
[California Utility Frets on Fire Costs as State Dodges Action.](#)

- **Lawmakers passed legislation that helps corporate utilities**
- **Municipal-owned utilities didn't get the help they wanted**

As California's lawmakers debated late Friday night under the statehouse capitol dome in Sacramento, the city's utility district kept the lights on for them. But the legislators fell short for the electricity provider.

Officials at the Sacramento Municipal Utility District had wanted legislators to support Governor Jerry Brown's proposal to give all utilities relief from strict liability rules. That didn't happen. Instead, they passed a bill on the last day of session that benefits publicly-traded competitors such as PG&E Co. by allowing new customer fees to help pay fire damages.

[California Approves Bill to Help PG&E Pay for Wildfire Costs](#)

Under California law, a utility can be held liable if its equipment caused a fire — even if the company followed safety rules. So if a tree limb outside the Sacramento Municipal Utility District's right of way blows into its power line and sparks a fire, the agency, which has about $2 billion in municipal bonds outstanding, could be on the hook.

Utilities are pressing the issue with increasing urgency after deadly fires last October destroyed large swaths of California wine country, including thousands of homes, and killed 44 people. California investigators have already named PG&E power lines and other equipment as the source of 16 fires last year.

Subject to Damages

"We're subject to damages that we have no control over,"said chief legal officer Laura Lewis in an interview Friday before the vote. "This legislation does nothing to help mitigate that potential risk, which we don't feel is equitable."

Unlike PG&E, the district, which earns 48 percent of its revenue from residences, has no shareholders. "We have no other recourse than to pass along costs to our customers," Lewis said.

The utility estimates that if saddled with $1.5 billion in damages, it would increase rates by 25 percent. That would hurt those with limited budgets — already, the district offers a low-income discount to 15 percent of its residential customers, bond documents show.

Lewis said the utility, along with its peers, will continue to raise the issue with lawmakers next year. It's becoming more significant as the climate changes. The average area burned by fires statewide would increase by 77 percent by 2100 if greenhouse gas emissions rise unchecked, according to California's Fourth Climate Change Assessment released in August.

"Extreme weather is going to continue," Lewis said. "That's going to fuel more wildfires down the road."

Bloomberg Business

By Romy Varghese

September 4, 2018, 8:37 AM PDT

— *With assistance by Mark Chediak*

[S&P Medians And Credit Factors: California Municipalities]

California municipalities' credit quality remains very strong, in S&P Global Ratings' view, supported by a dynamic economy that has been one of the nation's top performing for the last several years, generally strong budgetary performance facilitated by steady revenue growth, and financial management often supported by formal policies and regular budget monitoring.

[Continue Reading]

Sep. 6, 2018

[A Public Bank for LA: Instead of Sending Hundreds of Millions to Predatory Finance, Angelenos' Taxes Can Fund Community Development]

The City of Los Angeles sends the nation-wrecking finance industry more than $100MM/year in the form of fees and penalties for its banking business, supporting the institutions whose racist lending practices, financial engineering and mortgage fraud have wreaked untold harm on the city's residents.

This November, Angelenos will get to vote on a proposition to [create a public bank] that will back LA's smaller community banks and do the city's business without lining finance's pockets. This bank will be able to fund community projects from housing to transit to health-care, and will be able to take deposits from the city's burgeoning cannabis industry, which is presently shut out of the federally guaranteed bank system and relies on safes in entrepreneurs' homes or businesses to stash millions in cash.

The finance industry hates and fears this proposal and is spreading FUD about how a bank that is under democratically elected political control will inevitably become corrupt — while the discipline of the market will supposedly keep banks on the straight and narrow. Tell that to the millions of Americans whose suffered from Wells Fargo's corruption.

> And those are not the only benefits of a public bank, backers claim. A public bank would enable the city to loan money for badly needed affordable housing development. They

believe a city-owned bank could extend the credit lines of community banks and credit unions to offer loans to low-income residents and help bankroll affordable housing.

Another benefit touted by bank promoters: badly needed investment in infrastructure. They hold out the example of Costa Rica's public bank, Banco Popular. Advocates claim that this bank has been the financial linchpin behind the financing of water supply systems, residential solar panels, and hydroelectric generators.

"A public bank could make some investments that in the long-term would be profitable for LA… [investments that] no bank focused on short-term profit would dare to invest in," Baradaran asserted.

A public bank is also seen by many as a means to local self-determination and bypassing high Wall Street interest rates. For example, LA public bank advocates estimate Los Angeles pays $3.14 billion in debt service, the cost to borrow money, from Wall Street. They argue a municipal bank would allow the city to recapture that money and give Los Angelenos a say in redirecting this funding toward local projects.

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Arizona Opportunity Zones & Opportunity Funds Conference.

September 27, 2018 | Tempe, AZ

Click here to learn more and to register.

This Data Shows Who Grabs the Mic at Public Planning Meetings.

Andrew DeFranza has seen it countless times: An affordable housing project proposed in a mostly white, well-off community goes before the zoning board or the planning commission. A vocal minority of homeowners, themselves mostly white and well off, show up to oppose it. The project is killed, shrunk or delayed by litigation for years.

"We hear a lot of, 'I'm in support of affordable housing, just not here,'" says DeFranza, who's the executive director of Harborlight Community Partners, a community development corporation in southern Essex County in Greater Boston.

He wasn't surprised to hear the findings in "Racial Disparities in Housing Politics: Evidence from Administrative Data," a new paper by Boston University researchers. As the Boston Globe reported last week, the study of public meetings in nearly 100 Greater Boston cities showed that white people accounted for 95 percent of participants. In the same area, white people make up 80 percent of the population. Using an analysis of last names and geographic data from public meetings, the researchers concluded that "whites overwhelmingly dominate zoning and planning board meetings." (Details on how the BU researchers determined the race of participants are in the "Estimating Race" section of the paper.)

Continue reading.

NEXT CITY

BY JARED BREY | SEPTEMBER 6, 2018

NIMBYs Dominate Local Zoning Meetings.

A study of the Boston area shows that those who participate in planning and zoning board meetings are older, wealthier, and much more NIMBYish.

The late Jane Jacobs never much liked forums for community participation in zoning and housing issues. She thought they were usually a sham to harness community sentiment in ways that benefitted powerful government and development interests. She personally told me the story of how Robert Moses dismissed her and her colleagues at one critical meeting as "nobody but a bunch of mothers!"

But the reality today is that community participation is effective—as a mechanism for creating and reinforcing NIMBYism and the accompanying restrictive zoning and land use policies.

That's according to a new study by Katherine Einstein, Maxwell Palmer, and David Glick, political scientists associated with Boston University's Initiative on Cities. People who oppose creating more multifamily housing development tend to speak at public meetings much more often than those who support it.

Continue reading.

NEXT CITY

RICHARD FLORIDA SEP 6, 2018

- **Ed. Note:** Just a (not particularly friendly) reminder that all of the items contained in the newsletters are archived on bondcasebriefs.com, which serves as a fully-searchable database. We are fully aware that we routinely publish items that may not be immediately relevant to your current practice. The idea is that we'll be here for you in event that you need to get up to speed on recent developments (e.g. micro-bonds, opportunity zones, and that blockchain nonsense all the kids are talking about these days.)
- Task Force on Climate-Related Financial Disclosures Releases Three Key Documents that Serve as Building Blocks to Describe and Support Implementation of the Task Force's Recommendations.
- The California Heat Assessment Tool.
- **Ed. Note II:** The two bullet points above represent sources of both macro and micro information regarding climate-related risk factor disclosures. We'll work to keep you apprised of additional such sources as they become available.
- S&P: SEC Disclosure Rule Changes Will Improve Transparency, But Municipal Bank Loan Structures Can Still Carry Hidden Risks.
- Houston Eyes Designer Bonds to Pay for $15 Billion Ike Dike.
- And finally, When "Insult to Injury" Just Won't Cut It is brought to you this week by, *Lopez v. City of Grand Junction*, in which the Lopez family was just a tad aggrieved when the city ruptured a gas line, resulting in an explosion inside their home. Oh, but it gets so, much worse. The gas entered

the home via, yes, their sewer line. We now invite you to lean back, close your eyes, and luxuriate in the many delightful ways to describe the combination of exploding hydrocarbons and fecal matter. You're welcome.

DEVELOPMENT AGREEMENTS - CALIFORNIA

Center for Community Action and Environmental Justice v. City of Moreno Valley

Court of Appeal, Fourth District, Division 1, California - August 23, 2018 - Cal.Rptr.3d - 2018 WL 4025516 - 18 Cal. Daily Op. Serv. 8650

Objectors petitioned for writ of mandate, challenging city's adoption of initiative to approve a development agreement.

The Superior Court denied petitions, and objectors appealed.

The Court of Appeal held that development agreement statute, providing that a development agreement is a "legislative act" that is "subject to referendum," exclusively delegated the approval of development agreements to the local legislative body, even though statute did not expressly state that adoption of a development agreement by initiative was barred.

Development agreement scheme was of statewide concern, legislature could reasonably have found it appropriate to limit only initiative or referendum but not both, and initiative process was inconsistent with fundamental concept of development agreement as negotiated contract.

ZONING & PLANNING - CALIFORNIA

Citizens Coalition Los Angeles v. City of Los Angeles

Court of Appeal, Second District, Division 2, California - August 23, 2018 - Cal.Rptr.3d - 2018 WL 4026019 - 18 Cal. Daily Op. Serv. 8557

Objectors filed separate petitions for writ of mandate against city and permit applicant, alleging deficiency in city's environmental impact report (EIR) for new subzone for large commercial development, prepared under California Environmental Quality Act (CEQA), and asserting that city council's grant of variances were not supported by substantial evidence and thus violated municipal code.

The Superior Court granted petition. City and permit applicant appealed.

The Court of Appeal held that:

- Prior EIR pertaining to specific development of retail store precluded supplemental or subsequent EIR for current project dealing with more generalized program of amending ordinance to create new subzone and to place store in that subzone;
- Evidence was sufficient to support city's finding that no large-scale commercial developments beyond a planned retail store were a reasonably foreseeable consequence of ordinance's creation of zoning subarea, as would support finding that there was no need for major revisions in previously-promulgated EIR following passage of ordinance; and
- Even if creation of new zoning subarea amounted to spot zoning, it was not impermissible.

IMMUNITY - COLORADO

Lopez v. City of Grand Junction

Colorado Court of Appeals, Division I - July 12, 2018 - P.3d - 2018 WL 3384674 - 2018 COA 97

Plaintiffs brought action against city on claims of negligence and vicarious liability to recover for personal injuries and property damage when an independent contractor doing maintenance work on utility lines that powered a traffic light allegedly ruptured a natural-gas line, which allegedly caused gas to enter house through a sewer line and explode.

The District Court dismissed. Plaintiffs appealed.

As a matter of first impression, the Court of Appeals held that:

- As to negligence claim regarding maintenance work on the traffic light, plaintiffs' injuries resulted, in the context of the Colorado Governmental Immunity Act (CGIA), from independent contractor's conduct;
- As to negligence claim regarding maintenance work on the traffic light, independent contractor's conduct was attributable to city for purposes of waiver of immunity under the CGIA; but
- As to negligence claim regarding the sewer line, sufficient evidence supported finding that sewer main was in the same general state of repair as when it was installed.

REDEVELOPMENT AGREEMENTS - NEW JERSEY

MEPT Journal Square Urban Renewal, LLC v. City of Jersey City

Superior Court of New Jersey, Appellate Division - August 9, 2018 - A.3d - 2018 WL 3763433

Urban renewal entities, after deciding not to go forward with redevelopment projects, brought declaratory judgment action against city, asserting that prepayment agreements were ultra vires and void, and seeking refund of contributions made to affordable housing trust fund and refund of prepayment.

The Superior Court, Law Division, entered summary judgment in favor of urban renewal entities. City appealed.

The Superior Court, Appellate Division, held that:

- Prepayment agreements were contrary to redevelopment procedural scheme set forth in Long Term Tax Exemption Law (LTTEL) and thus were void, but
- Provision of financial agreements between urban renewal entities and city requiring contribution to affordable housing trust fund was permissible under LTTEL.

Prepayment agreements entered into between city and urban renewal entities, providing for renewal entities to pay a $2,000,000 sum characterized as portion of annual service charge that entities would pay in lieu of property taxes after redevelopment project was completed, were contrary to redevelopment procedural scheme set forth in Long Term Tax Exemption Law (LTTEL) for financial agreements between a municipality and an urban renewal entity, and thus prepayment agreements were void; LTTEL set forth detailed, specific requirements for financial agreements, from which was conspicuously missing any allusion to a municipality's ability to condition grant of tax abatement upon prepayment.

Financial agreements entered into between urban renewal entities and city with regard to redevelopment project, requiring renewal entities to pay initial contribution to city's affordable housing trust fund, was permissible under redevelopment procedural scheme set forth in Long Term Tax Exemption Law (LTTEL) for financial agreements between a municipality and an urban renewal entity, where city adopted three ordinances that incorporated trust fund contribution requirement, and contribution requirement was based on set rate of $1.50 per square foot of gross, not leaseable, space, pursuant to LTTEL standard of $1.50 per square foot for commercial construction.

PUBLIC UTILITIES - OHIO

Duke Energy Ohio, Inc. v. City of Hamilton

Court of Appeals of Ohio, Twelfth District, Butler County - July 16, 2018 - N.E.3d - 2018 WL 3428727 - 2018 -Ohio- 2821

Natural gas and electric utility brought action against city, seeking declaratory judgment that city could not provide natural gas or electric services to entities in particular area.

The Court of Common Pleas dismissed territorial exclusivity claim. Utility appealed.

The Court of Appeals held that:

- Judgment dismissing territorial-exclusivity claim was final, appealable order, and
- Claim fell within exclusive jurisdiction of Public Utilities Commission of Ohio (PUCO).

Judgment dismissing, for lack of subject matter jurisdiction, a natural gas and electric utility's territorial-exclusivity claim against city, as asserted in utility's declaratory judgment action, was a final, appealable order; a declaratory judgment action was a special proceeding, dismissal affected utility's substantial rights, and trial court certified there was no just cause for delay.

Claim by natural gas and electric utility, seeking declaratory judgment that it had exclusive right to provide natural gas and electric services within particular territory, fell within exclusive jurisdiction of Public Utilities Commission of Ohio (PUCO); claim was a service-based claim that required PUCO's administrative expertise to resolve.

REFERENDA - OHIO

State ex rel. McCann v. Delaware County Board of Elections

Supreme Court of Ohio - August 21, 2018 - N.E.3d - 2018 WL 4026314 - 2018 -Ohio- 3342

Protestors filed petition for writ of prohibition, seeking to prevent county board of elections from placing a township zoning referendum on the general election ballot.

The Supreme Court of Ohio held that:

- County board of elections exercised quasi-judicial power, as would support petition for writ of prohibition;

- Protesters lacked adequate remedy at law, as would support petition for writ of prohibition; and
- Part-petition failed to comply with statute governing signing of referendum petitions, and thus signatures were invalid.

County board of elections exercised quasi-judicial power, as required for protesters to obtain writ of prohibition preventing board from placing township zoning referendum on general election ballot, when board denied protest to referendum petition after a hearing that included sworn testimony.

