Transformation Plan, which could produce as much as $530 million of annually recurring savings, once fully implemented, from consolidation and efficiency opportunities. The MTA anticipates that the unprecedented capital investments will result in improved reliability, accessibility, and efficiency of its overall transportation network. The proposed capital program is subject to modification and approval by the Capital Program Review Board later this year prior to finalization. We also understand that, over the next few months, the MTA intends to implement its previously announced Transformation Plan and potentially publish the revised savings estimates in its November 2019 Financial Plan. We believe the November Plan will likely shed additional light on the proposed capital program and its potential timing and impact. Thus, in our view, it is too early to conclude the proposed capital program's potential rating impact until additional information becomes available with regard to forecast bond issuance timing and the Transformation Plan's impact on key financial metrics. We will continue to monitor the developments related to the proposed capital plan and the MTA's progress with regard to the Transformation Plan and their combined impact on the MTA's TRB credit.

For more information with regard to our rating on the MTA's TRBs, see our report published Aug. 7, 2019 on RatingsDirect.

Primary Credit Analyst: Paul J Dyson

Secondary Contact: Joseph J Pezzimenti

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## NASBO State Expenditure Report.

This annual report examines spending in the functional areas of state budgets: elementary and secondary education, higher education, public assistance, Medicaid, corrections, transportation, and all other. It also includes data on capital spending by program area, as well as information on general fund and transportation fund revenue collections.

**Overview: Fiscal 2017-2019**

- Total state spending rose by 5.7 percent in fiscal 2019, compared to 3.4 percent in fiscal 2018.
- Spending from states' own funds increased at the highest annual growth rate since the last recession.
- Transportation and the "all other" category experienced strong spending growth from state funds in fiscal 2019, while Medicaid spending growth slowed.
- Spending from federal funds to states also rose in fiscal 2019, partly due to recent federal budget agreements.
- State tax collections experienced strong gains in both fiscal 2018 and fiscal 2019, following two years of slow growth in fiscal 2016 and fiscal 2017.
- Download Summary.
- Download Full Report.
- Purchase Hard Copy.

**National Association of State Budget Officers**

Staff Contact
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## 2020 NAST Legislative Conference.

**February 9-11, 2010 | Washington DC**

Registration is now open for NAST's Legislative Conference and ABLE Expo in Washington, DC at the historic Mayflower Hotel located north of the White House. All events will take place at the Hotel unless otherwise noted. Sunday's events are business casual and business attire on Monday and Tuesday.

Click here to learn more and to register.

**National Association of State Treasurers**

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## The Curious Case of Aurelius Capital v. Puerto Rico.

**How a hedge fund's efforts to take the island territory to the cleaners wound up before the Supreme Court — with ordinary Puerto Ricans arguing in the hedge fund's favor.**

Puerto Rico filed for bankruptcy protection at 11:32 in the morning on May 3, 2017; by 11:33, the magnitude was obvious. No American territory had ever defaulted on so much debt. "A bankruptcy without precedent" ran a morning-after headline in the tabloid El Vocero, in an issue that also quoted leftist politicians warning readers not to be fooled: The filing, they claimed, was a prelude to more austerity. The island owed $72 billion. Already there was out-migration of 60,000 people a year and 10.5 percent unemployment. There were reports that vendors, owed millions of dollars, would no longer deliver food to Puerto Rican prisons.

The following month, an inconspicuous complaint was filed in federal court in San Juan. The plaintiffs were a group of hedge funds that had purchased Puerto Rican bonds around 2015 and were concerned that the bankruptcy would prevent them from recouping the bonds' full value. According to the complaint, the Puerto Rican Constitution mandated the repayment of certain types of bond debt, but the island's latest budget was instead pouring money into services that were "nonessential," leaving the bondholders high and dry. The hedge funds argued that this was illegal and sought to point out some "nonessential" expenses to the court.

The hedge funds scoured the island's budget. The Department of Sports and Recreation's allotment of $39.2 million: Nonessential, the lawsuit said. Ditto the $12.6 million for the Institute of Puerto Rican Culture; $7.3 million for the Corporation for Public Broadcasting; $1.8 million for the Boys & Girls Club; and the $88,000 commitment to a nonprofit ballet company. One assertion in particular stood out. Puerto Rico's budget had set aside $205 million in discretionary money for things like disaster relief. "While a 'rainy-day fund' is nice to have," the hedge funds conceded in Paragraph 159, "it is impossible to see how this is an 'essential service' or how it can be justified," in part because natural disasters were not "likely to occur" in the coming fiscal year. Three months later, Hurricane Maria made landfall. The presiding judge dismissed the complaint.

Continue reading.

**The New York Times**

By Jesse Barron

Nov. 26, 2019, 5:00 a.m. ET

## The Biggest Misconceptions About Opportunity Zones.

What are some of the biggest misconceptions, inconsistencies, and disconnects surrounding the Opportunity Zone tax incentive? Bob Richardson is managing partner of Blue Cardinal Capital, a real estate private equity firm with Opportunity Zone projects in upstate New York. Click the play button below to listen to my conversation with Bob. Episode Highlights The key differences between tax credits and the Opportunity Zone tax incentive….

Read More »

**Opportunity Db**

November 20, 2019

## FAA Focuses on Controlling Revenue Diversion.

The concern of the Federal Aviation Administration ("FAA") regarding the use by airport operators of airport generated revenues to soften budget shortfalls off the airport appears to be growing. In a speech delivered at the November 11, 2019 National Air Transportation Association Leadership ("NATA") Conference, Kirk Shaffer, FAA's Associate Administrator for Airports, solicited the assistance of the aviation community in working with jurisdictions on compliance. Mr. Shaffer went on to opine that jurisdictions that operate airports are sometimes unaware of the laws governing revenue diversion, or confused by revenue flows, particularly as related to state and local taxes. He illustrated the problem by sharing the fact that, of the 177 jurisdictions with which the FAA has worked over the past five years on revenue diversion issues, 107 still remain noncompliant.

That number of noncompliant jurisdictions is somewhat surprising as the rules governing the use of airport revenues from airports are fairly explicit. The general rule is that revenues generated by a public airport may only be expended for the capital and operating costs of: (1) the airport; (2) the local airport system; or (3) other facilities owned or operated by the airport operator and directly and substantially related to the air transportation of passengers or property. 49 U.S.C. §§ 47107(b)(1) and 47133(a). The use of airport revenue for purposes other than airport capital or operating costs is generally considered "revenue diversion" and is prohibited by federal law. See Policy and Procedures Governing the Use of Airport Revenue, 64 Fed.Reg. 7696, 7720 (February 15, 1999) ("Revenue Policy"). Airport revenues subject to the revenue use requirements include all fees, rents, charges, or other payments received from anyone who makes use of the airport and from the airport sponsor's activities on the airport. Id. at 7716.

The third prong provides unique revenue allocation opportunities to airport sponsors that own or operate other facilities.

Specifically, the statute permits sponsors to use airport revenue for other facilities owned or operated by the airport owner and directly and substantially related to the air transportation of passengers or property. "Owned" means that the airport owner or operator holds legal title to the facilities for which airport revenue is used. FAA Bulletin 1: Best Practices – Surface Access to Airports (2006). "Operated" means that the local or state government or authority that owns or operates the airport is legally responsible for the operation of the facility and operates the facility either with its own employees or through a management contract with another public agency or private firm. Id. “Directly and substantially related to the air transportation of passengers” is a standard that FAA interprets on a case by case basis with a focus on whether the project of facility is intended primarily for users of the airport. Where revenues are not expended wholly or primarily for users of the airport, they must be prorated to the actual or forecasted use of the facility. For example, if 10% of actual or projected use of the facility will be for non-airport purposes, the airport revenues can only be used to pay for 90% of the project.

Finally, federal law and policy permit the use of airport revenues for certain costs of off-airport environmental mitigation incurred for an airport development project. “Airport revenue may be used where airport development requires a sponsoring agency to take an action, such as undertaking environmental mitigation measures contained in an FAA Record of Decision approving funding for an airport development project, or constructing a ground access facility that would otherwise be eligible for the use of airport revenue.” Revenue Use Policy at 7720.

In short, airport operators are allowed to spend airport generated revenues on airport operation and development, including an off-airport project that contributes substantially to that operation and/or development. Off-airport uses that are unrelated, or marginally related, to airport operation or development are explicitly precluded by the airport revenue use policy.

This emphasis is particularly interesting in light of FAA’s recent decision to allow the City of Santa Monica to use airport revenues to tear up portions of its runway to make access by jets less likely. (See blog post FAA Ignores Its Own Regulations in Allowing Expenditure of Airport Revenue to Demolish Runway at Santa Monica Municipal Airport, November 11, 2019). Nevertheless, revenue diversion occupies a central position in the complex of policies directed at airport development. It is essential for any airport operator to understand and apply these policies scrupulously, for the purpose of avoiding FAA retribution, including, but not limited to, repossession of grant funds already allocated, sometimes amounting to millions of dollars. In the long run, being safe is more effective than being sorry.

by Barbara Lichman

November 15 2019

**Buchalter**

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## [2020 Summer Internship Program - Public Finance Investment Banking]

**Piper Jaffray . | . Denver, CO, US**

[Apply on company website]

Piper Jaffray is currently seeking an intern for Summer 2020 for our Public Finance business line in Denver, CO. Public Finance is an exciting area of investment banking, where bankers work with a diverse group of public sector, non-profit and developer clients. We have numerous Public Finance functional specialties in local markets.

**Responsibilities**

- Creation of Microsoft Excel spreadsheets
- Build information sources

- Assist Public Finance team with projects and assignments

**Requirements**

- Excellent oral, written communication and problem solving skills
- Strong analytical ability
- Detail oriented
- Knowledge of Microsoft Excel

Interns will participate in our firm-wide internship program consisting of a kickoff event in Minneapolis and a speaker series program where you will hear from top business leaders with the opportunity to network and learn about the various opportunities within finance .

This internship opportunity is open to undergraduate or graduate students who graduate in December 2020 or Spring 2021 and have a GPA of 3.3 or above.

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- SEC Approves Changes to MSRB Guidance on Underwriters' Disclosure Obligations.
- Why Is It So Hard to Access Performance and Financial Data in Munis?
- Muni-Bond Trading Evolves.
- Please note that we have been diligently covering developments concerning Opportunity Zones, such as this week's Federal Tax Bulletin: Key Timing Issues for Qualified Opportunity Fund Investments and What You Need to Know About the New Opportunity Investment Draft Form. We have, however, been hesitant to include OZ items in the Highlights due to lack of certainty as to how much OZ work is being done by Public Finance practitioners, as opposed to those tax wankers. Options include, a) letting us know that you'd like to see OZ news highlighted, b) going directly to the Tax section of the newsletter/website for OZ info, and/or 3) making the newsletter available to your tax practitioners.
- And finally, This Will End Well is brought to us this week by *In re Mathias H.*, in which the court was faced with the charming issue of whether or not to incarcerate a 12 year-old due to his repeated refusals to comply with the terms of his house arrest and ankle monitoring while awaiting trial on armed robbery charges. I think that we can all agree that we're looking at a monster understatement when the parent of the year "told the court that respondent repeatedly failed to listen to her." Indeed.

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**ZONING & PLANNING - CONNECTICUT**

## Mayer-Wittmann v. Zoning Board of Appeals of City of Stamford

**Supreme Court of Connecticut - November 5, 2019 - A.3d - 333 Conn. 624 - 2019 WL 5682694**

Neighbor sought review of decision of city zoning board of appeals granting landowner's application for variances from setback requirements and height restrictions to reconstruct a sea cottage on his beachfront property after cottage was severely damaged by a hurricane.

The Superior Court dismissed. Neighbor appealed.

The Supreme Court held that:

- Sea cottage’s status as a legally nonconforming accessory structure did not terminate due to lack of reconstruction within one year of hurricane, and
- Landowner established the existence of an unusual hardship warranting approval of application for variances.

Sea cottage’s status as a legally nonconforming accessory structure with respect to setback and building height requirements did not terminate due to landowner’s failure to reconstruct it within one year after it was severely damaged in a hurricane, notwithstanding city zoning regulation authorizing the reconstruction “as before” of buildings damaged in a calamity within 12 months of calamity, where it was not possible for sea cottage to be reconstructed and used as before it was damaged without any need to apply for variances from minimum flood elevation requirement.

Owner of beachfront property established existence of unusual hardship warranting approval of application for variances from setback requirements and height restrictions to reconstruct his hurricane-damaged sea cottage that was a legally nonconforming accessory structure and that was subject to city regulations applicable to flood prone areas, which required minimum elevation of structures; strict enforcement of regulations would have deprived owner of his constitutionally protected right to continue using sea cottage, and without variances in some form, owner would have been unable to reconstruct sea cottage, resulting in an inverse condemnation of his existing, legally nonconforming use.

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**ZONING & PLANNING - DISTRICT OF COLUMBIA**

## Committee of Neighbors Directly Impacted by LAMB Application v. District of Columbia Board of Zoning Adjustment

**District of Columbia Court of Appeals - October 31, 2019 - A.3d - 2019 WL 5617815**

Neighboring residents sought review of decision by Board of Zoning Adjustment (BZA) that approved application by prospective lessee of property for special exception that allowed it to operate and co-locate a public charter school with property owner’s existing private school in residential zone.

Prospective lessee intervened.

The Court of Appeals held that:

- Allowing continued use of existing, nonconforming parking lot did not violate intent and purpose of relevant zoning regulations;
- Prospective lessee, rather than property owner, was proper applicant to request special exception;
- BZA did not abdicate its authority by designating other entities to enforce certain conditions that it placed on its approval; and
- BZA conducted requisite “improved public review” prior to approving application.

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**IMMUNITY - GEORGIA**

## Georgia Lottery Corporation v. Vasaya

**Court of Appeals of Georgia - October 31, 2019 - S.E.2d - 2019 WL 5616681**

Lottery player initiated breach of contract action against State lottery corporation and filed motion for summary judgment.

The Superior Court granted motion for summary judgment and awarded player attorney fees and expenses. Corporation appealed.

The Court of Appeals held that:

- Lottery ticket constituted express waiver of sovereign immunity of corporation;
- Summary judgment testimony of corporation's validation manager was too speculative to support inference that player was not bona fide purchaser;
- Trial court lacked authority to award attorney fees; and
- Player's demand for interest sufficiently demanded prejudgment interest.

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**POLITICAL SUBDIVISIONS - GEORGIA**

## Board of Commissioners of Lowndes County v. Mayor of Valdosta

**Court of Appeals of Georgia - October 21, 2019 - S.E.2d - 2019 WL 5304498**

County board of commissioners brought action against Department of Community Affairs (DCA) officials in their official and individual capacities and cities for injunctive, declaratory, and mandamus relief after DCA imposed sanctions on county and cities for their alleged failure to comply with Service Delivery Strategy Act (SDS Act) requirements.

Trial court ordered sanctions to be held in abeyance and ordered DCA to reinstate qualified local government status to county and cities. Trial court granted officials' motion to dismiss on the bases of sovereign immunity and failure to state a claim for mandamus relief.

The Court of Appeals held that:

- Board's claims against DCA officials in their individual capacities for declaratory and injunctive relief were precluded by sovereign immunity;
- DCA officials did not have clear legal duty to stop notifying state agencies that county and cities were ineligible for state-administered financial assistance; and
- Adequate legal remedy existed by which board could resolve dispute with DCA over compliance with SDS Act.

County board of commissioners' claims against officials for Department of Community Affairs (DCA) in their individual capacities for declaratory and injunctive relief arising out of DCA's determination that county violated Service Delivery Strategy Act (SDS Act) were in fact claims against state as real party in interest, and, thus, were precluded by sovereign immunity; board of commissioners alleged that DCA, not its officers, was the entity imposing sanctions on county, including by posting on DCA website, board's requested relief sought to control actions of state by requiring DCA officials to "direct" the DCA to take actions, officials lacked authority in their individual capacities to direct DCA to do anything, and relief could only be granted by state under SDS Act.

Board members and commissioner of Department of Community Affairs (DCA) did not have clear legal duty to stop notifying state agencies that county and cities, which DCA concluded violated Service Delivery Strategy Act (SDS Act) by failing to review and revise service delivery strategy, were ineligible for state-administered financial assistance, grants, loans, and permits due to expiration of prior service strategy agreement, and, thus, county was not entitled to writ of mandamus requiring DCA to retract notifications of ineligibility; SDS Act contained no requirements for DCA board members and commissioner at all, and SDS Act contemplated that a prior service strategy agreement would not continue unaltered if a municipality failed to review or revise it as required.

Adequate legal remedy existed by which county board of commissioners could resolve dispute with Department of Community Affairs (DCA) over whether county and cities had complied with Service Delivery Strategy Act (SDS Act) and obtain relief from DCA's announcement that county was ineligible for state-administered financial assistance, grants, loans, and permits due to its non-compliance with SDS Act, and, thus, mandamus relief was unwarranted; SDS Act provided dispute resolution procedure applying to county's alleged noncompliance with requirements that it review and revise service delivery agreement, and trial court placed sanctions imposed by DCA in abeyance, such that county was still eligible for state-administered benefits.

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**INSURANCE . - ILLINOIS**

## Evergreen Real Estate Services, LLC v. Hanover Insurance Company

**Appellate Court of Illinois, First District, First Division - November 4, 2019 - N.E.3d - 2019 IL App (1st) 181867 - 2019 WL 5704599**

Insured, which was residential property manager, brought action against liability insurer, seeking declaration that insurer had duty to defend insured under professional liability insurance policy in tenants' class action and seeking damages for bad faith denial of insurance claim.

On cross-motions for summary judgment, the Circuit Court granted summary judgment in favor of insured as to issue of duty to defend but granted summary judgment to insurer on bad-faith claim. Insurer appealed, and insured cross-appealed.

The Appellate Court held that:

- City residential landlord tenant ordinance was not unequivocally consumer protection law that fell under policy's exclusion for claims arising from unfair and deceptive business practices, including local consumer protection laws;
- Claims in underlying class action did not unequivocally represent claims for unfair or deceptive business practices subject to policy's exclusion for claims arising from unfair and deceptive business practices; and
- Insurer put forth good-faith defense to coverage, and thus sanctions for bad-faith denial of insurance claim were unwarranted.

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**MUNICIPAL ORDINANCE - ILLINOIS**

## In re Mathias H.

**Appellate Court of Illinois, First District, First Division - October 28, 2019 - N.E.3d - 2019 IL App (1st) 182250 - 2019 WL 554363**

After 12-year-old with pending juvenile delinquency adjudication for robbery of a store violated electronic monitoring, and was arrested and placed in juvenile detention center, he filed emergency petition for habeas corpus.

The Circuit Court denied the petition. Juvenile appealed.

The Appellate Court held that:

- Issue of whether county ordinance lawfully proscribed juvenile court from detaining juvenile was not moot, and
- County ordinance prohibiting detaining child under age of 13 in county's jail or juvenile detention facilities conflicted with express limitations of state law and thus was preempted.

Issue of whether Cook County ordinance, which purported to bar county's jail and juvenile temporary detention facilities from accepting any minor under the age of 13, was proper exercise of county's home rule authority, so that juvenile court's order detaining 12-year-old juvenile was unlawful, was not rendered moot after juvenile completed sentence and was released, since detention of juveniles was matter of public concern that required authoritative determination, and which, due to time constraints, was likely to recur with other minors in future.

Cook County ordinance that prohibited county's jail and juvenile temporary detention facilities from accepting any minor under age of 13 conflicted with express limitations enacted by the General Assembly, and thus, was preempted as an invalid exercise of county's home rule authority, even though ordinance was an attempt by county to concurrently exercise its police power for the well-being of its juveniles within the justice system; ordinance conflicted with the Juvenile Court Act and the Detention Act, which together represented a comprehensive scheme for the treatment of minors 10 years of age and older who were under the jurisdiction of the Juvenile Court Act that required, or may have required, detention in a secure facility.

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## The Organizers and Officials Behind San Francisco's Push for a Public Bank.

Jacqueline Fielder has been working two restaurant jobs, but in increasingly unaffordable San Francisco, she's had trouble finding stable, safe housing she can afford. She moved to the Bay Area to go to Stanford, where she earned a bachelor's in public policy and a master's in sociology in just four years. But for the past six months, she's been couch surfing and living out of her van, a green Toyota Previa, model year 1994 — the same year she was born.

In her spare time between shifts, Fielder has continued volunteering as one of the lead organizers behind San Francisco's push for a city-owned public bank that would hold local taxpayer dollars and finance affordable housing, small businesses, student loans and other public needs that conventional banks aren't meeting.

That work takes another step closer with the introduction of local legislation in San Francisco that would begin the process for establishing a public bank — following the pathway laid out by AB 857, the landmark public banking bill passed into law earlier this year in California. That legislation is expected to be introduced today.

Continue reading.

NEXT CITY

by OSCAR PERRY ABELLO

NOVEMBER 12, 2019

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## Homespun Firms Challenge Wall Street's Muni-Bond Supremacy.

**The SEC is considering allowing advisers to arrange sales to skilled investors without the involvement of large banks and midsize brokers**

Wall Street's longstanding hold on the $4 trillion municipal-bond market faces a challenge from an onslaught of small, independent firms known as municipal advisers.

The Securities and Exchange Commission is considering allowing these advisers to arrange private bond sales to skilled investors without the involvement of the large banks and midsize brokers that have for decades dominated the market for high-grade local government debt.

Though private sales make up only a small portion of the overall market, broker-dealers—as these banks and brokers are known because they price and sell new bonds and trade existing ones—aren't eager to face further inroads.

Continue reading.

**The Wall Street Journal**

By Heather Gillers

Updated Nov. 13, 2019 6:04 pm ET

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## Muni-Bond Trading Evolves.

Slowly but surely, change is coming to municipal bond trading.

For brokers, tech providers and trade-venue operators seeking to modernize transactions, the $3.8 trillion muni-bond market has all the challenges, in spades — small issue size, little standardization, and a highly dispersed network of buyers and sellers. When a local savings and loan needs to buy a municipal bond backing a toll road on behalf of a wealth management client, the S&L representative historically has picked up the phone to do so.

Electronic trading has gained traction in government and corporate bonds, so technology providers and trading-platform operators are looking to export advances in those markets to their fixed income cousin. It is expected to be a long path with incremental gains, very much an evolution rather than a revolution.

"It's not going to be an overnight change where all the tools and protocols that happen over voice will appear on a platform on day one," said Amanda Meatto, Head of Sales and Relationship Management at fixed income marketplace Tradeweb Direct. "The wide range of securities and deals in the municipal marketplace make it more complex."

"What we see happening in munis is a phased approach, where step one is enhancing liquidity, connecting people with as many broker-dealers as possible, and automating small workloads that are very manual today," Meatto continued. "Those are the simpler parts of electronifying a product. There will be multiple stages of innovation from there, driven by the needs of buy-side and sell-side institutions."

While only 12 to 15 percent of municipal bond trading volume is conducted electronically, uptake by financial institutions is moving the needle. In 2018, 62% of buy-side firms traded munis on a screen, up from 51% two years earlier, according to a Greenwich Associates report published in 2Q 2019.

"Investors — primarily asset managers and hedge funds — are increasingly looking to e-trading platforms for order execution," Greenwich wrote. "The largest institutions are a leading indicator of technology adoption."

One unique characteristic of the muni market is a comparatively small average trade size, in the order of \$100,000-\$200,000. High net worth individuals are an important presence in the muni market, especially via the \$6.8 billion parked in separately managed accounts; Tradeweb is aiming to better connect institutions with this retail order flow.

Last month, the platform operator announced a partnership with InvestorTools, a provider of portfolio management and credit analysis systems for institutions, to enable straight through processing for municipal bond trades executed by Tradeweb Direct clients.

"The portfolio manager sits in InvestorTools to make decisions, and the next part of the workflow is execution," Meatto explained. "It was a natural progression for us to link up to streamline the PM's or trader's pivoting from choosing bonds, to looking for liquidity and then executing."

Meatto noted that the muni-bond market lends itself to electronic trading in the sense that buyers often search on criteria, such as duration and coupon, rather than coming in to buy one specific issue as is often the case in corporates and Treasuries. As there were an estimated 1.02 million different muni issues as of February according to Greenwich, electronic platforms can make inventory searches manageable.

Going forward, the challenge for electronic trading is to move beyond just the smaller, so-called odd lot trades and make headway in deals north of \$1-\$2 million. "How do we electronify two people speaking to each other to agree on a price?" Meatto asked. "That is going to be a huge part of electronifying the round-lot marketplace for muni bonds."

**By Markets Media'**

11.13.2019

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## Municipal Bond CEFs - Pressure For The Sector After The Treasury Yields Increase

**Summary**


- All of the net asset values of the municipal bond closed-end funds finished the week in negative territory.
- We continue to follow the most important yields and municipal/Treasury spread ratio.
- Most of the funds from the sector are still trading at positive Z-scores, and we do not see a statistical edge to include some of them in our portfolio.


Continue reading.

**Seeking Alpha**

Nov. 14, 2019

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## [How OZ Communities, Sponsors, and Investors Can Connect, with The Opportunity Exchange.]

Can an Opportunity Zone marketplace connect communities, OZ project sponsors, and investors to advance capital deployment and community impact? Peter Truog is founder of The Opportunity Exchange — a marketplace that connects impactful Opportunity Zone projects to capital sources. Also joining today's podcast episode from The Opportunity Exchange are Leo Peña and Ayat Amin. Click the play button below to listen to my conversation with…

Read More »

**Opportunity Db**

November 13, 2019

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## Municipal CUSIP Request Volume Surges in October.

NEW YORK, NY, November 11, 2019 – CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for October 2019. 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 significant increases in CUSIP request volume for municipal debt and a slight decline in requests for corporate debt identifiers in October.

Read Report.

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## 34% Monthly Increase in Muni Requests Puts Year-to-Date Volume on Record Pace.

"The favorable interest rate environment for debt issuers has put municipal bond CUSIP request volume on pace for a record year," said Gerard Faulkner, Director of Operations for CUSIP Global Services. "While we have seen some month-to-month volatility in the municipal bond category over the course of 2019, the general trend for the first three quarters has been toward steady growth."

Read Press Release.

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## The MSRB Adds Links to Additional Indices on EMMA®

View the new links.

## MSRB's Quarterly Trade Statistics Report.

Municipal market trading declines to $723 billion in the third quarter.

Read the MSRB's quarterly trade statistics report.

## Denver Supportive Housing Social Impact Bond Initiative: Housing Stability Payments

**Abstract**

In February 2016, the City and County of Denver and eight private investors closed on the city's first social impact bond, an $8.6 million investment to fund a supportive housing program for 250 of the city's most frequent users of the criminal justice system. The city will make outcome payments over five years based on the initiative's goals of housing stability and a decrease in days spent in jail by participants. This report details the third assessment of housing stability payment outcomes and interim housing stability outcomes for the program.

Read the full report.

**The Urban Institute**

by Mary K. Cunningham, Sarah Gillespie, Devlin Hanson, Mike Pergamit, Alyse D. Oneto & Prasanna Rajasekaran

November 12, 2019

## Fitch Ratings: Upgrades Again Outpace Downgrades for U.S. Public Finance in 3Q19

Fitch Ratings-New York-14 November 2019: Last quarter saw a bump in rating activity for U.S. municipal credits with upgrades again exceeding downgrades, according to Fitch Ratings in its latest Rating Actions & Sector Updates report for U.S. public finance.

As of third-quarter 2019 (3Q'19), the quarterly special report consolidates content from previous U.S. Public Finance Rating Actions and Sector Briefing special reports, and discusses the latest key credit issues for each sector.

Fitch upgraded 45 U.S. public finance security ratings and downgraded 31 in 3Q'19, compared with 34 upgrades and 19 downgrades in 2Q'19. Positive Rating Outlooks and Watches also increased by four to 99 (from 95 in 2Q'19) while Negative Rating Outlooks and Watches fell to 102 in 3Q'19 compared with 106 in 2Q'19.

On Oct. 7, 2019, Fitch resolved all 42 public power long-term ratings placed Under Criteria Observation after revisions to the U.S. Public Power Rating Criteria in April 2019. Nine out of 16 public power long-term rating upgrades and all four downgrades in 3Q'19 were the result of the criteria revision.

'U.S. Public Finance Rating Actions & Sector Updates: Third-Quarter 2019' is available at 'www.fitchratings.com'.

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## Fitch Ratings' View of Wildfire Credit Risk for LADWP Posed by Getty Fire.

Fitch Ratings-New York-11 November 2019: Fitch Ratings has not taken rating action on the Los Angeles Department of Water and Power (LADWP) or any publicly owned utility (POU) in California, to date, related to wildfire risk and the potential liability resulting from California's strict interpretation of inverse condemnation. However, wildfires have become more prevalent in California and present an ongoing business risk to POUs. POUs in California have inherent characteristics and strategies in place that mitigate wildfire risk and its impact on credit quality. These include largely urban service areas with quick fire service response times, vegetation management and wildfire prevention programs, robust cash reserves and the legal ability to recover costs associated with wildfire related liabilities from ratepayers. The new wildfire liability fund created by California Assembly Bill 1054 in July 2019 is exclusive to investor-owned utilities and not considered one of the strategies in place for POUs. Given these factors, coupled with the low likelihood of a massive liability event, Fitch considers the occurrence of a catastrophic event sizable enough to prompt a rating action as a remote event risk that is therefore not factored into the ratings. If a massive liability event occurs, ratings could be affected.

**Getty Fire**

The Getty fire that began on Oct. 28 in Los Angeles burned approximately 745 acres and was fully contained as Nov. 5, 2019, according to the Los Angeles Fire Department (LAFD). The LAFD reports there were no fatalities, although five fire-fighters sustained injuries considered to be 'non-life threatening'; ten homes were destroyed and 15 were damaged. According to the LAFD, its preliminary investigation determined the cause of the fire was an accidental start from a tree branch that broke off and landed on nearby power lines during high wind conditions, causing sparking and arcing of the power lines and igniting nearby brush.

The power lines are owned and operated by LADWP. LADWP reports they had recently completed vegetation management trimming and inspection in this area in July 2019. There is no alleged failure to act or failure of equipment. However, due to California's application of inverse condemnation that can impose liability against utilities regardless of fault, LADWP may face financial liabilities as a result of the Getty fire.

**What Circumstances Would Prompt Fitch to Take Rating Action**

LADWP has an Issuer Default Rating (IDR) of 'AA'/Stable. As Fitch indicated in its rating action commentary on LADWP published earlier this year on April 12 and Aug. 26, a rating action could occur if LADWP is found liable for a specific wildfire event of such a magnitude that it exceeds insurance and liquidity resources and outstrips LADWP's ability to recover the costs through rates and maintain rate flexibility. The potential development related to wildfire risk that could change Fitch's rating is the magnitude of the liability, not whether or not a wildfire occurs. It remains to be determined whether LADWP will face a liability for the Getty fire and, if so, the size of the liability.

Fitch expects that the initial recourse for LADWP will be to seek coverage under its wildfire liability insurance policy ($177.5 million), with additional coverage available to LADWP through its general excess liability coverage policy ($160.0 million) and self-insurance reserve ($192.5 million). In addition to insurance, LADWP has sizable cash reserves that could be used to meet any potential liability, although these reserves protect against multiple business risks and their use may be more of an interim step, depending again on the magnitude of the liability. LADWP's unrestricted cash for the power system at the end of fiscal 2018 was approximately $1.3 billion, including the debt reduction fund and rate stabilization fund.

If a potential liability exceeds LADWP's insurance policies and cash reserves, Fitch assumes LADWP could borrow to pay part or all of the liability, with repayment expected over the long term. If a wildfire results in a liability that is massive enough to alter LADWP's financial profile, the deterioration would appear in Fitch's net leverage ratio that measures long-term, fixed obligations, net of cash reserves, in relation to annual cash flow.

LADWP's net leverage ratio is currently expected to decline and the 'AA'/Stable IDR is based on that expectation. LADWP's net adjusted debt to adjusted FADS ratio was 7.8x in fiscal 2018. Fitch's Analytical Stress Test (FAST) model, a forward five-year look, indicates that net leverage should trend down slightly, closer to 7x by year three of the forecast period, while liquidity and coverage levels remain robust. Although Fitch assumes that LADWP would spread payment of any wildfire-related liability over the long term and recover those costs through its power rates, a new, large fixed obligation that alters our expectation of lower leverage could be enough to trigger downward rating action.

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## [Haskell and Richbourg on Municipal Bond Market (Podcast)]

Lisa Abramowicz and Paul Sweeney speak with Patrick Haskell Managing Director of Municipal Securities at Morgan Stanley and Scott Richbourg, Head of Public Finance at Build America Mutual.

[Play Episode]

**Bloomberg Markets**

November 14, 2019 — 8:19 AM PST

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## [Fitch Ratings: U.S. Water Utilities' Financial Profiles Strengthen]

Fitch Ratings-Austin-11 November 2019: Net margins accelerated for U.S. water utilities over the last year while sector leverage declined, according to a new report from Fitch Ratings.

Surplus cash flows climbed to 135% of annual depreciation in the current median cycle as revenues expanded over 5% and expenses were held in check. Most of the revenue growth occurring continued to come from rate adjustments. Water sales were marginally positive while sewer flows were flat, similar to recent results. 'Revenue growth is expected to continue expanding at about 3% annually based on planned adjustments, with revenue volatility sufficiently mitigated by residential rate structures that typically recover 40% of charges from fixed components,' said U.S. Public Finance Managing Director Doug Scott.

With the current medians, sector debt service coverage reached its highest levels observed by Fitch. Strong operations and robust reserves allowed the sector to utilize more pay-go funding for capital, which in turn drove virtually all debt metrics lower. Despite some drawdown of cash balances, liquidity levels continue to be among the highest seen and are more than 55% above those a decade ago, providing a significant degree of flexibility to utilities in managing their business.