Protesters lacked adequate remedy at law, as required for them to obtain writ of prohibition preventing county board of elections from placing township zoning referendum on general election ballot, due to proximity of election, which was less than four months from filing of prohibition action.

Part-petition for placement of township zoning referendum on general election ballot, on which fellow circulator, not actual circulator, wrote number of witnessed signatures, failed to comply with statute requiring that "the circulator shall indicate the number of signatures contained on" each petition paper, and thus signatures were invalid, though fellow circulator wrote number of signatures in actual circulator's presence, with his knowledge, in response to his request for assistance, and before part-petition left his possession; part-petition did not strictly comply with statute, and even if statute could be liberally construed, part-petition form issued by Secretary of State, which was entitled to deference, stated that it "[m]ust be completed and signed by the circulator."

PUBLIC PENSIONS - WASHINGTON

Fowler v. Guerin

United States Court of Appeals, Ninth Circuit - August 16, 2018 - F.3d - 2018 WL 3893114 - 18 Cal. Daily Op. Serv. 8230

Public school teachers brought putative class action against Director of the Washington State Department of Retirement Systems (DRS) to return interest that was allegedly skimmed from their state-managed retirement accounts in violation of Fifth and Fourteenth Amendments.

The United States District Court denied teachers' motion to certify a class and granted Director's motion for summary judgment. Teachers appealed.

The Court of Appeals held that:

- Teachers' claim was a claim for a per se taking, rather than a regulatory taking, and thus prudential ripeness test did not apply;
- Core property right for purpose of Fifth Amendment Takings Clause covers interest earned daily;
- Teachers' action was not barred by doctrine of issue preclusion or *Rooker-Feldman* doctrine;
- Teacher's claim was not foreclosed by Eleventh Amendment sovereign immunity; and
- Class could properly be certified as an injunctive relief class.

Public school teachers' claim that Washington State Department of Retirement Systems (DRS) took their property without providing just compensation by withholding interest accrued on their retirement accounts was a claim for a per se taking, rather than a regulatory taking, and thus prudential ripeness test requiring a plaintiff to have sought compensation through state procedures prior to bringing a takings claim in federal court did not apply to teachers' putative class action against DRS, where interest earned on funds in interest-bearing accounts was the private property of the owner of the principal, such that withholding of such interest was a direct appropriation of private property.

The core property right recognized in *Schneider v. California Department of Corrections*, 151 F.3d 1194, for purpose of Fifth Amendment Takings Clause, which is defined by reference to traditional background principles of property law, covers interest earned daily, even if payable less frequently, and regardless of whether a state legislature purports to authorize a state officer to abrogate such common law property right.

Washington Court of Appeals' decisions in public school teachers' action against Washington State Department of Retirement Systems (DRS) challenging DRS's interest rate calculations in their retirement accounts did not resolve issues presented in teachers' federal takings claims, which was whether DRS's refusal to pay daily interest constituted a taking, and thus teachers' federal action was not barred by doctrine of issue preclusion or Rooker-Feldman doctrine; state court expressly declined to reach the merits of teachers' constitutional takings claim, its discussion of teachers' entitlement to daily interest turned solely on state statutory law, and its ruling on teachers' claim that DRS rulemaking regarding interest calculation method would effect a taking simply found such claim premature.

Public school teachers' takings claim against Washington State Department of Retirement Systems (DRS), which claimed that DRS took their property without providing just compensation by withholding interest accrued on their retirement accounts, was not foreclosed by Eleventh Amendment sovereign immunity, where teachers were actually seeking an injunction ordering DRS to return savings taken from them, which would have involved applying a computerized formula to DRS electronic records to correct the amount of interest credited to members' accounts, rather than requiring payment of funds from the state's treasury.

Public school teachers' putative class action against Washington State Department of Retirement Systems (DRS) challenging DRS's interest rate calculations in their retirement accounts was not a claim for individualized monetary damages, but rather, sought an indivisible injunction benefiting all class members at once, and thus class could properly be certified as an injunctive relief class; relief sought by class would have required DRS to apply a single formula to its electronic records to correct the amount of interest credited to class members' accounts.

Task Force on Climate-Related Financial Disclosures Releases Three Key Documents that Serve as Building Blocks to Describe and Support Implementation of the Task Force's Recommendations.

On June 29, 2017 the Task Force released three key documents that serve as building blocks to describe and support implementation of the Task Force's recommendations.

Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures
Provides context, background, and the general framework for climate-related financial disclosures and is intended for broad audiences.

Annex: Implementing the Recommendations of the TCFD
Provides the next level of detail to help companies implement the recommendations and is a "living" document that will likely be refined as companies gain more experience preparing climate-related financial disclosures. Includes information on applying the recommendations, guidance for all sectors, and supplemental guidance for select financial sectors and non-financial groups.

[Technical Supplement: The Use of Scenario Analysis in Disclosure of Climate-Related Risks and Opportunities]
Provides a further level of detail that can be helpful for companies in considering scenario analysis. It describes key publicly available scenarios and resources on scenario analysis.

Task Force on Climate-Related Financial Disclosures

The California Heat Assessment Tool.

As California's climate warms, residents increasingly endure extreme heat events that adversely impact public health. This exacerbates existing risks and will bring new challenges for different regions in the state, threatening the efficacy of traditional intervention strategies. Current thresholds for heat alerts are based on temperatures that exceed historical statistical thresholds, rather than temperatures that cause public health impacts. These 'health-neutral' thresholds may underestimate the health risks for the most sensitive populations. The new California Heat Assessment Tool (CHAT) is based on research that establishes local, health-based thresholds for extreme heat that help public officials, health professionals and residents understand what changing conditions mean for them. CHAT is part of California's Fourth Climate Change Assessment, a state-mandated research program to assess climate change impacts in California, and was developed by Four Twenty Seven, Argos Analytics, the Public Health Institute and Habitat 7 with technical support from the California Department of Public Health.

FourTwentySeven

by Nik Steinberg
Director of Analytics

August 27, 2018

Houston Eyes Designer Bonds to Pay for $15 Billion Ike Dike.

- **Twist on catastrophe insurance partners with private industry**
- **'Resilience bonds' would help fund 60-mile levee system**

A massive dike to hold back storm-driven floods surging in from the Gulf of Mexico was first proposed after Hurricane Ike devastated the Houston-area coast a decade ago.

Last year's Hurricane Harvey disaster brought fresh enthusiasm for the languishing project – along with a wave of investor interest.

Now city and state officials in Texas are studying a possible partnership with private industry to create a new kind of bond to help pay for a $15 billion system of seawalls and floodgates, as a warming climate piles more storm risk on the nation's fourth-largest city. They're examining the market for catastrophe bonds, in which investors assume the risk for calamities like hurricanes in exchange for above-market returns and portfolio diversification.

"This is why we have financial markets, to come up with this type of solution,'' said Flavio Cunha, an economics professor at Rice University. "People love when markets can come and help construct some of these projects.’’

At stake: the welfare of $500 billion in industry, including the nation’s largest concentration of oil refineries and chemical plants. The dike could prevent countless homes and lives from being swept away in the 20-foot storm surge that would accompany a direct hit from a major hurricane -- a potentially worse cataclysm than Harvey.

Harvey flooded hundreds of thousands of homes and businesses, wreaking $125 billion in damages, a reminder of how vulnerable one of the nation’s most important economic centers remains. After a decade of indecision, officials have rallied around a plan for a seawall almost 60 miles long fitted with massive floodgates at the center to protect Galveston Bay and the industry lining the Houston Ship Channel.

The Dutch proved long ago that it can be done; Much of the Netherlands would be swamped if not for its network of levees and floodgates holding back the sea. Houston’s plan is modeled after those engineering marvels.

The Coastal Spine, also known as the Ike Dike, is the largest civil works project under consideration in the U.S., according to the Texas General Land Office. It would be a landmark deal for financial markets, too. If Houston can bring together the public and private sector, the new financing model could be replicated to reinforce communities from Florida to California against Mother Nature’s wrath.

Catastrophe Bonds

The U.S. Army Corps of Engineers in July committed $1.9 million for a study, and the state is seeking federal funding for construction. But under Corps rules for such projects, local governments would still need to shoulder 35 percent of the cost -- perhaps $5 billion — plus ongoing maintenance and repairs.

To raise the money, project backers are studying catastrophe bonds, which trade on public markets and have been adopted by companies and cities as a more cost-effective way to supplement or replace conventional insurance.

“Infrastructure finance related to resilience or risk reduction, that is probably the most dynamic area where we are seeing innovation at the moment,’’ said Daniel Stander, managing director at Risk Management Solutions, a consultant.

Following Hurricane Sandy in 2012, Amtrak obtained $275 million of natural-disaster protection for its railway from fixed-income investors, and New York’s MTA tapped the market twice for a total $325 million for its subway system.

Texas would put its own twist on the concept, pioneering a new instrument called “resilience bonds” that would both insure against flood damage and help fund construction of the Ike Dike, said Marvin Odum, Houston’s chief recovery officer and a retired president at Shell Oil Co., a unit of Royal Dutch Shell Plc.

How It Works

Here’s how money for the Ike Dike could be raised from the financial markets: Oil companies, chemical makers, railroads and others with assets exposed to flood risk would collectively issue resilience bonds to replace their traditional insurance.

When the storm barrier is complete after perhaps three years, payments to the bond investors would drop to reflect the lower risk of flooding. The companies would continue paying the higher, pre-dike rate, and the difference would go toward paying off the project.

Odum has pegged the value of industry along the Texas coast at $500 billion, giving companies plenty of incentive to help fund the Ike Dike campaign. The cost of paying investors interest on the bonds shouldn't be any greater than the cost of insurance, said Shalini Vajjhala, chief executive officer of re:focus partners, a firm that brokers public-private partnerships for sustainable infrastructure.

A Houston nonprofit has organized a panel to discuss the project on Sept. 12.

Texas Twist

So-called resilience bonds were conceived in 2015 by re:focus in collaboration with Goldman Sachs, Risk Management Solutions, and Swiss Re, but Texas's Ike Dike project would be the first to use them.

The concept relies on local governments collaborating with business and industry, and could be replicated across the country in areas at high risk from natural disaster. Miami could sell resilience bonds to help finance seawalls to protect hotels, condominiums and other pricey real estate lining its coast, Vajjhala said.

"The market is overcapitalized at the moment so there is lots of hungry capital looking for a home,'' RMS's Stander said. "This is a good time to be thinking about innovative risk finance and project finance."

Even so, Houston would be betting big on an untested model, and many obstacles remain before a deal is done, including getting industry on board.

Evolving Project

Companies generally support the idea of a coastal barrier. But even DowDuPont Inc., which operates the largest chemical complex in the western hemisphere on the coast south of Houston, remains noncommittal about pitching in on the financing: "We look forward to actively engaging in discussions about the project as they evolve," said Rachelle Schikorra, a company spokeswoman.

Other experimental financing models could still emerge. One possibility: a hybrid that blends catastrophe and municipal bonds to help finance infrastructure like the Ike Dike while eliminating the city's obligation in the event of a major hurricane, said Rowan Douglas at Willis Towers Watson Plc, a risk management consultant.

"It's a concept that is gaining quite a bit of traction," he said. "There is almost certainly going to be a movement in this direction relatively soon."

The Ike Dike has already spent almost a decade on ice, and even if financing is arranged, an army of environmentalists and Nimbys are likely to line up against the project. Houston is determined to press ahead. Harvey's floods only confirmed that governments need to start preventing disasters instead of just cleaning up after them, said Bob Mitchell, president of the Bay Area Houston Economic Partnership.

Meanwhile, Houston voters on Aug. 24 approved issuing $2.5 billion in debt to pay for hundreds of small flood-control projects, from property buyouts to storm water control. Odum, the Houston recovery chief, said the region may need to spend as much as $30 billion for flood mitigation in the coming decades.

Despite the daunting costs and technical challenges, the coastal spine "is not fiction," Houston Mayor Sylvester Turner said in an interview. "It's a project that should take place."

Bloomberg Economics

By Jack Kaskey

August 30, 2018

— With assistance by Joe Carroll, and Katherine Chiglinsky

[The Week in Public Finance: Tax Hike for Teachers Kicked Off Arizona Ballot.]

In an unexpected decision, the Arizona Supreme Court ruled that the ballot measure's wording was misleading to voters.

In a surprise ruling in Arizona, a proposed income tax hike to restore education funding has been knocked off the November ballot. Had the measure gone before voters and passed, it would have nearly doubled the state's income tax rates on the wealthy and made Arizona the first red state to pass a millionaire's tax.

Instead, the Arizona Supreme Court ruled this week that the wording in the petition to get the measure on the ballot was misleading because it termed the tax increase as a 3.4 percent and 4.4 percent hike. A more accurate portrayal would have been to say the tax rate would be raised by those amounts in percentage points. "When you go from 4.5 percent to 9 percent, that's a 98 percent increase," says Garrick Taylor of the Arizona Chamber of Commerce. "Had that been disclosed to voters, I'm not so sure it would have [as much] support."

Backers of the measure, which largely includes teachers and administrators, called the decision an "utter outrage." In a statement issued hours after the ruling, the Invest in Education Committee, which collected signatures for the measure, characterized it as a politically motivated move to protect the elite. "Any politician who has been part of this effort to stifle the will of the voters will be held accountable and pay the consequences in November," said committee co-chair, Joshua Buckley. "Our school children deserve better and our fight will continue."

Continue reading.

GOVERNING.COM

BY LIZ FARMER | AUGUST 31, 2018

[The Risks and Rewards of High-Yield Municipal Bonds.]

Amid low interest rates, clients looking for a tax break and more income may be tempted to consider high-yield municipal bonds.

The yield for a 10-year muni bond rated BAA was 3.27% as of Aug. 10, and yields for 10-year-plus BBB-rated munis were well past 4%. The bonds are exempt from federal, local and state taxes, pushing the effective yield higher for investors in upper tax brackets.

Although high-yield munis may be the right move for some clients, advisors should help them carefully weigh the benefits and risks before taking the plunge.

"High-yield munis can play a role in a diversified portfolio for those investors who are in higher tax brackets," says Chris Zaccarelli, chief investment officer at Independent Advisor Alliance in Charlotte, North Carolina.

Gregory Hahn, CIO and president at Winthrop Capital Management in Indianapolis, agrees, but cautions that advisory clients look before they leap.

"Municipal bonds are one of the safest fixed-income investments you can make, but when a bond trades cheap, it trades cheap for a reason," he says. "So, it's important to understand what that reason is."

Advisory clients should know where the revenue from a high-yield muni bond is coming from, bond experts say.

"Is the tax revenue going to be enough to support the project?" Hahn asks.

Bonds backed by a dedicated revenue stream, such as bridge tolls, parking authorities, sewers or water are often viewed more favorably than general obligation bonds coming from municipalities relying on anticipated revenue from budgets, he says.

"Tax revenue from multiple sources is a red flag," Hahn says.

What's more, municipalities may not get the revenue they intended, and budgets may not get approved or renewed annually, bond experts say.

Advisors should also make sure that clients considering high-yield munis carefully research bonds backed by projects such as hotels, nursing homes or sports stadiums.