Capital spending dipped to a four-year low of around 130% of depreciation, but was sufficient to maintain the age of facilities. The drop in capital deployment appears to be relatively short-term as utility capital projections for the next few years jumped around 20% relative to the last medians. 'While planned outlays have increased, sector leverage is expected to remain relatively unchanged given two-thirds of capital funding is anticipated to come from available resources,' said Scott.

Fitch's '2020 Water and Sewer Medians' is available at 'www.fitchratings.com'.

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## Muller and Dewey on Municipal Bond Market (Podcast)

Lisa Abramowicz and Paul Sweeney speak with Mark Muller, Senior Portfolio Manager at Loews Corporation and Grant Dewey, Head of Municipal Capital Markets at Build America Mutual.

Play Episode

**Bloomberg Markets**

November 14, 2019 — 8:44 AM PST

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## Bond and Market Analysis from Build America (Podcast)

Paul Sweeney and Lisa Abramowicz broadcast from Build America in New York City. Their guests include: Sean McCarthy, CEO Build America Mutual, Scott Richbourg, Build America Mutual Head of Public Finance, Patrick Haskell, Morgan Stanley Head of Public Finance, Grant Dewey, Build America Mutual Head of Capital Markets, Mark Muller, Head of Municipal Investments at Loews Corp, David McIntyre, Build America Mutual Chief Information Security Officer and Jonathan Couch, Sector Cyber-Security Expert. Hosted by Paul Sweeney and Lisa Abramowicz.

Listen to podcast.

**Bloomberg Markets**

November 14, 2019 — 9:17 AM PST

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## California Governor Newsom Fielding More PG&E Takeover Calls.

- **Governor Gavin Newsom under pressure to act on bankrupt PG&E**
- **Options include turning PG&E into co-op or giant muni utility**

For California Governor Gavin Newsom, sitting back and watching PG&E Corp.’s bankruptcy run its course is no longer an option.

The mayors of 22 cities are pressing him to turn the embattled power giant into a customer-owned cooperative. San Francisco, the city he once served as mayor, wants to take over the company’s local wires. On Wednesday, a board member of a statewide consumer group sent Newsom a proposal that would have the state run PG&E like a massive municipal utility. And the former chief of California's utility commission joined a coalition of groups to similarly press him for public control.

"It is time for California to take over PG&E and stop letting profits stand in the way of a safe, clean energy future we all need and deserve," the coalition, including former California Public Utilities Commission president Loretta Lynch, said in its letter to Newsom Thursday.

Continue reading.

**Bloomberg**

By David R Baker and Romy Varghese

November 13, 2019, 2:27 PM PST Updated on November 14, 2019, 12:21 PM PST

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## California Senator Drafts Bill to Turn PG&E Into Public Utility.

- **Scott Wiener wants to force bankrupt utility to become public**
- **Preliminary plan underscores frustration amid outages, fires**

California State Senator Scott Wiener said he's planning to introduce a bill next year that would force bankrupt power giant PG&E Corp. to become a public utility.

"We are looking at legislation to force PG&E to become a public utility, but that's still in the early planning stages and we haven't settled on the exact details yet," the San Francisco Democrat said in a phone interview. He intends to introduce "some sort of legislation forcing them to become a public utility" by the mid-February deadline for new bills, Wiener said.

The plan, while preliminary, shows the growing impatience lawmakers and municipal leaders have with PG&E, which plunged millions of Californians into darkness during mass power outages last month to prevent wildfires that still occurred. Government leaders representing nearly a third of PG&E's customers have urged California regulators to consider turning the company into a customer-owned cooperative.

Wiener's proposal would help protect the people of California, since the bankruptcy court's focus is generally to help creditors, he said. Wiener considers some form of public control of PG&E "desirable." The government of San Francisco has already made a $2.5 billion bid for the wires that PG&E runs within the city's limits. The company has so far rebuffed its efforts.

Cases of successful transitions of investor-owned utilities into public entities have occurred in smaller, more confined areas, said A.J. Sabatelle, an associate managing director at Moody's Investors Service.

Asked if his bill signals that the legislature is showing momentum toward a public model, Wiener said he couldn't speak for others and that lawmakers have "diverse views." California Governor Gavin Newsom pressed PG&E Chief Executive Officer Bill Johnson in a meeting last week to reach a swift resolution to the company's bankruptcy or face a potential state takeover.

"Ultimately, the governor's view is going to be extremely impactful," Wiener said.

**Bloomberg**

By Romy Varghese

November 12, 2019, 2:01 AM PST

*— With assistance by David R Baker*

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## Multifamily Private Activity Bond Issuances Decline 3.7 Percent in 2018.

Housing finance agencies issued $14.7 billion in tax-exempt multifamily rental housing bonds in 2018, a 3.7 percent decrease in multifamily issuance from last year, according to the Council of Development Finance Agencies (CDFA).

The issuance of single-family mortgage revenue bonds increased more than 50 percent, from $5.6 billion in 2017 to $7.4 billion in 2018. The combined multifamily and single-family mortgage revenue bond issuances increased by 5.3 percent to $22.1 billion. The percentage of volume cap private activity bonds (PAB) issued in 2018 for single and multifamily housing in the 50 states and the District of Columbia was 91.5 percent of all volume cap PAB activity, a record high.

The decrease in multifamily PAB issuance is not surprising, because of the risk of repeal of PABs at the end of 2017 as part of the tax law commonly known as the Tax Cuts and Jobs Act (TCJA) of 2017. Many planned 2018 multifamily issuances were accelerated into 2017 to eliminate the risk, evidenced by the fact that multifamily PAB issuance in 2017 was nearly $15.3 billion, compared to $14 billion in 2016.

This year's CDFA report, "CDFA Annual Volume Cap Report: An Analysis of 2018 Private Activity Bond & Volume Cap Trends," states that total annual private activity bond cap in 2018 increased 5.1 percent to $37.1 billion. The CDFA report surveys agencies from the 50 states and District of Columbia that allocate private activity bond cap among the eligible uses.

In addition to the $37.1 billion in new 2018 bond volume cap available, state agencies had an additional $53.1 billion in existing carryforward allocation. The resulting total available amount of national volume cap was approximately $89.8 billion in 2018. Of that, $24.1 billion in bond volume was issued, a slight 2.9 percent decrease from 2017.

CDFA also reported a total of $4.75 billion in total private activity bond cap abandoned, as states have three years to use such authority before it expires. Such a total represents a more than 50 percent decrease from the last time CDFA reported on abandoned cap in its 2016 report. However, 10 states—Alaska, Arizona, California, Florida, Iowa, Mississippi, Missouri, New Hampshire, New York and Tennessee (a list that includes some significant bond-issuing states)—did not report on how much bond cap was abandoned in 2018, and so the total 2018 reported amount likely under-reported the actual amount. See list below for full details.

Published by Michael Novogradac on Tuesday, November 5, 2019 – 12:00am

## Big Housing Bonds Pass in San Francisco and Durham, N.C.

When you think of a city with a housing market that caters to the wealthy and provides few options for people earning average wages or below, chances are good that you think of San Francisco before you think of Durham, North Carolina. But officials in both cities have good reasons to invest in a range of affordable housing types, and last week, voters in San Francisco and Durham each approved the largest housing bond in their city's history.

In Durham's case, it was a $95 million bond to be spent over the next five years. Durham Mayor Steve Schewel proposed the bond in February, saying that if Durham carried on its existing housing efforts without an infusion of funding, downtown neighborhoods would remain "the province of upper-middle-class white people, while people of color are pushed to the margins, farther and farther from good jobs and the public transit to get them to those jobs," according to a report in the Indy Week.

Durham currently has around 8,600 income-restricted affordable units, according to city estimates. If it wants to provide enough housing just for the residents who are currently facing a severe cost burden — spending more than half their income on rent — it will need to build 16,000 new affordable housing units, the city estimates. Despite being the biggest housing bond the city has ever approved, the $95 million would still only provide for a fraction of the need.

Continue reading.

NEXT CITY

by JARED BREY

NOVEMBER 14, 2019

## SEC Approves Changes to MSRB Guidance on Underwriters' Disclosure Obligations.

The SEC approved changes to an MSRB interpretive notice concerning the conduct of municipal securities underwriting activities. The MSRB indicated that the changes are to codify underwriters' disclosures and focus on the risks and conflicts associated with their transactions.

As previously covered, the amendments to the interpretive notice concerning MSRB Rule G-17 ("Conduct of Municipal Securities and Municipal Advisory Activities") are intended by MSRB to reduce disclosure burdens on underwriters, as well as the burden on issuers to acknowledge and review disclosures of risks that are (i) unlikely to materialize, (ii) not unique to a particular transaction or underwriter where a syndicate is formed, or (iii) otherwise duplicative.

The MSRB will provide a compliance date within 90 days of publishing the revised guidance in the Federal Register.

November 12 2019

**Cadwalader Wickersham & Taft LLP**

## Federal Tax Bulletin: Key Timing Issues for Qualified Opportunity Fund Investments

Time is running out to clearly maximize the tax benefits available under the qualified opportunity zone (QOZ) program. Under current guidance, it seems that you must invest in a "qualified opportunity fund" (QOF) by December 31, 2019 to be eligible for all possible QOZ tax benefits (though most QOZ tax benefits will still be available for QOF investments made after 2019). Additionally, if your capital gain this year is from the sale of property used in a trade or business, you must wait to make the related QOF investment until the last day of the taxable year (which for most taxpayers is December 31, 2019). These two critical timing requirements are woven into the QOZ rules, which are discussed in more detail below.

BASIC QOZ RULES AND BENEFITS

Under QOZ program, QOZ tax benefits are available to a taxpayer who recognizes capital gain on the sale of property to an unrelated buyer, makes a qualifying equity investment in a QOF up to the amount of that capital gain, and holds the QOF equity interest for a certain specified period of time. Such a taxpayer has the ability to defer and partially eliminate federal tax on that capital gain, as well as to avoid all federal tax on the taxpayer's eventual sale of their QOF equity interest.

A QOF is an investment vehicle created to invest in QOZs. Any corporation or partnership (including an LLC treated as a corporation or partnership for tax purposes) can be a QOF, so long as it follows the applicable QOZ rules and self-certifies by filing a Form 8996 with its federal income tax return. The QOZ requirements (which are beyond the scope of this Bulletin) primarily are designed to ensure that QOF investments result in new or significantly refurbished assets deployed and used in QOZs.

There are 3 potential tax benefits available to taxpayers who make qualifying QOF investments. A taxpayer's eligibility for 1 or more of these benefits depends on when the taxpayer invests in a QOF, and how long the taxpayer holds their QOF equity interest. These 3 tax benefits include:

1. Deferral of Capital Gain Recognition. A taxpayer who invests capital gain into a QOF in compliance with the QOZ rules is not subject to immediate tax on that capital gain. Rather, taxation of that capital gain is deferred, and no federal income tax is required to be paid on the gain until the end of 2026 (or upon the investor's disposition of the QOF equity interest, if earlier).
2. Reduction of the Deferred Capital Gain. When a taxpayer is required to pay federal tax on their deferred capital gain, if they have held their QOF equity interest long enough by that point, a portion of the deferred tax will be eliminated. Specifically, if the QOF interest has been held at least 5 years, then 10% of the deferred tax liability will be eliminated, and if the interest has been held at least 7 years, an additional 5% of the deferred tax liability will be eliminated. Thus, the maximum reduction of the deferred federal tax liability is 15%.
3. No Federal Tax on Ultimate Sale of QOF Equity Interest. Any increase in value of a QOF equity interest that a taxpayer holds for at least 10 years prior to disposition is not subject to federal tax upon the sale of that QOF equity interest.

180-DAY QOF INVESTMENT WINDOW: WHEN DOES IT BEGIN?

When a taxpayer recognizes capital gain in a qualifying sale, the taxpayer has a 180-day window in which to make a corresponding equity investment in a QOF. Generally, that 180-day window begins on the day of the sale; however, there are exceptions to this rule.

1. Sale of Business Property. If the capital gain that you wish to invest in a QOF resulted from the sale of property used in a trade or business, special rules apply. Firstly, only your net capital gain for the year from sales of business property is eligible for QOF investment. Secondly, because that net gain amount cannot be determined until the end of the year, the 180-day QOF investment window for this gain does not begin until the last day of the year. Although this delay in the start of the 180-day window can be a benefit to many taxpayers by providing a later deadline for investment in a QOF, it can also be a potential trap. If a taxpayer were to recognize gain from the sale of business property and unwittingly make a QOF investment before year-end, that investment would not be eligible for any QOZ tax benefits.
2. Flow-Through Entities. When capital gain is recognized by a flow-through entity (e.g., an entity taxed as a partnership or an S corporation), either the entity itself may invest that capital gain in a QOF, or (in the event that the entity elects not to so invest) the entity's owners may directly invest their respective shares of the capital gain in QOFs. Where a flow-through entity invests in a QOF, normal rules relating to the 180-day window apply. Where an owner invests, however, their 180-day window begins on the last day of the flow-through entity's taxable year (though an owner may make an election to use the 180-day window of the flow-through entity).

THE SIGNIFICANCE OF DECEMBER 31, 2019

As stated above, in order to obtain the maximum 15% elimination of federal tax on deferred capital gain, a taxpayer must have held their QOF interest for 7 years by the time they are required to pay federal tax on that gain. The latest date that any taxpayer can defer tax on capital gain is December 31, 2026. Only QOF interests acquired on or before December 31, 2019 will satisfy the 7-year holding period on December 31, 2026. Therefore, under current guidance, it seems that taxpayers must invest in a QOF no later than December 31, 2019 to be eligible for the total maximum 15% federal tax elimination.

Taxpayers making QOF investments on or before December 31, 2021 would still be eligible for the 10% federal tax exclusion. Additionally, QOF investments made on or before December 31, 2028 will be eligible for the permanent exclusion from tax on the sale of those QOF interests, described above.

The foregoing rules create a tight timetable for most taxpayers hoping to maximize their QOZ benefits from the sale of business property this year. Those taxpayers have just one day—December 31, 2019—to achieve their desired tax results. Happy New Year's Eve!

11/13/19

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*Note that the above discussion is based upon QOZ rules currently described in proposed regulations, which may be modified when released in final form. Until such time, the Treasury Department has indicated that taxpayers may rely on these proposed regulations. If you have any questions about these QOZ rules or the QOZ program generally, please contact your Vorys tax attorney.*

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## [What You Need to Know About the New Opportunity Investment Draft Form.]

In October, the U.S. Treasury Department released a [draft form] designed to help it and the IRS collect information about how [opportunity zone investments] — a concept established by the 2017

Trump tax cuts — are affecting the economy. If implemented, it will gather data about whether these investments are living up to the project's original goal, which is to spur economic development in undercapitalized American communities.

**What Are Opportunity Zones?**

The opportunity zone concept comes from the Trump tax cuts — introduced in Congress as the Tax Cuts and Jobs Act (or TCJA) — passed in December of 2017. The zones are designed to encourage investment in areas that are federally certified as economically distressed.

Investors can sell stocks or other investments and assets and delay the capital gains tax they would normally pay on those investments, so long as they invest the proceeds into an opportunity zone. Profits made from projects in these zones can be written off entirely and results in reduced or no federal tax. These projects can include stock or partnership interests held in local businesses, as well as direct ownership of companies in opportunity zones.

The first set of opportunity zones, designated shortly after the passage of the tax breaks, only covered 18 states. Now, there are more than 8,700 opportunity zones across all 50 states — roughly 12 percent of all census tracts.

The opportunity zone investment idea was one of the few components of the tax cuts that were met with bipartisan support.

However, even the idea's supporters were concerns that the concept didn't have much in the way of guidelines. As the legislation was written, the IRS and Treasury were not required to collect information on where the opportunity zone investment money was going. It was not clear what sorts of projects were being constructed as a result of the tax break.

Treasury outlined new regulations on opportunity investment since the spring. There has also been pressure from Congress. The draft form comes after a bipartisan group of lawmakers — including presidential candidate Cory Booker — introduced legislation that would require the IRS to collect information about opportunity zone investment. It's not clear when the bill will be voted on, but the Treasury has already moved to start collecting information about opportunity zone investments.

**Breakdown of the Opportunity Investment Draft Form**

The draft form is designed for the 2019 tax year, but it's not clear when Treasury will begin requiring taxpayers to disclose this additional information about their opportunity zone investments. The form primarily requires corporations and partnerships to do so.

Under the form, corporations and partnerships would be required to report employer identification numbers for each business in which they hold stock or partnership interest. They would also be required to report the census tract number the investment is in, as well as its overall value.

The form would also collect information about businesses in which corporations and partnerships hold a direct stake.

Because no instructions have been published for the form yet, it's not clear what noncompliance will mean for taxpayers. The IRS may [leverage a penalty or fine] if a corporation or partnership fails to properly disclose all its opportunity zone investments.

Treasury noted that the information collected as a result of the draft form would be available to lawmakers.

**What Investors Need to Know About Opportunity Zones**

It’s not clear when the IRS will begin requiring taxpayers to report additional information about their opportunity zone investments. The draft form is designed for the 2019 tax year, but taxpayers may not have to worry about providing more details just yet.

Lawmakers, in the meantime, will likely continue to push for stricter regulations on opportunity zones and look to pass laws that require the IRS and Treasury to ensure compliance with the provisions established under TCJA.

**Tech Bullion**

By Kayla Matthews

November 14, 2019

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## Fitch Ratings: U.S. Water Utilities' Financial Profiles Strengthen

Fitch Ratings-Austin-11 November 2019: Net margins accelerated for U.S. water utilities over the last year while sector leverage declined, according to a new report from Fitch Ratings.

Surplus cash flows climbed to 135% of annual depreciation in the current median cycle as revenues expanded over 5% and expenses were held in check. Most of the revenue growth occurring continued to come from rate adjustments. Water sales were marginally positive while sewer flows were flat, similar to recent results. ‘Revenue growth is expected to continue expanding at about 3% annually based on planned adjustments, with revenue volatility sufficiently mitigated by residential rate structures that typically recover 40% of charges from fixed components,’ said U.S. Public Finance Managing Director Doug Scott.

With the current medians, sector debt service coverage reached its highest levels observed by Fitch. Strong operations and robust reserves allowed the sector to utilize more pay-go funding for capital, which in turn drove virtually all debt metrics lower. Despite some drawdown of cash balances, liquidity levels continue to be among the highest seen and are more than 55% above those a decade ago, providing a significant degree of flexibility to utilities in managing their business.

Capital spending dipped to a four-year low of around 130% of depreciation, but was sufficient to maintain the age of facilities. The drop in capital deployment appears to be relatively short-term as utility capital projections for the next few years jumped around 20% relative to the last medians. ‘While planned outlays have increased, sector leverage is expected to remain relatively unchanged given two-thirds of capital funding is anticipated to come from available resources,’ said Scott.

Fitch’s ‘2020 Water and Sewer Medians’ is available at ‘www.fitchratings.com’

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Additional information is available on www.fitchratings.com

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## Why Is It So Hard to Access Performance and Financial Data in Munis?

Issuers look to the municipal bond market to refresh our nation's infrastructure, but who will update the municipal bond market's obsolete data infrastructure? Almost 20 years into the new century, the functional systems for identifying issuers and their performance are still being served up with 20th century technologies. To move the market forward, we believe that market participants, including regulators, adopt the best of breed technologies from other markets. The first step forward is to build a consortium of private, nonprofit, and academic interests who have been promoting alternative systems for identifying, indexing and analyzing capital market data.

**The "who's who" is important**

Associating securities with standard issuer identifiers makes it easier for investors to track exactly who owes what. In the municipal market, we often rely on the first six positions of the CUSIP number to identify issuers — but this 1960s-vintage technology is no longer fit for purpose.

CUSIPs have a total of nine positions, but the last position is a so-called check digit used to verify that there are eight characters do not contain a typo. So, for any given issuer, only the seventh and eighth positions can be used to uniquely identify a given bond. Since those positions can be filled with either letters or numbers, there is a theoretical maximum of 36*36=1296 CUSIPs per issuer . Since municipal bond issues often contain a dozen or more serial bonds and since CUSIPs are not reused after maturity, bigger issuers can easily exceed this limit.

Continue reading.

By Mark Campbell

BY SOURCEMEDIA | MUNICIPAL | 11/13/19 12:25 PM EST

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## New Jersey Edges Toward First Public Bank to Bypass Commercial Lenders.

- **North Dakota is only U.S. state to own bank; it opened in 1919**
- **State-run bank would be 'a force for good,' Murphy says**

New Jersey Governor Phil Murphy took a first step toward the potential creation of a state bank that would encourage some loan seekers to bypass commercial lenders.

Murphy, a retired Goldman Sachs Group Inc. senior director, signed an executive order on Wednesday creating a panel to study how to establish the bank, as he had promised prior to taking office in January 2018. A report is due in 12 months.

"I still believe in the ability of a public bank, owned by the people of New Jersey, to be a force for good," Murphy, a first-term Democrat, told an audience Wednesday in Newark.

Such an institution would keep cash in state, Murphy said. Loans likely would be at rates lower than those from commercial banks, contributing to economic growth, he said.

North Dakota is the only U.S. state that permits such an institution, whose risk is shouldered by taxpayers. California Governor Gavin Newsom last month signed legislation allowing counties and municipalities to form public banks.

"We want to work with community banks," Murphy said. "But it turns out a lot of those dollars go to money-center banks, including non-U.S.-headquartered banks."

**Bloomberg Politics**

By Elise Young

November 13, 2019, 9:51 AM PST

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## MSRB Proposes Enhancements to EMMA Website.

The MSRB proposed amending the organization's Electronic Municipal Market Access ("EMMA") system to more prominently display certain financial disclosures and related information.

Under the proposal, the Security Details pages of EMMA would provide, among other things:

- a link to annual financial information disclosures and/or the most recent fiscal period's audited financial statement;
- a calculation of the number of days between when the first disclosure was posted for the fiscal period and the financial period's end date for the same disclosure.

In an FAQ, the MSRB also provided information on how the information as to the timing of disclosure will be presented.

**Cadwalader Wickersham & Taft LLP**

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## Proposed Changes to Wisconsin Tax Incremental Financing Laws Could Harm Extra Collateral to Development Loans.

When lenders finance commercial real estate development in Wisconsin, part of the total financing "stack" is often TIF, or Tax Incremental Financing. In essence, TIF is financing provided by the local municipality to help facilitate the project's completion, in return for the local municipality receiving future tax revenues from the new development, after the initial investment is paid back.

TIF grants are often required to bring the property up to the point of being developable, including extending water and sewer lines to the property, expanding roadways and intersections, and resolving contamination or drainage issues. While extending utilities or improving roadways should be the municipality's job, at its expense, municipalities just do not have the tools to do this work, especially with levy limits in place and very little federal or state infrastructure funding.

TIF financing has been the workhorse for economic development for years, and is used by cities, villages and towns all over the State, large and small. The State of Wisconsin Department of Revenue TIF page provides detailed, up-to-date information on each TIF in a clear and transparent way.

One of the major benefits of TIF law is it allows local municipalities to determine exactly what is needed for their community, including how to tailor the TIF plan, and any development agreement with a developer to the facts of the specific project at hand: as well as phasing parts of the project; determining what preconditions the developer must meet before it receives any TIF money; and allowing the developer to assign the stream of money payments to a lender as extra collateral for a construction loan.

Over the last several years, a small group of lawmakers in the State Legislature has introduced bills to severely limit the use of TIF. In the last few weeks, another effort began to severely limit TIF in a number of ways.

If you are a bank that lends on new development, you ought to be aware that lending regulations will only permit you to lend a percentage of the total project costs, and the TIF financing is used to fill the "gap" in funding to pay for many of these municipal and infrastructure improvements. If TIF is not available to fill this gap, current regulations may not allow you to lend sufficient funds to make the project happen.

Several trade groups in the real estate field are working to educate legislators on the risks to development and to Wisconsin's ability to be competitive with surrounding states, as well as the benefits of keeping TIF as a necessary tool.

November 11 2019

**Michael Best & Friedrich LLP – Nancy Leary Haggerty**

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## New Report Shows Some States Are In Terrible Financial Shape.

By Jose Nino, includes "… The bottom three states — Connecticut, Illinois, and New Jersey — have the highest debt burden per taxpayer. … These states are also known for having forced unionization, sub-optimal tax policies, bad environments for starting a business, and their lack of affordable housing options thanks to heavy land-use restrictions. None of these are policy coincidences. …"

Read the full article on: Advocates for Self-Government

Jose Nino | November 14, 2019

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## Learnings from the Private Sector for Local Government Operations.

**The concept of public private partnership is nothing new and you will often see a strong presence of private companies in local, state and federal government operations – including IT, public finance consulting, wealth management, HR and many other areas**

**where public finance relies heavily on the industry experts from the private sector.**

These partnerships are often formed either because there isn't enough in-house knowledge/expertise to take on the project or simply because the private sector has already completed similar projects for other jurisdictions and has the experience to complete the work. For example, let's assume that a local government is looking to raise capital to build a public library. Many of the local and state government will hire the right private sector partners to see the project to fruition, from the municipal advisor to the bond counsel to the fixed income underwriters.

It's quite evident that, given the business potential, there are many private companies that are rapidly changing their business models to include and go after local government business pretty aggressively. However, you may also hear the term "red tape" often used when describing the local government operations, or government operations in general, which simply means "excessive bureaucracy or adherence to rule and formalities".

In this article, we will take a closer look both at private sector involvement in local government operations and learnings for local governments from the private sector.

Continue reading.

**municipalbonds.com**

by Jayden Sangha

Nov 13, 2019

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**TAX . - GEORGIA**

## B.C. Grand, LLC v. FIG, LLC

**Court of Appeals of Georgia - October 29, 2019 - S.E.2d - 2019 WL 5558651**

Property owner filed action against purchasers of tax executions for delinquent ad valorem taxes on property, asserting claims for negligence, unjust enrichment, conversion, and conspiracy, alleging that purchasers bought tax executions on property to collect higher interest amounts and penalties than were due because executions were based on initial tax assessments that were later reduced.

The trial court granted purchasers' motions to dismiss for failure to state claim. Property owner appealed.

The Court of Appeals held that:

- Tax executions were validly issued, and
- Property owner failed to establish that purchasers were not authorized to levy executions and demand payment.

Tax executions for delinquent ad valorem taxes on property were validly issued by County Tax Commissioner, where property owner failed to pay taxes after 30-day notice period while pursuing appeal of assessment and awaiting refund.

Property owner failed to establish that purchasers of validly issued tax executions for delinquent ad valorem taxes were not authorized to levy executions and demand payment, in property owner's action against purchasers, asserting negligence and other claims; property owner failed to allege that County Tax Commissioner cancelled tax executions, or that tax executions were void as a matter of law based on post-issuance reduction in tax assessment.

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## [CDFA // BNY Mellon Development Finance Webcast Series: Sourcing Local Capital for Community Projects]

**Tuesday. December 17, 2019 . | . 1:00 PM Eastern**

Click here to learn more and to register.

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## Moore: Michigan Cities Not Ready to Endure Another Long-Lasting Recession

Are Michigan's cities ready for the next recession? Simply put, no. For several years now the Michigan Municipal League, through our SaveMICity initiative has been sounding the alarm that we need to take steps to fix our municipal finance system.

It is an obsolete and dysfunctional system that doesn't track with the economy, and we need to take some major strides soon to build a system that works before the next recession hits.

Historically Michigan is the first in and the last out of a recession, but what we never experienced before was the apocalyptic declines that occurred during the last recession. It exposed the flaws in our system in a deep and painful way, and we have done nothing to correct it.

The fact is that Michigan was already hurting from the effects of a national downturn before the last recession. Median household income in the Great Lakes State was at its highest point in 1999, where the average household was earning approximately $67,000 per year.

Michigan's median household income has never truly recovered — in 2018, median household income in Michigan is still only $57,000 per year — and shows no signs of returning to its previous high in 1999.

Like it or not, an economic recession in Michigan is inevitable. The short and long-term effects damage our communities, and by extension negatively impact our residents and business.

Attraction and retention is ever more difficult if communities aren't thriving. Michigan's leaders need to cut through the partisan gridlock and realize that our cities are not prepared to endure another long-lasting recession.

Our lack of preparation could be a fatal mistake for our state's economy. We need to be focused on real solutions to solve the financial stresses facing our own backyards.

Our challenges are many, but not insurmountable. We believe Michigan and its economy can only be as strong as its communities. It is the very foundation of everything from schools to neighborhoods, storefronts to offices. They all need a strong and vibrant community to thrive.

We must act now to position ourselves differently. Not just for the next recession but for generations to come. Our current system cannot do that.

Aging infrastructure and skyrocketing growth in legacy costs, such as health and retirement benefits for current employees and retirees, constrain a community's ability to invest in critical services that are important to current and prospective residents.

We should change existing laws to discourage wasteful duplication of infrastructure and services and equip local governments with tools to modernize the delivery of legacy benefits.

The state must reverse nearly two decades of disinvestment in our communities and begin restoring revenue sharing. The $8.6 billion diverted to state programs and away from local services is a bad investment.

Additionally, Michigan places far too many restrictions on local municipalities' revenue-generating options. These rules significantly limit a community's ability to invest in itself.

We should provide more options for communities to fund critical services, including additional special assessment authority, expansion of local taxing authority and grants for public safety.

Property taxes are the largest source of revenue for local government services, but Michigan's current system doesn't allow for property taxes to rebound after a recession.

We need lawmakers to decouple Proposal A and Headlee to allow local governments to grow with the economy when times are good. These laws are antiquated and are our single biggest vulnerability in a recession.

More importantly, they no longer work or deliver value to cities, townships and counties across Michigan and are an impediment to a strong Michigan.

We're encouraging leaders across Michigan to take action, such as the possible solutions mentioned above to ensure that a future impending recession doesn't have a catastrophic impact.

It is a problem we can solve, but only if we come together and are willing to admit the status quo is our enemy and we begin to invest in a better future for Michigan.

**Crain's Detroit Business**

by Brenda F. Moore

November 17, 2019

*Brenda F. Moore is president of the Michigan Municipal League Board of Trustees and mayor pro tem for the City of Saginaw.*

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## [WEBINAR – Are State and Local Governments Prepared for the Next Recession?]

**Wednesday, Jan 29, 2020 . | 2:00 PM – 3:30 PM EST**

Online only

[Click here] to learn more and to register.

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## [Clinton Township Found Liable in Religious Land Use and Institutionalized Persons Act Lawsuit.]

The Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA") is a federal law which establishes certain land use protections for religious organizations in connection with land use decisions—such as decisions related to permitting under ordinances—made at the local government level.

On July 24, 2019, the United States District Court for the Eastern District of Michigan granted summary judgment to a religious organization, River of Life Ministries ("River of Life"), in a RLUIPA lawsuit brought by River of Life against Clinton Township.

**Background of the Case**

In 2001, River of Life's pastor acquired property located in Clinton Township. The property is located within a "Multiple-Family Low Rise District" zone pursuant to Clinton Township's Code of Ordinances that governs the use and development of real property located within the township.

The zoning district at issue is intended to promote the development of multiple-family dwelling structures. However, the court found that other uses in the district—outside of "Multiple-Family Low Rise District"—are permitted by Clinton Township as a matter of right, without the need to obtain a special land use permit.

In the court's order granting River of Life's motion for summary judgment, it explained that publicly-owned libraries and parks, municipal buildings, and swim clubs, among other things, are allowed to locate and operate within the district as a matter of right. Houses of worship, however, must acquire a special land use permit.

In 2014, River of Life applied for a special land use permit from Clinton Township. In June of 2015, the township board denied the permit request.

In July of 2015, River of Life brought suit alleging, among other claims, that Clinton Township's zoning ordinance violates the "Equal Terms" provision of RLUIPA because, by requiring houses of worship such as River of Life to obtain a special land use permit, it treats religious uses of property on less equal terms than other, non-religious uses.

**The Court's Decision**

On July 24, 2019, the court entered an order granting summary judgment on River of Life's RLUIPA claim, finding that the Clinton Township zoning ordinance treats churches less favorably than others who are entitled to operate schools, libraries, swim clubs, and other non-religious organizations as a matter of right within the district.

The court held that the Clinton Township zoning ordinance "fails to treat religious uses on equal terms with comparable nonreligious uses." It is important for municipalities to consider whether their land use ordinances and practices may give rise to lawsuits under RLUIPA because a judgment can result in significant liability, including a prevailing plaintiff's legal fees. With proper planning and preparation, however, municipalities can avoid, and, if necessary, defend against these claims.

November 14 2019

**Foster Swift Collins & Smith PC – Laura J. Genovich**

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## Building a Data-Driven Future: Digital Cities 2019 Revealed.

**The winners of this year's Digital Cities Survey from the Center for Digital Government are those making smart investments in technologies from infrastructure and citizen engagement to data storage and cybersecurity.**

This past year could be dubbed "the year of the refresh" for the winners of the 2019 Digital Cities Survey, presented by the Center for Digital Government.*

The IT leaders and elected officials of these top cities have braced themselves for the next decade by leveraging vendor solutions, identifying infrastructure upgrades and making government-wide changes to philosophy. Many of these initiatives were implemented during the past year, but other winners have thrived on existing foundations in IT operations.

None of these winning cities wants to be hindered by hindsight, and they share the belief that the user, whether it be a city resident, business owner or passing tourist, should be the guiding factor in the deployment of new or emerging technologies.

Continue reading.

GOVERNING.COM

BY PATRICK GROVES, GOVERNMENT TECHNOLOGY | NOVEMBER 16, 2019 AT 3:01 AM

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## Washington, D.C. Joins Muni Selling Spree With Record Bond Deal.

- **City is selling about $1 billion of bonds on Wednesday**
- **Muni sales increase 20% this year as interest rates fall**

Washington, D.C., is planning its largest-ever bond sale on Wednesday, joining state and local governments that are inundating the market with debt to seize on interest rates that are holding near a more than half-century low.