Factors to consider include demand for the service, local demographics, management's track record and whether the project is part of a national chain or a local one-off, bond experts say.

Another caveat: high-yield muni bonds are unlikely to be insured. And even if they are, the underlying risk is not completely mitigated, Hahn says.

Zaccarelli cautions advisors to be wary of private-activity bonds, which are subject to the alternative minimum tax.

"These bonds may be federal- and state tax-free, assuming you are taxed in the state that issued the bonds, but they are still counted as taxable income for AMT purposes," he says. "While this only applies to those taxpayers in higher tax brackets who are subject to the AMT, they are the ones most often looking for municipal-bond income."

The high-yield muni market was jolted by the Puerto Rico debt crisis this year, when ripple effects from the biggest muni bankruptcy in U. S. history shook investor confidence in lower-rated bonds.

Especially upsetting was a judicial ruling that issuers of several Puerto Rican special revenue bonds under Chapter 9 bankruptcy protection were not required to continue paying bond holders.

In a report issued by Franklin Templeton Investments, "Fundamental Changes That No Muni Investor Should Ignore," the company said that as a result of Puerto Rico's default, it would not purchase "general fund appropriation debt from cities, counties or states that in our view are facing unsustainable structural budget situations."

Specifically, Franklin Templeton said that it divested its holdings in bonds from Chicago public schools, the city of Chicago and the state of Illinois.

The market has since recovered, but a number of investors, including Zaccarelli, remain wary of Puerto Rican bonds.

"Personally, I would avoid Puerto Rico, as that is more of a distressed situation and not just a notch or two below investment-grade," he says. "However, other high-yield municipal bond opportunities, such as those from Illinois or Connecticut, are likely to work out better."

Hahn is bullish on a taxable high-yield bond issued by the Casino Reinvestment Development District of Atlantic City (New Jersey), backed by the Hard Rock Casino. Rated BB by Standard & Poor's, the bond yields 5.46% and is due in 2025.

"Because of the downturn in Atlantic City gaming over the past 10 years, revenue, including sales tax, liquor and gaming are down sharply, and the city was close to bankruptcy," Hahn says.

"The Hard Rock Casino just opened in the old Taj Mahal, and Atlantic City is going through a resurgence," he says. "This issue is backed by parking revenue and trades around par, offering a good relative value for investors."

Financial Planning

By Charles Paikert

August 31, 2018

MSRB Requests Information on Municipal Market Indicators.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today published a request for information on the accessibility, methodology and utility of the yield curves and other benchmarks currently available in the municipal market.

Market indicators can provide sector-specific or broad market information about the general level of municipal interest rates. The MSRB is seeking information to help support its long-term vision to enhance the Electronic Municipal Market Access (EMMA®) website and provide increased access to information and tools that help municipal bond investors, issuers and others make more informed decisions. The MSRB is not seeking information as a precursor to any rulemaking proposal.

"This request for information is designed to help the MSRB better understand the current landscape of municipal market indicators," said MSRB Executive Director Lynnette Kelly. "We hope to learn more about how these important benchmarking tools are developed and used by the diverse participants in our market, including issuers, retail investors, institutional investors and market professionals."

Answers to questions posed in the request for information and any supporting data should be submitted to the MSRB no later than November 27, 2018. Read the request for information.

Since 2012, the MSRB has worked to enhance understanding of the methodologies, mechanics and functions of municipal market indices, yield curves and other benchmarks by providing educational resources for investors and state and local governments. It has also made benchmarks more widely available by incorporating several third-party yield curves and indices into the MSRB's Electronic Municipal Market Access (EMMA®) website.

Date: August 27, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
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The Muni-Bond Market Loves You When Google Is Your Top Taxpayer.

- **Mountain View district sells some bonds for below AAA yields**
- **Sale illustrates the strong demand for scarce California debt**

You can get a good deal in the municipal-bond market when Google is your biggest taxpayer.

The Mountain View-Los Altos Union High School District, which operates schools for more than 4,400 students in Silicon Valley, sold $100 million in AAA rated bonds backed by property taxes in the wealthy enclave. But some of the securities sold for higher prices than even its gilt-edged rating suggests: Those due in 2022, for example, were priced for a yield of 1.5 percent, 37 basis points less than the rate charged the most credit worthy municipal borrowers, according to data compiled by Bloomberg.

Investors have gobbled up tax-exempt bonds issued by governments in California to drive down their tax liability, either because of their sizable fortunes or to offset the effect that the limit on state and federal tax deductions will have on their federal returns. At the same time, the securities have been hard to come by, with debt sales by issuers in the state dropping by 30 percent this year.

In the case of Mountain View, the headquarters of Google parent Alphabet Inc., the school district may have benefited from the massive wealth in its own backyard.

The median home value in Mountain View has risen by about 22 percent over the past year to $1.9 million, according to Zillow Inc. The assessed valuation of property in the district rose 9 percent to $48.4 billion in fiscal 2018, almost double what it was a decade ago, according to bond offering documents.

The bonds will be used to help teach future coders and software engineers by modernizing science and technology classrooms for "21st-century learning" and to accommodate growing enrollment at the district. It's the first installment of a $295 million sale approved by voters in June.

Bloomberg Business

By Amanda Albright

August 30, 2018, 9:19 AM PDT

[It’s Trump, Not Just the Fed, Driving the Short-Term Muni Frenzy.]

- **One trader says investments timed for 2020 presidential vote**
- **Democrat victory could trigger rollback to Trump’s tax changes**

It’s not just rising rates. It’s Trump, too.

That’s what Jason Ware, head of trading at 280 CapMarkets in San Francisco, offers as an explanation of short-term municipal bond yields, some of which are holding near a four-year low relative to Treasuries.

The high demand for debt maturing within three years is typical at a time when the Federal Reserve is raising interest rates and investors are seeking a refuge from price declines.

But many buyers are timing their investments to what they expect to be the end of Trump’s presidency after the 2020 election, Ware said in an interview. They think that Trump’s policies affecting municipal bonds, such as the limit on state and local tax deductions and the ban on a type of refinancing, would be vulnerable to rollbacks. The short maturities mean they will get their cash back to invest elsewhere.

“If Trump is out of office and a Democrat is elected, some of this will be reversed,” he said, adding that he doesn’t necessarily share that view. “There is a thought out there that will take place.”

Bloomberg Markets

By Romy Varghese

August 31, 2018, 6:27 AM PDT

— With assistance by Amanda Albright

[New Jersey Authorizes Expanded Use of P3s.]

Dive Brief:

- New Jersey Gov. Phil Murphy has signed into law a new bill that expands the use of public-private partnerships in the state to buildings and highway infrastructure projects. State and county colleges, under the Higher Education Institution Public-Private Partnerships Program, were already allowed to enter into such agreements as long as the private party provided 100% financing and the public entity retained ownership of the land.
- Projects under the new law can be wholly or partially financed by a private partner but the public entity still will have rights to certain financial and land-use controls. If the private partner seeks to lease any publicly-owned asset as part of the P3, the lease period cannot exceed 30 years if it’s in exchange for financing. In addition, workers on these projects must be paid a prevailing wage, the P3 must incorporate a project labor agreement and all private participants — including contractors and subcontractors — must be registered with the state.

- The state treasurer will provide oversight and must approve all P3 agreements under the new measure. The treasurer's office will also post the status of each new P3 agreement — proposed, under review or active — on its website. Murphy said the new regulation was a bipartisan effort by lawmakers to "give state, county, and local officials the much-needed flexibility they need to improve their communities while creating good-paying new jobs — and, in most cases, good union jobs — while leveraging private capital to invest in public infrastructure."

Dive Insight:

Contractors are just one piece of a P3 construction project, which also see some combination of design, financing, maintenance and operation components as well.

While P3s can be used for most any project, there is a growing demand for transportation-related P3s, according to a report earlier this year from law firm Husch Blackwell. This is because public agency budgets are such that these entities have started to explore other ways to get their projects done. Husch said that the agencies taking on P3s are not just using the full-on version in which the private partner takes on design, build, finance, operations and maintenance duties — but various permutations of that model.

As far as opportunities in P3s, public respondents to Husch's annual survey of registrants of the annual Public-Private Partnership Conference and Expo said that they were most likely to pursue public-facility (62.5%), government-facility (57.5%) and transportation (52.5%) P3s during the next three years. Those in the private-sector responded that they would most likely pursue those projects in the transportation (69%) sector.

Construction Dive

by Kim Slowey

Aug. 27, 2018

Amazon HQ2: How Did We Get Here? What Comes Next?

Sometime in the coming weeks Amazon will announce a short list of U.S. cities in which it will consider placing its new $5 billion, 50,000-person second headquarters. It is likely that these finalist cities will be large, prosperous, and located in the eastern part of the country.

Even in cities of a significant size and wealth, the arrival of what Amazon calls HQ2 will be transformative, even explosive. One only needs to look at the impact of HQ1 on Seattle to see why. Commentators in Seattle have taken to calling Amazon's expansion the "prosperity bomb," reflecting both the massive impact of the company's growth and the heat of the ensuing fights about how that growth should be managed and distributed across the city.

With the prospect of a second "prosperity bomb" being dropped in a major American city, it's not surprising that Amazon debates are raging. In fact, the Amazon HQ2 competition has focused the attention of a uniquely broad and diverse cadre of leaders across media, politics, business, and advocacy. Nationally, it has become a signpost for public policy issues ranging from antitrust to tax incentives to the need for policies that better support struggling communities. Locally, in each bidding city the response to HQ2 has simultaneously united a broad array of institutions around a shared economic development prize, and at the same time exposed fissures between elite-driven organizations and grassroots advocates about how bids should be executed, if at all.

Continue reading.

The Brookings Institute

by Joseph Parilla
Metropolitan Policy Program Fellow

August 28, 2018

The World Bank Just Issued a Bond That Relies On Blockchain Technology From Start to Finish.

The World Bank has launched a blockchain-only bond. The so-called bond-i—for "blockchain operated new debt instrument" and perhaps also for Sydney's famous Bondi Beach—is a two-year bond that was arranged by Commonwealth Bank of Australia and raised 110 million Australian dollars ($80 million.)

Investors included several Australian banks and state treasuries. Arunma Oteh, the World Bank treasurer, mentioned in a statement the additional help of King & Wood Mallesons, Mark-it, Microsoft and Toronto Dominion Securities.

The World Bank said the bond was the first in the world to be "created, allocated, transferred and managed through its life cycle using distributed ledger technology." However, that may not be quite accurate.

Continue reading.

FORTUNE

By LUCAS LAURSEN

August 24, 2018

Brightline Rail System Wins Approval to Issue Tax-Exempt Bonds. Not Everyone is Cheering.

All Aboard Florida got the go-ahead Wednesday from a state board to issue $1.75 billion in federal tax-exempt bonds for its Brightline passenger-rail system, as officials and residents from the Treasure Coast and Central Florida fought over a planned northern extension.

The Florida Development Finance Corp. Board of Directors backed issuing what are known as "private activity" bonds needed to extend Brightline north from West Palm Beach.

The approval came after board members asked Brightline officials for assurances that the Treasure Coast region wouldn't be hurt economically. Many residents and officials in Treasure Coast areas such as Martin and Indian River counties have long objected to the rail service.

But Central Florida officials, with the backing of the Florida Chamber of Commerce and other business-lobbying groups, view the passenger trains as an alternate link from South Florida that would complement the existing SunRail system in the Orlando area.

Florida Development Finance Corp Chairman Daniel Davis, whose agency has the authority to approve the federal bonds, said after the vote he hoped outstanding issues between Treasure Coast leaders and All Aboard Florida could be worked out.

The board approved a new series of $1.15 billion in bonds and the refinancing of $600 million in previously approved bonds, which helped set up the existing southern portion of the service.

Brightline, which started running between West Palm Beach and Miami this year, is looking to extend north to Orlando in 2021. Brightline has also started to work with the state on pursing an Orlando-to-Tampa route.

Officials representing Martin and Indian River counties, which have brought lawsuits against the service, raised questions about safety and potential economic and quality-of-life impacts of higher-speed trains running through their communities.

Brightline officials said they have approached Treasure Coast communities to consider stops and have taken similar steps for Cocoa in Brevard County.

Indian River County Attorney Dylan Reingold was among critics pointing to low ridership numbers — 74,780 people collectively paid $663,667 for tickets in the first three months of this year — for the service running between Miami and West Palm Beach, as he forecast little chance of the service becoming a financial success.

Brightline Chief Executive Patrick Goddard responded that the service was running between West Palm Beach and Fort Lauderdale in the first quarter.

Reingold also joined opponents — including state Sen. Debbie Mayfield, R-Rockledge, and state Rep. MaryLynn Magar, R-Tequesta — in requesting the bond decision be delayed, as federal litigation in pending about environmental impacts and as members of Congress have been looking into the proposal.

Reingold also said if the bonds were approved, conditions should have been added to limit the fiscal impact on what taxpayers must cover to maintain rail crossings that will have to be upgraded from freight service.

“It’s a private company owned by a Japanese hedge fund,” Reingold said. “It expects Indian River County taxpayers to pay for the maintenance of their (rail crossing) improvements for eternity.”

All Aboard Florida is owned by Fortress Investment Group LLC, a global investment management firm acquired last year by Toyko-based SoftBank Group Corp.

Ruth Holmes, a Martin County attorney, said Brightline should also be required to use an alternative route or to double-track the single-rail drawbridge north of downtown Stuart over the St. Lucie River. Otherwise, Holmes said, the constant opening and closing of the spans — from existing freight traffic and Brightline planning 16 daily round trips between Miami and Orlando — would hinder maritime traffic and business in the downtown area.

“That draw closure and opening is going to happen about 52 times a day,” Holmes said. “That effectively shuts down that bridge.”

Indian River County Commission Chairman Peter O'Bryan noted a number of deaths that have occurred in the past year with the new rail service in South Florida and warned that approving the issuance of the bonds would equate to giving "a license to kill for All Aboard Florida."

Countering those arguments, Central Florida lawmakers urged support for the bonds as they envision Brightline bringing economic growth to the state by removing cars from the highways and giving tourists more travel options.

Rep Jason Brodeur, R-Sanford, said Brightline is seen as a link to South Florida for the SunRail service, and he joined others in pointing out that most of the rails for Brightline have been in place since the late 1890s, when industrialist Henry Flagler brought passenger trains south.

"I have 500,000 people who are really looking forward to this," Brodeur said of the people he represents in Seminole County, north of Orlando.

Rep. Mike Miller, R-Winter Park, said the expansion of the service means jobs at both ends of the line.

"One of our jobs as legislators is to create an environment where there are jobs," Miller said. "This not only creates 2,000 jobs, and $2.4 billion worth of economic impact, directly because of Brightline, but it creates billions of dollars in jobs and job opportunities in Miami, West Palm, Orlando and throughout our state."

Rep. Tom Goodson, R-Rockledge, said residents in Brevard County are "enthused" at the prospect of a station in Cocoa that could serve the space industry and Port Canaveral.

Dennis Grady, President and CEO of the Chamber of Commerce of the Palm Beaches, said since being introduced in January, Brightline has made the Miami-Dade, Broward and Palm Beach region a "smaller, more manageable place to live and work."

But he added, for the state goal of a viable inner-city rail system, Brightline must be able to expand to Orlando.

News Service of Florida

by Jim Turner

August 29, 2018

[S&P: SEC Disclosure Rule Changes Will Improve Transparency, But Municipal Bank Loan Structures Can Still Carry Hidden Risks.]

The SEC's amendments to the municipal securities disclosure rule 15c2-12, announced Aug. 20, will improve disclosure of risks associated with many bank loan structures.

[Continue reading.]

Aug. 28, 2018

Muni Market Recap: Hope for the New York MTA

The New York Metropolitan Transit Authority, NY MTA, has had a busy summer raising capital through the municipal bond market to improve a massive system that has suffered from underinvestment for many years. The NY MTA operates New York City's subways and buses, the Long Island and Metro-North commuter railroads, and several bridges and tunnels, and is one of the largest issuers in the muni market with approximately $39 billion in debt, according to the Bond Buyer.

Growing up as a New Yorker, the subway was an important infrastructure asset that gave me access to all New York City has to offer. My father-in-law drove a NYC Bus for 25 years and many other family members of mine worked or still work for the MTA. New Yorkers take the subway to work, to school, to the beach, to the airport, to the park, to visit the Bronx Zoo and so many other places. We have an amazing subway system that spans many neighborhoods and runs all night long.

When I lived in West London I remember the first time I missed the last tube back to West Ealing and had to ride around on the late bus which was less than ideal. It reinvigorated my appreciation for the New York City subway system. But over the past 10 years the subway has become more and more crowded, with greater and greater delays. On a recent morning, it was 90 degrees on a very crowded platform and I started thinking more deeply about investment in the system.

Continue reading.

Neighborly Insights

Posted 08/31/2018 by Homero Radway

TAX - SOUTH CAROLINA

PBBM-Rose Hill, Limited v. Commissioner of Internal Revenue

United States Court of Appeals, Fifth Circuit - August 14, 2018 - F.3d - 2018 WL 3853450 - 122 A.F.T.R.2d 2018-5471

Limited partnership petitioned for redetermination of final partnership administrative adjustment (FPAA) which determined that it was not entitled to charitable contribution deduction for its donation of a conservation easement to a land trust and penalty for overvaluing the conservation easement. The United States Tax Court entered decision for IRS. Partnership appealed.

The Court of Appeals held that:

- In determining whether public-access requirement for qualified conservation easements was fulfilled, Tax Court was required to focus on terms of the deed and not on actual use of the land after donation;
- Terms of easement fulfilled public-access requirement for partnership to be able to claim charitable contribution deduction;
- Terms of easement did not fulfill the perpetuity requirement for partnership to be able to claim charitable contribution deduction;
- Fair market value of property before partnership donated it, based on its highest and best use, was IRS expert's estimate of $2,400,000 rather than taxpayer's expert's estimate of $15,680,000, so

that total amount that could be deducted was $100,000 instead of the $15,160,000 claimed by partnership;
- Managerial signature on cover letter of report sent prior to issuance of FPAA satisfied IRS's obligation to obtain written managerial approval of initial determination of gross valuation misstatement penalty; and
- Gross valuation misstatement penalty applied to penalize partnership's overstatement of the deduction, but not to decision to claim deduction which it was not entitled to claim.

TAX - SOUTH CAROLINA

Olds v. City of Goose Creek

Supreme Court of South Carolina - August 8, 2018 - S.E.2d - 2018 WL 3749764

Taxpayer appealed decision of city council regarding computation of gross income under business license tax ordinance, and further asserted claims against city for violation of equal protection, violation of procedural due process, abuse of process, violations of state and federal constitutions, and violation of the South Carolina Freedom of Information Act, against city administrator and city finance director for conspiracy, and against city's department of public works for breach of contract.

The Circuit Court affirmed the city council's decision regarding the meaning of gross income under city ordinance, and granted city summary judgment on taxpayer's other claims. Taxpayer appealed. The Court of Appeals affirmed. Taxpayer petitioned for writ of certiorari.

The Supreme Court of South Carolina held that city erroneously required taxpayer's business license fee to be calculated on "gross receipts"/"sales price" derived from his dealings in property, rather than a properly calculated "gross income."

While city was permitted by statute to levy a business license tax on gross income, the city ordinance went from broadly defining gross income as the "total revenue of a business" to narrowly mandating that the gross income figure reported to city conform to the gross income reported to the State Tax Commission, which, under the federal tax code would be defined as gains derived from dealings in property.

TAX - CALIFORNIA

Citizens for Fair REU Rates v. City of Redding

Supreme Court of California - August 27, 2018 - P.3d - 2018 WL 4057226 - 18 Cal. Daily Op. Serv. 8613

Taxpayer organization, individuals, and company hired to recover refunds of government fees filed petition for writ of mandate and complaint for declaratory and injunctive relief against city, asserting that payment in lieu of taxes transferred from city electrical utility to city's general fund was unlawful tax.

Organization, individuals, and company filed second complaint against city, seeking declaration that new two-year budget violated requirement that any special taxes for cities be approved by voters. Actions were consolidated. Following bench trial, the Superior Court denied petition for writ of mandate and issued memorandum of decision in favor of city. Organization, individuals, and company appealed, and the Court of Appeal reversed and remanded with directions. The Supreme

Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that:

- Payment in lieu of taxes was not a "tax" requiring voter approval, and
- Rate utility imposed on ratepayers did not exceed the reasonable costs of providing electrical service and thus was not a "tax" requiring voter approval.

Payment in lieu of taxes transferred from city electrical utility to city's general fund was not a "tax" requiring voter approval under Proposition 26; as utility had more than enough non-rate revenue to cover the payment, the payment was not necessarily passed through to and imposed on ratepayers.

Rate city electrical utility imposed on ratepayers did not exceed the reasonable costs of providing electrical service and thus was not a "tax" requiring voter approval under Proposition 26; revenue realized from rate payments was insufficient to cover utility's other operating expenses, all rate revenues went to covering utility's uncontested operating costs, remaining unpaid shortfall and payment in lieu of taxes to city to cover costs of services that other city departments provided to utility had to be satisfied from utility's other sources of income, and that budgetary transfer was not paid out of rate revenues.

Disney Walks Away From Millions in Economic Incentives.

Is one of corporate America's savviest companies reconsidering its reliance on subsidies, or is it seeking to avoid further regulation?

Earlier this month, the Walt Disney Company presented the city of Anaheim with a surprising request: It asked the California city to terminate two agreements that provide Disney with hundreds of millions of dollars in economic assistance.

The request comes as Disney's relationship with Anaheim has grown increasingly strained in recent years. Critics, led by Anaheim Mayor Tom Tait, a libertarian-leaning Republican businessman who was elected in 2010, have criticized the city for agreeing to a 45-year moratorium on a gate tax and a $267 million economic assistance package for a new luxury hotel in the Downtown Disney District. Tait has argued that the money should instead be used to shore up the city's bottom line.

In a letter to the mayor and city council, Disneyland Resort President Josh D'Amaro acknowledged "an unprecedented and counterproductive" level of animus between the company and the city that has hosted Disneyland since the theme park first opened in 1955. As a result, wrote D'Amaro, Disney had decided to ask the Anaheim "to join us in terminating" the two agreements at the center of the controversy.

On Tuesday, the Anaheim City Council acted on this request. It voted unanimously to revoke the two agreements. Tait described the vote as one that would boost city finances and serve as an example for other corporations to follow. "I think this type of move is bold, and I think it's an example for other corporations out there," he says. "Maybe there is a realization that long-term, it's in their best interest that they are in a healthy vibrant community. I think there is a chance here that Disney could be a trendsetter."

But not everyone is applauding the move. Some saw another reason for the company's change of heart — a ballot initiative that will go before Anaheim voters in November. Unions representing

Disneyland workers championed the ballot initiative, which, if it passes, will raise the minimum wage for businesses that accept economic assistance from the city to $15-an-hour and then increase it by another dollar per year until 2022, after which workers would receive a yearly cost-of-living adjustment.

Disney has insisted that their decision to terminate the two economic assistance packages was not an effort to sidestep the new ballot initiative. Yet that is precisely what critics of the company such as Vermont Sen. Bernie Sanders, who recently joined Disneyland workers to push for the measure, have accused it of doing. “Disney is so nervous that the living wage ballot initiative in Anaheim is going to pass,” Sanders told The Guardian, “it would rather end some of the corporate welfare it receives from local taxpayers than pay all 30,000 of its workers’ decent wages.”

Ada Briceño, co-president of UNITE HERE, which represents 3,000 Disneyland employees and is currently in the middle of contract negotiations, insists the fight is not over. “Subsidies or no subsidies,” she says, “we are adamant that Disney has to give its workers a dignified way of life.”

Greg LeRoy, who heads Good Jobs First, an organization that monitors corporate subsidies and has been critical of economic assistance packages, says companies such as Disney that employ large numbers of low-wage workers have historically gone to great lengths to avoid regulations that would require them to raise wages. “It would not be unusual for Disney to withdraw from a tax break package because of the wage standards,” he says. “[They] don’t want anyone telling them what to pay. They don’t want to set the precedent.”

As for Tait’s hope that Disney’s change of heart could set a precedent for corporate America’s dealings with other cities, LeRoy is skeptical. He says there has been a reduction in the number of economic assistance packages approved by state and local governments over the past 10 years. However, it’s not because corporations are asking for less, or that states and localities are taking a harder line. It’s because there are fewer deals to be had overall.

What is on the rise is extremely expensive “mega-deals,” such as Wisconsin’s $4.7 billion assistance package to Foxconn or the current competition for Amazon’s second headquarters. LeRoy sees the intense pursuit of mega-deals as another sign of what some economists have described as the winner-take-all economy. “Even at a time when unemployment is really low,” he says, “state and local governments appear desperate to spend to get jobs.”

As for Disney, it seems to view its decision to terminate its two most recent agreements with Anaheim as a one-off decision. In a statement released to Governing after the city council vote on Tuesday, Disney spokeswoman Liz Jaeger defended the practice of negotiating economic assistance packages. “These tax incentive policies, which are successfully and widely used across the country to stimulate economic growth and development,” she says, “unfortunately became counterproductive in Anaheim, prompting our decision to step away from them.”

GOVERNING.COM

BY JOHN BUNTIN | AUGUST 31, 2018

A Blueprint for Financing Green Stormwater Infrastructure.

This is Part 1 of a two-article series. The second article will be published in September.

In a few Rust Belt cities that are seeking economic and social benefits, Greenprint Partners – formerly known as Fresh Coast Capital – is breaking new ground by financing fresh solutions for green stormwater infrastructure. It is using a combination of municipal, private and government resources. Its goals are to create a replicable model and expand the market.

According to a case study from The Kresge Foundation, “While science supports the use of green stormwater infrastructure, many municipalities remain reluctant to adopt these practices due to a lack of capacity, expertise and/or capital.”

In an interview, Nicole Chavas, CEO and cofounder of Greenprint Partners, described the growth her company hopes to catalyze in this emerging market. It is currently working in Peoria, Youngstown, and St. Louis. It is considering a new project in Philadelphia.

Continue reading.

Conservation Finance Network

by Kat Friedrich

August 27, 2018

Public-Private Partnerships: When Will Reality Meet the Promise?

The promise of public-private partnerships (P3s) seems irresistible. The $4.5-trillion that the American Society of Civil Engineers says the U.S. must spend on at-risk infrastructure by 2025 is a backlog beyond the collective means of local, state and federal governments to fund and deliver.

Eyeing both need and return, the private sector is fast developing the required financing and capability, with U.S. and global investment funds looking for placement in physical assets. Dedicated infrastructure funds are raising hundreds of billions of dollars, sourced from pension and sovereign wealth funds and other investors “craving stable returns,” said Bloomberg in a report last month.

Such funds had assets under management that totalled $450 billion at the end of 2017, up from just $7 billion in 2000, according to data provider Preqin.

But capital invested in infrastructure has lagged this year as investment deals dropped, says Pitchbook, which tracks them.

More than halfway through 2018, there have been just 19 transactions in the sector worth about $7.6 billion compared to last year, when investors completed 94 deals totalling about $36.6 billion, Pitchbook says.

Most investment is not channeled to U.S public infrastructure most in need, says Bloomberg, contending that assets already in private hands, such as electric utilities, gas pipelines and cell towers, are the biggest beneficiaries.

While 36 states have legislation that enables P3 projects, there have only been five P3 greenfield deals in 2017, mainly in transportation. according to Inframation Group, the London-based on line infrastructure finance analysis provider.

New Jersey is set to boost the numbers with Gov. Phil Murphy signing a bipartisan bill on Aug. 15

that broadens P3 investments beyond colleges and universities to other infrastructure including some statewide road projects. But other public owners remain reticent. Baltimore officials voted Aug. 6 to add to November ballots a measure that would make the city the first in the U.S. to amend its charter to preserve public ownership and control over its water and sewer systems and the largest to ban any sale or lease.

What’s stopping the world’s leading economy from becoming the world’s biggest P3 market?

There are many barriers, but risk, both technical and commercial, is the main one. Many funds see it as risky to invest in greenfield projects under a complex legal and regulatory framework. Significant differences in requirements between jurisdictions result in high bid costs and high bars for market entry.

The lack of concerted federal action has not helped. While President Donald Trump’s infrastructure program, once touted as a $1-trillion investment, would depend on outside private investment, the effort that might have included partial matching funds as state and local project incentives, has fallen to back-burner status until well into next year.

DJ Gribbin, the former Trump Administration infrastructure advisor who recently joined private equity firm Stonepeak Partners LP as a partner, said governments need to find ways to make it easier for the private sector to invest.

Public sector owners need to provide globally reasonable terms and streamline both regulations and the bidding process to attract private sector participants. Like their counterparts in Australia, they should be open to unsolicited proposals from private sector investors.

If the private entities will own or operate the asset for the long term, they should have incentive to create designs and outcomes that go beyond the brief and create additional benefits for the bidder—and for the wider community. Even under more traditional bidding arrangements, participants should be encouraged to move beyond conforming to a reference design by seeking added value through innovation.

The concept of ‘asset recycling’ offers another way to reduce risk and free up capital for governments to invest in a greenfield development. Using this approach, a government entity develops a project using design and build input from the private sector. When the asset is completed and/or operating, it is leased to the private sector over a longer tax-effective term.

Proceeds from the lease (perhaps 50 to 100 years paid in one installment) then fund the next wave of infrastructure projects. If the re-investment is close to the recycled asset, it can reduce taxpayer concern over the loss of public asset ownership.

Clear communication is key to success. Long-term leases of ports in New South Wales, Australia, have enabled the state government to invest in significant road and rail transportation projects near those ports.

But asset recycling needs a very critical element. By developing the project, the government assumes risk in the construction phase and some of the early stage demand. Past toll road projects in Australia placed this risk onto the private sector, which relied on self-developed traffic forecasts, with the wider road network economics outside proponents’ control.

In a number of cases, this approach overestimated user demand for the new infrastructure and generated major pressure on the financiers, not to mention headline-grabbing lawsuits. Since P3 projects require the goodwill of private entities, risk allocation must be equitable and provide incentives for all parties to meet their obligations.

Maintaining transparency and simplicity is essential—not only for ethical reasons, but also to change assumptions and reallocate risk before the project fails. Project complexity could further shrink by separating contracts into specific delivery packages.