The nation's capital plans to sell about $1 billion of bonds to refinance outstanding debt and pump some money into a community revitalization project. It comes amid a flood of activity from municipalities that's pushed the amount of bond sales this year to $338 billion, a 20% increase over the same period last year, according to data compiled by Bloomberg.

Washington's finances have benefited from the city's economic boom, marking a stark shift from the period when its chronic fiscal strains left it under the control of a federally appointed management board from 1995 to 2001. Its population has swelled by about 17% since 2010 and its median household income of about $78,000 a year is some $20,000 more than the broader U.S.

The improvement has been recognized by Wall Street. S&P Global Ratings grades the new tax-backed securities AAA. Moody's Investors Service rates the bonds at its second highest level, one step below the city overall.

The city is utilizing that standing to make changes to "an unusually strong set aside structure" in its bond contracts that has required the city to put cash in escrow to make interest and principal payments nearly a year before they are due, according to Moody's analyst Nicholas Samuels. With that change — which Moody's expects to occur by 2021 — the city will set aside funds just four months ahead of payments.

District of Columbia bonds trading in line with AAA benchmark
These changes could free $80 million or more for the city, said Bruno Fernandes, Washington's deputy chief financial officer and treasurer.

"We've been wanting to take advantage of our ratings," said Fernandes. "That's really why we took the time to modernize the agreement. There's been some drastic changes in terms of improvement of the district and improvement of the credit rating."

A $944.8 million chunk of the bond sale is tax-exempt and will be used to refinance some of the city's outstanding debt and pay for projects, according to documents released ahead of the offering. The remaining $60 million will be taxable, with some set aside to revamp public housing facilities and provide those communities with increased social services.

The district is selling the bonds in an environment of high demand from investors, who have dumped record amounts of cash into the municipal market as the cap on state and local property deductions leaves some investors looking for other ways to shelter their income. Municipal-bond mutual funds have seen an influx of $54.1 billion over a 44-week period this year, shattering a record set over a 64-week stretch between 2009 and 2010, according to Refinitiv Lipper.

The Washington bonds could be attractive for investors looking for security as the record-long economic expansion raises speculation about when the next recession will occur, said Karel Citroen, the head of municipal-bond research at Conning. Similar bonds offered by the district last traded at an average yield of 1.56%, four basis points below the top-rated benchmark, according to data compiled by Bloomberg.

There's a strong argument for looking at "high credit quality munis, especially at this part of the cycle when you want to put your money somewhere you're going to feel safe," Citroen said. "It's very good to look at what credits you believe are well positioned during the next downturn."

**Bloomberg Markets**

By Fola Akinnibi

November 12, 2019, 5:00 AM PST

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## [This Tax-Free 5.1% Dividend Is Hiding In Plain Sight.]

I'm going to show you my favorite (perfectly legal) way to pay *0%* tax on your dividend income.

To show you the big savings this could mean, let's look at two fictional investors who are nearing retirement: Jane and Janet.

We'll assume both are single, are earning $50,000 per year and live in a state with no income taxes. Now let's assume Janet has taken the so-called "right" path, as suggested by her financial advisor, while Jane has steered her own course. A quick look at both will show how that "right" path can create a hefty tax problem.

Let's say Janet put a million dollars in the Vanguard S&P 500 ETF (VOO) because she's been told that a low-cost index fund is best for retirement. VOO is giving her $14,100 in annual dividends as a result, but because Janet is still working, she'll have to give Uncle Sam $1,864 in taxes on her dividends for just one year—and that doesn't include tax she'll pay when she eventually sells her shares.

Over to Jane. Instead of following the herd and buying VOO, she's put her million in a lesser-known fund called the Nuveen Municipal High Income Opportunity Fund (NMZ), which pays a 5% dividend yield, giving her an income stream of $50,000 from her investment. Not only is her nest egg now *entirely* replacing her work income, but she's also getting *all* of it.

That's right. Of that $50,000 a year NMZ is giving Jane, zero is going to Uncle Sam. And it doesn't matter if she gets a promotion at work and makes more, or if NMZ starts paying her more (which it did for its shareholders at the start of the year; more on that later).

She will not have to pay *any* of her income from this fund to the tax man.

Of course, the more Janet gets paid, the more taxes she'll have to pay out. If her work pay rises 20%, for instance, the tax on her dividends will climb to $2,115 per year, meaning her tax burden has gone up by almost as much as her raise!

**Municipal Bonds: Your Tax-Free Income Option**

Municipal bonds, the investments NMZ holds, are popular because they're one of the few ways Americans can legally get paid without having to pay taxes. It's all thanks to a 1913 law exempting municipal bonds from federal income tax. Since then, investors have been using "muni" bonds to generate a high income stream—and keep all of it.

**Dispelling the Biggest Muni Myth**

How popular are muni bonds? Right now, the market is worth nearly $4 trillion in the US, which is about 13% of the size of the total stock market. Considering municipalities aren't in the business of making a profit, it's surprising that muni bonds are as big as they are.

While many muni bonds are gobbled up by wealthy investors looking to cut out the tax man, the middle class often ignores them. One reason why is fear: headlines about municipalities going bankrupt and leaving investors in the cold result in paranoia—and many bad investment decisions.

Here are the facts: according to Moody's, the total default rate of muni bonds since 1970 is 0.09%. In other words, for every 10,000 muni bonds issued, nine go into default. Put another way, you're 1,442 times more likely to get in a car crash than to hold a muni bond that defaults.

**The Power of Diversification**

Here's another crucial point: when a municipality defaults, it doesn't mean investors get nothing. In reality, municipalities will restructure their debts on new terms, which could mean a small loss for bondholders. But one way to limit this risk even further is to hold a fund like NMZ.

With $1.5 billion in assets, NMZ can diversify across many bonds (it currently holds 598 of them) to slash the risk of being exposed to a default.

This doesn't just make NMZ safer, it's also made the fund's returns impressive. Thanks to NMZ's unique market access and expertise, it's crushed a muni-bond index fund like the iShares National Muni Bond ETF (MUB).

It's rare to get superior returns *and* greater safety, but NMZ delivers both.

**Finally, a Word on Rates**

There's one last reason why Jane would be smart to buy NMZ: the Federal Reserve.

In 2019, the Fed cut interest rates three times, which has had two effects on muni bonds. The first is that they're more attractive to investors than before. From 2015 to the start of 2019, when the Fed was raising interest rates, muni bonds were struggling to make headway.

There are two reasons why munis stalled in this period: first, many investors thought they could get higher income streams elsewhere as rates rose. Second, and more important, bonds fall in value as interest rates go up, which meant the resale value of these bonds dropped with the Fed's aggressive rate-hike cycle.

Fortunately, the opposite is also true: lower rates mean muni bonds go *up*, which is why you see that huge hockey stick at the end of the chart above. It's also why NMZ raised its dividend earlier in 2019, and why it may raise it again. The Fed's aggressive rate cuts have been a blessing for munis this year, and with the central bank likely to continue lowering rates, that hockey stick will get bigger.

**Forbes**

by Michael Foster

Nov 12, 2019

*Michael Foster is the Lead Research Analyst for Contrarian Outlook. For more great income ideas, click here for our latest report "Indestructible Income: 5 Bargain Funds with Safe 8.5% Dividends."*

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- FINRA Files for 4210 Effective Date Extension to March 2021.
- MSRB Proposes Changes to Content Outline for Muni Principal Exam.
- S&P Proposed Methodology For Rating U.S. Public Finance Rental Housing Bonds ***and*** S&P Request for Comment: Methodology For Rating U.S. Public Finance Rental Housing Bonds.
- S&P Credit Conditions: In The Mist Of Mixed Economic Signals, U.S. State And Local Credit Quality Remains Strong
- Are Taxable Advance Refundings Leaving Money On The Table?
- Fitch North American Project Finance: Lessons Learned
- *Long v. Development Authority of Fulton County* – Court of Appeals holds that hotel, office, and retail portions of project for which attorney general filed petition for validation of revenue bond authorized for issuance by county development authority were authorized under catchall provision of statute identifying projects that development authorities can finance.
- And finally, You Poor, Poor Bastard is brought to us this week by *City of Alpharetta v. Hamby*, in

which Toby Hamby sued the city after he fell from atop an 18-foot retaining wall hidden in the woods, sustaining serious injuries. What was he doing in the woods, you ask? Dealing with a medical emergency. Would the court be good enough to gloss over or otherwise euphemize the medical issue in question. It would not. "Hamby was driving home when he experienced a sudden bout of colitis and soiled himself. He exited the highway at Mansell Road in Alpharetta looking for a place to clean up." We've all seen our share of pharmaceutical ads, but nothing could possibly be more effective than, "If you or a loved one have experienced a catastrophic fall with your pants down while covered in fecal matter, you might want to ask your doctor about *bunghola."*

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**MUNICIPAL GOVERNANCE . - ALABAMA**

## Melton v. Bowie

**Supreme Court of Alabama - October 25, 2019 - So.3d - 2019 WL 5485271**

Mayor brought action against city council members, in their official capacities, for a declaration that city ordinance giving the council power to appoint the city's tax collector, chief of police, and chief of the fire department, which was an ordinance that the council passed over the mayor's veto, violated state statute on powers of municipal mayors, and mayor sought preliminary and permanent injunctions preventing the implementation of the ordinance.

The Circuit Court granted council members' motion to dismiss for failure to state a claim. Mayor appealed.

The Supreme Court held that ordinance did not violate statute on powers of municipal mayors.

City ordinance giving the council power to appoint the city's tax collector, chief of police, and chief of the fire department did not violate statute on powers of municipal mayors; statute provided that mayors had the power to appoint officers whose appointment was not otherwise provided for by law.

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**UTILITIES . - ARIZONA**

## Contreras Farms Limited LLC v. City of Phoenix

**Court of Appeals of Arizona, Division 1 - October 29, 2019 - P.3d - 2019 WL 5556333**

After city denied developer's request for an extraction appeal to challenged city's decision to require installation of a water main on property on which it planned to build a charter school, developer sought declaratory relief and damages.

The Superior Court granted city's motion for summary judgment. Developer appealed.

The Court of Appeals held that developer was not entitled to an extraction appeal.

Water main requirement in city ordinance was a legislative act that did not afford a city official or agency discretion to determine its nature or extent, and thus developer was not entitled to an extraction appeal of city's decision to require installation of a water main on property on which it planned to build a charter school; water main requirement in city ordinance was subject to only one interpretation, that an owner seeking to develop property was required install water mains along each street that bounds the proposed development.

**ZONING & PLANNING - CONNECTICUT**

## Wozniak v. Town of Colchester

**Appellate Court of Connecticut - October 29, 2019 - A.3d - 193 Conn.App. 842 - 2019 WL 5538240**

Property owners brought action against town, seeking a writ of mandamus to compel town to file a Letter of Map Revision (LOMR) to the Federal Emergency Management Agency (FEMA) to correct alleged error on flood map, and alleging inverse condemnation, and negligence.

The Superior Court granted town's motion for summary judgment. Property owners appealed.

The Appellate Court held that:

- FEMA's pending field study of body of water did not render moot property owners' appeal;
- No physical change affecting flooding conditions had occurred on property owner's property;
- Determination by town that no practicable alternatives existed to revising boundaries was discretionary; and
- Property owners were permitted to file LOMR individually.

Federal Emergency Management Agency's (FEMA) pending field study of body of water did not render moot property owners' appeal of trial court's dismissal of property owners' action seeking mandamus to compel town to submit Letter of Map Revision (LOMR) application regarding body of water; order of mandamus had potential to provide more expeditious resolution of mapping issue than FEMA's pending field study, which had unknown terminal date.

No physical change affecting flooding conditions had occurred with respect to property owners' property, and thus town had no duty to initiate Letter of Map Revision (LOMR) application to Federal Emergency Management Agency (FEMA) on property owners' behalf for purported map inaccuracy relating to body of water.

Determination by town that no practicable alternatives existed to revising boundaries of previously adopted floodway was discretionary, and thus, town had no ministerial duty to file Letter of Map Revision (LOMR) to Federal Emergency Management Agency (FEMA) on behalf of property owners to correct alleged inaccuracy relating to body of water.

Property owners were permitted to file Letter of Map Revision (LOMR) to Federal Emergency Management Agency (FEMA) individually to correct alleged inaccuracy relating to body of water, and thus, precluded need for mandamus relief to compel town to file LOMR on property owners' behalf.

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**BOND VALIDATION . - GEORGIA**

## Long v. Development Authority of Fulton County

**Court of Appeals of Georgia - October 30, 2019 - S.E.2d - 2019 WL 5588765**

County district attorney filed petitions for the validation of three revenue bonds authorized for issuance by county development authority.

After granting motion to intervene and denying intervenor's motion for a continuance, the Superior

Court entered final orders validating the bonds for all three portions of the project. Intervenor appealed.

The Court of Appeals consolidated appeals and held that:

- Petitions substantially complied with statutory requirement to set forth the purpose for which the bonds were to be issued;
- Hotel portion of project was properly evaluated under catchall provision of statute identifying projects that development authorities can finance, rather than under provision governing hotels constructed in connection with and adjacent to convention, sports, or trade show facilities;
- Office portion of project was properly evaluated under catchall provision of statute;
- Retail portion of project was properly evaluated under catchall provision of statute;
- Leasehold valuation methodology set out in memoranda of agreement between development authority, county board of assessors, and companies, was appropriate; and
- Trial court did not abuse its discretion in denying intervenor's motion for a continuance of bond validation hearing to allow for discovery.

Petitions for validation of three revenue bonds authorized for issuance by county development authority substantially complied with statutory requirement to set forth the purpose for which the bonds were to be issued; each of the petitions stated that the bond proceeds were to be used to acquire, construct, and equip land, improvements, and related building fixtures and building equipment in county, to be leased to specific company for use as a mixed-use commercial facility and an economic development project.

Hotel portion of project for which attorney general filed petition for validation of revenue bond authorized for issuance by county development authority was properly evaluated under catchall provision of statute identifying projects that development authorities can finance, rather than under provision governing hotels constructed in connection with and adjacent to convention, sports, or trade show facilities; there was no evidence of a meeting room or any other convention facility being constructed with and adjacent to proposed hotel, but rather, adjacent space at issue was an outdoor area that would be free and open to the public, that would serve as a gathering space for the community, that could be rented for events in the evening, and that would help generate traffic at the mall.

Trial court properly evaluated office portion of project for which attorney general filed petition for validation of revenue bond authorized for issuance by county development authority under catchall provision of statute identifying projects that development authorities can finance; although there existed another provision specific to office projects, catchall provision also expressly authorized office projects, construing both provisions together, development authority had the power to proceed with an office project under either provision, and development authority expressly determined that it was proceeding under catchall provision, that project would be for the public good and general welfare of the county and state, and that project would be in furtherance of the public purposes.

Trial court properly evaluated retail portion of project for which attorney general filed petition for validation of revenue bond authorized for issuance by county development authority under catchall provision of statute identifying projects that development authorities can finance.

Leasehold valuation methodology set out in memoranda of agreement between county development authority, county board of assessors, and companies, was appropriate, for purposes of project for which attorney general filed petition for validation of revenue bond authorized for issuance by development authority; memoranda merely provided a formula utilized by the board for valuing the leasehold interests, and such methodology was not arbitrary or unreasonable.

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**IMMUNITY - GEORGIA**

## City of Alpharetta v. Hamby

**Court of Appeals of Georgia - October 25, 2019 - S.E.2d - 2019 WL 5538086**

Pedestrian, who fell over an 18-foot retaining wall and injured his right heel, left leg, shoulder, and back, brought a negligence action against city.

City filed a motion for summary judgment, which was denied, and the case went to trial. The trial court entered judgment on jury verdict awarding pedestrian $459,575. City appealed.

The Court of Appeals held that:

- City was immune from liability for its discretionary decision not to erect a barrier above retaining wall, and
- Pedestrian failed to establish that city’s failure to construct a barrier at the top of retaining wall constituted a defect.

Pedestrian failed to establish that city’s failure to construct a barrier at the top of retaining wall constituted a defect, as the term was used in statute imposing liability upon a city for defects in the public roads and municipal street system, in negligence action filed by pedestrian after he fell over an 18-foot retaining wall; there was no evidence showing the retaining wall was part of the physical road on which the general public traveled, and even assuming that the retaining wall was part of the physical condition of the road, expert testified that the structure of the retaining wall was sound.

Pedestrian failed to establish that the area where retaining wall was located was intended by city to be used by the general public such that city was required to keep it reasonably safe, in negligence action against city after pedestrian fell from 18-foot retaining wall; testimony showed that the retaining wall itself was not a sidewalk, expert admitted that there was no path along the side of the retaining wall for public use, and there was no evidence that the City intended for the area near the retaining wall to be used by the public.

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**IMMUNITY . - MISSISSIPPI**

## Reverie Boutique LLC v. City of Waynesboro, Mississippi

**Court of Appeals of Mississippi - October 29, 2019 - So.3d - 2019 WL 5566059**

Clothing store brought negligence action against city arising from damage caused by flooding sewage system.

The Circuit Court granted city’s motion for summary judgment. Clothing store appealed.

The Court of Appeals held that city was not immune under Mississippi Tort Claims Act from clothing store’s negligence action.

City was not immune under Mississippi Tort Claims Act from clothing store’s negligence action arising from damage caused by flooding sewage system, despite fact that creation of sewage system was within city's discretion, where claim was based on allegation of a simple act of negligence, not a consideration of public policy.

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**ZONING & PLANNING - OHIO**

## Shelly Materials, Inc. v. City of Streetsboro Planning and Zoning Commission

**Supreme Court of Ohio - November 5, 2019 - N.E.3d - 2019 WL 5699511 - 2019 -Ohio- 4499**

Mineral lessee sought review of city zoning and planning commission's denial of its application for a conditional use permit for surface mining of sand and gravel in a rural-residential district.

The Court of Common Pleas reversed. Commission appealed. The Court of Appeals reversed. Lessee appealed.

The Supreme Court held that Court of Appeals exceeded the scope of its review by addressing the credibility of lessee's expert appraiser.

Court of Appeals exceeded the scope of its review in zoning appeal involving a dispute about grant of a conditional use permit for surface mining of sand and gravel in a rural-residential district, where Court of Appeals reversed common pleas court's judgment on the basis that city zoning and planning commission had a justifiable reason to reject the opinion of applicant's expert appraiser; this was a question concerning the weight of the evidence to be given to an expert's opinion, and Court of Appeals had no authority to second-guess the decision of common pleas court on questions going to the weight of the evidence supporting the commission's findings.

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## America's Housing Crunch Is So Bad It May Hurt City Bond Ratings.

- **Moody's foresees long-term impact if problem keeps worsening**
- **San Francisco approves $600 million bond for affordable homes**

Not only is the shortage of affordable housing and the number of homeless on America's streets a social and public policy crisis, it's increasingly becoming a risk for municipal-bond buyers as residents of high-cost cities struggle to make ends meet.

Home prices are up 33% nationwide over the past five years and the homeless population increased in Los Angeles, New York City and the Seattle metro area between 2014 and 2018, according to a report from Moody's Investors Service. Failure to deal with these changes puts local governments's bond ratings at risk as residents move to cheaper jurisdictions, spend less and use more social services.

It's an issue that has a growing importance for investors in the $3.8 trillion municipal-bond market, especially those with long-term horizons like life-insurance companies. That's because bad economic development policies and housing stresses can factor into decisions to buy a bond or not, said James Lyman, director of research for the municipal fixed-income team at Neuberger Berman.

"This has been evolving more quickly as a credit factor in recent times," Lyman said. "It really depends on the type of client, the duration of the bond you're buying and the speed at which the problem is evolving."

The rising cost of living in America's major cities isn't posing much of an immediate risk for investors, with governments including San Francisco, Los Angeles County and New York City all winning bond-rating upgrades as the rising values increase property tax revenues that are one of their biggest sources of cash. But widening inequality could pose a challenge if it continues to run its course over the next decade, particularly in places like California where housing already eats up a large share of residents' incomes.

Related: America's Worst Housing Market Is Desperate to Find More Supply

The growing problem has pushed municipalities to try addressing these issues. San Francisco residents Tuesday approved selling $600 million of bonds to pay for public housing rehabilitation and the purchase of new affordable housing units, according to preliminary results, seeking to address the city's increasingly visible homelessness epidemic.

University campus housing expansion and hospital housing for the homeless have also emerged as options to stem the housing issues, according to Moody's.

**Bloomberg Markets**

By Fola Akinnibi

November 6, 2019, 10:35 AM PST

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## [Muni Bonds Contain New Fine Print: Beware of Climate Change]

**The underwriters of municipal bonds are disclosing more about cities' exposure to higher temperatures and rising seas.**

Investment banks have begun quietly sounding alarm bells about climate change. Their worries are showing up in the documents that accompany municipal bonds they underwrite.

When state and local governments issue debt, federal securities laws hold their bankers accountable for making sure that states and cities adequately disclose the risks bond buyers are taking on. These might include any lawsuits a town is facing, or how the sales taxes used to pay back bondholders could fluctuate in a recession. Now many of these documents include language about climate change, hurricane risks, and rising seas. "Every bank should be asking their clients about this risk," says Christopher Hamel, a senior fellow at Municipal Market Analytics and former head of municipal finance at RBC Capital Markets.

Bloomberg News analyzed more than a dozen due diligence questionnaires prepared by banks or legal counsels and sent to governments in coastal Florida, and over 40 official statements for prospective bond investors. About half of the questionnaires and the majority of the statements included language on storm-related risks or climate change. The questions about climate risk sometimes come from the banks or their lawyers, and sometimes from disclosure counsels who are hired by cities to prepare for a bond deal.

During the preparations for Jacksonville's sale of $197 million in bonds in August, a disclosure counsel asked if the city had long term plans to implement projects that increased resilience against storm related risks. Questions like that are new, says Randall Barnes, the treasurer of Jacksonville, Florida's largest city. "We had been asked about impacts of hurricanes before, but not specifically on what we are doing for the future," he says.

Scientists predict that global warming and rising seas could lead to more intense storms such as Hurricane Maria, which devastated Puerto Rico in 2017. Tidal flooding—already happening in Miami Beach and other cities—could force residents to move inland. BlackRock Inc. says that within a decade, more than 15% of debt in the S&P National Municipal Bond Index will come from regions that could suffer average annualized losses from climate change of as much as 0.5% to 1% of their gross domestic product.

The questions asked by the banks or legal counsels in the documents Bloomberg reviewed varied in specificity. For example, before JPMorgan brought $162 million in bonds to market for Miami Beach, one of its counsels asked the officials to answer three questions that directly address climate change and its effects on the city's financial health. The Florida Keys Aqueduct Authority was asked by Citigroup to explain the impact of Hurricane Irma on the utility system. Michael Carlson, JPMorgan's head of public finance infrastructure, says that the climate discussion is "very much a part of our due diligence," and he's seen an "exponential increase" in disclosures in recent months.

Thomas McLoughlin, head of munis at UBS Financial Services, says the turning point in awareness came when Superstorm Sandy hit the New York area in 2012. As the storm forced the Hudson River into the streets and subways of lower Manhattan, Wall Street financiers saw first-hand the damage those types of events could do to cities' infrastructures, most of which are financed by muni bonds. McLoughlin says concern was elevated in the last two years as fires ravaged California and hurricanes slammed the East Coast.

Climate risk isn't necessarily showing up in muni bond pricing yet—communities that that are more susceptible to these hazards do not seem to pay any penalty in the form of higher yields. Even so, some investors say many bond issuers still aren't disclosing enough. "Climate disclosure has to increase," says Daniel Rabasco, head of municipal bonds at Mellon Investments Corp. "There is a broad trend to do it, but more needs to be done." Most official statements analyzed show a paragraph or two, mentioning that climate change is an investment consideration. Tom Doe, president of Municipal Market Analytics, says these are usually "enough to satisfy investors today," but he thinks bond buyers will be demanding more within the next five years. "Vague presentations of adaptation strategies and cursory actions taken will not suffice," he says.

Florida's director of bond finance is trying to get ahead of that shift. Ben Watkins says he's talking with investors to get an understanding of what kind of climate-risk information they want. "What we have now is just the start," he says. "We have more work to do about that."

**Bloomberg BusinessWeek**

By Danielle Moran

November 5, 2019

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## Investing In Senior Housing Muni Bonds Amid Demographic Change.

**Summary**

- Continuing care retirement communities (CCRC) fall within a broader category of municipal bonds called private activity bonds (PABs).

- The overall size of the CCRC market is still relatively small ($5 billion of issuance in 2018), but it's doubled in size over the past decade.
- With a potential yield advantage over AAA munis, CCRC issues can offer attractive tax-exempt income in a well-diversified portfolio.

**This credit sector can offer attractive opportunities, but investors shouldn't be drawn in by high yield alone.**

Continuing care retirement communities (CCRC) and senior housing facilities have historically been a sought-after category by institutional investors, who are often attracted to this credit sector because of its higher yield. Yield aside, investing in the senior living sector is supported by positive demographic fundamentals that should expand opportunities in this sector.

Continue reading.

**Columbia Threadneedle Investments**

By Catherine Stienstra, Head of Municipal Investments; Douglas Rangel, CFA, Vice President, Fixed Income Client Portfolio Manager

Nov. 8, 2019

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## S&P Criteria | Governments | Request for Comment: Methodology For Rating U.S. Public Finance Rental Housing Bonds

Read the S&P Request for Comment.

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## S&P Proposed Methodology For Rating U.S. Public Finance Rental Housing Bonds.

CENTENNIAL (S&P Global Ratings) Nov. 4, 2019–S&P Global Ratings is requesting comments on its proposed update to its methodology for rating rental housing bonds in the U.S. (see "Methodology For Rating U.S. Public Finance Rental Housing Bonds").

This proposed methodology, if adopted, would apply to ratings on bonds backed by rental income from residential properties that serve a public purpose. In particular, the proposed methodology would apply to bonds backed by revenues from:

- Affordable multifamily housing (including mobile home parks);
- Age-restricted independent or assisted-living rental housing;
- Privatized military housing;
- Privatized student housing affiliated with a university, college, or community college; and
- Pools of loans secured by affordable multifamily housing.

The primary purpose of the proposed methodology update is to recalibrate our rating analysis, following observed volatility and sharp deterioration in creditworthiness within subsectors of the issues in scope.

S&P Global Ratings is seeking responses to the following questions, in addition to any other general comments on the proposed criteria:

- What is your view of the overall structure of the proposed methodology and clarity of its scope (type of entities rated with the proposed methodology)?
- In your opinion, does the proposed methodology contain any significant redundancies or omissions?
- Are our proposed criteria principles and adjustments comprehensive and clearly defined?
- Do you believe that the proposed methodology appropriately captures credit risks and do you agree with the manner in which we propose to assess these risks (selection of key factors, their weighting, associated ratios and measures to assess these risks, associated caps)? If not, what alternative(s) would you propose?
- Do you agree with our proposal to focus on borrower default risk rather than property liquidation value, and therefore to use DSC as the key quantitative metric of our coverage and liquidity reserves analysis rather than loan-to-value?
- Do you agree with our proposal to apply a negative adjustment to the rating for transactions with multiple tranches of varied seniority that include a "springing-lien" provision, which results in a pro rata distribution of recovery proceeds following a default of the most senior tranche (see Table 1, and the proposed guidance document in Appendix B)?
- Are there any other views regarding this methodology proposal that you would like to bring to our attention?

We encourage interested market participants to submit their written comments on the proposed criteria by Dec. 18, 2019, to http://www.standardandpoors.com/en_US/web/guest/ratings/rfc where participants must choose from the list of available Requests for Comment links to launch the upload process (you may need to log in or register first). We will review and take such comments into consideration before publishing our definitive criteria once the comment period is over. S&P Global Ratings, in concurrence with regulatory standards, will receive and post comments made during the comment period to www.standardandpoors.com/en_US/web/guest/ratings/ratings-criteria/-/articles/criteria/requests-for-comment/filter/all#rfc.

Comments may also be sent to CriteriaComments@spglobal.com should participants encounter technical difficulties. All comments must be published but those providing comments may choose to have their remarks published anonymously or they may identify themselves. Generally, we publish comments in their entirety, except when the full text, in our view, would be unsuitable for reasons of tone or substance.

This report does not constitute a rating action.

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## S&P Credit Conditions: In The Mist Of Mixed Economic Signals, U.S. State

## And Local Credit Quality Remains Strong

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Despite some indications of a weakening economy at the national level, state and local government credit quality has not shown any signs of broad deterioration. States continue to project revenue growth, and local revenues also appear to be on solid footing. Signs that we typically look for to indicate economic slowness, such as an increase in Medicaid enrollees or falling sales tax revenues, haven't materialized and therefore the end of 2019 looks to be on track for states and locals.

Even with cautious revenue projections, most states expect that fund balances will be maintained or grow in fiscal 2020, helping to project stability over the near term. Supported by this solid financial backdrop from states, local government credit quality remains stable with limited signs that state governments intend to cut aid or otherwise negatively impact local government operations. Overall we expect most local governments will be able to weather the changes; however, a confluence of events such as a weakening economy and a cyber- or weather-incident would result in a different scenario.

Continue reading.

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## Fitch Ratings: North American Infrastructure Projects Are Complex, Require Unique Solutions

Link to Fitch Ratings' Report(s): North American Project Finance: Lessons Learned (Decades of Challenges and Successes)

**Fitch Ratings-New York-05 November 2019:** North American Infrastructure projects are complex undertakings that require careful coordination among multiple parties to adequately address risks and avoid delays, according to Fitch Ratings in a new report.

Fitch's new report highlights over 30 case studies in North American infrastructure from the 1990s to the present, highlighting projects that faced considerable challenges and lessons learned from the experience. Earlier projects are found to have been most frequently stymied by revenue underperformance relative to missing original traffic and revenue projections. More recently, Fitch observes that a larger portion of project challenges are tied to completion risk, including issues during construction and counterparty exposure.

While recognizing that several projects have faced challenges and that project teams cannot anticipate every potential development, Fitch notes that risks to lenders have ultimately been well managed, with very few projects ending in default. "With the complexity of this asset class, some problems are to be expected," said Senior Director Emma Griffith. "These projects require unique solutions, and smart risk transfers from beginning to end can do a lot to protect lenders when challenges occur."

A point to note is that terminations for convenience that have occurred have not reimbursed investors their make-whole premiums. While this is consistent with the terms of the transaction, investors can view this negatively, as it constitutes a loss for them. Fitch expects investors will likely raise this issue as terms are agreed for new financings going forward.

'North American Project Finance: Lessons Learned' is available at 'www.fitchratings.com' or by clicking on the above link.

Cases are also accessible in an interactive map format on FitchRatings.com, where the projects are sortable by industry, highlighting the primary risk for each project.

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## Bond Buyers Hit by Negative Yields Around the Globe Flock to U.S. Muni Debt.

- **Taxable bond boom drawing increased interest from overseas**
- **Foreign holdings hit record high as U.S. yields stay higher**

Jeffrey Burger, a money manager at Mellon Investments Corp., in September swung through Zurich, where government bonds are yielding less than nothing, to pitch his U.S. municipal debt funds to investors hunting in unfamiliar places for positive returns.

So he brought up one of Switzerland's most famous men, the professional tennis player Roger Federer, who competed in the U.S. Open in New York's Arthur Ashe Stadium, a venue financed with the types of securities Burger's funds buy.

"Even though he lost, what can give you some joy, is that he did it in a U.S. muni-funded stadium," said Burger, who held meetings with investors in London, Paris and Milan. "And if you go four kilometers to the north, guess what you run into? LaGuardia Airport, another example."

The unprecedented era of negative interest rates in Europe and Asia is turning some of America's most domestic securities into a valuable export. Even with interest rates holding near a more than half-century low, the returns promised by the $3.8 trillion municipal-bond market look good compared with the $13 billion of sovereign debt that it winds up costing investors to own.

Foreign buyers have been a steadily growing presence in the U.S. municipal market, doubling their direct holdings over the past decade to a record $102 billion by the end of June, according to Federal Reserve Board data. But the interest has been given an added jolt in recent months because of a torrent of refinancing by states and cities, who have seen rates fall so much that they are selling taxable debt — which carries higher yields — to refinance tax-exempt securities. Oversees buyers are primarily interested in taxable bonds because they have no need for the U.S. income-tax shelter typical municipal securities provide.

U.S. governments have sold about $48 billion of taxable bonds this year, an 119% increase from the same period in 2018 and the most in almost a decade, according to data compiled by Bloomberg. Such debt has delivered a 10.5% return this year, according to the Bloomberg Barclays index.

"This supply really helps to get focus and attract the broadest possible investor base," said Patrick Brett, head of municipal capital markets at Citigroup Inc., which has a municipal-bond banker stationed in London. "We've had quite a bit of interest from overseas for these issues."

The influx of foreign cash is similar to what happened in the wake of the recession, when President Barack Obama's recovery program covered part of the interest bills on Build America Bonds that were issued to finance public works projects intended to jump-start the economy. They were structured as taxable securities to expand the market for the bonds beyond traditional buyers of municipal debt.

International investors are buying municipal securities both directly and through mutual funds like those run by Mellon's Burger. MFS Investment Management offers a fund to institutional investors in Europe and Asia that is registered in Luxembourg, for example. Its top holdings include debt issued by Illinois, Denver's water system and New York City.

Lori Cohane, a portfolio manager at Credit Suisse Asset Management, said such big, well-known issuers have benefited from the global interest.

"If the state of Texas issues taxable municipal bonds, global buyers are going to know the state of Texas. Or if Harvard University issues taxable municipal bonds there's a familiarity there," Cohane said.

The Dallas Fort Worth International Airport is one that's tapped into the trend. The largest airport in Texas sold $1.2 billion in taxable bonds in August that were specifically marketed to international buyers. Christopher Poinsatte, the chief financial officer for the airport, traveled to London, Paris, Seoul, Hong Kong and Taipei ten months before the sale to educate potential investors about his airport and the mechanics of the U.S. industry.

"We understand that international investors are very interested in U.S. infrastructure," he said. "There's an entirely untapped market out there."

Poinsatte said the sale received $465 million in direct international orders from buyers in London, Norway, Tokyo and Taipei, with about 15% of the total deal eventually allocated to foreign accounts. The airport plans to sell another billion in taxable bonds next summer and Poinsatte is planning another trip — both to the places he visited previously and to new cities in Italy and Norway.

“There are tens and hundreds of billions of dollars in international money that is very anxious to invest in infrastructure,” he said. “We are playing the long game. We are trying to tap that market.”

**Bloomberg Markets**

By Danielle Moran

November 7, 2019, 4:30 AM PST

*— With assistance by Chikafumi Hodo*

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## Are Taxable Advance Refundings Leaving Money On The Table?

The 5% non-callable-10 structure, which has been the standard for municipal bonds, was tailor-made for advance refunding. Prior to 2018, borrowers could demonstrate substantial savings by advance refunding them immediately after issuance (See The Allure of 5% Bonds: Coupon Levitation Creates Magical Savings). Not surprisingly, most 5% NC-10 bonds were advance refunded well before they were actually called in Year 10.

With the elimination of advance refunding, the churning came to a brief halt — today only a single tax-exempt issue can support a qualifying project. However, there is still a huge amount of high-coupon not-yet-callable bonds outstanding. In fact, 5% NC-10s continue to be issued almost daily. With interest rates being at historical lows, there is an opportunity to realize savings by advance refunding high-coupon tax-exempts with taxable bonds.

Let’s take a closer look at the economics of advance refunding a $100 million 5% muni with 22 years to maturity and two years to call, with a 22-year 2.80% taxable bond sold at par. The proceeds of the refunding issue are invested in an escrow portfolio of Treasuries yielding 1.5%, structured to pay the debt service of the refunded bond through the call date.

The reported savings are impressive — assuming a 1% issuance cost, they amount to $29.8 million in present value terms over 22 years. Of course, nobody expects 5% bonds to remain outstanding beyond the call date, and our analysis should incorporate this. By advance refunding today, the issuer forfeits the valuable option to call the bond in the future. But how valuable is this option?

The value of the option of the outstanding bond, based on the issuer’s current tax-exempt 5% NC-10 yields — 1.60% for 10 years, 2.10% for 20 years, etc., is $36 million. Thus the efficiency of the taxable advance refunding is only 83% ($29.8 million/$36 million). Looking at this from a different angle, $6.2 million of the option value has been wasted, at the expense of the municipality’s constituents. We leave it to the readers to figure out who was the beneficiary of the lost option value.

Let’s discuss the practical ramifications of this result. A refunding efficiency below 100% signals that waiting is preferable to acting now. The alternative to refunding today with a taxable 2.80% bond is to wait for two years, and then call and refund with a tax-exempt bond. For a specified shift of the borrower’s yield curve, we can determine the savings from calling, in today’s dollars. To break even with today’s $29.8 million savings, the yield curve would have to increase 75 basis points. In that case, the yield of a 5% 20-year 5% NC-10 bond would rise from its current 02.10% to 2.85%. As long as the yield curve does not rise more than 75 basis points, waiting would be preferable taxable advance refunding today.

Direct comparison of a 5% NC-10 muni to an essentially non-callable taxable bond is complicated. For an apples-to-apples comparison, we have to estimate the issuer's non-callable 20-year par rate. Today, when the 20-year 5% NC-10 yield is 2.10%, the rate of a 20-year muni bullet is roughly 2.49%. If the 5% NC-10 yield curve increases by 75 basis points to the break-even point, the bullet rate rises 42 basis points, to 2.91%. Callable yields and optionless rates don't move in tandem — the former are yields to the 10-year call, the latter are yields-to-maturity.

Although finance theory cannot predict where the muni yield curve will be two years from now, it can help you play the odds. By advance refunding with taxable bonds, you are making a bet that within two years the tax-exempt curve will rise more than 75 basis points.

It is interesting to contemplate what the possibilities are when advance refunded bonds are redeemed on their call date. Could the borrower economically refund the taxable bonds, at the make-whole price, with the proceeds of a new tax-exempt issue? A topic for another day.

By Andy Kalotay

BY SOURCEMEDIA | MUNICIPAL | 11/08/19 01:21 PM EST

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## KBRA Releases Research – Environmental, Social and Governance (ESG) Considerations by Sector

NEW YORK–(BUSINESS WIRE)– Kroll Bond Rating Agency (KBRA) publishes sector-specific research pieces on Environmental, Social and Governance (ESG) factors as they relate to credit analysis.

KBRA's public finance ratings incorporate all material credit factors including those that relate to ESG factors. This report serves to increase transparency around how KBRA views ESG factors as they relate to credit risk. It does not introduce new credit variables but, rather, expands upon the many factors that KBRA considers in our ratings analysis as they relate to ESG.

While ESG factors may influence ratings, it is important to underscore that KBRA's ratings do not incorporate value-based judgments around credit factors. Rather, KBRA's ratings incorporate expectations for the credit impact of such factors, which include an evaluation of risk management and mitigation efforts.

KBRA's analytical approach intends to capture all meaningful factors into our ratings when we believe there will be an impact on the credit in the near term or in the future, after considering risk mitigation efforts. Factors that may influence credit analysis are not always static and require continuous surveillance. As credit factors develop more clarity, they are incorporated into KBRA's surveillance reviews. And as new information comes available and as future expectations evolve, the information and expectations may trend in a way that could materially impact KBRA's credit analyses and ratings.

To view the report, click here.

November 6, 2019

## The Imperfect Art of Tracking Local Government Financial Stress.

**California is the latest state to launch a program to shed light on the financial conditions in localities. Systems like this can have benefits, but also limitations.**

When the California auditor's office recently rolled out a new online system that tracks and ranks local governments based on their levels of financial risk, David Dale, the city manager in Calexico, was caught somewhat off-guard when he found his town listed as fifth worst-off.

The city of 40,000 about 100 miles east of San Diego has certainly had its share of problems.

Its police department was raided by the FBI back in 2014 amid allegations of various criminal conduct by officers and other city staff. Just a couple years later, Dale said poor financial management led the city to the brink of bankruptcy.

"The city was a complete mess politically, financially," Dale said. "It was bad all around." Lately, however, he said that things within Calexico's city government are improving. "We've made a lot of strides and sacrifices," Dale said. "People are doing two jobs, pay cuts."

Calexico's designation as financially at risk appeared on a list along with the release of California's new "local government high-risk dashboard," a system that is designed to provide a snapshot of how 471 cities around the state are doing financially.

Information for it is pulled from publicly available, audited financial statements, which cover past years. The dashboard currently shows where cities stood as of June 30, 2017—part of the reason the progress Dale touts in Calexico isn't necessarily reflected in the rankings.

"When this came out in the news," he said, "they painted the picture that the city was currently in a financial debacle."

California is the latest state to develop a public facing program that provides a way to monitor the finances of local governments statewide. New York has had a system like this for about six years now and Michigan has done similar work since before the Great Recession.

"It definitely is a trend," said Justin Marlowe, a professor who specializes in public finance at the Daniel J. Evans School of Public Policy and Governance at the University of Washington, and who advised California on its program.

"You've seen, I think, a big uptick in interest," he added.

There are a number of ways that the systems can prove useful. But they also have limitations, including issues like Dale keyed in on concerning the timeliness of the data.

Dale explained that during the bad years Calexico's general fund was $4 million in the hole and the city borrowed $3.5 million from its own wastewater account to backfill it.

He said the city is now on track to pay back the loan about a year early and ended the last fiscal year with a roughly $1 million surplus. The city's total general fund budget is about $16 million annually.

"We've gotten so far," Dale said, which is why he says it was frustrating to unexpectedly see the city in the No. 5 spot on a list of the state's most fiscally distressed municipalities.

Marlowe agreed that a dashboard like California's is going to fail to capture all information. "The perfect system does not exist," he said.

California's dashboard was built as part of the high-risk local government audit program within the state auditor's office. That team is responsible for identifying local governments that may have troubled finances, and in some cases auditing them.

"We thought it was important to do a comprehensive analysis of all the cities as opposed to looking at a subset," said Mike Tilden, a deputy state auditor who was involved in the project.

The dashboard and the rankings it presents rely on a set of 10 "financial indicators" meant to assess how well a city can cover its near-term and long-term costs. Some indicators include a city's cash position, debt burden, financial reserves and revenue trends.

ROUTE FIFTY

BY BILL LUCIA

NOVEMBER 7, 2019

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## FINRA Files for 4210 Effective Date Extension to March 2021.

FINRA has filed with the SEC a proposed rule change to extend (to March 25, 2021) the implementation date of the amendments to FINRA Rule 4210 (margin requirements).

This delay, as well as certain changes to the amendments, are in line with BDA's advocacy efforts and we appreciate all BDA members who helped drive those efforts.

The full notice and text are available here.

**Bond Dealers of America**

November 6, 2019

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## Schroders Sees Value in Municipal Bonds Over Treasuries.

Julio Bonilla, U.S. fixed income portfolio manager at Schroders, discusses the advantage municipal bonds have over U.S. Treasuries. He speaks with Bloomberg's Taylor Riggs in this week's "Muni Moment" on "Bloomberg Markets."

Watch video.

**Bloomberg MarketsTV Shows**

November 6th, 2019, 1:07 PM PST

## KBRA Municipal Ratings Available on Bloomberg Terminal Calendar Screens.

Kroll Bond Rating Agency (KBRA) ratings on municipal securities and new issues are now available on the Bloomberg Terminal.

Bloomberg subscribers can find KBRA's ratings for municipalities by accessing the following functions: MUNI DES (Description), CDRA (Calendar), CDRN (Negotiated Calendar), and CDRC (Competitive Calendar).

"Bloomberg's decision is a very welcome affirmation of KBRA's accelerated growth and coverage in public finance, where we now rate over $310 billion of municipal debt. More and more of the municipal market's largest and most complex issuers are choosing to use KBRA on their transactions because of the seniority of our analysts, the quality of our reports, and the timeliness of our service," said William Cox, Senior Managing Director and Senior Analyst in the Funds, Insurance, and Public Finance Ratings groups at KBRA.

To view a full list of KBRA's Public Finance ratings, please visit www.kbra.com.

**Business Wire**

November 7, 2019

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## First Foundation Bank Launches Municipal Lending Offering with the Appointment of Trevor Mael as Vice President, Director of Public Finance.

First Foundation Inc. (FFWM) ("First Foundation"), a financial services company with two wholly-owned operating subsidiaries, First Foundation Advisors and First Foundation Bank, announced the new municipal lending and public finance service offering with the appointment of Trevor Mael as Vice President, Director of Public Finance. In his new role, Mael will oversee the department for First Foundation Bank which seeks to add to its existing strong loan portfolio with a new public finance footprint.

"As First Foundation Bank continues to expand, we continue to search for service and product offerings that complement our existing capabilities," said Scott F. Kavanaugh, CEO. "The opportunity to offer municipal lending and government banking is a nice fit with our Sacramento location and comes at a time when we found a proven and well-connected leader in Trevor to lead this effort."

Mael began his 10-plus years banking career with Umpqua Bank, and grew to a role as a Vice President, Relationship Manager, where he managed the bank's municipal finance portfolio. He has built a strong reputation as a banker committed to helping communities build and grow by utilizing bank-financing. He comes to First Foundation Bank with experience also as an operator in loan administration, underwriting and credit, allowing him to effectively manage the loan process from application to funding.

The new offering will seek to focus on community development projects such as schools, transportation, infrastructure improvements, economic development, and other major projects to help grow and enrich the community. The initial offering by First Foundation Bank will include general financing for the needs of cities, counties, and special purpose districts across the First Foundation Bank footprint.

"I am honored by this opportunity to work with a relationship-driven bank with so many strong resources to support the local communities. First Foundation Bank's expansion into financing local projects will now bridge the gap to making integral investments into the communities in which our clients and team both live and work," said Mael.

**About First Foundation**

First Foundation, a financial institution founded in 1990, provides private wealth management, personal banking, and business banking. The Company has offices in California, Nevada, and Hawaii with headquarters in Irvine, California. For more information, please visit www.firstfoundationinc.com.

**Business Wire**

November 7, 2019

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## Federal Register: MSRB Proposes Changes to Content Outline for Muni Principal Exam

An MSRB proposal to amend the content outline for the Series 54 examination and selection specification was published in the Federal Register. Comments must be submitted by November 26, 2019.

The MSRB stated that it intends to make the Series 54 examination permanent beginning on November 12, 2019. The proposed amendments were filed with the SEC and are now effective.

As previously covered, municipal advisor principals must pass the Series 54 examination in order to qualify for engagement in the management, direction or supervision of municipal advisory activities. The changes will, among other things:

- incorporate MSRB Rule G-40;
- clarify that 70 percent and above is a passing score for the examination;
- update the sample questions; and
- make technical changes to better explain the topic descriptions.

**Cadwalader Wickersham & Taft LLP**

November 5 2019

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## How Transparent Should Government Be After a Cyberattack?

**City tech leaders and cybersecurity experts confront the tension between elected officials beholden to the public and IT bosses whose primary concern is limiting the information available to bad actors.**

Atlanta was one of the first major cities hit, waylaid by a costly ransomware attack. As headlines about what happened continued in the months to come, similar incidents besieged other government agencies across the country. There was Baltimore. There was the Colorado Department of Transportation, twice. There were half a dozen small cities in Massachusetts. There was Albany, N.Y.

In the past 18 months or so, cyberattacks on government have accelerated. Experts say this is an evolution wherein bad actors have moved from targeting individuals at random, to going after governments, school districts, companies, and other institutions, which often have more to lose and are thereby more lucrative. Another factor in the recent acceleration is that many of these entities have been traditionally underfunded in the realm of cybersecurity.

As such, public-sector IT leaders have begun to view a successful cyberattack as a matter of when, not if. Essentially, regardless of how well-prepared government is, a breach is still coming, and so a larger onus is now being placed on response, specifically on best practices for the aftermath of a cyberattack. Within this conversation, however, a major point of tension has arisen — transparency.

A question local government leaders must grapple with is this: How transparent should government be after a cyberattack? Should they tell citizens everything, or should they downplay incidents altogether, obscuring details under the assumption that any information on their vulnerabilities can and will be used against them?

It’s a complicated debate, and with this wave of cybercrime showing little sign of slowing, finding answers has become imperative.

Being as transparent as possible with citizens has evolved as of late, fueled by technology that enables easier sharing of data as well as more convenient lines of communication between government and the citizens it serves.

There is, perhaps, a growing expectation that local government should tell residents everything, provided it doesn’t infringe on the privacy of others. But what about emergency situations like cyberattacks?

In March, Albany was hit by a cyberattack on a Saturday. Thanks to an alert about the breach, the city had most major systems up and running again by Monday, except for getting birth, death and marriage certificates. City offices were closed Monday morning, though, as the city worked to ensure a full recovery.

Albany Mayor Kathy Sheehan was open with information throughout, announcing via social media that an attack had occurred the same day she found out. On Sunday, she again took to social media to let residents know city officials had been working to prevent any interruptions in government service. Then on Monday, the city let residents know when it was open again.

It all seems innocent enough, but at a recent breakfast roundtable discussion about cybersecurity and cities, hosted during the CityLab DC summit, Sheehan said not everyone in City Hall agreed with that open approach.

“Our CIO would have preferred saying nothing at all,” Sheehan told a collection of other elected officials and IT leaders, the majority of whom had similar anecdotes to share.

Other CIOs in attendance agreed with the stance, or at least the desire to be able to maintain silence. But Sheehan felt obligated as an elected official to let the public know all that she could about what was happening. Moreover, she said her CIO and the rest of the IT staff had “done a phenomenal job” and she wanted the public to know that as well.

The reason for advocating silence, however, is in part a concern that a larger cybersecurity target will be put on local governments, and that bad actors will see detailed news of a successful defense as a challenge. Another layer is that releasing detailed information will help bad actors find a new vulnerability to exploit. Cyberattacks are, after all, a crime, and so some of the details will always be sensitive.

Brian Nussbaum, who is a fellow with New America's Cybersecurity Initiative and an assistant professor of cybersecurity at the University of Albany, said a balance must be struck between giving citizens necessary info and obscuring the scope of defenses and recovery, noting that "it's possible to describe in general what's being done without being specific about what's being done."

Sometimes, Nussbaum added, public organizations withhold information not in the name of secrecy, but rather because they are still sorting out "second order effects," which basically means assessing the problem and understanding the damage. For organizations like government or public health systems, which keep private data subject to regulations, this is paramount.

Nussbaum, however, was optimistic that more answers about transparency after a cyberattack will emerge as this particular challenge matures. As cybersecurity defenses, response plans and general knowledge evolves in the public sector, so too will best practices around what information to share with the public.

This is also far from a new tension within government.

"This is not an unusual problem in the abstract," Nussbaum said. "Elected officials who are accountable to citizens often have impulses to do things that people in the business line don't have the same incentives to want to do, because they are not directly talking to the citizens in the same way. I don't think this is a problem that's unique to local government cybersecurity, but rather a problem for government writ large."

Gary Brantley, the Atlanta CIO, continues to oversee that city's cybersecurity in the wake of its recovery. Also in attendance at CityLab DC, Brantley said his goal is always to share as much information as he can without compromising operations or inciting fear. One thing that gets lost, he added, is just how common failed attacks are.

"These attacks are widely unsuccessful," Brantley said, "and that's one thing we don't talk about."

BY LUCAS ROPEK, GOVERNMENT TECHNOLOGY | NOVEMBER 8, 2019 AT 3:01 AM

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## [Kansas Tax Outlook Improving, But State Still Set To Spend More Than It Receives.]()

After lawmakers repealed Brownback's signature income tax cuts in 2017, Kansas's cash reserves quickly swelled to $1.1 billion… He acknowledged the forecast does not take into account the possibility of future recession… Under current spending levels, Kansas will end the next fiscal year with a surplus of $722 million.

Read the full article on: [The Wichita Eagle]()

**Truth in Accounting**

Jonathan Shorman | November 8, 2019

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## Raising Opportunity Zone Capital for Business Investment, with Len Mills.

For business owners, what are some tips for approaching investors and raising Opportunity Zone capital? Len Mills is CEO of Verte OZ, a venture capital Opportunity Zone fund launched in September 2019 that invests in high-growth disruptive businesses. Click the play button below to listen to my conversation with Len. Episode Highlights The characteristics that make the Verte OZ Fund unique among Opportunity Zone funds.

Read More »

**Opportunity Db**

November 6, 2019

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## Fitch North American Project Finance: Lessons Learned

Fitch Ratings' Infrastructure analytical team has published a report and interactive tool outlining the lessons we've learned covering various North American P3 projects.

Fitch will also be hosting a webinar on **Wednesday, November 13th at 11:00 AM ET** on which the report will be available for download. Register Now.

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## IRS Opportunity Zone Form Doesn't Quell Transparency Concerns.

- **Unclear how much information Treasury, IRS can make public**
- **Transparency advocates look to Congress to address data gap**

A new draft tax form for investors taking advantage of opportunity zone incentives affirms the need for Congress to bolster reporting requirements for the perks, according to those advising on and studying them.

The incentives, part of the 2017 tax act, were meant to spark economic development in nearly 9,000 mostly low-income census tracts across the U.S. by offering investors the ability to defer and reduce capital gains taxes. The tax law didn't include any data reporting requirements, which advocates say are needed to paint a more holistic and objective picture of whether the tax breaks are helping communities or accelerating gentrification to the benefit of wealthy investors.

The IRS Oct. 31 released a proposed Form 8996 that would require opportunity funds to disclose the employer identification numbers, census tract numbers, and assets of the businesses in which they invest, as well as the funds' own structures and assets. The IRS went about as far as many observes expected: The form would give the agency enough information to ensure investors are following the program's rules, but doesn't require more granular information, like job creation and poverty alleviation data requested by numerous organizations.

"This will be unlikely to satisfy many of us who are just looking for a more comprehensive data regime," said John Lettieri, president of the Economic Innovation Group, which helped develop the incentives.

**IRS Authority**

The data the IRS is seeking makes sense in light of the authority the IRS has and its ability to enforce the tax law and its opportunity zone regulations, according to Michael Novogradac, managing partner of Novogradac & Co. LLP. The San Francisco-based accounting and advisory firm focuses on real estate and affordable housing.

"This demonstrates what information is needed to assess compliance," Novogradac said.

The original opportunity zones legislation, authored by Sens. Cory Booker (D-N.J.) and Tim Scott (R-S.C.), included data reporting requirements for investors. However that language wasn't included in the 2017 tax law in order to ensure the package complied with the Senate's procedural rules.

The new form was released days after House lawmakers met to discuss ways to improve the opportunity zones program through congressional action. There is some interest in Congress of adding those requirements to the tax code. Booker and Scott introduced a bill (S. 1344) to establish opportunity zone reporting requirements, while a House companion (H.R. 2593) was introduced by Reps. Ron Kind (D-Wis.) and Mike Kelly (R-Pa.).

Lettieri, who attended the congressional meeting to discuss improvements to the program, said that the IRS document could help inform any related legislation Congress considers.

There may not be much information to collect just yet, as the pool of funds using the capital gains tax breaks is still small and growing, said Steve Glickman, who helped create the incentives and now advises investors as CEO of Develop LLC.

"We're still very much in the early days here," he said. "There's always going to be anecdotal investments that don't meet the spirit and intent of the program."

**Will Public See Data?**

Absent congressional action, transparency advocates are concerned that the public may not ever get to see the data collected by the Internal Revenue Service and Treasury Department because the federal government is prohibited from publicly disclosing tax return information under tax code Section 6103.

"I worry this information won't ever be shared with the general public," said Brett Theodos, a senior fellow at the Urban Institute who has researched the incentives and requested detailed data collection and disclosure on them. "We need more data. I would like additional detail to be able to evaluate the program."

A Treasury spokesperson said the department "intends to publish all of the Opportunity Zone data that it gathers through this form as soon as possible in a manner consistent with the law."

Booker, in an Oct. 31 statement, emphasized the need for public disclosure of more detailed data.

"For starters, this information needs to be public, not available only to the Treasury Department," he said. "Additionally, there needs to be transaction-level reporting so that we can properly evaluate the impact of the program and ensure that investments are being effectively allocated to low-income communities."

There may also be concerns of taxpayer privacy and identity theft when it comes to employer identification numbers, said Lisa Zarlenga, a partner at Steptoe & Johnson LLP and a former Treasury official. Even publicizing the number of funds investing in a particular census tract could lead to privacy problems if there are only one or two in that area, she said.

And while the IRS is likely reluctant to make these kinds of public disclosures on its own, the issue could be a thorny one for lawmakers to navigate as they seek to boost the incentives' transparency.

"It's a hard thing to balance," Zarlenga said. "I don't envy the lawmakers trying to figure this out."

**Bloomberg Tax**

by Lydia O'Neal

Oct. 31, 2019, 1:39 PM; Updated: Nov. 1, 2019, 6:46 AM

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## Bill Introduced in Senate to Require QOF Reporting, Change Designation of Some OZs.

Read the Detailed Summary.

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## Fires and Blackouts Pose an $11.5 Billion Economic Hit to California.

**California's wildfires and blackouts may push the state economy to underperform the U.S. for the first time since 2010.**

The state's economic growth rate this year may range from 2% to 2.2%, below the expected 2.3% growth rate for U.S. gross domestic product, according to the latest estimates from Bank of the West's chief economist Scott Anderson. That's due to the combined impact of this year's fires and blackouts, at up to $11.5 billion.

That shows the stakes for California's leaders as they struggle to deal with mass power shutoffs and wildfires that have increased in severity due to a changing climate. Unaddressed, the fires and outages can leave the state more vulnerable during the next inevitable downturn should companies, who already chafe under regulations and costs, decide to leave the state, said Howard Cure, head of municipal research in New York at Evercore Wealth Management.

"The state has to approach this for the long term and get more involved than they did already," Cure said. "They have to view this as a continual problem and always look for new solutions. Otherwise, if they are stagnant about the problems, they could really risk hurting the economy."

**Bloomberg Markets**

By Romy Varghese

November 7, 2019, 11:36 AM PST

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## First Foundation Bank Picks Sacramento to Launch Municipal Finance Division.

Irvine-based First Foundation Bank is launching a niche municipal lending operation out of its Sacramento office.

The bank is part of First Foundation Inc., which entered the Sacramento market with the purchase of Community 1st Bancorp in 2017.

First Foundation (Nasdaq: FFWM) hired former Umpqua Bank municipal lender Trevor Mael to be its director of public finance for the Sacramento Valley.

"It's a new division for us," First Foundation spokesman Tyler Resh said. He said the bank is taking the opportunity in Sacramento because it can market through many trade groups based here.

The target customers will be smaller cities, school and special districts and rural communities that need financing under $20 million for public works, economic development or transportation projects, Mael said. In some cases, the bank's clients will be contractors on those projects, and the bank will handle escrow accounts and timeline disbursements of payments for milestones achieved on public works projects.

Wall Street banks generally offer bond financing for public works larger projects, but in its municipal deals, First Foundation will be holding the debt on its own books as loans, Mael said.

The division will start with lending, but it is assumed the business will attract deposit relationships with customers over time, Resh said. First Foundation operates a wealth management subsidiary First Foundation Advisors, as well as First Foundation Bank.

First Foundation had $6.5 billion in assets at Sept. 30. That's up from $3.7 billion in the first quarter in 2017 when it announced it would buy Community 1st Bancorp for $50.4 million in stock. At that time, Community 1st had $373 million in assets and branches in Auburn, Sacramento and Roseville. Those are now the First Foundation branches in the Sacramento region.

**Sacramento Business Journal**

By Mark Anderson – Staff Writer

Nov 8, 2019, 5:42pm EST

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## Illinois' Municipal Market Penalty Eases in $750 Million Bond Sale.

CHICAGO (Reuters) – Illinois paid a smaller penalty for its financial woes on Wednesday, selling $750 million of general obligation (GO) bonds at tighter, but still hefty spreads.

The deal benefited from aggressive bidding by investment banks and yield-hungry investors, according to Daniel Berger, senior market strategist at Municipal Market Data (MMD).

The spread for Illinois bonds due in 10 years over MMD's benchmark triple-A yield scale fell 11 basis points to 150 basis points.

"The penalty eased, but it's still a big penalty," Berger said, noting that Illinois spreads remain the widest among the states.

Illinois also has the lowest credit ratings compared to other states due to its $133.5 billion unfunded pension liability and chronic structural budget deficit.

Bank of America Merrill Lynch won $450 million of the bonds in competitive bidding, while Barclays Capital won the remaining $300 million.

"We were pleased to have entered the market near historic low interest rates and with solid investor demand, and the results reflect a low all-in interest cost that benefits Illinois taxpayers." said Paul Chatalas, Illinois' capital markets director, in a statement.

Proceeds are earmarked in part for a six-year, $45 billion Rebuild Illinois infrastructure program passed earlier this year by the legislature, which also approved new funding from higher fees and taxes and a gambling expansion that includes additional casinos and sports betting.

The bond sale is Illinois' first since a constitutional challenge to some of its outstanding GO bonds was filed in a state court in July. The case is on appeal after it was dismissed in August.

Last month, the governor's budget office released a five-year forecast that showed the state's general fund deficit reaching $3.2 billion by fiscal 2025 along with an unpaid bill backlog that balloons to $19.2 billion. The forecast pointed to the state's "unsustainable" tax structure as a culprit. Governor J.B. Pritzker hopes voters will make a major change to the structure next year by adopting a constitutional amendment for graduated income tax rates.

NOVEMBER 6, 2019

*Reporting By Karen Pierog; editing by Diane Craft*

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## Illinois's Road and Bridge Bond Runs Smack Into a Supply Glut.

- **State plans to issue $750 million in general obligation bonds**
- **Governor Pritzker in June signed a $45 billion capital plan**

Illinois already has to pay up when the worst-rated state borrows money from Wall Street. Now, as the state kicks off a $45 billion capital spending plan, it will have to compete with a crowd of issuers flooding the $3.8 trillion municipal debt market trying to capture cheap rates.

Illinois is scheduled to issue $750 million in general obligation bonds this week for Governor J.B. Pritzker's six-year "Rebuild Illinois" infrastructure plan, intended to infuse funding into roads, bridges, railways, broadband and schools. The debt likely will need to come with "more attractive yields," amid the supply glut, said Michael Belsky, executive director of the University of Chicago's Center for Municipal Finance. Still, the state could get within 100 to 150 basis points of the benchmark AAA index, he said.

“I anticipate that it’ll be well received. It’ll probably have some spread,” said Dora Lee, director of research for Belle Haven Investments, which holds Illinois bonds among $10 billion of municipal debt.

[Continue reading.](#)

**Bloomberg Markets**

By Shruti Singh

November 5, 2019, 10:32 AM PST

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## [Fitch Rtgs: Chicago Teachers Settlement Preserves Expenditure Flexibility; State Aid Key](#)

Fitch Ratings-New York-06 November 2019: Last week the Chicago Public Schools (CPS) and the Chicago Teachers Union (CTU) tentatively agreed to a five-year contract ending an 11-day strike. The contract is expected to be ratified by union members via secret ballot referendum on Nov. 14 and 15 and approved by the Chicago Board of Education (CBOE) on Nov. 20. Annual contracted cost increases start at $115 million in fiscal 2020 (2% of fiscal 2018 spending) and reach $504 million (9.1% of fiscal 2018 spending) by the end of the contract — for a cumulative estimated increase of $1.6 billion. Fitch’s ‘BB’/Stable rating on CPS assumes management will be able to incorporate the additional contract costs without impairing its recent financial progress — namely the achievement of structural balance and the restoration of reserves to positive but still narrow levels.

The new contract commitments appear manageable within the scope of the fiscal 2020 CPS operating budget, but the additional costs represent a potential pressure on credit quality in the out years should projected state aid increases not materialize. CPS expects to fund the new contract costs from a combination of increased revenues estimated at $200 million-$250 million annually (including $60 million-$70 million of assumed increased state funding to full statutory levels), and, to a lesser extent, the reallocation of existing spending in the range of $30 million-$40 million. CPS has benefited from a new state funding framework enacted in 2018 that has significantly increased its recurring revenue and improved the stability of its cash flows. However, CPS’s ability to accommodate the contract costs while maintaining its current level of financial flexibility would be challenged if the state school funding environment were to weaken.

The bulk of the contract cost increases are tied to cost-of-living adjustments, with annual wage increases of 3% in each of the first three years and 3.5% in each of the final two years. The annual increase in cost associated with high-needs school programs, class size initiatives, and additional nurses, social workers, and case managers is projected to reach nearly $103 million by fiscal 2024. Another component of the contract increases, totalling about $50 million or 10% of the fifth-year annual cost increase, relates to the normal cost contributions to the Chicago Teachers’ Pension Fund, which will be paid by the state pursuant to the new state funding model enacted in 2018.

The new contract introduces new mandatory staffing requirements for some types of support staff, limiting CPS’ ability to make cuts to those positions. However, CPS maintains the ability to enact reduction-in-force savings or to close schools, if necessary, to address future budget gaps, which is important to our view of CPS’ credit quality given its already limited expenditure flexibility and its reliance on uncertain state funding increases in future years to pay for the increased contract costs.

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## [Bankrupt Puerto Rico Eyes New Debt Policy, Will Pay Holiday Bonus.]

SAN JUAN — Puerto Rico would place restrictions on its future debt sales under proposed legislation that won praise on Tuesday from the bankrupt U.S. commonwealth's federally created financial oversight board.

Puerto Rico's bankruptcy takes up the bulk of the island's $120 billion of debt and pension obligations and analysts have raised questions about the island's future market access due to the board's attempt to void some outstanding bonds.

Under legislation backed by Governor Wanda Vazquez Garced, the Puerto Rico Fiscal Agency and Financial Advisory Authority would be charged with developing a policy for the government and its public corporations that sets a limit on tax-backed debt.

The agency would also have to approve any debt issuance, which would be limited to maturities of no more than 30 years with proceeds allocated for only capital improvements. Principal payments would be required to begin within two years of issuance.

Debt refinancings would have to produce debt service savings without extending maturity dates beyond those on existing bonds. Exceptions would be made for bond refundings to address natural disasters or emergencies.

"Upon the possibility and need that the government returns to capital markets and in accordance with our public policy, this law establishes uniform and responsible processes for any future debt issuance," the governor said in a statement.

The board said it welcomed a policy to prevent a repetition of "irresponsible fiscal management and debt issuances" that led to the island's financial crisis and subsequent 2017 bankruptcy filing.

The bill now heads to the legislature, where support for the measure was unclear.

Concerns have been raised about Puerto Rico's future ability to access the U.S. municipal market without paying a bruising penalty given the board's contention that more than $6 billion of general obligation bonds sold in 2012 and 2014 should be invalidated because they breached a debt limit in the island's constitution. [nL2N26I0SM]

Meanwhile, the governor and the board announced on Tuesday that public sector workers will receive about $60 million in Christmas bonuses this year.

In July, the board said its $20.2 billion, fiscal 2020 budget for Puerto Rico's central government would prohibit officials from moving money around to pay for things not in the board's fiscal plan like the bonus, which has been the subject of past spending disputes. [nL2N24211X]

On Tuesday, the board said that the bonus is "part of the routine compensation package provided to public employees," and that it worked with the governor to identify funding to pay for it.