On a passenger rail project, hard-build infrastructure such as track foundations and stations can be split from signal technology systems and from customer service and maintenance operations to enable different companies to focus on what they do best.

While the private sector tends to provide greater service efficiency, communities have higher expectations for P3 projects and are likely to pounce on profit-making entities for any shortcomings or disruption in delivery. So it is important to acknowledge that infrastructure projects are not just financial instruments, but a way to support social and economic activities.

The business case for the project and the community engagement process should take into account those outcomes across the long-term.

Singapore relies on P3 to deliver water treatment and desalination infrastructure, growing the local industry into a global supplier of water technologies, with exports contributing more than $1 billion annually to the country's GDP. If each of the 50 states develops one P3 project annually, what industries would spring up as a result?

Municipalities and states understand the stresses their infrastructure is under, and should be given a guiding hand in matching local needs with global investors' demand for infrastructure assets.

If communities understood how they could have new hospitals, schools, bridges or water treatment plants with better service and without additional taxes or user charges that also could boost employment, what would they choose?

Engineering News-Record

by Richard Fechner, GHD

August 30, 2018

Richard Fechner, global leader of infrastructure investment & economics at GHD Advisory, part of consulting firm GHD, has led and supported asset transactions valued at more than $80 billion. He can be reached at Richard.Fechner@ghd.com

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Norton to Introduce Bill Affording New Way for D.C. to Secure Private Funding for Public Infrastructure Projects.

WASHINGTON, D.C.—Congresswoman Eleanor Holmes Norton (D-DC) today announced that she will introduce a bill that clarifies the District of Columbia's authority to enter into public-private partnerships (P3s). The District recently began the procurement process for its first-ever P3s: rehabilitating the Metropolitan Police Department headquarters (Daily Building) and modernizing streetlights. The bill makes it clear that the federal Anti-Deficiency Act (ADA), which uniquely applies to D.C., does not prohibit the District from entering into P3s. The bill provides legal certainty that D.C. may enter into multi-year contracts to design, construct, improve, maintain, operate, manage and/or finance projects procured pursuant to a local D.C. law, the Public-Private Partnership Act of 2014.

“Federal law potentially limits the authority of only one jurisdiction, the District of Columbia, to enter into public-private partnerships,” Norton said. “The federal government, many states and other countries have used P3s. There is no reason that the District should not be able to take advantage of this option. Among other benefits, P3s will free up District funds that would otherwise be spent on infrastructure for other pressing needs, such as education and health care.”

The federal ADA prohibits the federal and D.C. governments from obligating or expending funds in advance or in excess of an appropriation. A critical benefit bestowed by P3s is that the District would not have to appropriate all the funds upfront, freeing up funds for the District to spend on other matters. An ADA violation may occur if the District terminates a P3 contract. Under P3 contracts, the District would make payments on an annual basis over the life of a contract, and the District would appropriate the funds for such payments annually. However, upon termination, the District would have to pay all costs incurred up to that point, but would not yet have appropriated all the funds for such payments, potentially causing an ADA violation.

Under D.C. law, “a ‘public-private partnership’ means the method in the District for delivering a qualified project using a long-term, performance-based agreement between a public entity and a private entity or entities where appropriate risks and benefits can be allocated in a cost-effective manner between the public and private entities in which:

(A) A private entity performs functions normally undertaken by the government, but the public entity remains ultimately accountable for the qualified project and its public function; and

(B) The District may retain ownership or control in the project asset and the private entity may be given additional decision-making rights in determining how the asset is financed, developed, constructed, operated, and maintained over its life cycle.”

August 29, 2018

Municipalities May Regulate the Local Impacts of Pipelines Without Violating the Commerce Clause: Foley Hoag

Foley Hoag Secures Victory for City of South Portland in Lawsuit Challenging its Clear Skies Ordinance

Federal Court Rules Statute Banning the Bulk Loading of Crude Oil Is Constitutional

Foley Hoag LLP successfully represented the City of South Portland, Maine in a federal lawsuit aiming to overturn the City’s Clear Skies Zoning Ordinance. The U.S. District Court for the District of Maine issued its decision on Friday, August 24, 2018, finding that the local zoning ordinance, which prohibits the bulk loading of crude oil onto ships in South Portland’s harbor, does not violate the Commerce Clause of the U.S. Constitution. The victory comes after three years of litigation.

In its decision, the Court concluded that “the City Council enacted an ordinance that would block a tar sands project like the one PPLC proposed because it had concerns about the air quality, water quality, aesthetics, and redevelopment risks of crude oil loading in general, and the transporting and coastal loading of crude oil derived from tar sands in particular.” This is one of the first times that a federal court has ruled that cities and towns can prohibit crude oil pipeline and loading facilities through local zoning without being preempted by any federal statute or violating federalism principles in the Constitution.

South Portland prohibited the loading of bulk crude oil into ships on its waterfront in 2014, as domestic demand for imported oil was declining and production in the oil sands of western Canada was increasing. In December 2017, the Court ruled in the City's favor on eight of nine counts – that the ordinance was not preempted by the federal Pipeline Safety Act, the federal Ports and Waterways Safety Act, or the Maine Oil Discharge Prevention Law; it was not preempted by federal powers over foreign affairs or maritime commerce; it did not violate Portland Pipe Line's due process or equal protection rights; and it was not inconsistent with the City's Comprehensive Plan – but found that a trial was needed on the Commerce Clause claim. After five days of testimony, the Court has now ruled in the City's favor on the final claim, finding that that the ordinance "does not discriminate against interstate or foreign commerce on its face, in effect, or in purpose."

"Faced with the prospect of hundreds of thousands of barrels of crude oil being loaded onto marine vessels in the City and threatening the health of the residents and preventing redevelopment of the waterfront, the City Council prohibited this new activity. We are pleased that the Court upheld the ordinance," said Linda Cohen, Mayor of South Portland.

"The District Court conducted a painstakingly thorough review of the evidence, including hearing live testimony over five days, and concluded that the Clear Skies Ordinance was constitutional and not preempted by either federal or state law," said Jonathan Ettinger, a partner at Foley Hoag. "The Court appropriately recognized that this case was about protecting the health, safety and welfare of the residents of South Portland under its broad zoning powers and not about whether the oil came from Alberta or Augusta."

Foley Hoag is a Boston-based law firm with a leading environmental law practice. The team representing the City of South Portland was led by Ettinger and comprised of partner Euripides Dalmanieras and associate Jesse Alderman. Sally Daggett and Mark Bower of Jensen, Baird, Gardner & Henry in Portland served as co-counsel.

About Foley Hoag LLP
Foley Hoag provides innovative, strategic legal services to public, private and government clients across the globe. We have premier capabilities in the life sciences, healthcare, technology, energy, professional services and private funds fields, and in cross-border disputes. The diverse backgrounds, perspectives and experiences of our lawyers and staff contribute to the exceptional senior level service we deliver to clients ranging from startups to multinational companies to sovereign states. For more information, visit www.foleyhoag.com or follow @FoleyHoag on Twitter.

August 27, 2018

SEC Adopts Rule Amendments to Improve Municipal Securities Disclosure: Orrick

On August 20, 2018, the Securities and Exchange Commission adopted amendments to Rule 15c2-12 of the Securities Exchange Act in order to enhance transparency in the municipal securities market. The adopted changes focus on material financial obligations that could impact an issuer's liquidity, overall creditworthiness or an existing security holder's rights. The amendments add two new events to Rule 15c2-12 of the Securities Exchange Act, which requires brokers, dealers and municipal securities dealers that are acting as underwriters in primary offerings of municipal securities to reasonably determine that the issuer or obligated person has agreed to provide to the Municipal Securities Rulemaking Board timely notice of certain events.

Press Release.

Final Rule.

August 30, 2018

Treasury Releases Guidance on Permissibility of State Legislation to Circumvent SALT Deduction Cap.

On Aug. 23, 2018, the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) issued proposed regulations under Section 170 of the Internal Revenue Code (Code) addressing the federal income tax treatment and characterization of state legislation allowing certain charitable contribution payments made by taxpayers in exchange for a corresponding credit against state and local taxes (SALT).

Continue reading.

Brownstein Hyatt Farber Schreck

August 29, 2018

US Federal Reserve Board, OCC and FDIC Issue Interim Final Rule with Respect to the Treatment of Certain Municipal Obligations as High-Quality Liquid Assets: Sherman & Sterling

The U.S. Board of Governors of the Federal Reserve System, U.S. Office of the Comptroller of the Currency and U.S. Federal Deposit Insurance Corporation jointly issued an interim final rule and request for comment to treat “liquid and readily-marketable,” investment grade municipal obligations as level 2B high-quality liquid assets (HQLAs) for purposes of the liquidity coverage ratio rule. The interim final rule implements Section 403 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, which amends Section 18 of the Federal Deposit Insurance Act and requires the Federal Reserve Board, OCC and FDIC to treat qualifying municipal obligations as high-quality liquid assets (i.e., level 2B liquid assets) for purposes of the LCR rule and any other regulation that incorporates the definition of “high-quality liquid asset” or similar term. For purposes of the LCR rule, the term “municipal obligation” is defined to mean “an obligation of a state or any political subdivision thereof or any agency or instrumentality of a state or any political subdivision thereof. In order for a municipal obligation to qualify as a HQLA, it must be liquid and readily-marketable and investment grade at the time of calculation. With respect to the definition of liquid and readily-marketable, the interim final rule harmonizes the definition across the three agencies and adopts the Federal Reserve Board’s definition, which defines the term as a security that is traded in an active secondary market with: (i) more than two committed market makers; (ii) a large number of non-market maker participants on both the buying and selling sides of transactions;

(iii) timely and observable market prices; and (iv) a high trading volume. Section 403 also provides that the term "investment grade" has the meaning given in 12 C.F.R. Part 1, which requires that the issuer of a security has adequate capacity to meet financial commitments (meaning that the risk of default is low and full and timely repayment is likely) under the security for the projected life of the asset or exposure. In addition, consistent with the EGRRCPA, the Federal Reserve Board is rescinding its 2016 amendments to the LCR rule, which treated a narrower range of municipal obligations as HQLAs. With respect to FDIC- and OCC-regulated financial institutions, municipal obligations were not previously permitted to be treated as HQLAs. The interim final rule will take effect upon its publication in the Federal Register, with comments due within 30 days of publication.

View full text of the interim final rule.

Shearman & Sterling LLP

August 30, 2018

Developing with Other People's Dollars: Leveraging Public Property in NC for Private Development

Downtowns across the country are seeing an increase in population and North Carolina is no exception.

From 2016-2018, 45% of North Carolina's population growth occurred in its seven largest municipalities. During that same time, rural areas in the state saw their populations decrease.

This "urbanization," or flow of people from small towns and counties into North Carolina's cities, is increasing the need for development projects and opportunities for developers. In an already competitive development environment, public-private partnerships ("PPP's") can offer developers opportunities that would not otherwise exist, including the chance to collaborate with municipalities on large-scale projects that can result in cost savings and a competitive advantage.

Continue reading.

Ward and Smith, P.A.

August 30, 2018

A New Accelerator for Community-Owned Broadband Networks.

Some of the communities selected will be able to begin building within a matter of months.

A San Francisco-based online investment platform plans to launch a Community Broadband Accelerator in the coming months to help localities quickly establish community-owned networks.

In November, Neighborly will announce its first cohort of communities, which will have access to its financing at a discount.

With 19 million Americans, 6 percent of the population, lacking access to broadband at minimum speeds, networks aren't being built fast enough, Garrett Brinker, Neighborly's product manager, told Route Fifty.

"We really see community broadband networks as the 21st century's bridges that spur economic development," Brinker said.

But the conversation about financing projects often occurs too late in the process, he added.

Once a participating community decides to build a network, it can use Neighborly's mapping, demand aggregation and marketing tools to funnel in capital.

For its first cohort, the accelerator is looking for communities already seeing movement on broadband from local government or local advocacy groups. Brinker anticipates some of the communities selected will be able to begin building within a matter of months.

"That's where we see the power of a community-owned model," he said. "We believe that access to the internet should be equal by design."

By building an open-access network much like Ammon, Idaho—a city of about 15,300 people—communities will incentivize private internet service providers using it to provide faster service at low cost. That's opposed to a single private operator lacking the financial motivation to align their infrastructure anywhere other than the most affluent neighborhoods in a community.

The deadline for communities to apply to be a part of the accelerator is Sept. 28.

CBA wants to scale broadband networks across communities big and small by working with partners like Axiom, Island Institute, the Local Government Commission, and Next Century Cities.

"These networks only get built if everyone is able to come to the table," Brinker said.

Route Fifty

by Dave Nyczepir

September 2, 2018

Ambac Announces Execution of COFINA Plan Support Agreement.

Advances Resolution of COFINA Title III Proceedings

NEW YORK, Aug. 30, 2018 (GLOBE NEWSWIRE) — Ambac Financial Group, Inc. (Nasdaq:AMBC) ("Ambac"), a holding company whose subsidiaries, including Ambac Assurance Corporation ("AAC"), provide financial guarantees, announced today that AAC, the Financial Oversight and Management Board for Puerto Rico (the "Oversight Board"), the Puerto Rico Sales Tax Financing Corporation ("COFINA"), Puerto Rico Fiscal Agency and Financial Advisory Authority, Bonistas Del Patio, Inc., other bond insurers, and certain holders of senior and junior COFINA bond claims have executed a Plan Support Agreement (the "COFINA Plan Support Agreement") for the restructuring of all senior and junior COFINA bonds.

AAC insures $808.5 million of the initial principal amount of Senior COFINA Capital Appreciation

Bonds (approximately $1,325.4 million of accreted value as of, but not including, the May 5, 2017 petition date (the "Petition Date") in the COFINA Title III proceeding). AAC also owns approximately 58% of AAC-insured senior COFINA bonds.

The COFINA Plan Support Agreement furthers the agreement-in-principle announced by the Oversight Board on August 8, 2018. Under the COFINA Plan Support Agreement, the creditor parties agree, among other things, to support the filing of a plan of adjustment with respect to COFINA that provides for a distribution of Plan consideration comprised of new COFINA bonds and cash, with a face amount in the aggregate equal to approximately 93% (plus accrual, as of August 2018) of senior COFINA bond holders' Petition Date claim amounts, without taking into account AAC's insurance policy for the AAC-insured bonds, and a face amount of approximately 56% (plus accrual, as of August 2018) of junior COFINA bond holders' Petition Date claim amounts. The contemplated Plan of Adjustment, once confirmed by the court overseeing COFINA's Title III proceeding, will also finally resolve all COFINA-related litigation and validate the COFINA structure.

Under the COFINA Term Sheet (attached as an exhibit to the COFINA Plan Support Agreement), holders of AAC-insured senior COFINA bonds would have the option to elect to either (i) commute their rights in respect of the AAC insurance policy associated with the existing senior COFINA bonds, which bonds will be cancelled, in exchange for new COFINA bonds, cash amounts to be paid by COFINA, plus additional consideration provided by AAC, or (ii) exchange their senior COFINA bonds for trust certificates issued by a custodial trust, which trust would receive distributions from COFINA under the new COFINA bonds, plus payments under the existing AAC insurance policy in respect of any shortfalls. Payments on the new COFINA bonds deposited in the custodial trust would reduce AAC's obligations on its insurance policy.