**By Reuters**

Nov. 5, 2019

(Additional reporting by Karen Pierog in Chicago)

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- Tax Relief for Replacing LIBOR in Tax-Exempt Debt and Swaps: Orrick
- Proposed Rule Change to Amend & Restate MSRB Rule G-17: SIFMA Comment Letter.
- BDA Continues to Lead Industry Pushback on the PFM and NAMA Requests to Avoid Broker-Dealer Regulation.
- Dealers Ask SEC Not to Approve Fair Dealing Guidance Changes.
- Lukewarm Bond Yields Belie Mayors' Climate Alarm.
- MSRB: Trends in Municipal Bond Ownership.
- Is Public Finance Ready to Rely on Blockchain Technology?
- Tearing Down Tax Walls Pitched as Way to Spur Green Muni Bonds.
- And finally, You Don't Mess With A Man's Tips is brought to us this week by *Gatto v. City of Statesboro*, in which parents sued city after their 18-year old college student was involved in an incident at a bar located in city-owned plaza. Jeez, bit of an overreaction to some college shenanigans, no? Wait, this wasn't about underage drinking? Apparently the kid was accused of stealing from the bar's tip jar. The bouncer reacted judiciously and "struck Michael five times in the head/face, until he was limp and unconscious, and then dropped him on the floor of the bar. After [bouncer] heard Michael's head hit the floor of the bar, he dragged him outside and left him." We would like to take this opportunity to apologize for the above-mentioned overreaction accusation.

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**ANNEXATION . - ALABAMA**

## Courtyard Manor Homeowners' Association, Inc. v. City of Pelham

**Supreme Court of Alabama - October 18, 2019 - So.3d - 2019 WL 5288011**

Homeowners' association brought action against city in which association requested that city conduct a hearing on association's petition to be deannexed from city's municipal limits, on which city allegedly failed to take any action.

The Circuit Court dismissed for failure to state a claim. Association appealed.

As a matter of apparent first impression, the Supreme Court held that State Constitution's provision on petitioning the government for redress of grievances did not require city to respond to the deannexation petition.

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**IMMUNITY . - GEORGIA**

## Gatto v. City of Statesboro

**Court of Appeals of Georgia - October 21, 2019 - S.E.2d - 2019 WL 5304500**

Parents, as personal representatives of the estate of their son, filed a negligence and wrongful death complaint against city and city clerk after son died following an altercation with a bouncer at a bar.

City's insurer filed a motion to intervene. The trial court granted city and city clerk summary judgment, and denied insurer's motion to intervene. Parents and insurer appealed.

The Court of Appeals held that:

- The doctrine of sovereign immunity applied to nuisance claim filed by parents;
- City's purchase of liability insurance did not waive defense of sovereign immunity; and
- The trial court erred in sua sponte granting summary judgment to city clerk on the ground of sovereign immunity.

The doctrine of sovereign immunity applied to nuisance claim filed by parents, as personal representative of the estate of son, who died following an altercation with a bouncer at bar, against city and city clerk, in action alleging city created a nuisance by renewing business and alcohol licenses of bars despite knowledge of repeated criminal activity at bars; there was no "nuisance exception" to sovereign immunity.

City's purchase of liability insurance did not waive defense of sovereign immunity, in negligence and wrongful death lawsuit filed by parents after son died following an altercation with bouncer at bar; the liability insurance policy expressly declined to cover occurrences when sovereign immunity applied, and the actions challenged in lawsuit involved a governmental function to which sovereign immunity applied.

The trial court erred in sua sponte granting summary judgment to city clerk on the ground of sovereign immunity, in negligence and wrongful death lawsuit filed by parents after son died following an altercation with bouncer at bar; city clerk never moved for summary judgment on the ground of sovereign immunity, and thus parents were not given adequate notice and an opportunity to be heard on the issue of whether sovereign immunity applied to parents' claims against city clerk.

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**MUNICIPAL ORDINANCE - MONTANA**

## City of Missoula v. Fox

**Supreme Court of Montana - October 22, 2019 - P.3d - 2019 WL 5417786 - 2019 MT 250**

City brought action seeking declaration that firearm ordinance, imposing background checks on firearm transfers within city, was a lawful exercise of city's self-governing powers.

The District Court granted summary judgment to city. Attorney General appealed.

The Supreme Court held that:

- Action was justiciable, and
- Ordinance did not fall within exception to general prohibition on local government regulation of firearms, authorizing cities to prevent and suppress possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

City's action for declaration that firearm ordinance was lawful exercise of self-governing powers, following Attorney General's issuance of opinion to contrary, was justiciable, as required by Uniform Declaratory Judgment Act, even though city had not attempted to enforce ordinance; to enforce the ordinance at all, city would need to proceed in contravention to Attorney General's opinion, which carried imprimatur of legal authority.

City firearm ordinance, requiring background checks on firearm transfers within city, did not fall within exception to general prohibition on local government regulation of firearms, authorizing cities to prevent and suppress possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors; nothing within language of such exception permitted cities to regulate functions other than possession in any manner.

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**EMINENT DOMAIN - NEBRASKA**

## Russell v. Franklin County

**Court of Appeals of Nebraska - October 15, 2019 - N.W.2d - 27 Neb.App. 684 - 2019 WL 5152150**

Landowners brought inverse condemnation action against county arising out of county's removal of 67 trees from two locations on property covering 1.67 acres.

County moved to exclude landowners' experts and for summary judgment, and landowners moved to exclude county's expert. Following hearing, the District Court granted county's motions and denied landowners' motion. Landowners appealed.

The Court of Appeals held that correct measure of damages was fair market value of property before trees were removed less value of property after trees were removed.

Measure of damages in inverse condemnation action against county arising from removal of 67 trees on 1.67 acres of landowners' 164-acre property was fair market value of property before tree removal less fair market value of property after removal, rather than cost of restoring trees and vegetation on property; suit was not tort action for property damage, there was no evidence landowners intended to use property for residential or recreational purposes, cost of restoration exceeded predamaged fair market value of damaged property, and land could not be returned to prior condition by replacing trees since some were large and had naturally grown over many years.

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**REFERENDA . - NEW YORK**

## Parrish v. Rosenblum

**Supreme Court of Oregon, En Banc - October 10, 2019 - P.3d - 365 Or. 597 - 2019 WL**

**5078283**

Elector challenged certified ballot title for initiative petition to add constitutional provision regarding public pensions.

The Supreme Court held that:

- Prohibition on borrowing was an actual major effect of proposed measure, and thus belonged in caption;
- Phrase “effects unclear” in caption was unhelpful and failed to describe initiative’s subject matter;
- Phrase “unfunded actuarial liability” did not need to be placed in quotation marks in caption;
- Ballot title’s “yes” result statement did not substantially comply with requirement that it describe most significant and immediate effects; and
- Ballot title’s “no” result statement did not substantially comply with requirement that it inform voters about status quo.

Prohibition on borrowing to finance unfunded actuarial liability was an actual major effect of proposed state measure to amend constitution to be initiated, and thus prohibition belonged in ballot title’s caption, if word limit permitted it, despite contention that prohibition was subsumed within phrase “effects unclear;” regardless of uncertainty as to meaning of “accrue,” proposed measure on its face would have restricted use of borrowing to finance unfunded pension liabilities, and that restriction was significant change that proposed measure would have enacted in context of existing law.

Phrase “effects unclear” in caption of ballot title to amend constitution was unhelpful and failed to describe initiative’s subject matter, as statutorily required; even though proposed measure’s failure to define “accrue” was a source of ambiguity that should have been noted in caption, caption could have placed word in quotation marks followed by “undefined,” and lack of clarity as to how proposed measure would have applied to government bodies was in nature of secondary effects.

Phrase “unfunded actuarial liability” did not need to be placed in quotation marks in ballot title’s caption, for proposed state measure to add constitutional provision regarding public pensions, despite contention that phrase was ambiguous; phrase had accepted meaning under state statute, and proposed measure’s text was consistent with that meaning.

Ballot title’s “yes” result statement, which included phrase “effect unclear,” did not substantially comply with statutory requirement that it describe most significant and immediate effects of proposed measure, which would add constitutional provision regarding public pensions; ambiguity regarding term “accrue” was adequately addressed by putting that word in quotation marks, followed by word “undefined,” and lack of clarity in initiative petition concerning how governmental entity would have complied with new constitutional provision or consequences that would have flowed from failure to comply was not a change that would have effect on existing law.

Ballot title’s “no” result statement, which included statement that treasurer was “not required to calculate unfunded actuarial liability,” did not substantially comply with statutory requirement that it inform the voters about the status quo; statement, without more, could have left voters with incorrect impression that, under existing law, unfunded pension liabilities were not calculated by anyone, and therefore, the “no” result statement did not summarize current law accurately or advise voters of choice they were being asked to make on initiative petition to add constitutional provision regarding public pensions.

**REFERENDA - OHIO**

## State ex rel. Barney v. Union County Board of Elections

**Supreme Court of Ohio - October 17, 2019 .- N.E.3d - 2019 WL 5258021 - 2019 -Ohio- 4277**

Protesters sought writ of prohibition to prevent county board of elections from placing a township zoning referendum on the general-election ballot.

The Supreme Court held that:

- Protesters had no adequate remedy at law;
- Part-petitions were not invalidated based on placement of number of zoning-amendment application;
- Protesters failed to establish that petition was invalid for failing to contain "correct title" of application; and
- Omissions of modifications to application from brief summary did not render application invalid.

Protesters, who objected to placement of township zoning referendum on general election ballot, had no adequate remedy at law, as required for grant of writ of prohibition to preclude county board of elections from including referendum on ballot, due to proximity of general election, which was approximately seven weeks after protesters filed petition for writ of prohibition.

Zoning-referendum part-petitions, which provided zoning-amendment application number in summary section, rather than on top of the form, strictly complied with election statute requiring that petition must "contain" the number of the zoning-amendment application, and substantially complied with form of petition contained in statute, and thus petition was not invalidated based on placement of application number, though form petition instructed petitioners to write name and number of proposal "on the top of the petition"; number of the application appeared on the face of the part-petitions, statute did not specify where on face of the part-petitions the information must have appeared, and protesters asserted no public-interest reason for invalidating part-petition upon such technical ground.

Protesters, who objected to placement of township zoning referendum on general election ballot, failed to establish that zoning-amendment application did in fact have title that petitioners should have used but did not, and thus protesters failed to demonstrate that part-petitions failed to comply with statutory requirement that they contain "full and correct title, if any" of the application, though protesters asserted that title identified at top of part-petitions was "made up"; protesters never identified what correct title was and neglected to place application into evidence, evidence that township never referred to application by title used in part-petitions did not establish actual "correct title" of applications, and statute contemplated possibility that application would not have title.

Zoning-referendum part-petitions, which provided name by which zoning-amendment application was known in summary section, rather than on top of the form, strictly complied with election statute requiring that petition must "contain" the name by which the application was known, and substantially complied with form of petition contained in statute, and thus was not invalidated based on placement of application name, though form petition instructed petitioners to write name and number of proposal "on the top of the petition"; name and number of application appeared on the face of the part-petitions, and while statute required information to appear on part-petition, it did not mandate where it was required to appear.

Omission of five modifications to proposed zoning amendment imposed by township board of trustees from brief summary of zoning-amendment application contained in zoning-referendum part-petitions did not render summary inaccurate or ambiguous, and thus part-petitions were not invalidated on that ground; part-petitions contained entire zoning amendment, including full text of modifications, and petition was brief, as the complete zoning amendment including the full list of amendments was only two pages long.

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**PUBLIC UTILITIES . - PENNSYLVANIA**

## Lorenzen v. West Cornwall Township Zoning Hearing Board

**Commonwealth Court of Pennsylvania - October 23, 2019 - A.3d - 2019 WL 5405314**

Individual claimants and citizens' association sought judicial review of decision by the Zoning Hearing Board, which issued a permit for energy company to construct a natural gas pipeline facility.

The Court of Common Pleas affirmed the Board's decision. Claimants and association appealed.

The Commonwealth Court held that:

- Citizens' association had standing to appeal issuance of permit;
- Individual claimants lacked standing; and
- Energy company was not exempt from zoning provisions as a public utility.

Members of citizens' association demonstrated a particular harm to their properties resulting from issuance of zoning permit for construction of natural gas pipeline facility, and therefore association had standing to appeal the issuance; association presented qualified expert testimony that natural gas liquids (NGLs) such as ethane and propane had potential to explode and turn nearby trees and pieces of facility's structure into flying debris within a .5 mile radius, 2 of association's members lived within a .5 mile radius of facility.

Claimants lacked standing to challenge issuance of zoning permit that allowed construction of a natural gas pipeline facility, where claimants alleged harm resulting from the pipeline itself but the permit at issue related only to structures built in support of the pipeline.

Zoning ordinance regarding public utility exemptions did not implicitly generally exempt public utilities from township's zoning provisions, and therefore energy company, which had been issued a permit for construction of natural gas pipeline facility, was not entitled to such exemption; the ordinance merely attempted to limit or clarify the application of existing public utilities exemptions by providing that only support and maintenance structures were covered, and township could have expressly provided a general exemption if it so desired.

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**IMMUNITY - TEXAS**

## University of Texas v. Garner

**Supreme Court of Texas - October 18, 2019 - S.W.3d - 2019 WL 5275579 - 63 Tex. Sup. Ct. J. 41**

Bicyclist sued state university for negligence after she was injured by university employee while bicycling on university-owned property.

The District Court denied university's plea to the jurisdiction, and university appealed. The Court of Appeals affirmed, and appeal was taken.

The Supreme Court held that:

- University owed bicyclist only the duty not to injure her intentionally or through gross negligence pursuant to recreational use statute, and
- Recreational use statute applied to bicyclist's negligence claim, and because bicyclist did not assert claims premised on conduct involving malicious intent, bad faith, or gross negligence, the Tort Claims Act did not waive university's immunity from suit.

State university owed bicyclist, who was injured by university employee while bicycling on university-owned property, only the duty not to injure her intentionally or through gross negligence pursuant to section of recreational use statute, providing that, if person enters premises owned by governmental unit and engages in recreation on those premises, governmental unit does not owe to the person a greater degree of care than is owed to trespasser; bicyclist entered premises owned by governmental unit and engaged in activity on those premises, namely bicycling, which qualified as recreation under the statute.

Although bicyclist argued that she was bicycling on state university-owned property for transportation, rather than recreational purposes, when she was struck by vehicle driven by university employee, her subjective intent did not control when determining if bicyclist's activity was recreational for purposes of recreational use statute.

Recreational use statute applied to bicyclist's negligence claim against state university, after she was injured by university employee while bicycling on university-owned property, and because bicyclist did not assert claims premised on conduct involving malicious intent, bad faith, or gross negligence, the Tort Claims Act did not waive university's immunity from suit.

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## BDA Continues to Lead Industry Pushback on the PFM and NAMA Requests to Avoid Broker-Dealer Regulation.

Since learning of the October 2018 request from advisory firm PFM in late spring, the BDA has lead industry efforts to push back against the initial request and subsequent efforts from NAMA. Below, is a recap of all BDA advocacy activity, including meeting recaps and an overview of the 3 letters submitted to the SEC.

**SEC Request**
Currently, the BDA is in the process of drafting an outline response with Committee Leadership to the SEC request for comment on a proposed exemptive order that would grant, in limited circumstances, a conditional exemption from the broker registration requirements of Section 15(a) of the Securities Exchange Act of 1934 for Certain Activities of Registered Municipal Advisors.

The proposal, which is broad in scope, would permit non-dealer MAs to solicit financial institutions, Registered Investment Advisors and institutional SMMPs in private placement transactions where the entire issue is placed with one account.

After the outline is finalized, the BDA will host a conference call with full Committees to further draft a response.

**BDA Advocacy**
Following mid-September meetings with leadership at the SEC Office of Trading and Markets, including chief counsel, and the Office of Municipal Securities and Commissioner Robert Jackson, the BDA was tasked with finding a narrow framework for exemptive relief.

While BDA remains opposed to the SEC issuing any form of the requested relief, we believe that, if relief were to be granted, it should be in the form of a narrowly tailored exemptive order that makes clear that engaging in the activity constitutes acting as a broker-dealer but, under the limited circumstances, the SEC would exempt municipal advisors from broker-dealer registration requirements.

Following prior fall meetings with SEC staff, the BDA has sent two prior letters in response to the PFM and NAMA requests for guidance regarding private placement activity by non-dealer municipal advisors.

The September 9th letter, which can be viewed here, focuses on historical precedent, competitive disadvantages and the erosion of investor protections provided by the broker-dealer regulatory regime.

While the first letter submitted by the BDA on June 28th addressed directly the problems that would arise from the request for interpretative guidance if granted, including rolling back decades of settled law on what constitutes broker-dealer activity.

**Background**
PFM, the municipal advisory firm, sent a letter to the SEC last fall asking that the firm "not be required to register as a broker dealer" when conducting certain placement agent activity. They requested guidance exempting them from BD registration, which they argued "is essential for PFM and other MAs to fulfill their statutory mandate to protect [municipal entity] issuers, and to provide clarity and transparency regarding the role of the MA in municipal financing transactions."

Shortly after learning about the letter, BDA staff met with the SEC and the conversation with SEC staff focused on concerns we have with the request, including that it would negate the substantial regulatory protections under BD regulations in place to protect investors. The BDA also argued that the guidance PFM is asking for would create an unbalanced competitive environment between dealer and non-dealer MAs, and we emphasized that the act of finding investors, even for a direct placement, is inherently BD activity.

**Bond Dealers of America**

November 5, 2019

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## Investors Reap Rewards Using Conduit-Issued Municipal Bonds.

**Summary**

- Conduit-issued munis are little-known area of the muni market that can increase yield.
- Investors benefit from higher yields and maintain the same tax-free status.
- Look under the hood of conduit issuers to avoid getting burned.

The search for safe and generous tax-free income with individual municipal bonds is becoming more difficult each day. But rest easy, there's an obscure area of the muni market that can offer generous yields. Conduit-issued muni bonds often offer much higher yields than their traditional municipal counterparts and at the same time carry the same tax-free status. Many are safe and stable, but others can be very high risk. Investors must exercise due diligence. Safe conduit issues are a great alternative to municipal ETFs and mutual funds. Mutual funds carry redemption risk, meaning they will likely suffer value erosion during periods of large outflows. Individual bonds – including conduit-issued munis with good credit ratings – have no such redemption risk.

**What Are Conduit Bonds?**

Conduit bonds are bonds issued by an organization (usually a government agency) to fund projects on behalf of a third party who is the actual borrower. The borrower is usually responsible for the bond payments. Most conduit securities are issued to benefit the public at large (hospitals, airport improvements, housing, veterans, and pollution reduction). These issues can vary widely in size, purpose, and geography. They range from well-known public projects like hospitals to smaller projects like museums, airplane hangars, or maternity centers. In most cases the more obscure it is, the more risk.

Continue reading.

**Seeking Alpha**

by Alexander Anderson

November 1, 2019

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## Dealers Ask SEC Not to Approve Fair Dealing Guidance Changes.

Broker-dealers don't want the Securities and Exchange Commission to approve changes to fair-dealing guidance, saying that a proposed amendment adds complexity and uncertainty to the rule.

Bond Dealers of America made that case to the SEC in a letter dated Oct. 29, asking them not to approve the Municipal Securities Rulemaking Board's amendment to Rule G-17's interpretive guidance.

"Rather than simplify and streamline Rule G-17 compliance, the lengthy amendment would add significant complexity and uncertainty to the G-17 regime," wrote Michael Nicholas, BDA CEO.

BDA is continually opposed to the MSRB's use of a "reasonably foreseeable" standard, saying it would result in inconsistent compliance standards. The standard would provide that an underwriter's potential material conflicts of interest must be disclosed to an issuer only if that potential conflict is reasonably likely to mature into an actual material conflict of interest during the course of that specific transaction.

BDA said that standard is vague and would provide little useful information for issuers as well as inconsistent compliance.

The Securities Industry and Financial Markets Association reiterated that it wants the MSRB to require only disclosures of actual conflicts of interest.

“The MSRB has chosen a standard of ‘reasonably forseeable’ conflicts, which we feel is not addressing the industry’s concerns about a clear standard,” said Leslie Norwood, a managing director, associate general counsel and head of municipals at SIFMA. “This is an undefined standard at this point.”

BDA also argued that new language in the proposed amended guidance would introduce new disclosures around complex municipal securities financial structures, creating a “compliance gray area.”

“The amendment would create a vague and imprecise standard for determining what is a CMSF and what kinds of information related to the transaction would need to be disclosed and under what conditions,” Nicholas wrote.

SIFMA wants clarification from the MSRB regarding complex municipal securities disclosures, and confirmation that standardized underwriters’ disclosures will still comply with the rule.

In the MSRB’s proposed amended interpretive guidance, they ask that transaction-specific disclosures address complex features or products rather than being general in nature.

Underwriters have to adopt policies and procedures that can be implemented in a consistent manner to satisfy regulatory requirements and examiners, Norwood wrote.

“There have been some small changes in the interpretive guidance that led us to have some concerns regarding the tailoring of complex securities disclosures,” Norwood said. “Specifically, SIFMA wants to ensure that the MSRB, FINRA examiners and underwriters implementing this amended guidance all have the same understanding.”

SIFMA wants to confirm that the way the industry has been complying with the rule through standardized disclosures where appropriate is still a valid way to comply with the rule, given the proposed changes.

SIFMA believes it is reasonable to give any issuer that has been recommended a common complex structure a standard written disclosure that describes the nature and risks, with the understanding that the disclosures would be more tailored if the transaction deviated from the standard, Norwood wrote.

SIFMA also wants to clarify wording in the guidance such as “individualized,” to mean that standard disclosures are designed to be clear, concise and tailored to a specific type of financing such as variable rate demand obligations, not a book of all types of product disclosures.

“Confirmation from the MSRB that this interpretation is reasonable would clear up this confusion from the proposed revised interpretive guidance,” Norwood wrote.

If the SEC approves the MSRB’s proposed changes, SIFMA will review and update its G-17 model documents, Norwood said.

The MSRB’s proposed guidance said that a sole underwriter or lead manager would need to “disclose” to an issuer client that the “issuer may choose to engage the services of an MA with a fiduciary obligation to represent the issuer’s interests in the transaction.”

BDA is opposed to the provision, saying there are no statutory or regulatory requirements that issuers hire an MA and that underwriters should not be required to promote the services of other market participants.

The National Association of Municipal Advisors supports the changes to the interpretive guidance, restating their support on adding underwriter disclosures that issuers may engage the services of MAs who have a fiduciary duty to the issuer, unlike the underwriter.

"Further, we support expanding the language of the interpretative guidance to disallow underwriters from deterring the use of municipal advisors by issuers," wrote Susan Gaffney, NAMA executive director.

BDA also believes the MSRB missed out on an opportunity to provide compliance on combining and integrating underwriter disclosures required under Rule G-17 and Rule G-23 on activities of financial advisors.

The MSRB is currently reviewing Rule G-23. Some issuers have been concerned that an underwriter firm serving as an issuer's MA could get insight and leverage a deal, only to then resign as advisor and underwrite a transaction or at least submit a bid on a competitive deal.

However, some municipal market participants say not by allowing that broker-dealer firm to switch roles and underwrite the bonds takes one more firm out of the equation that can actually submit a bid.

The SEC has the final say. They could choose to require changes suggested in comments or by its own staff. The SEC could also choose to approve the proposal as is.

By Sarah Wynn

BY SOURCEMEDIA | MUNICIPAL | 10/30/19 02:24 PM EDT

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## Lukewarm Bond Yields Belie Mayors' Climate Alarm.

**If politicians believe what they say on the campaign trail, why don't their cities disclose it to borrowers?**

Dire climate-change warnings have become a mainstay of politics. This is particularly true for state and local politicians whose coastal constituents stand to be most affected by rising sea levels. Mayors declare that impending eco-dangers represent an "existential threat," and that significant portions of their cities will be submerged without swift and dramatic action. But do municipalities disclose these perilous environmental risks to potential bond investors?

The Government Accountability Institute undertook a yearlong study of 40 major cities to find out if mayors' apocalyptic projections about climate risks are factored into the interest rates on the municipal bonds their cities issue. The results revealed a gulf between the words municipal leaders speak and the disclosures cities make. There was no statistically significant difference in the interest rates for bonds issued by cities in high-risk locations for climate-change devastation versus those issued by low-risk cities.

The study compiled 100 bond issuances for 20 cities at risk of climate-induced sea-level rises such as New York and New Orleans, as well as 100 issuances for 20 low-risk, inland cities such as Chicago and Kansas City. Greater risk to investors should produce a higher bond interest rate, or "coupon rate." But the average rate for at-risk cities was 4.21% versus 3.99% for low-risk cities, and our analysis found that this difference of 22 basis points was not statistically significant. The study controlled for factors like type of bond, maturity and purpose, which also affect interest-rate variation.

The study also found scant mention of climate change in bond disclosure documents. The disclosure statements of the 20 at-risk cities totaled 4,361 pages. Phrases like "climate change" and "sea-level rise" appeared fewer than 100 times across all 20 at-risk cities in the context of the issues addressed in this study. Further, 12 out of the 20 disclosures for at-risk cities did not mention climate language in the same context.

The contrast between what mayors say in public and what cities disclose in bond language is often stark. New York's Bill de Blasio has called climate change an "existential threat" and a "dagger aimed straight at the heart" of the city. Yet New York and the Port Authority of New York and New Jersey barely mentioned climate change or rising sea levels in their risk statements to investors.

The city's official 297-page disclosure for its April 2018 $1.1 billion general-obligation bond issuance contains four paragraphs with generic mentions of rising sea levels and climate change. This issuance was composed of $250 million in taxable bonds with an average coupon rate of 3.2% and $850 million in tax-exempt bonds with an average coupon rate of 4.21%. These interest rates hardly reflect the "dagger to the heart" threat Mr. de Blasio says is imminent.

California municipalities evinced a similar pattern. In a 2017 lawsuit against Exxon Mobil Corp. and four other oil companies, the city of Oakland painted a dystopian portrait of looming environmental calamities. "Global warming has caused and continues to cause accelerated sea level rise in San Francisco Bay and the adjacent ocean with severe, and potentially catastrophic, consequences for Oakland," the city's lawsuit stated. Worse, "by 2050, a '100-year flood' in the Oakland vicinity is expected to occur on average once every 2.3 years and by 2100 to occur 44 times per year or almost once per week." The lawsuit added that "Oakland is projected to have up to 66 inches of sea level rise by 2100." The city alleged this would "imminently threaten Oakland's sewer system" and harm property with a "total replacement cost of between $22 and $38 billion."

Contrast that detailed, dramatic language with Oakland's bland, measured 2017 bond risk disclosure to investors: "The City is unable to predict when seismic events, fires or other natural events, such as sea rise or other impacts of climate change or flooding from a major storm, could occur, when they may occur, and, if any such events occur, whether they will have a material adverse effect on the business operations or financial condition of the City or the local economy."

Politicians can't have it both ways. If climate change is the existential threat they claim, then why aren't municipal-bond investors being rewarded with higher interest rates for taking greater risks? And why don't bond disclosure statements contain the grave and granular data from climate-change projections those same municipalities tout elsewhere?

If mayors are serious about leading on climate change, they should align the rhetoric they speak on the campaign trail with the interest rates and disclosures they offer on municipal bonds. And if they need another motivation, there's this: While campaign promises aren't legally binding, bond disclosure statements are.

**The Wall Street Journal**

By Peter Schweizer

Oct. 28, 2019 6:50 pm ET

*Mr. Schweizer is president of the Government Accountability Institute.*

## [U.S. City Revenue Lags Inflation for First Time in Seven Years.]

- **Collections to decline by inflation-adjusted 1%, report says**
- **Two thirds of large cities foresee recession as soon as 2020**

U.S. cities' revenues are failing to keep pace with inflation for the first time in seven years, signaling an increase in the financial pressure on local governments despite the nation's record-long economic expansion, according to a survey released by the National League of Cities.

On average, municipal finance officers estimate general-fund revenues will decline by 1% when adjusted for inflation, the survey found. At the same time, officials have grown more cautious about the economic outlook, with almost two-thirds of those from large cities now forecasting a recession as soon as next year.

"Fiscal trends are beginning to align with some of the negative economic trends that we've seen in past downturns," Christiana McFarland, the director of research for the National League of Cities, said during a televised discussion on the report.

The findings come amid rising global geopolitical tensions that are frightening investors and dampening business confidence. U.S. manufacturing reached its lowest since the last recession in September and the pace of home sales has slowed.

Yet, cities are still largely benefiting from the more-than decade long economic expansion, even if their revenue isn't keeping up with inflation. Three out of four finance officers said they are confident their cities are able to meet their financial obligations, roughly the same as last year, according to data from 554 cities.

The local governments are poised to spend 2.3% more in 2019 than they did the previous year, as the cost of goods and services, including health care, rises.

"The purchasing power of the public sector is weakening in relation to other parts of the economy, and having a large impact on city budgets," the report said.

Property-tax collections, typically the biggest source of municipal revenues, are expected to increase by 2% in 2019, about the same pace as a year earlier. Sales taxes, which are more sensitive to economic swings, are anticipated to grow 0.3% after a jump of 1.9% in 2018.

**Bloomberg**

By Maria Elena Vizcaino

October 28, 2019, 1:29 PM PDT

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## [MSRB: Trends in Municipal Bond Ownership.]

What are the possible implications of the recent increase in holdings of municipal bonds by mutual funds and ETFs?

Read the [MSRB's issue brief] on municipal bond ownership trends.

## Proposed Rule Change to Amend & Restate MSRB Rule G-17: SIFMA Comment Letter.

SUMMARY

SIFMA provided input to the Securities and Exchange Commission on Amendment No. 1 to Proposed Rule Change to Amend and Restate the Municipal Securities Rulemaking Board's August 2, 2012 Interpretive Notice Concerning the Application of Rule G-17 to Underwriters of Municipal Securities.

SIFMA thanks the MSRB for: (1) adopting our proposal that the underwriter recommending the complex municipal securities transaction should be the one to make the requisite disclosure; (2) clarifying that placement agents may disclaim a fiduciary duty to the issuer if that is consistent with the nature of their arrangement; (3) clarifying the application of scope of the interpretation related to municipal fund securities; and (4) adopting changes regarding acknowledgement of receipt.

Read the Comment Letter.

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## How Does PG&E Impact the Utilities Market?

Nisha Patel, municipal portfolio manager at Eaton Vance, examines credit risk for utilities from PG&E Corp. and how overall climate change affects municipal water and sewer bonds. She speaks with Bloomberg's Taylor Riggs on "Bloomberg Markets."

Watch video.

**Bloomberg Markets TV Shows**

October 30th, 2019, 8:55 AM PDT

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## Is Public Finance Ready to Rely on Blockchain Technology?

**Governments often contend with many issues when attempting to link public dollars to real-world outcomes captured by data in disparate systems. EY claims its OpsChain Public Finance Manager will reduce those struggles.**

The stewardship of public dollars is a challenge as old as government itself, but nascent technologies are coming into the space with the intention of streamlining it. Blockchain-enabled tools are one such example.

The OpsChain Public Finance Manager (PFM), a new blockchain-based tool from Ernst & Young, is designed to allow governments to "focus more directly on the things that matter," said Mark MacDonald, EY global public finance management leader.

The potential of this tool lies in helping governments track the "financial integrity of the way public money is spent" and the related outcomes that are achieved, MacDonald said. Essentially, the PFM promises to enhance the ability of governments to see how public dollars are connected to actual results, which should support further decision-making.

“In simple terms, it’s the integration between a financial view and non-financial view that can really help public managers manage more effectively, public budgeters budget more effectively, and ultimately it’s about trying to advance that cause of ‘better finance, better government,’” MacDonald said.

The PFM is based on the EY Ops Chain, which is a blockchain platform that entered its second generation earlier this year. According to EY, this platform can “support up to 20 million transactions per day on private networks” and has reportedly led to efficiency gains of more than 90 percent in certain cases.

Most governments utilize an enterprise resource planning (ERP) system to keep up with public funds. MacDonald said those systems are generally well understood, but he suggested a critical piece of the organizational puzzle is missing when it comes to linking ERP data to outcome data in other systems.

“The question becomes when I have an opportunity to try and connect financial data and information to another system that perhaps has my non-financial information in it, how easily am I able to do that?” MacDonald said.

Mike Mucha, deputy executive director of the Government Finance Officers Association, said his organization helps governments prepare and procure ERP systems, so he understands the challenge that MacDonald refers to. Mucha cited an example involving a school district. A district will have its financial data in one system (ERP), but student performance data will be stored in a student information system (SIS).

“If you’re trying to calculate like an academic ROI … you need to basically, through some sort of third-party tool or some sort of third tool, correlate your spending on various programs with the academic return that you’re getting out of your student data system,” Mucha said.

Additionally, MacDonald said governments often deal with a “complicated array” of contractors, partners and not-for-profits in delivering public services. The chances of these external agents being on the government’s ERP system are essentially zero, which creates a “hard organizational interface to try to overcome.” The blockchain component can help manage this kind of chaos, almost acting as an “ERP across ERPs.”

Another challenge is simply the idea of the government running multiple systems itself. Almost no organization runs just one ERP system, Mucha said. Then there’s the fact that public entities frequently house their own information even though those entities might need to work together for the common good. Although Mucha admits that he doesn’t know anything about the EY tool, he can imagine great potential for public entities wishing to work together.

“From a business intelligence perspective, you might want to pool that information together … so if you had an ERP across ERPs, then you could conceivably use data from each one of those individual entity’s ERP system in sort of a shared resource,” Mucha said.

MacDonald stressed that the blockchain aspect of the PFM is not “technology for technology’s sake.” Rather, the blockchain platform presents a logical opportunity for technology to address long-standing business challenges within the complexity of a government system.

“It [blockchain] has the ability to work at that network level across organizational boundaries, across different authorities, and so forth,” MacDonald said.

According to EY, the PFM has been tested by multiple governments around the world. MacDonald would not reveal all of those governments due to concerns related to privacy and confidentiality. It is public knowledge, however, that Toronto has tested the tool, but Toronto's chief financial officer Heather Taylor could not be reached for further comment.

BY JED PRESSGROVE, GOVERNMENT TECHNOLOGY | OCTOBER 30, 2019 AT 3:01 AM

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## Tearing Down Tax Walls Pitched as Way to Spur Green Muni Bonds.

- **Ramirez banker says creating national market would cut costs**
- **Plan would involve extending tax breaks to out-of-state debt**

Banker Alfredo Quintero just finished working on the New York subway operator's first green-bond sale when he considered the paradox that's kept environmentally minded investing from taking off in the $3.8 trillion municipal-securities market.

States and cities routinely sell debt for mass-transit systems, water-treatment plants and other projects that do good for the environment, so they would seem like the perfect pipeline to feed the latest fixed-income trend. Yet they rarely go through the steps to market their bonds as green for a good reason: it doesn't seem to save them money.

But those savings could emerge, Quintero realized, if one could tear down the tax-law barriers that largely keep the $400 billion of municipal bonds sold each year in their home states. So the senior managing director at investment bank Samuel A. Ramirez & Co. has been pitching California officials on a plan to extend the state's tax exemption to New York's green bonds, and vice versa, marking a first step toward creating a national market that could vastly increase demand and cut the yields governments pay.

Continue reading.

**Bloomberg Markets**

By Romy Varghese

October 29, 2019, 10:30 AM PDT

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## Muni-Bond Desks Stand to See Big Wins If Trump Loses.

- **Tax-the-rich plans of Democrats may boost muni-bond market**
- **Tax-exempt debt saw outsize gains early under Clinton, Obama**

Elizabeth Warren wants to tax those she calls ultra-millionaires. Bernie Sanders has targeted the top 0.1%. And Joe Biden is seeking to reverse President Donald Trump's tax cuts.

On the whole, Wall Street may not be very excited about the tax-the-rich push that's front and center in the Democrats' efforts to unseat Trump next year. But a $3.8 trillion corner of the bond market could reap big gains if one of them wins the White House.

That's because the value of tax-exempt state and local government debt tends to rise when taxes head higher as wealthy investors buy those bonds to hold down what they owe.

Continue reading.

**Bloomberg Markets**

By Amanda Albright

October 31, 2019, 6:30 AM PDT

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## Tax Relief for Replacing LIBOR in Tax-Exempt Debt and Swaps: Orrick

Many tax-exempt bonds and related hedges, such as interest rate swaps ("Exempt Instruments"), use a LIBOR-based interest rate. LIBOR is going away, and existing Exempt Instruments are going to have to be modified to replace the LIBOR index as a result. These changes can result in potentially serious tax consequences relating to a reissuance of the bonds or a deemed termination of the hedge, in addition to the business issues and document requirements that will arise.

On October 8, 2019, the IRS issued proposed regulations (the "Proposed Regulations") that propose broad relief from these tax consequences. The discussion below focuses on Exempt Instruments, but the Proposed Regulations address replacing any interbank offering rates (IBORs) in any debt instrument or non-debt contract. With some minor limitations, the Proposed Regulations can be applied to IBOR replacements before the final regulations are published.

**Potential Tax Consequences of Replacing LIBOR**

Prior to the publication of the Proposed Regulations, parties were hesitant to amend existing Exempt Instruments to replace LIBOR-based interest rates, because it was possible that the amendment might trigger a reissuance of tax-exempt bonds or a deemed termination of a related hedge, such as a swap.

If tax-exempt bonds are reissued, the tax treatment is as if the bonds are refunded by new bonds on the date of the reissuance. The new bonds must meet all the requirements for tax-exemption on the reissuance date or the new bonds are not tax-exempt. So long as the law has not changed and certain requirements are satisfied, a reissuance does not usually cause a loss of tax exemption, but that is not the case for other tax-advantaged bonds. For example, the authorization to issue build America bonds (BABs) has expired, and a reissuance of BABs would result in a loss of the subsidy payments to the issuer.

Likewise, if a swap is modified to replace LIBOR with a new index, the swap could cease to meet the requirements for a qualified hedge or could result in a deemed termination of the swap.

The Proposed Regulations provide safe harbors that allow parties to avoid these tax consequences.

**In General**

The Proposed Regulations provide that amending the terms of an Exempt Instrument to replace LIBOR with a "qualified rate" will not result in a reissuance of the debt instrument or a deemed termination of the hedging contract if the fair market value of the altered Exempt Instrument is substantially equal to the fair market value of the Exempt Instrument prior to being altered. Likewise, any alteration made in association with the replacement (an “associated alteration”) will not trigger a reissuance or deemed termination if a fair market value test is satisfied.

In other words, the actual interest rate (and therefore the arbitrage yield) may change due to the substitution of the new index, but the bonds are still the same tax-exempt issue and the swap or cap is still a qualified hedge. This will be true regardless of whether the amendments are made through an amendment of the original instrument or by an exchange of a new instrument for the original instrument.

**Qualified Rates**

The following rates are considered “qualified rates”[1] under the general rule:

(i) The Secured Overnight Financing Rate published by the Federal Reserve Bank of New York (SOFR);

(ii) Any qualified floating rate, as defined in §1.1275-5(b) (but without regard to the limitations on multiples), and

(iii) Any rate that is determined by reference to one of the rates listed above, including a rate determined by adding or subtracting a specified number of basis points to or from the rate or by multiplying the rate by a specified number.

This is a very broad definition of a qualified rate and, subject to the fair market value test, should accommodate almost all desired substitute rate.

**Fair Market Value Test**

In addition to using a qualified rate, the fair market value of the amended Exempt Instrument must be substantially equivalent to the fair market value before such amendment. The Proposed Regulations provide that the fair market value of an Exempt Instrument may be determined by any reasonable valuation method, as long as that reasonable valuation method is applied consistently and takes into account any one-time payment made in lieu of an adjustment to the index, such as adding basis points. Recognizing that fair market values tests often are difficult to implement, the IRS provided two safe harbors for determining the fair market value.

**First Fair Market Value Safe Harbor**

Under the first safe harbor, the fair market value test is met if at the time of the alteration the historic average of the LIBOR rate on the Exempt Instrument is within 25 basis points of the historic average of the rate that replaces it. The parties may use any reasonable method to compute a historic average if

- the lookback period from which the historic data are drawn begins no earlier than 10 years before the alteration and ends no earlier than three months before the alteration,
- once a lookback period is established, the historic average must take into account every instance of the relevant rate published during that period, and
- the parties must use the same methodology and lookback period to compute the historic average for each of the rates to be compared.

Although this lookback test is relatively straight-forward, it too may be difficult to implement at times. For example, the Proposed Regulations are silent regarding the minimum length of the lookback period and the minimum number of data points that is acceptable, which raises the question if a lookback period designed to provide one data point would be sufficient. In addition, the Federal Reserve only began publishing SOFR in April 2018, and SOFR is calculated using data from overnight Treasury repo activity, whereas Exempt Instruments often use 30-day LIBOR.

On the other hand, the Proposed Regulations also provide that, for this purpose, an historic average may be determined by using an industry-wide standard, such as a method of determining an historic average recommended by the International Swaps and Derivatives Association (ISDA) for the purpose of computing the spread adjustment on a rate included as a fallback to an IBOR-referencing rate on a derivative or a method of determining an historic average recommended by the Alternative Reference Rates Committee (ARRC) for the purpose of computing the spread adjustment for a rate that replaces an IBOR-referencing rate on a debt instrument. We understand that ISDA and ARRC are working on guidance to assist in determining these historic averages for SOFR.

**Second Fair Market Value Safe Harbor**

Under the second safe harbor, the fair market value test is met if the parties to the Exempt Instrument are not related, and the parties determine that the fair market value of the amended Exempt Instrument is substantially equivalent to the fair market value of the Exempt Instrument before the amendment. In determining the fair market value of an amended Exempt Instrument, the parties must take into account the value of any one-time payment made in lieu of a spread adjustment (described below). This safe harbor should be satisfied in almost any arms-length rate substitution, but counsel will require certifications to support any opinion. This safe harbor may be the only one that applies if there is a substantial one-time payment.

**Associated Alterations**

"Associated alterations" are alterations that are both associated with the replacement of the LIBOR-based rate and are reasonably necessary to adopt or implement that replacement. This is also a broad concept. One example of an associated alteration is the requirement for one party to make a one-time payment to the other in connection with the replacement of the LIBOR-based rate to offset the change in value that occurs as a result of the replacement.

Importantly, the Proposed Regulations provide that any such payments have the tax character of the associated instrument. For example such a payment by an issuer to a holder of a tax-exempt bond should be tax-exempt interest. Likewise, a payment from a bondholder to an issuer should be considered additional bond proceeds. It is unlikely that any payments made as a result of associated alterations would be able to be financed on a tax-exempt basis.

**Multiple Alterations or Modifications**

The Proposed Regulations provide that when alterations or modifications go beyond replacing an IBOR rate and making qualified associated alterations, the excessive portion of the alteration is tested under the normal reissuance rules. The portion of the alteration that is a qualified associated alteration is treated as part of the existing terms of the instrument when the reissuance test is applied. As a result, the qualified associated alteration becomes part of the baseline against which the excess portion of the alteration or modification is tested.

The Proposed Regulations do not address the simultaneous alteration of multiple instruments between the same parties. In such situations, parties may be inclined to maximize a payment made with respect to an Exempt Instrument and to minimize a payment made with respect to other instruments. These circumstances will require careful consideration to make sure that the simultaneous alterations do not result in problems that undermine the tax relief provided by the Proposed Regulations.

**Proposed Effective Dates**

The IRS has proposed that generally the final regulations ultimately adopted would apply to an alteration of the terms of an Exempt Instrument that occurs on or after the date of publication of the final regulations in the Federal Register. However, a taxpayer may choose to apply certain portions of the Proposed Regulations to alterations that occur before that date, provided that the taxpayer and its related parties consistently apply the Proposed Regulations.

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[1] Note that a rate is not a qualified rate if it is in a different currency than the rate being replaced or if the rate is not reasonably expected to measure contemporaneous variations in the cost of newly borrowed funds in the same currency. This should not matter much for Exempt Instruments, because all such instruments should be US dollar-based. Accordingly, this alert does not discuss qualified rates in other currencies.

**Orrick Public Finance Alert | October.28.2019**

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## NASACT: Treasury/IRS Seek Comment on Potential Tax Consequences of LIBOR Transition

In the summer of 2017, the United Kingdom Financial Conduct Authority announced that all currency and term variants of the London Interbank Offered Rate (LIBOR), including U.S.-dollar LIBOR (USD LIBOR), may be phased out after the end of 2021. LIBOR is used globally as a “benchmark” or “reference rate” for various commercial and financial contracts, including floating rate mortgages, corporate and municipal bonds, asset-backed securities, consumer loans, swaps and other derivatives.

As a result of this announcement, several work groups were formed to recommend an alternative rate to LIBOR. In the U.S., the Alternative Reference Rates Committee (ARRC) was formed and identified the Secured Overnight Financing Rate (SOFR) as the alternative rate for USD LIBOR. SOFR is a broad measure of the cost of borrowing cash overnight and collateralized by Treasury securities.

Earlier this year, the ARRC submitted to the Treasury Department and the Internal Revenue Service documents identifying various potential tax issues associated with the elimination of Interbank Offered Rates (IBOR). ARRC further requested that tax guidance be issued to address potential tax consequences so that an orderly transition may occur. The ARRC stated that existing debt instruments and derivatives providing for IBOR-based payments must be amended to address the transition.

The Treasury Department and the IRS have issued guidance to minimize potential market disruption and to facilitate an orderly transition. Specifically, the guidance would address concerns about whether the replacement rate in a debt instrument or non-debt contract would result in a taxable exchange of the debt instrument or contract.

Generally, the proposed regulations provide that alteration of the terms of existing financial instruments that switch from LIBOR to another alternative rate will not be treated as a modification resulting in the realization of income, deduction, gain, or loss for purposes of section 1001 of the Tax Code. However, the proposed regulations provide more fully the circumstances in which the modification could result in a taxable exchange.

The Treasury and IRS are specifically seeking comment on any complications under any section of the Code or existing regulations that may arise from the replacement of an IBOR with a qualified rate and that are not resolved in the proposed regulations.

NASACT members are urged to provide comments, which may be sent to Cornelia Chebinou no later than COB on Friday, November 15. Should enough comments be received, NASACT will prepare an association response. You may also comment directly to Treasury and IRS no later than November 25, 2019.

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## How to Form Your Own Opportunity Zone Fund.

How can you form your own Opportunity Zone fund? What are the most important considerations when structuring your entity, and what are some best practices for regulatory compliance? Opportunity Zones Podcast host Jimmy Atkinson and OZ Consultants CEO Ashley Tison have teamed up to create OZ Pros — Qualified Opportunity Fund and Qualified Opportunity Zone Business entity formation made easy. Click the play button below…

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**Opportunity Db**

October 29, 2019

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## How to Form Your Own Qualified Opportunity Zone Business (QOZB).

Are you considering starting your own Qualified Opportunity Zone Business or converting an existing business into a QOZB? Or perhaps you need a QOZB for your Qualified Opportunity Fund? In today's episode, we highlight some of the most important considerations when structuring your QOZB entity, and best practices for regulatory compliance. Opportunity Zones Podcast host Jimmy Atkinson and OZ Consultants CEO Ashley Tison have teamed…

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**Opportunity Db**

October 31, 2019

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## Deep in No-Tax Texas, Shale Hub Weighs $569 Million School Bond.

- **Midland's leaders back funding to upgrade outdated facilities**

- **Oil-company honchos worry about quality of tomorrow's workers**

The hall lockers at Midland High School — Go Bulldogs! — sport a fresh coat of red paint, but the rest of the place looks like its best years were last century.

Some passageways in the West Texas public school are too narrow for wheelchairs and a number of classrooms have just two electrical outlets. A few of the 48 students in an AP economics class are without desks while another sits in the teacher's chair. Across town, Midland Lee High School — Go Rebels! — isn't much better.

An overlooked consequence of the American energy revolution is the stretching of municipal resources in small cities like Midland. The Permian Basin hub of 142,000 residents hasn't kept pace with the influx of families flocking to the shale patch, and now civic leaders are fretting over the long-term costs of outdated schools. To remedy that, Midland voters will decide Tuesday whether to issue a $569 million bond to build two new high schools and freshen up the old ones.

Per-pupil spending in Texas, famously hostile to government expansion, was in the bottom fifth of all states in 2016, according to Governing, a public-finance site. Nationally, capital spending on schools slowed after the recession that ended in 2009 and never recovered. The money spent in the U.S. in 2016 was less than it was 10 years ago even as enrollment grew.

Texas has no income tax and property taxes are frozen for senior citizens. Midland, the former home of the Bush family, has voted overwhelmingly Republican for years.

But Midland's antiquated schools are seen as so troubling that the usually tax-averse Chamber of Commerce voted unanimously to support a "yes" vote, and oil-company honchos have publicly backed the bond issue. They say that a lagging educational system is already an issue in wooing talented hires to town and could produce subpar employees of the future.

**Biggest Drawback**

"We've allowed the conservative nature of our community to not fund the facility improvements that have been needed over time," Travis Stice, chief executive officer of Diamondback Energy Inc., a Midland-based independent with a $14 billion market value, said in an interview.

"As an employer, that's one of the single biggest drawbacks I have when it comes to bringing people from the outside," said Stice, who, like his wife and three children, attended Midland Lee. "They always ask, 'What the heck is going on with your schools out here?'"

Last week, Scott Sheffield, CEO of Irving, Texas-based Pioneer Natural Resources Co., also came out in favor.

"For Midland to attract the professional and skilled workforce needed to take advantage of this vast opportunity, new modern school facilities providing critical added capacity are required," Sheffield wrote in an opinion piece for the Midland Reporter-Telegram.

Midland is accustomed to fluctuations in fortune. During boom times, restaurants struggle to retain workers who leave for better jobs in the oilfield, traffic mishaps soar as droves of drivers hit the highway with fracking supplies and rents can spike so high that the school district bought apartments just to keep prices from pushing out teachers.

**Spigot Off**

Busts have kept the city aware that another downturn could always be lurking. But even with shale production growth slowing, folks say that schools could finally use some money.

“When there was the bust in the 80s, the spigot was turned off,” Joe Rhone, a 56-year-old Midland resident, said outside an early-voting location where he supported the bond. “The schools are in really bad shape.”

Texas employs a so-called Robin Hood funding model for its public schools, allocating tax revenue from wealthy districts to poorer ones. Thanks to shale, Midland ranked seventh in the state last year in revenue and next school year is projected to almost double its payment to the state to $118 million.

If the bond passes, the city estimates a net property-tax impact of $5.29 a month for a $300,000 home. Midland’s median home price is $261,800, according to Zillow.

The bulk of the debt would be used to build two new high schools while renovating the current Midland Lee location. The new Midland High is slated to be built on the 117-acre Ranchland Hills Golf Club, which the school district bought this year for $9.5 million.

**Safety Concerns**

The current buildings pose safety concerns for students, said Midland High School Principal Leslie Sparacello. She counts more than 50 entryways — a nerve-wracking layout at a time when school shootings are a concern.

Sparacello, who goes by Dr. S, said she’s looking at one workaround by turning a second-floor hallway into an internal entrance to the library. The fire marshal signed off, but the hall is too narrow to comply with the Americans with Disabilities Act.

Not everyone thinks the bond is the best way to turn things around. Tim Bryson, a financial adviser for Merrill Lynch Wealth Management who lives in Midland, says it’s “irresponsible” to buy a golf course and then build a school on the land.

“There’s only eight people in town who think that’s a good idea,” he said.

Orlando Riddick, the school superintendent, said he doesn’t have a lot of options.

“I’m being just as shrewd a business operator as any of our other industry partners here in the city,” he said in an interview. “We kicked the can so far down the road. There are half a billion dollars of needs that we’ve left behind.”

**Bloomberg Markets**

By Rachel Adams-Heard

October 31, 2019, 4:00 AM PDT

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## [The Grand Experiment: The State and Municipal Pension Fund Diversification into Alternative Assets]

By Jeff Hooke and Ken Yook, includes “Over a nine-year period (2008–2016), state and municipal pension funds embarked on a grand experiment. They boosted their commitments to alternative assets, spending tens of billions of dollars per year on additional third-party money management fees. … We conclude that the states and municipalities obtained neither lower risk nor higher returns with the higher level of active management and diversification implied by alternative assets. The experiment is thus a failure."

Read the full article on: [Portfolio Management Research]

**Truth In Accounting**

Jeff Hooke, Ken Yook | November 1, 2019

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## [S&P State Brief: Kansas]

[Read the Brief.]

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## [Risky Business: As Some Major Contractors Pull Back from P3s, Others Embrace the Approach]

Most public-private partnership contracts are for design-build, fixed-budget, fixed-schedule work that Skanska, Fluor and others say is just too risky to guarantee profit.

When President Donald Trump announced his campaign pledge to upgrade the country's infrastructure, he endorsed public-private partnerships (P3s) as a way to help finance and build the $1 trillion worth of projects subject to his proposal.

He said he would leverage the power of P3s to turn $200 billion of public dollars into $1 trillion of investment, refurbishing crumbling infrastructure without emptying public coffers.

But just a year later, he had soured on the idea, telling a group of legislators in 2017 that private financing of public infrastructure isn't likely to work and that P3s are "more trouble than they're worth."

[Continue reading.]

**Construction Dive**

by Jenn Goodman

Oct. 25, 2019

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## [Pension Vise Tightens on Illinois Towns.]

**As Pritzker considers consolidating hundreds of funds around the state, local governments face an urgent problem: Police and fire pension costs are growing at a greater rate than**

**property taxes. "It's a hornet's nest with a snake inside," says one expert.**

In the heart of Illinois, the city of Peoria cut its workforce by almost one-fifth to pay its annual obligations for police and firefighter pensions. In northern Illinois, Waukegan is selling bonds to keep the city operating. In the east, Danville closed one of its four fire stations following mounting pension bills. And in Springfield—for the first time—the state capital is pouring every dollar it collects in property taxes into public safety pensions.

All across Illinois, in many of the small towns and larger cities that manage some 650 independent police and fire retirement systems, those funds have placed an increasingly tightening vise on municipal finances.

Much of the focus on the pension problem in Illinois has been on the massive liabilities facing the five statewide funds as well as Chicago's citywide pensions. But in many ways, the more pressing pension issues can be found in the towns in every corner of the state.

Continue reading.

CRAIN'S CHICAGO BUSINESS

by TIM JONES & JARED RUTECKI

October 30, 2019

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## S&P: Chicago Ratings Hinge On Its Ability To Achieve Structural Balance By 2022.

CHICAGO (S&P Global Ratings) Oct. 25, 2019–On Oct. 23, the mayor of Chicago (BBB+/Stable) detailed her proposal to close a projected historic $838 million budget gap, or approximately 21.8% of forecast revenue, for fiscal 2020. Her budget would rely on roughly $313 million in one-time measures, leaving the city with a deep 7% structural imbalance before accounting for actuarial pension funding shortfalls. Looking beyond fiscal 2020, S&P Global Ratings notes that the mayor also stated in her budget speech that if the city secures revised legislation for a Chicago casino and a graduated real estate transfer tax, it will be on a path to structural balance, funding all four pension plans on an actuarial basis by 2022. Based on our understanding of estimates for these two revenue streams, we think that these sources, coupled with continued moderate savings measures or revenue growth, could feasibly address the next two outyear gaps. However, we believe that these revenues carry significant implementation risk, and while the mayor asserts that a property tax increase remains on the table as a contingency, it still would require council support.

In S&P Global Ratings' opinion, the significant use of one-time revenue to close the fiscal 2020 budget gap is a reasonable one-year approach to closing such a sizable gap, particularly at the current Chicago rating level, even if it does not represent best fiscal practices. The current proposal buys the city time to execute structural revenue enhancements and operational efficiencies that require a longer time frame to implement. The city's ongoing ability to demonstrate a credible path to structural balance, including fully funding its pension ramp by 2022, whether it be through garnering state support for new revenue streams or evidence of political willingness to execute such contingent measures as a property tax increase, will be critical to our rating analysis.

**Proposed fiscal 2020 structural revenue and savings appear feasible despite**

**implementation risks**
The mayor's budget proposal includes a number of structural revenue increases. Highlights include $163 million from emergency medical transportation and ambulance services reimbursements; $47 million from congestion initiatives such as increases to certain rideshare fees and new parking meters; $37.2 million in increases to existing service and sales taxes, including $20 million from restaurants and $17 million from lease transaction; and an $18 million library property tax levy increase. The proposal also assumes $50 million from a graduated real estate transfer tax (RETT), which is predicated on simple-majority state legislative approval for a July 1, 2020, implementation date. Other revenues totaling $23.6 million include a modest $3.5 million in estimated cannabis tax receipts.

While we don't expect that the city council will "rubber stamp" the mayor's proposal, we think that the proposed revenues are more politically feasible than alternatives such as a large property tax increase. Also, the assumption that the RETT would get a simple majority approval for a July 1 implementation is more conservative than assuming the two-thirds majority required for the law to take effect earlier, on Jan. 1. Although less attractive, the city has the option to enact a graduated RETT for fiscal 2021 without needing state support. In our view, current revenue estimates appear reasonable based on historical performance and implementation time frames.

The budget also identifies $249 million in structural savings and efficiencies. Highlights include $148.7 million from zero-based budgeting changes, $141.0 million from improved fiscal management, $19.7 million from vacancy reductions and reallocations, $25.0 million from improved revenue collections, and $3.2 million from department mergers. Based on underlying details behind savings assumptions, we view the city's expectations as reasonable. Also, in our opinion, efforts to control expenditures not only demonstrate good management but could also prove politically beneficial as the mayor asks for support for new revenue sources.

**Identified one-time measures do not impair the city's liquidity or liability profile**
Proposed one-time measures include $200 million from general obligation and Sales Tax Securitization Corp. (STSC) debt refunding, $31.4 million from a tax-increment finance (TIF) surplus, $43 million of the proposed ground emergency medical transportation fee, and fund balance sweeps. While we do not look favorably on the use of one-shot sources to close the budget gap, these measures do not materially impair the city's finances beyond prolonging structural imbalance into fiscal 2021.

The city has no plans to extend final maturity dates as part of the refunding structure, and the bonds would still have net present value savings, distinguishing this structure from past "scoop-and-toss" practices. We also expect that the city will preserve capacity within the STSC structure for future capital needs and understand that it maintains sufficient liquidity such that planned further securitization of sales taxes would not result in cash-flow pressures.

Notably, the city did not include certain measures that we have identified as potential contributors to downward rating pressure. We would view negatively any measure that would lower annual contributions into Chicago's pension systems. Particularly given the city's low funded ratios (weighted average of 23%) and the fact that it already must liquidate assets to make annual benefit payments, reductions to annual contributions would increase the likelihood of asset depletion, necessitating contribution spikes in the not-too-distant future. We also consider the city's substantial reserves and liquidity crucial to the current rating, and we would view the significant use of reserves to offset ongoing expenses–rather than for "rainy day" or one-time purposes, such as a temporary shortfall during a recession–negatively.

**Lingering structural imbalance is daunting but not insurmountable for 2021 and beyond**

We consider the proposed structural imbalance as sizable relative to the city's budget, but manageable relative to potential available revenue sources. The mayor's budget speech identified $100 million of ongoing annual graduated real estate transfer taxes, potential casino revenue, and a property tax increase as potential revenue measures. In addition to these sources, we expect that the city will benefit from a full year of cannabis revenues although receipts will likely remain small relative to the budget. It also could receive a share of a statewide graduated income tax if the amendment passes in November 2020. In addition, we understand that the city is looking to identify other expenditure reductions that could offset revenue needs and that some of the structural changes it has already taken will result in additional outyear savings, providing a better course for structural alignment.

Looking ahead to fiscal 2022, the city's projected budget gap actually decreases by $30 million, even when accounting for $250 million in increased municipal/laborer contributions for the pension ramp. Therefore, to the extent that Chicago structurally addresses the next two fiscal year gaps, it will have largely tackled the fiscal 2022 budget. Even should an economic slowdown or mild downturn occur, based on its past performance, diverse revenue streams, and limited pension plan invested assets, we don't expect that the city's budget gap will significantly widen over this period.

Potential revenue from a casino remains uncertain given that tax structure negotiations are ongoing. Casino revenue often misses forecasts and takes longer than expected to realize. That said, we understand that if the state were to authorize revised casino legislation, the city could benefit from temporary casino revenues as early as fiscal 2021, providing the same type of short-term boost seen in other municipalities that added casino gaming tax revenues.

In our view, a modest property tax increase still remains a viable part of the solution to closing Chicago's budget gap. We recognize that city residents have property tax fatigue and have voiced a preference for other revenue streams. However, Chicago's property tax rates still remain competitive with those of neighboring suburbs, and its costs of doing business and housing remain affordable relative to those of other large cities such as New York, Los Angeles, Denver, Washington, and Boston. If Chicago were to raise property taxes by $300 million, this would increase the average tax rate by 0.34% from its current average tax rate of 6.79%.

While the mayor discussed pension reform, it is our understanding that the city's current budget plan does not count on legislated pension savings and that the city remains committed to funding pensions according to the current statutory amortization schedule. To the extent that the city could either trim liabilities through benefit reductions or secure a dedicated revenue stream toward pensions, this would improve its budget sustainability and bode well for long-term credit stability. However, in our view, these measures may prove challenging to attain and may not occur within the 2022 time frame.

**Chicago teacher strike could pose indirect risks to the budget plan**

The mayor did not propose additional funding for Chicago Public Schools (CPS) in her budget address despite an ongoing teacher strike although we understand that the schools will receive approximately $66 million more than CPS budgeted of the city's declared TIF surplus in 2020. We note that this is a one-time revenue source. Although the mayor appoints the school board, city and school finances have largely remained separate. The city has historically provided CPS minimal financial support, and the current budget proposal is in line with past practices. However, given the shared tax base, education's causal effects on city demographic and economic trends, and potential consequences for the mayor's political capital, we consider the relationship between the city and CPS significant.

In our opinion, the Chicago Teacher's Union strike has more potential to reverse CPS' recent financial gains than hurt the city's budget in the near term. Given Chicago's history of limited financial support for CPS and challenged financial position, we do not expect it to provide significant, if any, additional funding for CPS. Higher-than-budgeted contract costs for CPS would not necessarily result in the board levying property tax hikes, especially since they are subject to property tax limitations and would need special authorization from the state for additional property taxes. Therefore, we are not assuming that the strike would measurably reduce the city's tax capacity. The mayor's budget proposal, however, relies on council approval, and the resolution of the strike could potentially undermine public and council member support.

**Rating stability hinges on the demonstrated ability to execute any necessary contingency plans**
The Illinois General Assembly's veto session begins Oct. 28, and the city will then know whether it has secured state support for both the RETT and new casino tax structure prior to a planned budget vote at the end of November. Given that the city is not relying on casino revenue in the 2020 budget, this provides more time to either consider legislation during a later session or detail a contingency plan for the next two budget years.

Our analysis of rating stability extends well beyond the next fiscal year. If the city fails to receive legislative approval for new revenue streams or if revenues fail to materialize as the city has projected, we will be looking to see if not only the mayor, but also the city council, has the willingness to execute any necessary contingency plans to structurally close the gap by the identified 2022 target, including full statutory pension contributions. As stated in our current outlook (please refer to our full analysis on Chicago, published on RatingsDirect on March 14, 2019) increasing evidence of political resistance to raising revenues or an inability to make expenditure cuts could result in downward rating pressure. The city's long-term fiscal health also depends on major structural changes, and even if it is able to balance its budget by fiscal 2022, we expect that its financial position will remain challenged.

This report does not constitute a rating action.

S&P Global Ratings, part of S&P Global Inc. (NYSE: SPGI), is the world's leading provider of independent credit risk research. We publish more than a million credit ratings on debt issued by sovereign, municipal, corporate and financial sector entities. With over 1,400 credit analysts in 26 countries, and more than 150 years' experience of assessing credit risk, we offer a unique combination of global coverage and local insight. Our research and opinions about relative credit risk provide market participants with information that helps to support the growth of transparent, liquid debt markets worldwide.

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## Building Demand in US Water Quality Trading Markets.

IN BRIEF

- WATER QUALITY TRADING MARKETS ALLOW THE OPERATORS OF POINT SOURCES OF WATER POLLUTION — such as sewage treatment plants or factories — to offset that pollution by purchasing credits representing reductions elsewhere.
- BUT DESPITE THE PRESENCE OF FUNCTIONING PROGRAMS ACROSS THE COUNTRY, the overall volume of trading remains low.
- TO EXPAND TRADING, STAKEHOLDERS NEED TO ADDRESS THE LACK OF NUMERIC DISCHARGE LIMITS, transaction costs, risk aversion, and the absence of empirical data on

programs.

Environmental credit trading programs have gained traction for pollutants like carbon emissions, at least in concept. Is water quality trading the next frontier? The mechanism offers the possibility of more flexible and cost-effective water quality control, but in contrast to some environmental credits, markets have struggled to gain momentum.

Water quality trading markets allow the operators of point sources of water pollution — such as sewage treatment plants or factories — to offset that pollution by purchasing credits representing reductions elsewhere. Just as the purchase of a carbon offset gives its buyer credit for reducing their carbon footprint, a water quality trading market allows participants to buy and sell the credit for reduction of water pollution into a given water body.

Trading is a tool that may be well-suited to address the evolving nature of water pollution in the United States.

"The Clean Water Act was written at a time when the major pollution in our waterways was coming from pipes," said Kristiana Teige Witherill, clean water project manager at the Willamette Partnership, a nonprofit focused on market-based conservation in the American West. "Today, depending on what watershed you're looking at, 80 to 90% of pollution is coming from non-point sources, not coming from the end of a pipe."

After establishing parameters for water quality trading in 2003, the Environmental Protection Agency (EPA) reiterated its support for the tool in a statement in February. A 2017 Government Accountability Office (GAO) report tallied 19 water quality trading programs operating in 2014 in a diverse set of 11 U.S. states, from California to Idaho to Florida.

But despite the presence of functioning programs across the country, the GAO noted that the overall volume of trading remains low. "According to stakeholders, two key factors have affected participation in nutrient credit trading — the presence of discharge limits for nutrients and the challenges of measuring the results of nonpoint sources' nutrient reduction activities," the report stated.

Now, proponents of water quality trading are working to bring more participants into the fold. What can be done to scale up use of trading?

**How Water Quality Trading Works**

Under the U.S. Clean Water Act, states are responsible for regulating the quality of water discharged into water bodies. Water quality trading markets provide an alternate way for any point source regulated by the National Pollutant Discharge Elimination System to meet requirements set by states through the act.

Water quality trading credits most often deal with nitrogen and phosphorus pollution, but they can be generated for other purposes as well. To protect temperature-sensitive salmon species, for example, Oregon has a functioning trading market for water temperature, according to Witherill. Less commonly, markets can also facilitate trades for credits that represent reduced stormwater quantity.

Credits are frequently generated through reduced pollution from agricultural land, but can also come from point-source sites that have exceeded pollution-reduction requirements. States are responsible for approving and verifying credits.

Water quality trading has the potential to provide massive increases in the cost-effectiveness of pollution reduction. [According to the World Resources Institute](), reducing nitrogen pollution through water treatment plant upgrades costs an average of about $15 per pound of nitrogen, but under $5 per pound through planting cover crops on farms.

**Generating Demand**

The GAO's 2017 report stated that in the year they surveyed, 2014, the majority of trading occurred in Connecticut, Pennsylvania and Virginia. In those states, most point sources didn't purchase credits, resulting in a substantial share of generated credits going unused. State officials told the GAO, however, that trading programs still provided other benefits, like flexibility in complying with water quality regulations.

"I would say that there are a number of programs across the country that are working well, like here in Oregon where we have a number of facilities and municipalities that are successfully using water quality trading," Witherill said. "But I think we haven't yet reached a tipping point where water trading becomes a mainstream solution for meeting water quality regulations."

Often, the issue centers around the question of bringing buyers to the table.

In October 2018, the National Network on Water Quality Trading — facilitated by the Willamette Partnership — published its report "Breaking Down Barriers: Priority Actions for Advancing Water Quality Trading." The group aimed "to diagnose why, in contrast to other environmental markets, interest in water quality trading and demand for water quality credits has been slow."