The terms of the COFINA Plan of Adjustment and related documentation which will effectuate the contemplated transactions remain subject to negotiation and court approval.

Claude LeBlanc, President and Chief Executive Officer of Ambac commented "While there is a lot of work left to be done, the execution of the COFINA Plan Support Agreement is a definitive step towards a final resolution of Puerto Rico's debt restructuring and we are pleased to be a party to the COFINA Plan Support Agreement. The negotiated settlement of the Commonwealth-COFINA litigations also provides significant value to the Commonwealth through a sharing of the sales tax revenues, and resolution of the COFINA Title III proceedings will provide clarity regarding one of Ambac's key adversely classified credits."

The COFINA Plan Support Agreement, and related term sheet can be found on Ambac's website under the heading "Information for Investors Regarding COFINA Plan Support Agreement."

About Ambac

Ambac Financial Group, Inc. ("Ambac" or "AFG"), headquartered in New York City, is a holding company whose subsidiaries, including its principal operating subsidiaries, Ambac Assurance Corporation ("AAC"), Everspan Financial Guarantee Corp. and Ambac Assurance UK Limited ("Ambac UK"), provide financial guarantees of obligations in both the public and private sectors globally. AAC is a guarantor of public finance and structured finance obligations. Ambac's common stock trades on the NASDAQ Global Select Market under the symbol "AMBC". The Amended and Restated Certificate of Incorporation of Ambac contains substantial restrictions on the ability to transfer Ambac's common stock. Subject to limited exceptions, any attempted transfer of common stock shall be prohibited and void to the extent that, as a result of such transfer (or any series of transfers of which such transfer is a part), any person or group of persons shall become a holder of 5% or more of Ambac's common stock or a holder of 5% or more of Ambac's common stock increases its ownership interest. Ambac is committed to providing timely and accurate information to the investing public, consistent with our legal and regulatory obligations. To that end, we use our website to convey information about our businesses, including the anticipated release of quarterly financial results, quarterly financial, statistical and business-related information, and the posting of updates to the status of certain residential mortgage backed securities litigations. For more information, please go to www.ambac.com.

Contact

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Source: Ambac Financial Group, Inc.

New Puerto Rico Bond Group Starts Negotiations.

Funds holding about $1.9 billion in general obligation bonds split from a rival group in a bid to further broader restructuring efforts

Investment funds owning about $1.9 billion of Puerto Rico's general obligation bonds have formed a committee to negotiate a consensual restructuring with the commonwealth and the federal oversight board that manages its finances, people familiar with the matter said.

Members of the committee are seeking to differentiate themselves from a pre-existing group of general obligation bondholders that includes Aurelius Capital Management LP, which is fighting the board and the island's government in ongoing litigation, the people said

The new group organized in August after the oversight board reached important deals with Puerto Rico's two other largest classes of debt—bonds issued by its power utility and its sales-tax authority—raising hopes that general obligation creditors might also broker a settlement. The committee includes hedge funds Fir Tree Partners and Mason Capital Management LLC and mutual-fund manager First Pacific Advisors LLC, according to a bankruptcy-court filing.

The formation of the new group increases the likelihood that Puerto Rico will settle with its last large group of bond investors, potentially paving the way for a global restructuring of its finances.

Prices of Puerto Rico's $3.5 billion general obligation bond due in 2035 have risen about 33% this month to 53 cents on the dollar, according to data from the Municipal Securities Rulemaking Board.

Brokering restructurings with investment funds that own much of its $70 billion of bonds is critical for Puerto Rico because it needs to regain access to capital markets as a precondition for the removal of the oversight board. Litigation with creditors also has grown expensive for the island since it entered bankruptcy court in May 2017. Legal fees are expected to exceed $1.1 billion over six years.

Relations between Puerto Rico and general obligation creditors have been frosty for much of the past two years. Fiscal plans published by the government and oversight board last year left little to repay its $13 billion of general obligation bonds. Aurelius is suing the board, contending its appointment was unconstitutional. The committee Aurelius is part of also has argued that general obligation bondholders should have first claim on tax revenues before holders of about $18 billion of bonds issued by the island's sales-tax authority known as Cofina.

"We have participated in constructive negotiation with the [Oversight] Board, and we hope that will continue," a spokesman for the committee that includes Aurelius said. "We've submitted proposals that would have achieved a consensual outcome, and we would welcome the Board's engagement and commitment to a solution."

The oversight board reached an agreement in early August with a committee of Cofina bondholders granting them claim on a portion of sales-tax revenues and average recoveries of 74.5% of face value.

The recent deals with other creditor groups opened the door to a possible detente for general obligation bondholders, the people familiar with the new group said. Fir Tree and the other funds in the group already had been negotiating a deal with Puerto Rico to restructure bonds they own issued by its Public Buildings Authority and saw an opening to do the same for their general obligation bond investments.

A key negotiating point will be how the oversight board and Puerto Rico calculate revenue in future fiscal plans, the people familiar said. The larger the revenue assumptions, the more cash will be left over for debt servicing, they said.

The Wall Street Journal

By Matt Wirz

Aug. 29, 2018

For Goldman, a New Tax Break Makes Helping the Poor More Lucrative.

- **Firm creates opportunity funds as rivals eye U.S. incentives**
- **Banks and investors may defer $7.7 billion in taxes by 2022**

For almost two decades, a Goldman Sachs Group Inc. unit has tended billions of dollars in bets off Wall Street, funding projects in struggling neighborhoods around New York and beyond.

Now, thanks to a new U.S. tax break, its deals could become a lot more lucrative.

The tax overhaul Republicans pushed through in December includes a lesser-known passage creating a new type of investment vehicle — "opportunity funds" — that can win steep tax breaks for supporting projects in low-income communities. Few if any banks are as well positioned to capitalize on the incentives as Goldman Sachs, which began creating funds days after the law passed. It's now weighing whether to set up more to let clients invest, too.

"We have a big leg up," said Margaret Anadu, who heads the bank's Urban Investment Group. "This is investing that we're already doing."

Opportunity funds are both innovative and controversial. They have to focus their investments in roughly 8,700 low-income communities selected by state governors and other officials. Zones range from gritty urban neighborhoods to shrinking Rust Belt towns.

Proponents say the program will provide a much-needed jolt to areas typically avoided by developers. But detractors have warned the law is written too broadly, giving savvy investors a break on projects they might have pursued profitably anyway. There are also concerns the program may accelerate gentrification, driving out low-income residents.

Goldman Sachs, for its part, is hardly shy: It's racing to make use of the new tax break and potentially popularize it on Wall Street. Anadu said the firm wants its investments to have a positive impact.

Days after the legislation passed, Goldman Sachs created an opportunity fund to invest in a project that will add affordable housing to New York's Jamaica neighborhood. In April, it did the same for money it put toward a development in East Orange, New Jersey, that will expand a grocery store in an area short on healthy food. In June and August it did deals in Brooklyn and Baltimore.

The funds are especially attractive for firms looking for ways to redeploy capital gains — of which Goldman Sachs and its clients have plenty. Investors start by plowing those proceeds into opportunity funds, deferring taxes until 2026. And, if the funds buy and hold qualifying assets for at least five years, investors can reduce the tax they pay on appreciation, or eventually eliminate it altogether.

Hit to Tax Collections

Deferrals will let opportunity zone investors cut tax payments immediately

The deferrals are expected to cost the government $7.7 billion by 2022, an impact that will eventually wane as investors resume payments, according to the Joint Committee on Taxation. There's no limit on the ultimate benefit for investors, whose profits depend on the gains generated by their projects and how long they hold onto the assets.

Researchers and non-profits have been raising red flags since the law went into effect. A study from the Urban Institute estimated almost 4 percent of the areas picked were already attracting large numbers of wealthier, college-educated transplants. That may seem small, but investors aren't required to spread their projects evenly, potentially concentrating their efforts in areas already destined to gentrify.

Goldman's Urban Investment Group started in 2001 and pursues a strategy known as social impact investing, looking to generate profits while contributing to communities. The unit is small enough that the bank doesn't break out its results in financial reports. But over the years, its name has appeared in numerous media reports describing its piece of local revitalization projects, many supported by other tax credits.

The head of that group, Dina Powell, left the bank to join the administration last year, as did Goldman Sachs President Gary Cohn, who became Trump's top chief economic adviser. Neither was directly involved in the crafting of the opportunity zones plan, according to two congressional aides who worked on the legislation.

Publicly, the idea was long championed by the Economic Innovation Group, a non-profit founded by Sean Parker, the Napster creator and first president of Facebook Inc. The think tank proposed opportunity zones three years ago in a white paper written by Jared Bernstein, a member of the Obama administration's economic team, and Kevin Hassett, the head of Trump's Council of

Economic Advisers. A roster of lawmakers from both parties, including Senators Tim Scott of South Carolina and Cory Booker of New Jersey, sponsored earlier bills to create the zones before it was tucked into the broader tax overhaul.

Mnuchin's Pitch

At first glance, the legislation looks promising for Goldman.

Anadu's team recently reexamined the roughly $7 billion the firm has deployed since its inception. Executives found that more than $5 billion of that money went to projects in areas eligible to become opportunity zones.

For now, the firm's ambitions are being tempered by uncertainties. The Internal Revenue Service and Treasury have yet to issue rules that will affect how investors qualify for the benefits, leaving accountants and lawyers to pore over the legislation for clues.

Late last week, Treasury Secretary Steven Mnuchin, who started his career at Goldman Sachs, talked up the tax break to a group of wealthy investors in the Hamptons. In an interview afterward, he repeated a remark by a billionaire in the room: "It's not about the zone, it's about the opportunity."

Mnuchin was emphasizing that there's an opportunity to move businesses into the zones, creating jobs and spurring the economy, a Treasury spokesman said Wednesday. While most of the people in the room had been looking at the tax break as an incentive to develop real estate, the initiative is really a chance to expand business, he said.

Mnuchin predicted guidance for investors should be available "shortly."

The wait is a big reason why Goldman Sachs has yet to decide whether to offer opportunity funds to clients, Anadu said. In particular, there's ambiguity over what happens if multiple investments are wrapped into a fund. So while awaiting guidance, the firm is placing each investment into a single fund.

To be sure, some of the nation's largest banks also have programs to help struggling communities and no doubt have expertise in vetting projects. JPMorgan Chase & Co., for example, has a community development arm that provides financing for a variety of projects. The firm has also set out to help cities such as Detroit, where the bank has promised to invest $150 million by 2019. A spokesman declined to comment on its plans for opportunity funds.

Other investors are already pushing ahead. Among them, RXR Realty, which focuses on property in the New York area, is seeking to raise $500 million for an opportunity fund, a person familiar with the matter said earlier this month. Steve Case's venture capital firm Revolution LLC recently hired two real estate executives to begin making direct investments with a focus on the zones.

PNC Financial Services Group Inc. is planning opportunity funds. And a number of banks in addition to Goldman Sachs, such as Wells Fargo & Co., have participated in calls held by the Economic Innovation Group to keep abreast of the law's implementation, according to a person familiar with the talks.

Seeking Limits

This month, the National Housing Conference, an advocate for affordable housing, sent a letter to the Treasury pointing out what the non-partisan group sees as flaws in the legislation. The group encouraged policymakers to implement guardrails and gather data to prevent abuse. It said it would be "tragic" if higher-priced rentals replaced more affordable units because of the incentives.

Goldman Sachs says it shares some concerns raised by critics. It's worrisome, Anadu said, that the law doesn't require investors to align their goals with community priorities. The bank plans to do so, and voluntarily measure the outcomes of its projects, she said.

"Being thoughtful about the impact of our investments is not just positive for the communities themselves," Anadu said, "but also meaningfully mitigates risk."

Bloomberg Wealth

By Noah Buhayar

August 29, 2018

— With assistance by Sridhar Natarajan, Laura Davison, Ivan Levingston, Michelle Davis, Amanda L Gordon, and Saleha Mohsin

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Opportunity Zones: An Updated Overview and Look at What's Ahead

SUMMARY
Created as part of the 2017 tax reform deal, the Opportunity Zones Program is designed to drive long-term capital to distressed communities by providing tax benefits on investments in Opportunity Funds, or "O Funds". This brief offers an updated, high-level overview of the program as of August 2018.

DESCRIPTION
The Opportunity Zones concept was originally introduced in the Investing inOpportunity Act (IIOA), and enacted in 2017 as part of the Tax Cuts and Jobs Act. At its essence, it offers special treatment on capital gains in a way that's designed to drive long-term investment in a diverse range of low-income communities throughout the nation. Various tax incentives are provided to encourage investment through privately- or publicly-managed (or in some cases joint public-private) Opportunity Funds.

Continue reading.

Enterprise Community Loan Fund, Inc.

By Rachel Reilly

Incentives for Qualified Opportunity Zone Investments: Check Your Locations

In Short

The Background: The Tax Cuts and Jobs Act created a new tax incentive program to encourage investments in qualified opportunity zones ("OZs"). Taxpayers seeking to redeploy gains from other sources can obtain favorable tax deferral and tax reduction if the gains are reinvested in OZs.

The Development: All of the OZs have been designated, and both developers and investors should determine if their projects are in those zones, as the tax benefits can be substantial.

Looking Ahead: Taxpayers may take advantage of this new program for property disposed of through 2026.

The Tax Cuts and Jobs Act created a new tax incentive program to encourage investors to reinvest gains from other sources in qualified OZs. OZs are low-income communities identified by specific census tracts that were selected by the governor of each state and approved by the Secretary of the U.S. Treasury. There are more than 8,000 OZs in urban and rural areas. Investors, developers, investment funds, and other businesses should review the locations of OZs to determine if they encompass existing or future investment plans.

Gains from dispositions of property may receive preferential tax treatment if a taxpayer reinvests those gains in an OZ. Reinvestment must be made through a qualified opportunity fund ("OZ Fund") within 180 days of the property's disposition. A taxpayer may elect this treatment of gains for any property disposition occurring through December 31, 2026. Gains may be short- or long-term from dispositions of any type of property. Because deferred gains are reinvested, a taxpayer's initial basis in an OZ Fund investment would be zero. A taxpayer's potential tax benefits from an investment are:

- Deferral of tax on reinvested gains until earlier of disposition of the investment or December 31, 2026;
- If held five years, a step-up in basis of 10 percent of the reinvested gain, thereby reducing the tax eventually payable on the deferred gain;
- If held seven years, an additional step-up in basis of 5 percent; and
- If held 10 years, an election to have the investment's basis be equal to its fair market value, thereby potentially eliminating recognition of gain on the investment.

The value of the tax benefits may be significant. For a corporate taxpayer subject to a 21 percent marginal rate, net present value of the tax deferral for an investment made in 2018 and disposed in 2026 could be 9 percent to 11.5 percent of the deferred gain assuming a range of discount rates of 6 percent to 10 percent. For an individual whose gain is subject to a 37 percent marginal rate (e.g., on short-term capital gains), net present value could be 16 percent to 28 percent of the deferred gain assuming the same discount rates. Naturally, actual benefits would vary from these simple estimates.

If a taxpayer holds a OZ Fund investment through 2026, the taxpayer must recognize the deferred gains (after reduction for any basis step-ups) at the end of 2026 equal to the lesser of (i) the remaining deferred gain or (ii) the fair market value of the investment. Therefore, if the OZ Fund continues after 2026, the taxpayer would need sufficient funds from sources outside of the OZ Fund to pay the taxes from this recognition event.

An OZ Fund must maintain at least 90 percent of its assets in qualified OZ property. Qualified property includes specific types of real estate and other tangible property, as well as equity interests in qualified businesses in the OZ. Specific types of "sin" properties and businesses are excluded such as golf courses, country clubs, massage parlors, hot tub facilities, suntan facilities, racetracks, gambling facilities, and liquor stores. There are a number of other technical rules that apply. Failure to comply with all requirements would subject the OZ Fund to annual penalties and cause investors to lose tax benefits.

To foster new investments, qualified property must be acquired after 2017 and must either be substantially improved or used for the first time by the OZ Fund or its subsidiary. An OZ Fund's property may also qualify under other programs (such as the tax credit programs for low income housing, new markets, and historic rehabilitations) that may enhance the investment potential. An OZ Fund may receive funds that are not reinvested gains (and do not qualify for the new program's benefits), in which case the sources of capital need to be separately tracked.

Investors and business owners should consider the potential benefits of the new program for any OZ investment. Each investment should be reviewed to determine if the new program is consistent with the investment's business plan and the investors' goals. That evaluation should include a careful analysis of whether the investment qualifies under the new program and is structured to maintain compliance with the program's conditions.

But all analyses begin with a simple question of whether or not the business is located in a qualified OZ. If so, the possible tax benefits should be evaluated.

Further guidance from the IRS is expected on this program.

Two Key Takeaways

1. Evaluate all investments to determine if they are located in OZs.
2. Any project or business in an OZ that anticipates obtaining capital from taxpayers (instead of tax-exempt investors) should determine if the investment would benefit from qualifying under the program.

Jones Day

August 31, 2018

Firm Offers Data on Hundreds of Businesses in 'Opportunity Zones'

The dataset's creators hope to draw attention to small companies eligible for investment under the economic development program.

For state and local officials seeking to identify small businesses that could make for good investments under the recently created Opportunity Zones program, a New York City-based market intelligence firm says that it has data that could be useful.

The company, SMB Intelligence, earlier this month rolled out an interactive map and dataset that now feature about 2,800 small businesses and chains, located throughout the U.S., that are both "investable" and located within areas that are eligible for the program.

SMB describes itself as a "mission-driven" firm that seeks to "advance inclusive economic growth" by bolstering small businesses. "We think that Opportunity Zones has huge potential," the company's CEO and founder, Steve Waters, said by phone on Wednesday.

"We view it as: this is an excellent opportunity to direct capital to businesses that are often overlooked by traditional investors and lenders," Waters added. "We're basically trying to do everything we can to intentionally direct that capital towards entrepreneurs."

The Opportunity Zones initiative offers tax breaks for people and corporations that funnel capital gains, from investments such as stocks or hedge funds, into "Opportunity Funds."

These funds are expected to make investments in economically distressed census tracts designated as zones. Governors selected the zones, which were then certified by the Treasury Department and the IRS. There are now zones in about 8,700 census tracts, in all 50 states.

Because the program is still in its early stages it’s still unclear how far it will go toward amping up investment in poor areas.

Waters said that, as it stands, interest in real estate investment under the program appears to be strong, but that it’s less certain capital will “naturally flow” from the Opportunity Funds to small businesses.

But he believes the data that his firm has pulled together can help on this front, providing agencies with a valuable reference as they put together documents that describe possible investments in their areas. He’s not aware of anything else like it currently available.

There’s been interest in the data. Since posting it online, he said, about 40 state and local agencies, and 50 investors have reached out to SMB about it. The firm has plans to provide the data, which is updated every two weeks, to 15 agencies on a pilot basis starting in September.

Waters said he’s not sure yet how much the company might charge to access the information. He wants people to use it, but said it is labor intensive to assemble.

A footnote attached to a version of the interactive map that is currently available for free online explains that the company, which has a dozen people on staff, relies on “proprietary open-source intelligence” methods to compile the information.

That process involves people and computers tracking and analyzing information about small businesses gleaned from thousands of sources, ranging from news publications and social media, to government and real estate data.

SMB has a system to classify “prime growth” businesses—independent companies or small chains that meet certain conditions and could use investment capital to start up or expand.

The dataset includes details for each company, like what type of business it is (for instance, a restaurant, eye clinic, or art gallery), and whether the business is minority- or woman-owned, whether it is independent or a small chain, and how many establishments it has.

“There’s not like one secret source,” Waters noted, referring to the data. “We track growth signals.”

Some experts on Opportunity Zones have suggested that local government officials will have a key role to play in flagging promising businesses in the zones for investors. Waters says his company’s dataset could help to supplement this type of local knowledge.

“Everyone that we’ve had an inquiry from has looked at that initial map and has found something on there that they were not aware of,” he added. “That map is focused on planned growth. So a lot of times this is information that has not necessarily completely circulated.”

ROUTE FIFTY

by BILL LUCIA

AUGUST 29, 2018

Commentary BDA Calls on Michigan Legislature to Promote Investment, Not Hamper Growth.

Michigan municipalities' statewide have turned the corner since the 2008 recession. According to the Center for Michigan, since 2009 the state has the nation's seventh fastest growing economy. Investment is flowing back into the state including Metro Detroit where the economy accounts for over half of the state's GDP.

Recently State Treasurer Nick Khouri announced that for the first time in nearly two decades, no Michigan municipality or school district was under state financial oversight. This feat is an incredible accomplishment by issuers in the state and demonstrates most issuers across Michigan are quite capable of managing their finances prudently.

As cities continue to build upon their fiscally stable condition, a Michigan Senate bill was introduced that could hamper the continued growth and force residents – all taxpayers – to pay more for daily services and infrastructure, while limiting the ability of municipalities to finance vital capital infrastructure including roads, bridges, schools and more.

Senate Bill No. 1054, the Revised Municipal Finance Act, would be detrimental to this recovery. This bill will create unintended consequences by increasing debt costs for municipalities, school and water districts, extending timely access to the capital markets, and isolating municipalities from much of the municipal securities market.

If passed, the bill would prohibit issuers from negotiated underwritings of municipal bonds, limiting their choice and forcing issuers of public debt to sell their debt in competitive underwritings in nearly all cases, removing a critical issuance option and isolating municipal issuers in Michigan.

What is the difference between competitive and negotiated underwritings you may ask? The Bond Dealers of America is the trade association in Washington, DC representing the U.S. bond markets and while the BDA is not advocating in favor of one or the other, it is essential to understand the difference and the important role each can play for municipalities.

In a competitive sale of municipal bonds, an issuer publishes a notice of sale and seeks bids on its bonds from underwriters across the marketplace. Issue size and structure is predetermined, and the bond issue is awarded to the bidder offering the lowest interest cost. In a negotiated sale, an issuer selects an underwriter or group of underwriters to purchase its bond issue. The selected underwriter works closely with the issuer to structure and market the bonds, and the terms of the issue are tailored to the needs of the issuer and the demands of investors.

Many observers of the municipal marketplace have debated whether competitive or negotiated underwritings are more cost-effective for municipal issuers, and the BDA is not taking a position in that debate. However, what is beyond debate is that categorically eliminating the ability of Michigan municipalities to access the marketplace through negotiated underwriting will limit their ability to respond to market conditions, create unnecessary hurdles to market access, and diminish the cost-effectiveness of their bond issuances. The end result will be increased costs to the taxpayer, especially for those constituents of issuers whose bond offerings are more complex, whose credit quality is less than ideal, or who sell public debt in distressed or volatile market environments.

Municipal bond financing is working well for local governments in Michigan, so why limit the tools available to issuers by prohibiting one of the ways in which bond issuances are transacted?

We call on the Senate to reject Senate Bill No. 1054 and allow municipalities to be able to continue to issue debt in the manner that works best for them, and not to force a one-size-fits-all methodology that will cost taxpayers more of their hard-earned money.

Bond Dealers of America

August 31, 2018

By Michael Nicholas

[Fitch Rates Chicago Housing Authority, IL GO Bonds 'AA-'; Outlook Stable.]

Fitch Ratings-New York-30 August 2018: Fitch Ratings has assigned a 'AA-' rating to the Chicago Housing Authority's (CHA) 2018 A & B general obligation (GO) bonds. The Rating Outlook is Stable.

CHA expects to issue its series 2018 A&B bonds in the amount $325 million during the week of Sept. 4, 2018. Proceeds of the series 2018 A&B bonds will be used to finance certain capital costs of the authority and related projects within its portfolio. In addition, the proceeds will be used to fund the debt service reserve fund and pay the cost of issuance.

SECURITY
The series 2018 AB bonds are secured by the general obligation pledge of CHA.

ANALYTICAL CONCLUSION

CHA's rating reflects continuing demand for public and affordable housing within the city of Chicago. In addition, CHA exhibits stable and predictable revenue and cash flow derived from its rented properties, as well as public housing grants. It further exhibits strong and prudent management of operations evidenced by its management of finances and its good standing with the federal oversight provided by the Housing and Urban Development (HUD).

KEY RATING DRIVERS

Revenue Defensibility: Midrange
Fitch assesses CHAs revenue defensibility as midrange given the authority's pricing characteristics. Although, Fitch expects demand to remain strong within the city of Chicago, CHA has limited flexibility to raise rates on its existing portfolio given income and rental rate limits for public housing. CHA shows healthy occupancy (95%) and turnover within its housing properties. Demand is evidenced by the authority's current waiting list of 108,922 Chicago residents in need of low income housing. In addition, CHA operates with a collection rate of 99% of tenant rent. It also manages a housing choice voucher (HCV) program, which allows the authority to house an additional 47,000 tenants. This program permits residents to take their affordability voucher to units outside of the CHA portfolio, fulfilling its mission of providing affordable housing to the city.

Operating Risk: Stronger
CHA's 'stronger' operating risk is supported by its designation as one of 39 Moving-To-Work (MTW) PHAs, which allows for flexibility and fungibility in the use of its intergovernmental grants from HUD for cost efficiency. Participation in the rental assistance demonstration (RAD) further provides greater funding certainty for potential lenders and increased operational flexibility for the authority. Strong resource management is also reflected in CHA's year-over-year funding from HUD and its

recently renewed MTW status through 2028; both indicate the oversight agency's view of the authority's overall management capabilities.

Financial Profile: Stronger
Low debt levels, healthy cash balances and net annual surpluses over the last five years support CHA's 'stronger' financial profile. The authority's business plan forecasts positive funds available for debt service (FADS) as they continue to transform nearly 44% of its public housing portfolio units to Section 8 and mixed-income properties through the RAD conversion program, where rent rates may become more flexible. Despite anticipated debt issuance, Fitch expects CHA's net leverage to remain consistent with the assessment over the next five years.

Asymmetric Additive Risk Factors
Asymmetric risk factors are neutral to the rating. Debt characteristics are manageable with level debt service payments. In addition, the governing body is solid with sound extensive experience and stability.

RATING SENSITIVITIES
Lower Grants and Transfers: CHA could be subject to negative rating pressure if a consistent decline in grants and transfers were to weaken funds available for debt service and increase the authority's leverage ratio.

CREDIT PROFILE

CHA was created in 1937 to own and operate housing built by the federal government under President Franklin Roosevelt's Public Works Administration. CHA is one of the largest PHA's in the United States with 21,359 housing units in 117 properties. The first three housing projects, built in the late 1930s, included Jane Addams, Julia C. Lathrop and Trumbull Park Homes. They were all part of Roosevelt's New Deal programs to provide affordable housing for low-income families and combat blight.

CHA provides homes to more than 50,000 families and individuals, while supporting healthy communities in neighborhoods throughout the city. It has utilized the flexibility of the MTW agreement to test innovative, locally-designed strategies that use federal dollars to more efficiently help residents become self-sufficient and to increase housing choices for low-income families. In 2000, 15% of work-eligible heads-of-household were employed. Now more than 58% are employed. CHA is a municipal not-for-profit corporation, governed by a Board of Commissioners consisting of 10 members. The commissioners are appointed by the Mayor.

The authority is one of 40 (out of 3,300) public housing agencies participating in HUD's MTW Demonstration Program. The authority's original MTW Demonstration Agreement was executed with HUD in February 2000 and was amended and restated in 2008. Congress extended the authority's agreement through 2028. The MTW Agreement gives the authority latitude in implementing its transformation plan via the exemptions from many existing HUD related public housing and voucher rules, and allows for more flexibility with how they use federal funds. In addition, it incorporates numerous waivers and modifications of HUD administrative, regulatory and/or legal requirements which further support the authority's transformation plan.

Revenue Defensibility
Demand for public housing remains strong within the city of Chicago and any changes in the rents that PHA's are able to charge would be unlikely to materially affect demand. CHA recently completed their five-year strategic plan along with a five-year capital and operating program. This plan expands from 2018-2022. The authority has delivered a diverse range of housing assets that are

high quality and in high demand. As of June 30, 2018, the authority has delivered approximately 24,000 units towards its goal. The overall portfolio is comprised of approximately 11,000 family units, 11,000 senior/elderly units, and 2,000 supportive housing units. The authority plans to deliver an additional 1,000 units in 2018 for an overall total of 25,000 housing units. Average occupancy for the units over the past three has been at 96.7%.

CHA administers 47,000 housing choice vouchers, which accounts for 92% utilization rate of the program. Based on the Institute for Housing Studies at DePaul University in Chicago report, "2018 State of Rental Housing in Cook County," the growth in renters is leveling off, but there are still about 182,000 more people who need low-cost housing than there are affordable apartments in Cook County. The report explains that since 2012, the number of affordable rental units in Chicago has declined by more than 10% while demand for affordable housing has declined by less than 5% over the same period. CHA had a total of 108,922 households on their waitlists at the beginning of FY 2018.

Given the core mission and industry standard for rental rates for PHAs, CHA's pricing characteristics coupled with the makeup of its current portfolio drive the authority's midrange revenue defensibility. Like all PHAs within the U.S. with public housing or Section 8 units, rental rates are set using residents income levels to create affordability. This limits flexibility in raising revenue through rental income.

Currently, rental income is roughly 5% of CHAs total revenue, which is in line with industry standards. CHA sets its rental rates using HUD guidelines. HUD sets the lower income limits at 60% and very low income limits at 30% (for public housing) of the area median income (AMI) for the county or metropolitan area in which residents reside. CHAs current portfolio consists of 23,810 public housing units.

The authority applied for, and HUD accepted, applications for CHA to participate in the RAD program allowing the conversion of over 10,000 of its public housing units to project based Section 8 with 20-year housing assistance payment (HAP) agreements, or to mixed-income properties utilizing HCVs. To date CHA has converted 2,815 units to RAD. Upon transformation of the portfolio Fitch expects that CHA will have more flexibility in the pricing characteristics as revenue from the properties, via partnerships with private developers as an equity member, show a return on the units from either mixed-income properties or fees associated with administering the PBV or HCV programs that will maintain affordability in the converted units.