Along with discharge limits, the "Breaking Down Barriers" report points to transaction costs, risk aversion, and the absence of empirical data on programs as deterrents to trading. When it comes to discharge limits, the regulatory structure of a given state plays a big role. Under the Clean Water Act some states, but not others, have set specific quantitative limits on pollution.

"In places like Wisconsin that have numeric criteria for nutrients, they have a really strong driver for cities and municipalities to be looking at options like water quality trading," Witherill said. "It's kind of a precondition for it to have some kind of regulatory driver."

Wisconsin has a statewide trading program for the variety of pollutants regulated by the state Department of Natural Resources, but the difficulty of conducting trades has limited its use, according to Wisconsin Public Radio. Critics of the program's current design have blamed low participation on inflexible rules and trouble connecting buyers and sellers.

In the absence of a "regulatory driver" like quantitative pollution limits, water quality trading programs have limited options for attracting buyers.

The Ohio River Basin Trading Program, run by the Electric Power Research Institute (EPRI), manages a trading market in Ohio, Indiana and Kentucky. The program aims to address nutrient pollution into the Ohio River — and ultimately, the Gulf of Mexico — by generating credits from conservation practices on agricultural land. According to Program Manager Jessica Fox, the Ohio River Basin Trading Project has over 100,000 of the $12 to $14 credits — each representing a pound of verified reduced nitrogen or phosphorus discharge — "on the shelf" waiting to be sold.

EPRI has sold credits to power companies, a university and individuals, Fox said, but not at the volume necessary to make the program self-sustaining. "When every transaction requires me to take a business trip," she said, "that's not going to work. It has to be more liquid than that."

There are other preconditions needed for water quality trading in addition to quantitative criteria, the “Breaking Down Barriers” report argues. First, unless the technology required for polluters to meet limits is expensive or nonexistent, managers of point sources are unlikely to turn to trading. Regulatory agencies must also support purchasers interested in pursuing credits. “We’ve also seen that the utilities who pursue water quality trading often have a champion supporting the program within their own organization,” the report stated.

**Building Markets and Confidence**

Through stakeholder interviews and other research, the “Breaking Down Barriers” authors identified seven steps that stand to increase use of trading. They advocate for simplifying trading programs; making sure state regulators have the capacity and resources they need; clarifying the policies of EPA and states; reducing buyer risk, real and perceived; addressing the legal risk that stems from a lack of case law on trading; developing more direction for stormwater trading; and building relationships.

For its part, the Ohio River Basin Trading Program is looking to stimulate more demand of its own accord. In May, EPRI announced a partnership with First Climate, a firm that specializes in selling environmental credits, to sell credits on international markets and make them available to a wider range of domestic buyers. Before, the trading program wasn’t able to accommodate transactions of less than $25,000, according to Fox. Through First Climate, however, the program is taking a more retail approach to trading.

“You can go on now, and you can buy one credit with a credit card or Paypal account,” Fox said. The program has a calculator online that individuals can use to determine their personal nitrogen footprint, and provides buyers a photo of the farmer who generated their credit. It even sells t-shirts.

“It’s kind of like ‘adopt a sea lion,’” she said. “It’s getting it to be a more publicly accessible thing.”

First Climate and EPRI are also pitching large corporate buyers on water quality credits as a way to meet voluntary sustainability commitments.

But as trading programs continue to try to break into the mainstream, Willamette’s Witherill cautioned that they are just one tool in the toolbox for “expanding the number of options utilities have to invest in their watersheds,” she said. “Maybe that doesn’t necessarily look exactly like water quality trading, maybe that looks like a source water protection program or some kind of groundwater irrigation management.”

On the policy front, Fox also wonders if EPA could do more to support markets. The agency’s February memo was “a huge signal that the administration is strongly behind water quality trading,” she said, but it doesn’t actually change implementation on the ground.

One possibility worth exploring, Fox said, would be whether EPA could allow states to use their own share of funds from joint federal-state programs — such as Clean Water State Revolving Funds, for example — to buy credits.

“Any way to incent the buyer side is a great solution,” she said.

**Conservation Finance Network**

Chris Lewis

September 25, 2019

## A Reasonable Proposal: How U.S. Law Allows Puerto Rico's Legal Bills To Flourish

The Commonwealth of Puerto Rico was once known mostly for tourism, but is now recognizable for turmoil. The U.S. territory has been ravaged by natural disaster and political chaos, all while becoming the test case on how to free a financially overburdened municipality from its crushing debt load.

As Puerto Rico navigates through the first court-supervised public debt restructuring of its kind, one of the most watched aspects of its bankruptcy-style case is the amount of money earmarked to pay the professionals tasked with providing the island with advice. Having already run up a $400 million tab, current estimates predict the total bill for lawyers and advisors in the case to reach $1.5 billion through 2024.

For comparison, professional fees in the 2008 collapse of Lehman Brothers – a storied global financial institution that once had more than $600 billion in assets – amounted to $1.9 billion over four years to sort out the largest corporate bankruptcy filing in American history. In the municipal world, Detroit previously held the title of most expensive restructuring, spending $177.9 million in legal and advisory fees to turn its finances around.

Continue reading.

**Forbes**

By Maria Chutchian

Oct 29, 2019

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## Big Opportunities in Indian Country: How Tribal Nations Can Leverage Opportunity Zones for Economic Growth

The Opportunity Zone (OZ) program, a community development program created out of the Tax Cuts and Jobs Act of 2017, presents the largest potential capital equity infusion into tribal nations in the history of the United States. With an estimated $6 trillion of unrealized capital gains in the U.S. stock market, the legislation could transform development in these designated areas. Consider that almost 8,700 census tracts have been approved as designated Opportunity Zones, more than 300 of which are in Indian Country, according to the Native American Finance Officers Association (NAFOA).

The OZ program presents tribal nations with the opportunity to attract investors who may have never otherwise considered projects within those spaces. It could also encourage financial institutions that have solely worked on debt financings to also consider equity investments in Indian Country. While there are some concerns about the negative aspects of unchecked development, I believe that with smart planning and strategic thinking, the opportunities this program presents for tribal communities far outweigh the risks.

To take full advantage of the legislation, tribal nations need to develop strategic project plans that range in scale from large master-planned concepts down to neighborhood-level community investments. As part of that strategic effort, tribal nations will need to combine three actions to optimize potential OZ deal offerings that will attract investors:

Continue reading.

**Faegre Baker Daniels**

October 28, 2019

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## New York State Is Paying Up to Borrow With a Taxable Bond Sale.

The state of New York will pay high interest rates on $914 million of bonds it sold this week—high compared with peers, at least.

The extra cost isn't the result of bad credit; the state has the second-best credit rating available from Moody's and S&P Ratings. The typical 10-year muni bond with a comparable rating yields around 1.6%, according to FMSbonds. But New York's 10-year bond yields 2.55%.

Investors demanded higher yields because they will pay federal tax on the bonds' interest income. That is fairly unusual in the municipal bond market, and even more so among "general obligation" bonds, the type of debt New York issued. In other words, most G.O. bonds pay interest that is exempt from federal income tax. For example, the state of Minnesota sold tax-exempt 10-year G.O. bonds at a yield of 1.38% in August.

New York's bonds are taxable because of the way the state plans to use the proceeds from the sale. The state will use that $914 million to refinance outstanding bonds that mature between four months and 22 years from now. Such transactions are called "advance refundings."

Until 2018, investors could earn tax-exempt income from bonds sold in advance refundings. But a provision in the 2017 Tax Cuts and Jobs Act removed that exemption. That ostensibly killed the market for advance refunding bonds, and meant that municipalities had to find new projects to finance if they wanted the tax exemption.

But then came this year's rally in the Treasury market, which pushed yields lower and reduced interest costs for all types of borrowers, including municipalities. That prompted municipalities to do advance refundings, anyway, and sacrifice the tax exemption altogether. Issuers have sold $50 billion of taxable muni bonds so far this year, according to Citigroup , the highest volume since a flood of Build America Bonds, also taxable, hit the market in 2010.

Advance refundings are a notable share of the supply of new taxable bonds, said Matt Fabian, partner at Municipal Market Analytics. The spread between yields on taxable and tax-exempt munis has narrowed as well, he said.

Part of the reason for the demand is that taxable munis could provide better value than corporate bonds, which are also taxable. The broader muni market has been trading at expensive valuations of late.

Corporate bonds provide less yield compared to Treasuries than they did at the start of the year, while taxable munis' yield spread has remained mostly steady, according to Citigroup strategist Vikram Rai.

“This is good news for prospective crossover buyers, because this under-performance has led to a moment of cheapness,” Rai wrote in a Oct. 28 note.

**Barron’s**

By Alexandra Scaggs

Oct. 30, 2019 12:54 pm ET

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## [With Interest Rates Low, Colleges Get In On 100-Year Debt.]

**Colleges in need of capital are eyeing a financing option that lets them pay back their investment over a longer period than most bonds.**

The University of Pennsylvania wasn’t necessarily looking to issue bonds this summer, much less bonds that would take 100 years to repay. But as its analysts watched the debt markets, they saw an opportunity that was too good to pass up.

Colleges and universities regularly secure funds to improve their facilities by issuing bonds that they’ll have to repay, with interest, over several years. Usually, the longest they will take to repay the bonds is 30 years. Since the Great Recession, however, a dozen elite public and private universities, including Penn, have issued century bonds, which don’t mature for 100 years.

That timeframe lets schools pay off massive investments over a lifetime or more, usually at a fixed, low interest rate. For the investors that buy them, such as insurance companies, century bonds are a chance to lock in guaranteed returns even in tough market conditions. But the opportunity to issue them doesn’t come up often.

So far this year, the pieces have fallen into place for four universities: Penn, the University of Virginia, Rutgers and Georgetown. Together, they have issued more than $1.23 billion in 100-year financing.

Penn’s finance team knew the university was interested in issuing debt sometime in the next year, said MaryFrances McCourt, vice president of finance and treasurer. The university had issued century bonds once before — $300 million in 2012 — to help upgrade its facilities to meet environmental goals. Several developments moved university officials to consider those bonds again.

The first major signal was that interest rates were low — really low. In July, interest rates for 30-year municipal bonds were lower only about 1% of the time, while rates on 30-year U.S. Treasury bonds were only lower about 2% of the time, according to McCourt’s office. “It kind of takes you aback,” she said.

The second factor was that lenders weren’t paying a significant penalty for long-term bonds. Investors usually demand higher interest rates for longer-term investments. But when Penn analysts looked at the market, they found little difference in interest rates for shorter- and longer-term investments.

Other market indicators were also favorable: The interest rates Penn would have to pay on its bonds were lower than usual relative to U.S. Treasury bonds. And the interest rates for taxable bonds were not significantly higher than the rates on the tax-exempt municipal bonds that public and private universities typically depend on.

Plus, Penn's fiscal models showed that the century bonds would help, not hurt, its financial situation in an economic downturn. If cash ran short or if interest rates in the bond market spiked, having access to a low-interest pool of money could let the university meet its capital needs.

"You don't know what's going to happen tomorrow. All we knew was what was staring at us then," McCourt said. "We decided we've got to move quickly on this."

**Education Dive**

by Daniel C. Vock

Oct. 29, 2019

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- Moving on from LIBOR: Squire Patton Boggs
- Hawkins Advisory: Guidance from Treasury Regarding USD LIBOR Phase-Out
- Cities Prepare for Climate Risk. Bond Prices May Not Reflect It.
- Smaller Muni Issuers Face Some of the Biggest Climate Risks.
- Assured Guaranty Corp. v. Puerto Rico: SIFMA Amicus Brief
- And finally, Judge Wiley Ain't Having It is brought to us this week by *Dobbs v. City of Los Angeles*, in which Cynthia Dobbs sued the City of Los Angeles after walking into a concrete bollard designed to protect the Los Angeles Convention Center from car bombs. Judge Wiley was unamused. Here's his description of the bollards in question: "Key evidence included how this bollard looked on the sidewalk. It was big. It was designed to stop cars. It was obvious to pedestrians who looked where they were going." When an opinion ends with, "When one walks into a concrete pillar that is big and obvious, the fault is one's own," you've possibly picked the wrong forum.

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**IMMUNITY . - CALIFORNIA**

## Dobbs v. City of Los Angeles

**Court of Appeal, Second District, Division 8, California - October 16, 2019 - Cal.Rptr.3d - 2019 WL 5206043**

Pedestrian who walked into concrete bollard on sidewalk brought action against city for personal injury.

The Superior Court granted summary judgment in favor of city. Pedestrian appealed.

The Court of Appeal held that:

- Project manager's declaration regarding city agency's custom and practice of discretionary approval was sufficient to satisfy design immunity element of discretionary approval of a design, and
- Substantial evidence that city's approval of concrete bollard design was reasonable supported finding of design immunity.

Declaration by project manager for city agency regarding agency's custom and practice of discretionary approval of designs was sufficient to satisfy element of design immunity requiring discretionary approval of a design before construction, as necessary for city to be immune from liability for pedestrian's injuries from walking into concrete bollard that she claimed was negligently designed.

Substantial evidence that city agency's approval of bollard design was reasonable supported trial court's finding that design immunity applied to pedestrian's personal injury claim against city, arising from incident in which pedestrian walked into concrete bollard on sidewalk; bollard, which was large and designed to stop cars, was obvious to pedestrians who looked where they were going, and was placed conspicuously in its location.

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**PUBLIC PENSIONS . - ILLINOIS**

## Gilmore v. City of Mattoon

**Appellate Court of Illinois, Fourth District - October 16, 2019 - N.E.3d - 2019 IL App (4th) 180777 - 2019 WL 5205476**

Retired city employees brought claim against city alleging violations of Insurance Code, equal protection, breach of contract, promissory estoppel, unjust enrichment, and violation of pension protection clause of Illinois constitution, based on employees' cost of contributions to health insurance premiums.

The Circuit Court granted city's motion to dismiss for claims of violations of Insurance Code, breach of contract, promissory estoppel, unjust enrichment, and violations of pension protection clause. Employees appealed.

The Appellate Court held that:

- Employees waived any claim of private right of action under Insurance Code;
- Statute of frauds precluded employees' breach of contract and promissory estoppel claims;
- Retired city employees failed to allege specific facts to show that state municipal retirement fund representative was invested with any authority to bind city to any promise or agreement; and
- City's actions did not violate pension protection clause.

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**IMMUNITY . - KANSAS**

## Williams v. C-U-Out Bail Bonds, LLC

**Supreme Court of Kansas - October 11, 2019 - P.3d - 2019 WL 5090403**

City resident and occupants of resident's home filed amended petition against city, on theory of respondeat superior, based on police officers' negligent failure to protect plaintiffs in response to resident's 911 call that armed bail bondsmen were attempting to forcibly enter resident's home.

The District Court granted city's motion to dismiss for failure to state claim. Plaintiffs appealed. The Court of Appeals affirmed. Review was allowed.

The Supreme Court held that:

- Allegations that bondsmen intended to forcibly enter resident's house "without legal authority" and that police officers who had responded to plaintiff's call left scene knowing that bondsmen "were

attempting to enter the house illegally" were not bare legal conclusions, for purposes of city's motion to dismiss for failure to state claim;
- Plaintiffs adequately alleged that police officers undertook to render services to resident and occupants of resident's home, as would trigger duty of care, under exception to public duty doctrine; and
- Plaintiffs adequately alleged that officers' actions fell outside scope of "discretionary function" exception to waiver of governmental immunity, under Kansas Tort Claims Act (TCA).

Allegations in petition by city resident and occupants of resident's home that armed bail bondsmen intended to forcibly enter resident's house "without legal authority" and that police officers who had responded to resident's call left scene knowing that bondsmen "were attempting to enter the house illegally" were not bare legal conclusions to be disregarded, on city's motion to dismiss for failure to state claim resident's petition on claims for negligent failure to protect; rather, issue whether bondsmen's entry into home was illegal raised questions of fact, subject to later proof regarding source of bondsmen's authority to enter home, whether by common law privilege, by statute, or by contract between bail bond company and principal on whose behalf bond was posted.

City resident and occupants of resident's home adequately alleged that police officers undertook to render services to them when they responded to resident's call concerning attempts by armed bail bondsmen to forcibly enter resident's home to search for principal under bond, as would trigger duty of care owed by officers, and by city under theory of respondeat superior, to resident and occupants in rendering of such services, under exception to public duty doctrine, in action against city for negligent failure to protect; plaintiffs alleged that, after arriving at resident's home, officers remained at scene and observed bail bondsmen's actions, and that officers spoke to one of bondsmen, thereby at least initiating an investigation into resident's complaint.

City resident and occupants of resident's home adequately alleged that police officers' actions in response to resident's 911 call that armed bail bondsmen were attempting to forcibly enter resident's home to search for principal under bail bond fell outside scope of "discretionary function" exception to waiver of governmental immunity, under Kansas Tort Claims Act (KTCA), in action against city for negligent failure to protect, on theory of respondeat superior; plaintiffs alleged that officers remained on scene and even spoke with one of bondsmen, thus at least initiating investigation, but then left scene without having taken any action to prevent or protect plaintiffs from bondsmen's forcible entry into home and resulting harm.

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**EMINENT DOMAIN . - LOUISIANA**

## Department of Transportation and Development v. Motiva Enterprises, LLC

**Court of Appeal of Louisiana, Fifth Circuit - October 2, 2019 - So.3d - 2019 WL 4855042 - 19-32 (La.App. 5 Cir. 10/2/19)**

Department of Transportation and Development (DOTD) brought action against owner and lessee of land seeking to expropriate land for road construction project.

During jury trial, the District Court granted directed verdict for DOTD against lessee. Lessee appealed.

The Court of Appeal held that lessee failed to establish damages for diminished value of its leasehold interest in expropriated land.

Lessee failed to establish damages for diminished value of its leasehold interest in land expropriated by Department of Transportation and Development (DOTD) for road construction project, although it presented testimony in which project manager involved in previous sale of land estimated value of land, where project manager had no input into actual valuation of land for purposes of sale, and lessee did not present evidence of any methodology used to determine value of leasehold interest either before or after expropriation.

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**REFERENDA . - MINNESOTA**

## Clark v. City of Saint Paul

**Supreme Court of Minnesota - October 16, 2019 - N.W.2d - 2019 WL 5198831**

City residents filed petition, challenging city's refusal to put on the ballot referendum on city ordinance, stating that all trash collected in city had to be pursuant to written contract with the city and stating that all previous private contracts between solid waste haulers and residents were null and void.

The District Court granted petition. City appealed to the Court of Appeals, and Supreme Court granted city's petition for accelerated review.

The Supreme Court held that:

- Referendum on city ordinance that established organized waste collection services did not conflict with requirements in state statute, and
- Referendum on city ordinance that established organized waste collection services did not impair city's contract obligations under the contract clauses of the United States or Minnesota Constitutions.

Referendum on city ordinance that established organized waste collection services did not conflict with requirements in state statute, that municipalities ensure that residents have waste collection services, including through appropriate local controls, because other municipal ordinances that were not subject to the referendum fulfilled those requirements and legislature intended that municipalities have broad authority in process for establishing organized waste collection; it was reasonably possible for city to comply with statutory mandate to ensure that residents have waste collection services, even if ordinance was subject to referendum petition, appropriate local control could include an ordinance, and there was no legislative intent to exclude exercise of referendum authority over ordinance used as the local control.

Referendum on city ordinance that established organized waste collection services in home rule charter city did not impair city's contract obligations under the contract clauses of the United States or Minnesota Constitutions because, whatever result of the referendum, city's contract obligations were not impaired; city was contractually obligated to allow city waste haulers the exclusive right to provide waste collection services, and outcome of referendum on ordinance that established waste collection would not terminate the contract and did not rise to level of constitutional impairment of contractual obligation.

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**PUBLIC UTILITIES . - OHIO**

## [In re Application of Ohio Edison Company]

**Supreme Court of Ohio - October 15, 2019 - N.E.3d - 2019 WL 5150987 - 2019 -Ohio- 4196**

Electric distribution utilities sought review of Public Utilities Commission order approving their portfolio plans concerning energy-efficiency and peak-demand-reduction statutory benchmarks, but with annual cost caps on recovery of costs incurred in implementing utilities' energy-efficiency, peak-demand-reduction, and shared-saving programs.

The Supreme Court held that Commission lacked statutory authority to impose a cost-recovery cap.

Public Utilities Commission lacked authority under statute governing energy efficiency programs to impose annual cost caps on recovery of costs that electric distribution utilities incurred in implementing energy-efficiency, peak-demand-reduction, and shared-saving programs, as set forth in utilities' portfolio plans concerning energy-efficiency and peak-demand-reduction statutory benchmarks; statute contained no language authorizing Commission to impose such a cap, unlike a renewable-energy-resource statute that was enacted at same time and that contained cost-cap language.

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**WATER DISTRICTS . - UTAH**

## [Metropolitan Water District of Salt Lake & Sandy v. SHCH Alaska Trust]

**Supreme Court of Utah - October 16, 2019 - P.3d - 2019 WL 5256348 - 2019 UT 62**

Water district brought action against owner of land on which district held easement, seeking injunctive relief to require landowner to comply with district's property regulations.

The Fourth District Court granted summary judgment to district. Landowner appealed.

The Supreme Court held that:

- Provision of Limited Purpose Local Districts Act granting district authority to "acquire or construct works, facilities, and improvements necessary or convenient to the full exercise of [district's] powers, and operate, control, maintain, and use those works, facilities, and improvements" did not grant district authority to impose land use restrictions on real property across which district held easement;
- Provision of Act granting district authority to negotiate with owner of property on which district had right-of-way regarding use of property also did not grant such authority;
- Provision of Act granting district authority to "perform any act or exercise any power reasonably necessary for the efficient operation of the local district in carrying out its purposes" also did not grant such authority; and
- In determining scope of easement, which was created under Canal Act of 1890 or 1890's Act, trial court could not simply accept Federal Bureau of Reclamation's written description of easement as dispositive of its scope.

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## [Cities Prepare for Climate Risk. Bond Prices May Not Reflect It.]

**An analysis covering 620 municipalities shows there's plenty of room for improvement.**

Climate change is no longer the problem of the future—some 70% of cities worldwide are already experiencing its effects. The good news is that many of them are doing what they can to prepare, according to an analysis of global disclosures by the nonprofit CDP.

There's a direct connection between identifying climate-related threats and taking steps to reduce them, according to Kyra Appleby, global director of CDP's program on cities, states and regions. Climate change "is affecting cities now," she said. That reality is not, however, always reflected in local real estate and municipal bond markets.

The three U.S. cities identified by CDP as having the highest climate hazard scores (St. Louis, Boynton Beach, Fla., and Lakewood, Col.) have about $218 million in outstanding municipal bonds, including utility debt sold by Boynton Beach.

The hazards outlined by CDP aren't reflected in the prices of state- and local-government securities, which continue to hover near record-low yields. "These risks will undermine your tax base. They'll undermine your economy, and ultimately they will undermine the ability to pay back the debt, which is what investors really care about," said Eric Glass, a portfolio manager for fixed income impact strategies at AllianceBernstein. "They are material risks, and I don't think investors are entering this into their credit analysis."

CDP asks companies and sub-national governments to submit reports every year explaining the specific concerns they have about climate change and what they're able to do about them. At least 620 cities filled out those surveys for 2018, which the British nonprofit scored by type and quantity of threat, in its eighth annual assessment. Fewer than half of those cities have conducted citywide climate vulnerability assessments, which Appleby linked to increased action to lessen risk.

More than 40% of the hazards that cities reported last year are likely to occur in the relatively short-term, according to the group's seven-page analysis, well-within that 30-year time-frame of a typical muni bond. That's an improvement compared with trends before the 2015 Paris Agreement, Appleby said, but still insufficient. Climate threats are going to keep increasing, particularly after mid-century, according to the UN's Intergovernmental Panel on Climate Change, which means, theoretically, that cities should report more threats in the future, not fewer.

"What cities are reporting doesn't line up with what the science tells us the future will be like," Appleby said.

St. Louis, for example, is planning for drought when it's also at risk of flash floods, which can bring water-borne diseases. The city was struck with outbreaks of Legionnaires' and cryptosporidium in 2014 and 2015. Heavy rain and ever-higher tides threaten low-lying businesses in Boynton Beach. In its 2018 survey, the city noted local snorkeling and scuba trips could diminish as more coral reefs die. Lakewood is staring down the barrel of extreme heat, heavy snow, drought, forest-fires and greater insect infestation.

Banks and other businesses are preparing for future threats as well. The Federal Reserve Bank of San Francisco last week published an 18-chapter volume dedicated to climate risks in low- and moderate-income U.S. communities. The report calls for an entirely new system for financing resilient infrastructure.

"Historically, cities have taken the approach of willful ignorance because actual notice of a problem often legally required them to do something about it," said Jesse Keenan, a climate risk and adaptation specialist at Harvard University and the editor of the new Federal Reserve volume. "Some cities are actively disclosing the risks and uncertainties with the hopes that they can dictate the terms of how they will invest in the adaptation."

**Bloomberg**

By Eric Roston and Danielle Moran

October 22, 2019, 1:00 AM PDT

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## Smaller Muni Issuers Face Some of the Biggest Climate Risks.

The threats posed by a changing climate spell trouble for a number of small municipal-bond issuers, including some in South Carolina, Kentucky, and Texas.

Muni investors face long-term risks in the $3.8 trillion market, *Barron's* wrote recently, because climate change raises an issuer's credit risk by damaging its assets and tax base. Absent efforts to curb emissions, BlackRock estimates that within a decade more than 15% of the S&P National Municipal Bonds index will come from metropolitan issuers that probably will suffer climate-related losses of 0.5% to 1% of local gross domestic product a year.

The recent article looked at some of the largest constituents of the popular ICE U.S. Broad Municipal Index and their climate risks, based on analysis by HIP Investor, a San Francisco-based sustainability ratings, data and analytics provider. (HIP stands for "Human Impact plus Profit.")

Continue reading.

**Barron's**

By Leslie P. Norton

Oct. 22, 2019 5:30 am ET

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## Climate Change Has Probably Hit Your City Already.

Some 70% of cities around the world are already experiencing the effects of climate change, according to a new study by the CDP, formerly known as the Carbon Disclosure Project.

Flash floods, heat waves, rainstorms, extremely hot days, and droughts are among the top hazards.

Investors in municipal bonds are already facing climate risk. Smaller cities and counties, in particular, are already struggling to generate sufficient cash flow to deliver city services, let alone funding efforts to mitigate damage from climate change.

In addition to plans to address risks such as storms, cities will need to provide more public services, given that changing temperatures are likely to allow diseases to spread.

Continue reading.

**Barron's**

By Leslie P. Norton

Oct. 22, 2019 12:56 pm ET

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## Assured Guaranty Corp. v. Puerto Rico: SIFMA Amicus Brief

**Amicus Issue:**

Whether Bankruptcy Code Section 928(a), which provides that post-petition pledged special revenue remains subject to a lien, and Section 922(d), which provides that the automatic stay does not stay the application of pledged special revenue, provide authority for a court to either compel the flow of pledged special revenues, or lift the stay to allow bondholders to compel the flow of pledged special revenues.

**Counsel of Record:**

Chapman and Cutler LLP
Laura E. Appleby
Steven Wilamowsky

Read the Brief.

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## A Tailored Opportunity Zone Incentive Could Bring Greater Benefits to Distressed Communities and Less Cost to the Federal Government.

**Abstract**

Brett Theodos, senior fellow, testified before a subcommittee of the US House Committee on Small Business about Opportunity Zones and how the OZ incentives could be tailored to provide greater benefits to distressed communities at less cost to the federal government. His testimony noted the promising aspects of Opportunity Zones and detailed the limitations and challenges to the program as it currently exists. He also provided options for both the Congress and Administration to act to help redefine Opportunity Zone incentives to bring clearer investments to communities.

Download PDF.

**The Urban Institute**

Brett Theodos

October 17, 2019

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## Fitch Rtgs: P3s Can Fund Higher Ed Projects While Preserving Balance Sheets

**Fitch Ratings-New York-21 October 2019:** Public private partnerships (P3s) can help fill infrastructure funding gaps for colleges and universities, says Fitch Ratings. In the face of flat or reduced state funding, public universities in particular will need to find other sources of funding to address aging infrastructure and ongoing capital needs. By allocating costs to the private sector, universities are able to preserve balance sheet capacity. While potential benefits make P3s a useful funding tool, the strength of a P3 is dependent upon sensible risk allocation and the university's and operator's contractual commitments.

Most four-year institutions face limitations in tuition-raising flexibility to offset operating and capital expense pressures, especially public universities, which are facing a persistent expense and revenue mismatch. State appropriations remain below pre-recession highs compared with rising operating expense levels. Subsequently, universities are entering into P3s for a wide variety of infrastructure needs. Recent P3s have been used for major capital projects, notably campus utilities at Ohio State University, Dartmouth University and the University of Iowa. Projects requiring specialized technical expertise, such as campus utility systems or laboratories, necessitate a qualified operator and contractor and available replacements that have the technical and organizational resources to manage major projects with intensive capital needs.

Continue reading.

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## Hawkins Advisory: Guidance from Treasury Regarding USD LIBOR Phase-Out

The attached *Hawkins Advisory* discusses recently published Proposed Treasury Regulations that provide guidance as to the ability of parties to variable rate debt and other contracts that currently rely on LIBOR as an interest rate benchmark to alter the documents for these transactions for the purpose of incorporating interest rates reflective of other reference rates. The Advisory also reviews the status of other regulatory efforts to prepare the capital markets to transition from broad reliance upon LIBOR.

The Proposed Treasury Regulations generally provide that such changes will not be treated as "substantial" modifications of existing transactions that might otherwise result in a variety of federal tax consequences, including termination, if the new reference rate is a "qualified rate" and certain other requirements are met. This would create an exception from the current rules governing alterations.

- Qualified rates generally may include a reference rate selected, endorsed or recommended for this purpose by a governmental capital markets regulator (such as the Federal Reserve Bank of New York's Secured Overnight Financing Rate), a rate that is calculated on the basis of such a rate or a "qualified floating rate", defined, with certain variations, as in the existing variable rate debt instrument rules).
- To qualify for the proposed exception, the change to a qualified rate must result in an instrument that continues to have substantially the same fair market value as it did prior to the change. Safe harbor rules are provided for valuations that are based upon historic averages of the relevant reference rates and for new reference rates resulting from arm's length negotiations.

This proposed exception may extend to changes to "fallback rates" and to "associated alterations" that are reasonably necessary to implement the underlying reference rate changes.

The Proposed Regulation comment period expires on Saturday November 23, 2019. Taxpayers may rely upon the Proposed Regulations for permitted changes that occur prior to the Final Regulation publication date, provided that the taxpayer and its related parties consistently apply the proposed regulations prior to such date.

Read the Advisory.

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## Century Bonds Make No More Sense Than Millennium Bonds.

- **Century bonds are not an appreciably "safer alternative" to corporate bonds.**
- **Taking on more interest-rate risk when rates are at near-record lows is not an attractive idea.**
- **The current bond rating for a 100-year bond is meaningless 10, 20 or 80 years from now.**

Except for bonds that are rated CCC-, I can think of few decidedly worse investments for an individual fixed-income investor than so-called "century bonds" that are touted in an article titled, "For Yield, Look to 2119" (available behind the Barron's paywall, or in the print edition) in the Oct. 7, 2019 issue of Barron's magazine. Virtually all of the purported benefits cited in the article are flawed.

First, these bonds, most of which are municipals, are presented as a "safer alternative" to corporate default because they enormously extend the maturity date and thereby take on more interest-rate risk. That's quite a leap of logic. How does that make them safer? Municipal-bond defaults do, in fact, occur, and the odds only increase over a 100-year period. Moreover, taking on more interest rate risk at a time when rates are at near-record lows can hardly be an attractive idea. They're not going to stay that way forever, and when rates inevitably rise, a bond's value will fall. When, precisely? Well, that's the problem: no investor will hold a bond for 100 years, but where will rates, and the principal value, be when he does want to sell 10, 20… or 80 years from now? That's not just rate risk – that's a lot of rate risk.

Although the article earnestly tries to make a case for these bonds, such as tax exemption in the issuer's home state (so what, that's true of most munis), and inconsequential track records about particular issuers' payout histories ("Rutgers has been around in some form since 1766, and hasn't had any problems repaying debt in recent decades"), I simply can find no silver lining for individual investors unless they've been given medical, actuarial or divine assurance that they'll live past 100 – at least as to bonds bought at issuance.

And stellar investment grades? How can any long-term bondholder take seriously a current high-quality rating for a bond of virtually infinite maturity? Changes in bond ratings occur on a regular basis, and the likelihood increases substantially over a period of 10 decades. For a century bond, therefore, the current rating is practically meaningless.

The article ends by noting that a century bond issued by a hospital in 2016 is currently yielding 3.8% compared to the 3.2% offered by the lowest tier of investment-grade debt. Well, there's a good reason for that: the hospital bond is at the far reaches of the maturity spectrum, and, as with junk bonds, investors demand to be paid for taking unattractive risk, in this case time risk. Perhaps some audacious municipality will offer a millennium bond sometime soon, at an irresistible rate of 4%! Who could turn that down?

It would be far more judicious for an income-oriented investor to buy, say, a 2028 target-date exchange-traded fund that is currently yielding about 3.3%.* Why would you go out 100 years on a single bond when you can hold one for just 10 years for only slightly less yield?

* Note: The 3.3% yield cited for a 2028 target-date ETF pertains to the Invesco BulletShares 2028 Corporate ETF (BSCS), priced at $22.08 on 10/7/19, the Barron's issue date. The distribution of $0.0613 on Sept. 23, 2019 would result in an annualized yield of 3.3%: $0.0613 x 12 = $0.7356. $0.7356/$22.08 = 3.3%.

Oct. 23, 2019 2:05 PM ET|2 comments | Includes: BSCS
John Gerard Lewis

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## Chicago's New Mayor Grapples With Nation's Worst Pension Debt.

**Lori Lightfoot vows to avoid excessive parking fees and other nickel-and-dime strategies**

CHICAGO—Mayor Lori Lightfoot has been in office only five months, but she is facing the prospect of having to ask a lot of residents in the nation's third-largest city.

Chicago has the most pension debt of any major U.S. city, a shrinking population and an $838 million budget gap—and the city's teachers have been striking since Thursday. At the same time, Ms. Lightfoot, a former federal prosecutor, has eschewed some of the nickel-and-dime approaches taken by many cities, ending Chicago's practices of turning off residents' water for nonpayment and suspending drivers' licenses for unpaid parking tickets.

Ms. Lightfoot will deliver her first budget to the city council Wednesday. Her efforts to make the math work as Chicago's pension payments increase rapidly will provide a window into the challenge of addressing the burdensome legacy costs weighing on many older American cities.

"Cities that have pension challenges are facing the same sort of question, which is 'How do you cover future liabilities and current costs without driving people away with higher taxes?'" said Michael Pagano, dean of the College of Urban Planning and Public Affairs at the University of Illinois at Chicago.

Cities' net pension liabilities grew 76% in nominal dollars in the five years ending in 2017, according to a study by Moody's Investors Service of cities rated by that firm. The number of large cities that have on hand less than half of the assets they need to pay promised future benefits doubled between 2009 and 2015, according to a study by the Pew Charitable Trusts.

Philadelphia, Providence, R.I., and Fort Worth, Texas, are all in that situation, as is Chicago, according to 2018 data from Merritt Research Services.

The reasons: Amounts owed to workers and retirees for pensions have lagged behind the assets on hand to pay them. Losses in 2009, plus years of falling short of investment targets, left pension funds with far less than projected, while governments have also contributed to the shortfall by skimping on annual pension contributions to balance budgets. Court protections in many states have made it difficult to cut benefits for already hired workers.

Rising costs for pensions and other expenses "have become a new normal since the recession," said Mary Murphy, project director at the Pew Charitable Trusts.

In an effort to shore up Chicago's finances, former Mayor Rahm Emanuel, a former congressman and White House chief of staff who served eight years, raised property taxes and also helped attract new investment and construction to the city's downtown. But decades of paltry contributions to the city's four pension funds have left Chicago $30 billion short of what it needs by the city's own estimates. The city has the largest pension liability of any major city, according to Moody's.

"The pressure is building on Chicago," said Laurence Msall, president of the Civic Federation.

Now the city's pension cost jumps each year, and Ms. Lightfoot must find $1.7 billion for pensions, up from $1.3 billion last year, according to the city's 2020 budget forecast. Total spending by the corporate fund, which pays the city's general operating costs—aside from pensions and debt, is $3.8 billion this year.

"There's no more road to kick the can down," Ms. Lightfoot told attendees at the Chicago Investors Conference last month.

Ms. Lightfoot must also contend with the teachers' strike, going on since Thursday over pay, class size and other issues.

The school district, which is run by a mayor-appointed board, sets its own budget and levies property taxes that are in addition to the taxes levied by the city on the same properties, and are subject to a state cap. Ms. Lightfoot has more latitude to raise property taxes and has made clear she may do so.

Two strategies touted by Ms. Lightfoot—additional taxes on real-estate sales and a casino in Chicago—will likely require cooperation from state lawmakers. Ms. Lightfoot's administration has also talked about plans to go after businesses delinquent on their taxes, to add ride-share and restaurant taxes, and to refinance city debt at lower interest rates. Along with pensions, Chicago also faces escalating bond payments.

The city's finance chief said Monday that 40% of the budget gap will be filled by one-time revenues and 60% will be structural solutions such as recurring revenues or lasting cuts. She said the city plans to save $200 million next year by refinancing existing debt. A spokeswoman said Ms. Lightfoot isn't currently considering shoring up the city pension fund with borrowed money, a possibility contemplated by Mr. Emanuel.

Ms. Lightfoot will also forego an expected $15 million in revenues, following through on a campaign promise to offer relief to residents burdened by parking fines and fees. Ms. Lightfoot has said that she expects the city to recoup some of the revenues as residents take advantage of new installment plans. The initiative has won kudos from residents but attendees at the Chicago Investors Conference were underwhelmed.

"Most of the investors don't live there," said Howard Cure, director of municipal bond research at New York City-based Evercore Wealth Management, which holds some Chicago debt. "They're just looking at 'How best can they pay their debt service and balance their budget?'"

**The Wall Street Journal**

By Heather Gillers

October 22, 2019

## Munis In Focus: Amanda Albright (Radio)

Amanda Albright, Municipal Bond reporter, will discuss the huge uptick in supply of taxable bonds. Hosted by Lisa Abramowicz and Paul Sweeney.

Play Episode

**Bloomberg**

October 25, 2019 — 8:36 AM PDT

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## Fixed Income Is Still a Mystery to Many Investors.

**A survey underscores a lack of understanding, but the bond market doesn't have to be an impenetrable enigma.**

The top-line takeaway from a BNY Mellon Investment Management national survey on fixed-income investing was stunning: A measly 8% of Americans were able to accurately define fixed-income investments.

The 29-question online survey of just more than 2,000 adults, conducted in July, clearly shows that many Americans admit to having little knowledge about various fixed-income markets and how to invest in them. Here's a rundown of those who answered "I do not understand it at all" with regard to the following types of bonds: Treasuries, 39%; municipal bonds, 45%; high-yield bonds, 46%; corporate bonds, 51%; structured products, 53%; Treasury Inflation Protected Securities, 63%. Of the 849 respondents who don't own fixed income or don't have any investment portfolio, 44% said they don't buy bonds because they don't understand the different types of securities.

Continue reading.

**Bloomberg Opinion**

By Brian Chappatta

October 24, 2019, 3:00 AM PDT

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## San Jose to Propose Turning PG&E Into Giant Customer-Owned Utility.

San Jose, California's third-biggest city, is proposing to convert PG&E Corp. into the country's largest customer-owned utility, its mayor told The Wall Street Journal on Monday.

The most populous city served by PG&E hopes to persuade other cities and counties in coming weeks to line up behind the plan, which would strip PG&E of its status as an investor-owned company and turn it into a nonprofit, electric-and-gas cooperative.

The buyout proposal amounts to a revolt by some of PG&E's roughly 16 million customers as the company struggles to keep the lights on and provide basic services while preventing its aging electric equipment from sparking wildfires.

San Jose Mayor Sam Liccardo said in an interview that the time has come for the people dependent on PG&E for essential services to propose a new direction. A cooperative, he said, would create a utility better able to meet customers' needs because it would be owned by customers—and answerable to them.

"This is a crisis begging for a better solution than what PG&E customers see being considered today," said Mr. Liccardo. He said recent power shut-offs initiated by the company were poorly handled, adding, "I've seen better organized riots."

PG&E did not immediately respond to a request for comment. In the past, the company has said its energy systems are not for sale and it has repeatedly beaten back efforts on the part of dissatisfied cities to form municipal electric utilities.

The idea represents a dramatic twist in the debate over how PG&E could emerge from bankruptcy, compensate fire victims and address its many safety problems. It likely will face stiff opposition from PG&E, which sought chapter 11 protection in January from what it estimated at more than $30 billion in wildfire-related liabilities. The company's bondholders also will likely contest the idea after putting forward a rival reorganization plan in bankruptcy court.

California officials are running out of patience with PG&E after the company shut off power to roughly two million Californians in 34 counties earlier this month to ensure that its power lines, transformers and fuses didn't ignite fires that could spread quickly amid warnings of high winds. PG&E warned Monday that winds could trigger another round of shut-offs for parts of 17 counties later this week.

PG&E may have accidentally galvanized support for the public buyout proposal last week when Chief Executive Bill Johnson told state regulators that the utility may need to rely on power shut-offs for up to 10 years. That is a horrifying prospect for public officials, who note that the blackouts affect public safety and the delivery of other basic services such as clean water.

"We need to align the financial interest with the public interest," Mr. Liccardo said. "We hope there will be recognition that this structure better addresses the public need and we're looking to start the drumbeat to enable all of us to march together."

By Dow Jones Newswires

Oct. 21, 2019 3:43 pm ET

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## Housing PABs See Increase of More than $1.1 Billion in 2018.

Combined multifamily and single-family tax-exempt private activity bond (PAB) issuance was $22.1 billion in 2018, an increase of more than $1.1 billion over 2017, according to a report issued by the Council of Development Finance Agencies (CDFA). Today's report contains revised numbers from an original report that was posted Oct. 15. Housing bonds made up 91 percent of total PAB issuance, the highest percentage since the CDFA began tracking the amounts in 2007. Multifamily housing bonds–which are paired with 4 percent low-income housing tax credits–totaled $14.7 billion in 2018, a decrease of $600 million from 2017. States used 65 percent of their PAB allocation 2018, a drop of

5 percent from 2017. California ($4.3 billion) was one of five states to top $1 billion in total PAB issuance, with New York, Texas, Florida and Tennessee also topping that figure.

Wednesday, October 23, 2019 – 3:15pm

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## Is Public Finance Ready to Rely on Blockchain Technology?

**Governments often contend with many issues when attempting to link public dollars to real-world outcomes captured by data in disparate systems. EY claims its OpsChain Public Finance Manager will reduce those struggles.**

The stewardship of public dollars is a challenge as old as government itself, but nascent technologies are coming into the space with the intention of streamlining it. Blockchain-enabled tools are one such example.

The OpsChain Public Finance Manager (PFM), a new blockchain-based tool from Ernst & Young, is designed to allow governments to "focus more directly on the things that matter," said Mark MacDonald, EY global public finance management leader.

The potential of this tool lies in helping governments track the "financial integrity of the way public money is spent" and the related outcomes that are achieved, MacDonald said. Essentially, the PFM promises to enhance the ability of governments to see how public dollars are connected to actual results, which should support further decision-making.

"In simple terms, it's the integration between a financial view and non-financial view that can really help public managers manage more effectively, public budgeters budget more effectively, and ultimately it's about trying to advance that cause of 'better finance, better government,'" MacDonald said.

The PFM is based on the EY Ops Chain, which is a blockchain platform that entered its second generation earlier this year. According to EY, this platform can "support up to 20 million transactions per day on private networks" and has reportedly led to efficiency gains of more than 90 percent in certain cases.

Most governments utilize an enterprise resource planning (ERP) system to keep up with public funds. MacDonald said those systems are generally well understood, but he suggested a critical piece of the organizational puzzle is missing when it comes to linking ERP data to outcome data in other systems.

"The question becomes when I have an opportunity to try and connect financial data and information to another system that perhaps has my non-financial information in it, how easily am I able to do that?" MacDonald said.

Mike Mucha, deputy executive director of the Government Finance Officers Association, said his organization helps governments prepare and procure ERP systems, so he understands the challenge that MacDonald refers to. Mucha cited an example involving a school district. A district will have its financial data in one system (ERP), but student performance data will be stored in a student information system (SIS).

"If you're trying to calculate like an academic ROI … you need to basically, through some sort of third-party tool or some sort of third tool, correlate your spending on various programs with the academic return that you're getting out of your student data system," Mucha said.

Additionally, MacDonald said governments often deal with a "complicated array" of contractors, partners and not-for-profits in delivering public services. The chances of these external agents being on the government's ERP system are essentially zero, which creates a "hard organizational interface to try to overcome." The blockchain component can help manage this kind of chaos, almost acting as an "ERP across ERPs."

Another challenge is simply the idea of the government running multiple systems itself. Almost no organization runs just one ERP system, Mucha said. Then there's the fact that public entities frequently house their own information even though those entities might need to work together for the common good. Although Mucha admits that he doesn't know anything about the EY tool, he can imagine great potential for public entities wishing to work together.

"From a business intelligence perspective, you might want to pool that information together … so if you had an ERP across ERPs, then you could conceivably use data from each one of those individual entity's ERP system in sort of a shared resource," Mucha said.

MacDonald stressed that the blockchain aspect of the PFM is not "technology for technology's sake." Rather, the blockchain platform presents a logical opportunity for technology to address long-standing business challenges within the complexity of a government system.

"It [blockchain] has the ability to work at that network level across organizational boundaries, across different authorities, and so forth," MacDonald said.

According to EY, the PFM has been tested by multiple governments around the world. MacDonald would not reveal all of those governments due to concerns related to privacy and confidentiality. It is public knowledge, however, that Toronto has tested the tool, but Toronto's chief financial officer Heather Taylor could not be reached for further comment.

GOVERNING.COM

BY JED PRESSGROVE / OCTOBER 25, 2019

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## CityLab University: Tax Increment Financing

*Behind the dry-as-dust name is a powerful (and controversial) tool for financing urban redevelopment. Here's a quick guide to understanding TIF.*

It's time again for CityLab University, a resource for understanding some of the most important concepts related to cities and urban policy. If you have constructive feedback or would like to see a similar explainer on other topics, drop us a line at editors@citylab.com.

Urban development professionals, neighborhood activists, and diligent readers of local newspapers have very likely come across the term "Tax Increment Financing" (TIF). Whether all of these groups understand what it means is another matter.

This mechanism for financing redevelopment is a powerful and controversial force in American urbanism. Every state except Arizona currently allows it, as does the District of Columbia, and it has become the most popular incentive tool for economic development in the United States as the federal government has decreased its urban development spending. TIF plays a role in megaprojects such as Chicago's Lincoln Yards and Amazon's HQ2 in Arlington, Virginia, as well as in smaller-scale neighborhood improvements, affordable housing, and transit projects.

Continue reading.

CITY LAB

BENJAMIN SCHNEIDER

OCT 24, 2019

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**TAX . - OKLAHOMA**

## Shadid v. City of Oklahoma City

**Supreme Court of Oklahoma - October 14, 2019 - P.3d - 2019 WL 5106715 - 2019 OK 65**

Objector brought action, seeking assumption of original jurisdiction, for declaratory and injunctive relief, challenging constitutionality of ordinance creating temporary term of excise tax.

The Supreme Court held that:

- Supreme Court would exercise discretion to assume original jurisdiction over action, and
- Even if contents of resolution of intent which accompanied ordinance set out projects that were not of same subject, this did not render ordinance in violation of constitutional or statutory single subject mandate.

Supreme Court would exercise its discretion to assume original jurisdiction over objector's action for declaratory and injunctive relief, challenging constitutionality of excise tax ordinance; decision could significantly affect municipal finance statewide, and matter was urgent as special election was set for just a few months from filing of objector's petition.

Even if contents of resolution of intent, which accompanied ordinance creating temporary excise tax, set out projects that were not of same subject, this did not render ordinance in violation of constitutional or statutory single subject mandate, where subject matter contained in ordinance itself was clearly germane to excise tax.

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**TAX . - FLORIDA**

## Joiner v. Pinellas County

**District Court of Appeal of Florida, Second District - September 25, 2019 - So.3d - 2019 WL 4666376 - 44 Fla. L. Weekly D2397**

County brought action against appraiser for a second county seeking declaratory and injunctive relief concerning first county's immunity from paying ad valorem taxes on its ranch property situated in second county and reimbursement of previous years' tax payments.

The Circuit Court granted first county's motion for summary judgment. Appraiser appealed.

As a matter of first impression, the District Court of Appeal held that first county's ranch property was not immune from taxation by second county.

County's ranch property situated in another county was not immune from taxation by the other county; a county's immunity from taxation in its sovereignty did not eliminate its obligation to pay taxes on property in another political entity's jurisdiction.

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## Charter Schools Are an Opportunity for Impact Investors.

**High interest rates are a barrier to buying new facilities, even though such loans have proved a safe bet.**

With more than three million students in charter schools nationwide, and an estimated five million families who would send their child to a charter if a spot were available, why aren't many more of them opening? One reason is the higher cost of capital they bear compared with traditional public schools. While both types of school receive public funding for operating expenses, charter schools cannot issue general-obligation bonds to purchase or construct their properties. That forces charter schools to find facilities, and the funds to renovate or build them, on the open market.

Charter schools enter the market at a distinct disadvantage. When they do find a site and draw up plans for a new school building, the organizers often find interest rates far steeper than those enjoyed by traditional public schools—about 1.5 percentage points higher. That's because teachers unions and other advocacy groups dissuade school districts from sharing the proceeds of their bonds or guaranteeing charter-school bonds. The extra interest charter schools pay consumes dollars they could otherwise spend to hire more teachers, increase salaries and buy resources for students.

Yet compared with many real-estate investments, charter schools are an extremely safe bet. A 2011 report on charter-school loan performance from Ernst & Young's Quantitative Economics and Statistics Practice assessed 430 outstanding and paid-off loans totaling $1.2 billion. Only five loans, which amounted to 1% of the set in dollar terms, ended in foreclosure. And just 0.2% of the total loan amount was reported as being written off. Among outstanding loans, only eight (3.6%) had been delinquent for any period of more than 60 days.

This strong performance makes charter schools an ideal opportunity for impact investing. Impact investors are those who aim to "do well by doing good"—i.e., generate a measurable social benefit along with a commensurate financial return.

While impact investors are already funding auxiliary features of education like tutoring programs, few have gotten involved in core activities like helping schools buy their physical plants. Historically, supplemental funding for schools has come in the form of donations and grants. Yet supporters of charter schools could have a greater impact by making larger, lower-cost loans that would allow the schools' organizers to finance capital expenditures at lower rates of interest than are available on the open market.

Low-interest investors would help charter schools spread and flourish in the long term. The infusion of affordable capital would make it possible to extend spots to many of the students waiting to enroll in charter schools. Millions of dollars in interest could be saved and reinvested to pay teachers and spend on student learning—more spending in the classroom, rather than on it. The discrepancy between charter schools' high cost of capital and their demonstrated stability and low default rate is exactly the sort of gap impact investors should naturally seek to fill.

Investors in social causes have made valuable contributions in recent decades to fields like public health that had long been occupied exclusively by nonprofits, but too many investors seem to focus more on improving their public image instead of finding the areas with the greatest potential impact. This may have dissuaded some from funding charter schools, which have lost some of their luster among political liberals because of the supposed threat they pose to traditional public schools.

Charter schools are an untapped opportunity for impact investors. Investors in charter schools have the satisfaction of knowing that their investments would finance expenses that donors can't cover with gifts, and can rest comfortably in the knowledge that their investments are very likely to pay off. What's more, they can help meet a goal that should be beyond the divisiveness of politics: better education for America's children.

**The Wall Street Journal**

By Mark Medema

Oct. 27, 2019 4:44 pm ET

*Mr. Medema is managing director for the Charter School Facility Center at the National Alliance for Public Charter Schools.*

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## Moving on from LIBOR: Squire Patton Boggs

The IRS has issued proposed regulations that allow issuers to replace LIBOR rates associated with their bonds and swaps without triggering a reissuance of the bonds or a deemed termination of the swaps. The replacement rate must be a "qualified rate," which includes the Secured Overnight Financing Rate ("SOFR"). A rate isn't a "qualified rate" unless the fair market value of the bond or swap is the same before and after the replacement, taking into account any one-time payment made in connection with the switch. Although they're only proposed regulations, issuers can apply them immediately.

**Background – Once again, let us dazzle you with the most boring part of a very interesting topic.**

Countless municipal bonds and countless derivatives[1] that relate to those bonds depend on the continued existence of one or more of the London Interbank Offered Rates, which are referred to generically as "LIBOR."[2] In particular, many variable rate bond documents contain rates that are based on LIBOR, and many derivatives contain a variable stream of payments or receipts that is based on LIBOR. For municipal bonds that bear interest at a rate that is based on LIBOR, if LIBOR can't be determined, then in most cases the bond documents will move the interest rate on the bonds into a "fallback" rate that could be very financially unattractive for the issuer. The same could be true for an interest rate swap with a stream of payments or receipts that is based on LIBOR.

Continue reading.

**The Public Finance Tax Blog**

**By Johnny Hutchinson on October 22, 2019**

**Squire Patton Boggs**

## CDFA-Ice Miller Broadband Financing Bootcamp.

**December 4, 2019 | 1:00 PM – 4:00 PM Eastern**

Click here to learn more and to register.

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## Financial Accounting Foundation Opens Search for New Executive Director.

Read the News Release.

10/24/19

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## GASB Outlook E-Newsletter Fall 2019.

Read the Newsletter.

10/24/19

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## NFMA Advanced Seminar on Higher Education: Sector Under Stress

The Education Committee is pleased to open registration for the Advanced Seminar on Higher Education to take place on **January 23 & 24, 2020 in Los Angeles**.

To view the program, click here. To see who is speaking (more to come), click here.

To register, click here.

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## MSRB Holds First Quarterly Board Meeting of FY 2020.

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) met on October 23-24, 2019 for its first in-person meeting of Fiscal Year 2020. The Board's standing committees and special committees met to set their priorities for the year and begin work, and the full Board discussed regulatory coordination and the organization's cloud migration, among other topics.

"Much of the Board's important oversight work and strategic thinking happens at the committee level," said Board Chair Ed Sisk. "With two special committees leading the MSRB's governance review and CEO search, and the creation of our new standing committee on stakeholder engagement, I look forward to an especially productive year."

Read more about the MSRB's FY 2020 priorities.

The Board's CEO Search Special Committee interviewed executive search firms to facilitate the broad-based nationwide search for a new president and CEO. The Governance Review Special Committee discussed priority areas for its wide-ranging review of MSRB governance practices, including the size of the Board and selection of public and regulated members, which are established under MSRB Rule A-3.

**Regulatory Coordination**

The Board approved acting on the recommendation of the U.S. Securities and Exchange Commission (SEC)'s Fixed Income Market Structure Advisory Committee that the MSRB coordinate with the Financial Industry Regulatory Authority (FINRA) on further analysis of a practice in the corporate and municipal bond auction process referred to as "pennying."

"The MSRB seeks to coordinate with FINRA on any matters that cut across the corporate and municipal bond markets to ensure our regulatory approaches are harmonized to the extent possible," Sisk said.

The Board also directed staff to analyze the potential regulatory and market impacts of the SEC's proposed order to grant conditional exemptive relief, which would, if granted by the SEC, permit municipal advisors to engage in certain limited activities in connection with the direct placement of municipal securities without registering as a broker.

As previously announced, the MSRB plans to coordinate closely with the SEC and FINRA to consider the impact of SEC Regulation Best Interest on MSRB rules.

**Market Transparency**

The Board received an update on the enterprise-scale migration of MSRB market transparency systems and data to the cloud.

"The Technology Committee and the full Board will closely monitor the MSRB's journey to the cloud," Sisk said. "We are committing the largest investment of resources since the launch of our Electronic Municipal Market Access (EMMA®) website to enhance the long-term reliability, data quality and security of our market transparency systems."

Date: October 25, 2019

Contact: Leah Szarek, Director of Communications
202-838-1500
lszarek@msrb.org

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- **Ed. Note:** A catastrophic (and possible self-inflicted) computer/network debacle prevented us from sending out last week's newsletter. We apologize for the perpetual inconvenience.
- Proposed Rules Addressing LIBOR Phase-out Help Ease Reissuance Concerns.
- Background on LIBOR and SOFR.
- Local Governments Lobby for Stable NAV Bill.
- CDFA Releases Annual Volume Cap Report.
- City Bonds May Be Hit by Climate Change. Moody's Can Now See How.
- Pension Obligation Bonds May Soon Have Their Moment.

- And finally, Struggling To Put A Favorable Spin On This One is brought to us this week by *Daley v. Kashmanian*, in which Devonte Daley and some pals headed out on their motorcycles for a midnight jaunt through the streets of Hartford Connecticut. When the opinion includes the following, "plaintiff's motorcycle was neither 'street legal' nor 'roadworthy' because it did not have headlights and was equipped with off-road tires" and "plaintiff was ejected from his motorcycle and landed approximately ninety-five feet down Sumner Street, causing him significant injuries," we're thinking that you can go ahead and skip the whole, "The relevant facts, viewed in a light most favorable to the plaintiff" recitation.

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**IMMUNITY . - CONNECTICUT**

## Daley v. Kashmanian

**Appellate Court of Connecticut - October 1, 2019 - A.3d - 193 Conn.App. 171 - 2019 WL 4750666**

Motorcyclist brought action against detective and city, alleging detective had negligently and recklessly caused plaintiff to be ejected from his motorcycle.

Following close of evidence at jury trial, the Superior Court granted detective's motion for directed verdict as to recklessness charge, and subsequently, following jury verdict in motorcyclist's favor on negligence charge, granted detective and city's motions to set aside the jury verdict. Motorcyclist appealed.

The Appellate Court held that:

- Whether detective's conduct while attempting to surveil motorcyclist was reckless presented question for jury;
- Detective's surveillance on motorcyclist constituted discretionary conduct; and
- Statute governing rights and duties of emergency vehicles did not implicitly preclude officers conducting surveillance from being exempt from obeying certain motor vehicle statutes.

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**EMINENT DOMAIN - LOUISIANA**

## Department of Transportation and Development v. Motiva Enterprises, LLC

**Court of Appeal of Louisiana, Fifth Circuit - October 2, 2019 - So.3d - 2019 WL 4855042 - 19-32 (La.App. 5 Cir. 10/2/19)**

Department of Transportation and Development (DOTD) brought action against owner and lessee of land seeking to expropriate land for road construction project.

During jury trial, the District Court granted directed verdict for DOTD against lessee. Lessee appealed.

The Court of Appeal held that lessee failed to establish damages for diminished value of its leasehold interest in expropriated land.

Lessee failed to establish damages for diminished value of its leasehold interest in land expropriated by Department of Transportation and Development (DOTD) for road construction project, although it presented testimony in which project manager involved in previous sale of land estimated value of land, where project manager had no input into actual valuation of land for purposes of sale, and lessee did not present evidence of any methodology used to determine value of leasehold interest either before or after expropriation.

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**PUBLIC UTILITIES - MINNESOTA**

## Clark v. City of Saint Paul

**Supreme Court of Minnesota - October 16, 2019 - N.W.2d - 2019 WL 5198831**

City residents filed petition, challenging city's refusal to put on the ballot referendum on city ordinance, stating that all trash collected in city had to be pursuant to written contract with the city and stating that all previous private contracts between solid waste haulers and residents were null and void.

The District Court granted petition. City appealed to the Court of Appeals, and Supreme Court granted city's petition for accelerated review.

The Supreme Court held that:

- Referendum on city ordinance that established organized waste collection services did not conflict with requirements in state statute, and
- Referendum on city ordinance that established organized waste collection services did not impair city's contract obligations under the contract clauses of the United States or Minnesota Constitutions.

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**LABOR . - MINNESOTA**

## Firefighters Union Local 4725 v. City of Brainerd

**Supreme Court of Minnesota - October 9, 2019 - N.W.2d - 2019 WL 5057546**

Firefighters union and union president brought action against city alleging unfair labor practices in violation of Public Employment Labor Relations Act (PELRA), violation of statutory requirements regarding amendment of city charters, and free speech retaliation arising from city's unilateral restructuring of its fire department, via a resolution, to eliminate paid full-time firefighter positions.

The District Court granted city's motion for summary judgment. Union and president appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. City petitioned for further review.

The Supreme Court held that:

- City's resolution reorganizing its fire department clearly implicated matters of inherent managerial policy, for purposes of the PELRA provision governing mandatory bargaining; but
- In a matter of first impression, city's violation of PELRA provision that prohibited the unfair labor practice of interfering with the existence of an employee organization was not excused because the city's interference was a matter of "inherent managerial policy";
- The plain language of the PELRA provision which prohibited the unfair labor practice of interfering with the existence of an employee organization did not require that the public employer's interference be motivated by antiunion animus; and
- City engaged in an unfair labor practice in violation of the PELRA when it interfered with the existence of an employee organization by eliminating all paid full-time firefighter positions

governed by a collective bargaining agreement, while it provided for paid on-call firefighters and a new assistant fire chief.

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**LIENS . - MISSISSIPPI**

## [Watkins Development, LLC v. Jackson Redevelopment Authority]

**Supreme Court of Mississippi - October 3, 2019 - So.3d - 2019 WL 4874824**

Redevelopment authority brought declaratory judgment action against tenant and developer, seeking to expunge mechanic's liens on properties that were subject of development project.

After grant of partial summary judgment in favor of redevelopment authority and bench trial, the Chancery Court entered judgment finding lease properly terminated but denying monetary damages. Tenant appealed.

The Supreme Court held that:

- Evidence was sufficient to support bench trial finding that tenant's breach of development obligations under lease of property from redevelopment authority was material, as would allow termination of lease;
- Trial court acted within its discretion in finding that redevelopment authority's initial forbearance did not estop it from terminating lease;
- Tenant could not obtain quantum meruit remedy for value of improvements to leased property;
- Discovery that building had construction flaw which would cost $1.5 million to remedy did not excuse tenant's failure to meet construction deadlines imposed by lease;
- Redevelopment authority did not breach implied duty of good faith and fair dealing by terminating lease; and
- A mechanic's lien may not be enforced on municipal property held for purposes of the Urban Renewal Law.

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**EMINENT DOMAIN - MISSISSIPPI**

## [Tippah County v. LeRose]

**Supreme Court of Mississippi - October 3, 2019 - So.3d - 2019 WL 4872584**

Landowners brought declaratory-judgment action against county, alleging that county's rescission of its decision to abandon public road, which ran through landowners' property, was void and seeking damages for county's taking of property without compensation.

The Circuit Court granted partial summary judgment in favor of landowners. County filed request for interlocutory review.

The Supreme Court held that:

- Landowners' constructive notice of regular public meeting of board did not provide adequate notice that board would rescind abandonment of public road at meeting, and thus landowners'

right to due process was violated, and
- Circuit Court had subject-matter jurisdiction regarding inverse-condemnation claim.

Landowners' constructive notice of regular public meeting of county board of supervisors did not provide adequate notice that board would rescind abandonment of public road, which ran through landowners' property, and thus landowners' right to due process was violated, though no statute explicitly required notice of hearing to reconsider prior decision of board; landowners had vested property right at time of board's reconsideration at meeting, and landowners would have been necessary parties to a proceeding that reinstated county's easement over property.

Circuit Court had subject-matter jurisdiction in landowners' inverse-condemnation action against county, which attempted to rescind its abandonment of public road over landowners' property; Special Court of Eminent Domain did not have exclusive jurisdiction, and state constitution invested Circuit Court with original jurisdiction in all matters civil and criminal not vested by the constitution in some other court.

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**PUBLIC EMPLOYMENT . - MISSISSIPPI**

## Jones v. City of Canton

**Supreme Court of Mississippi - September 26, 2019 - So.3d - 2019 WL 4686409**

Public school district and trustee of district filed a bill of exceptions, challenging decision of city's board of aldermen to remove trustee.

The Circuit Court affirmed trustee's removal, and he appealed.

The Supreme Court held that:

- As matter of first impression, trustee could be removed only in accordance with provision of State Constitution, stating that all public officers, for wilful neglect of duty or misdemeanor in office, shall be liable to presentment or indictment by grand jury and, upon conviction, shall be removed from office;
- City ordinance, stating that every officer who willfully neglects to perform the duties imposed upon him, or for any satisfactory cause, shall be removed from office, violated State Constitution; and
- Trustee's procedural due process rights were violated when city board of aldermen's decision, to remove trustee, was made without notice or hearing.

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**ZONING & PLANNING - NEW HAMPSHIRE**

## Working Stiff Partners, LLC v. City of Portsmouth

**Supreme Court of New Hampshire - September 27, 2019 - A.3d - 2019 WL 4725178**

After city issued cease and desist order to property owners that precluded their use of property for short-term rentals, property owners appealed.

The Zoning Board of Adjustment upheld the order. Property owners appealed. The Superior Court affirmed. Property owners appealed.

The Supreme Court held that:

- Zoning ordinance did not permit property owners' short-term rental of the property as a principal use, and
- Property owners failed to establish city ordinance definition of "dwelling unit" was unconstitutionally vague as applied.

Zoning ordinance did not permit property owners' short-term rental of the property as a principal use; the ordinance expressly permitted single-family dwellings and two-family dwellings in the district as principal uses, and owners' rental of the property by providing short-term rentals to guests paying on a daily basis constituted a transient occupancy that was similar to a hotel, motel, or rooming house, which was excluded from the definition of a dwelling unit.

Property owners failed to establish city ordinance definition of "dwelling unit" was unconstitutionally vague as applied; ordinance's definition of "dwelling unit" as a building providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation that did not include such transient occupancies as hotels, motels, or boarding houses, provided owners with a reasonable opportunity to understand that their conduct in using property for short-term rentals was not a permitted use of property, and owners failed to demonstrate that ordinance was so vague that it authorized arbitrary or discriminatory enforcement.

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**ADVERSE POSSESSION . - PENNSYLVANIA**

## City of Philadelphia v. Galdo

**Supreme Court of Pennsylvania - September 26, 2019 - A.3d - 2019 WL 4686781**

City brought action against citizen making use of undeveloped city property, alleging continuing trespass, permanent trespass, and ejectment, and citizen filed a counterclaim to quiet title, claiming ownership by adverse possession.

Following bench trial, the Court of Common Pleas found in favor of city and ordered citizen ejected from the disputed property. Citizen appealed. The Commonwealth Court vacated and remanded. City petitioned for allowance of appeal.

The Supreme Court held that condemned property that was held for eventual resale by a political subdivision after the original public purpose for the condemnation had lapsed did not constitute a public use of the property that afforded the political subdivision immunity from adverse possession claims.

Condemned property that was held for eventual resale by a political subdivision after the original public purpose for the condemnation had lapsed did not constitute a public use of the property that afforded the political subdivision immunity from adverse possession claims, and thus remand was warranted to address citizen's adverse possession claim against city concerning undeveloped city property that was originally condemned for transit purposes, but the transit purposes lapsed in late 1970s, in city's action for ejectment in which citizen sought to quiet title to property and claimed ownership by adverse possession.

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## CDFA Releases Annual Volume Cap Report.

Read the Volume Cap Report.

**CDFA | Oct. 17**

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