The income levels for those units converted must adhere to other HUD regulated programs such as section 8 and low income housing tax credit (LIHTC). Those projects are likely to have eligible income limits of 60% of AMI for units deemed affordable. CHA's overall conversion of public housing units to RAD will become realized within the next two to five years as projects are converted.

Operating Risk

CHA, like all public housing authorities in the U.S., receives an operating grant deposited into the authority's operating fund. The operating fund is available by formula distribution to PHAs to cover operating and management costs. Funding eligibility is offset by the amount of expected tenant rental revenue. In FY 2017 CHA received a total of $178 million for operations. CHA has received a five-year average operating grant in the amount of $170 million. The cost to operate the units and the grant provided fluctuates based on the number public housing units in the portfolio along with the overall budget allocations to HUD programs from the appropriations committee within congress. While the HUD grant is not anticipated to cover the entire operating cost for the authority, it covers a very significant portion, on average 85% operating expenses from 2013-2016.

CHA can use operating funds for operating and management costs, including administration, routine maintenance, anti-crime and anti-drug activities, resident participation in management, insurance costs, energy costs, and costs, as appropriate, related to the operation and management of mixed finance projects, as well as repayment of debt service to finance rehabilitation and development of public housing units. CHA has full discretion in how it allocates this grant in its operating fund. CHA may leverage operating funds to make capital improvements through the operating fund financing program by pledging a portion of their operating reserves to make future debt service payments. CHA may also leverage operating funds to enter into energy performance contracts, by pledging, in accordance with section 30 of the U.S. Housing Act of 1937 and, with HUD's approval, to use energy savings for debt service payments.

Resource Management Risk

CHA manages its resources via its MTW plan approved by HUD along with its five-year strategic plan. To obtain MTW status CHA had to demonstrate solid and robust financial management, allowing them the flexibility to expend the federal revenue stream that makes up 91% of the CHA's balance sheet, as they see fit. CHA has no supply constraints for labor or resources in terms of amount and cost. The authority's average number of employees was 651 in FY 2017 and is set to stay at this level. Wages and salaries are assumed to increase by 3% each year while fringe benefit rates are expected to remain unchanged. Total personnel costs were estimated at$61.2 million in FY 2017. With increases CHA budgeted for FY 2018 a 4.7% increase over FY 2017. The authority's pension contribution is over 100% funded and has been at least 100% of the actuarially determined contribution for the past three years.

The preparation of the authority's Annual Budget is the culmination of a seven-month budget process, which begins in May and ends in November of each calendar year. CHA's budget is organized into 12 divisions: Executive Offices, Internal Audit, Legal Services, and Office of the Inspector General, Finance, Investment Management, Administration, Procurement, Property Office, Capital Construction & Development, Housing Choice Voucher and Resident Services.

CHA has demonstrated a history of successful capital planning and execution. The authority has adequate mechanisms for capital planning and funding, and has demonstrated generally effective management. Capex benefits from documented assessment and aligns to plan in a reasonable way. Capital expenses are primarily covered by a variety of funding mechanisms including the capital fund grant provided to the authority by HUD for capital projects. As CHA develops newer units the expense for capital repairs are expected to decline.

Financial Profile
CHA's available funds, defined as cash and investments not permanently restricted, have declined in recent years, but remained robust at $224 million at year end 2017. CHA's liquidity cushion has remained well above 1.0x over the past five years.

Lower grant funding from HUD in FY 2017, as a result of prior overfunding, contributed to the decline in liquidity, as well as to lower Fitch-calculated FADS. Income generated from public housing activities has been relatively consistent year over year, with rental income from public housing being at or slightly above $51M over the past five fiscal years. During the same period, the proportion of revenue from public housing rents has been between 5%-7% of total revenue. CHA, like most PHA-MTW authorities, receives more than 90% of their revenue from HUD subsidies in the form of various grants. Whereas CHA's FADS averaged approximately $130 million over the period 2013-2016 reflecting consistently strong grant funding, lower funding in 2017 resulted in FADS of only $59 million.

CHAs leverage profile has remained low in recent years as available funds have exceeded total debt obligations. Fitch's five-year forward scenario analysis indicates that the authority's leverage and financial profile should remain strong, even after considering the proposed issuance of the 2018AB general obligation bonds. Fitch expects FADS to migrate higher toward historical levels beginning in 2018, based on year to date results, which should support of ratio of net debt to FADS of between 3.0x and 4.1x through 2022 even through a temporary stress in CHA's revenue base.

Asymmetric Additive Risk Factors
Debt Profile

CHA issued $25 million in taxable Build America Bonds (BABS) in FY 2010 that were special obligations of the authority. The bonds are fully amortizing and debt service is level at around $1.80 million a year. The debt was backed by the full faith and credit of the CHA, consisting of all revenues and funds pledged for the payment of debt service. The bonds were issued to take advantage of HUDS energy use and cost reduction incentives. The proceeds were used for the removal of 50 year old boilers/controls domestic hot water heaters, asbestos abatement and disposal and demolition of existing equipment, such facilitates to be replaced by 85% efficiency boilers/controls and hot water heaters. This resulted in the installation of remote monitoring devices at 22 of the authority's developments affecting 4, 8111 residential units.

The authority maintains a $20 million line of credit from Federal Home Loan Bank of Chicago at an interest rate not to exceed 2.5% for a period not to exceed 36 months from the time of lending. The line of credit is collateralized by cash and investments held by CHA. Proceeds from the line of credit are designated for the authority's unit acquisition program. In 2016, the Board approved a resolution to expand the use of funds borrowed under this line. There was an outstanding balance of $3.0 million and $3.35 million at Dec. 31, 2017 and 2016, respectively.

The authority also maintains an unsecured, $20 million line of credit, from BMO Harris Bank N.A. at an interest rate not to exceed 2.0% for a period of 12 months. Proceeds from the line of credit are designated for the authority's acquisition of the former Presbyterian Homes senior housing units. There was an outstanding balance of $20.0 million and $19.0 million at Dec. 31, 2017 and 2016, respectively.

Governance and Management

CHA is governed by a 10 member board of commissioners including a board chairperson. Members are appointed by the Mayor and confirmed by City Council. At least two commissioners are CHA residents. In the last few years, numerous board members have been appointed in order to strengthen the board as well as due to members stepping down after reaching the maximum five-year term. Board members bring a broad range of experience and are deeply rooted in public service.

Day-to day operations are managed by an executive team that includes the chief executive, chief operating officer, chief financial officer, chief investment officer, chief administrator, chief legal officer, chief development officer and chief property officer. Most of the executive staff joined CHA or have taken on their respective role since 2015. This is the result of a review to refocus the team on strategic change and to help drive their mission and build new partnerships involving people, process data and systems and to create a more efficient and effective structure. Each team member brings extensive experience reaching all facets of the sector and maintains a strong relationship with HUD and key stakeholders. The chief executive has over 35 years' experience in the industry and has recently renewed his contract with CHA for the next two years.

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National League of Cities Releases Small Cell Guide for Local Government.

The equipment is popping up in urban environments across the country, and the NLC is trying to educate local governments before 5G hits.

As small cell wireless equipment — those little cell service-spreading doohickeys attached to structures such as streetlights and utility poles — proliferates across the U.S., the National League of Cities (NLC) is looking to help local governments make decisions about how to allow it.

It's a move the Federal Communications Commission (FCC) has already undertaken, as it drafts a model ordinance for cities to adopt or build upon. The NLC saw some shortcomings in that effort, and decided to publish its own.

"One important thing to keep in mind is that no national model is ever going to solve everybody's problems, and that was one of the issues with the [FCC] model from the outset," said Angelina Panettieri, a principal associate of technology and communications for NLC.

Toward that end, the ordinance leaves a lot of room for local governments to make considerations about what they want to do — for example, holding public hearings for every small cell installation or gathering input on the general concept and then setting up an administrative review process to cut down on the amount of time it takes to approve each project.

That was the approach that Raleigh, N.C., took.

“They actually engaged citizens through a more formal process … they really gave residents the opportunity to weigh in on the look and feel and design of this new equipment,” said Nicole DuPuis, a principal associate of urban innovation for NLC.

The organization also released a guide explaining the fundamentals of small cell technology and what it’s there for.

“Our focus has actually been on the guide for most of the last year and change,” Panettieri said. “We thought it was important that a nontechnical resource be available to local officials just to understand what small cell technology is and why it’s important to their communities so they aren’t completely caught off guard when [companies] come to them and want to build.”

Small cells, which have a short range and are most often deployed in denser urban environments to serve high demand, are a part of the connectivity backbone cities are building out in anticipation of smart city-type technology like pedestrian-counting sensors, but telecommunications firms are looking at them in another way: preparation for 5G wireless.

“5G is going to use a higher portion of the spectrum that, because of the wavelength, is not going to be able to transmit very far,” she said.

The equipment does face local opposition in a lot of places. One sticking point is design — especially in places with older architecture, modern equipment can look out of place. A 2018 study by RVA Research, sponsored by the pro-broadband nonprofit Next Century Cities, found that the appearance of the equipment was the most common complaint about small cells.

The NLC guide includes a brief case study of how Boston worked with companies and community members to come to an agreement on how to help the equipment blend in more naturally with the cityscape.

Another is local concern about radio frequency radiation and whether it might increase cancer rates — though there doesn’t appear to be much evidence that it does, scientists are still researching to more definitively answer questions. Furthermore, the FCC hasn’t updated its guidelines on safe levels of radio frequency radiation exposure since 1996.

“It’s reasonable for people to want to know that something close to street level is safe,” Panettieri said.

A lot of local governments might not have to worry much about small cell installations, since Panettieri said telecommunications companies have mostly targeted middle-sized and larger cities for the equipment.

Nonetheless, the number of deployments is likely to rise, with telecommunications firms planning to look more to small cells as they compete with each other to set up 5G networks.

Government Technology

by Ben Miller
Staff Writer

August 31, 2018

IRS Proposed Regulations Erode South Carolina Conservation Easement Tax Credit.

On August 23, 2018 the Internal Revenue Service issued Proposed Regulations regarding the $10,000 cap on the deductibility of state and local taxes imposed under the Bipartisan Budget Act of 2018 (Code Section 164(b)(6)).

The Proposed Regulations were issued in response to a work around proposed by states with high state and local tax rates. For example, to avoid the new $10,000 cap on the deductibility of state and local income taxes, New York adopted legislation that permitted property taxpayers to make a charitable contribution to state or municipal governmental entities in exchange for a credit against state or municipal taxes. Under this statutory scheme taxpayers could convert a state and local tax deduction, which is capped at $10,000, into a charitable contribution deduction with no cap.

The Proposed Regulations provide that if a taxpayer makes a payment to an entity which would otherwise entitle the taxpayer to a charitable deduction and the taxpayer in return receives or expects to receive a state or local tax credit in exchange for such payment, the tax credit constitutes a return benefit, a quid pro quo, which reduces the charitable deduction. Specifically the Proposed Regulations provide that the amount of any charitable deduction otherwise available to a taxpayer is reduced by the amount of any state or local tax credit that the taxpayer receives or expects to receive in consideration for the taxpayer's payment or transfer.

The Proposed Regulations provide a de-minimis exception if the state tax credit does not exceed 15% of the amount paid ("contributed") by the taxpayer or 15% of the fair market value of the property transferred by the taxpayer.

South Carolina provides a state tax credit equal to the lesser of 25% of the charitable deduction resulting from the gift of a qualified conservation contribution or $250 per acre of property to which the qualified conservation contribution applies. Under the Proposed Regulations, a South Carolina taxpayer may lose a portion of their charitable contribution deduction as a result of their receipt of the state tax credit.

For example, if a taxpayer owns a 1,000 acre farm with a value before the conservation easement of $3,000,000 and a value of $1,800,000 after placing a conservation easement on the farm the charitable deduction will be $1,200,000 and the state tax credit will be $250,000 ($250,000 is less than $1,200,000). The 15% safe harbor under the Proposed Regulation is $180,000 (1,200,000 x 15% = $180,000). The state tax credit $250,000 exceeds the 15% safe harbor amount ($180,000) and accordingly the taxpayer's charitable deduction is reduced by $70,000.

The regulations, which are in proposed form but are applicable to gifts made after August 22, 2018, suggest that that upon issuance of the final regulations the IRS may allow the taxpayer to decline state or local tax credits and receive full deduction for their charitable contribution.

Haynsworth Sinkler Boyd, P.A.

August 31, 2018

[Is This The Real Reason For Chicago's Pension Obligation Bond Proposal?]

Why is Chicago pursuing issuing $10 billion in bonds to remedy its pension funds' woeful underfunding? The answer, we're told, is that the city hopes to earn money with an investment return greater than the interest rates they'll be paying to investors for these bonds. But the real reason — or a significant contributor to their motivation — may be entirely different: due to the nature of pension accounting for government benefits, their real objective may be to keep the plans' valuation interest rates high by avoiding a poorly-funded-plan "penalty" interest rate.

Here's the background:

Continue reading.

Forbes

by Elizabeth Bauer

Aug 28, 2018

[Emanuel Defends $10 billion Pension Bond Plan.]

Mayor Rahm Emanuel on Wednesday offered a spirited defense of his controversial plan to sell more than $10 billion in pension obligation bonds to minimize the need for another punishing round of post-election tax increases, even as he insisted that a final decision has not yet been made.

Mayoral challenger Paul Vallas has urged the City Council to stop that train from leaving the station to avoid putting Chicago taxpayers in what he called a "financial straightjacket."

Former Police Board President Lori Lightfoot, who's also running for mayor, has likewise demanded that Emanuel "slow down the process and open it to public scrutiny." She wants a detailed plan subject to an independent analysis, followed by "multiple public hearings" and "substantive debate."

On Wednesday, Emanuel made his first public comment about the massive borrowing that has municipal finance experts waving red flags.

"I've asked my staff to explore all options to achieve the goals of retirement security without overburdening our taxpayers. It would be equally reckless not to explore options … to avoid a significant tax increase when you can minimize that and shore up peoples' pensions. If we didn't do that, we wouldn't be doing our jobs," Emanuel said.

"So I've asked everybody to explore all available options and think creatively out of the box. One of the things I won't do is kick the can down the road."

Vallas has argued that kicking the can is precisely what Emanuel is doing.

It allows the mayor to wait until after the election to spell out which taxes he intends to raise when the five-year ramp to actuarial funding will end and taxpayers will be on the hook to keep city employee pension funds on the road to 90 percent funding.

By 2023, the city's contribution to all four funds will nearly double — from $1.2 billion this year to

$2.1 billion, according to the city's annual financial analysis.

Asked Wednesday about Vallas' claim, Emanuel fell back on the same argument that prompted the long-simmering tensions between Emanuel and Mayor Richard M. Daley to boil over last spring. At the time, William Daley demanded that Emanuel "put on his big-boy pants" and stop blaming his older brother for the $2 billion avalanche of tax increases imposed, just to begin to solve Chicago's $28 billion pension crisis.

"I didn't create this problem. That's all I've got to say. I'm here in asking the public and trying to figure out, how do you ensure people's retirement, which was not done before. And how do we ensure that we don't let the cost explode to taxpayers," the mayor said.

"I think it's a responsible thing because we've had a lot of irresponsible decisions made. The responsible thing is to explore options that achieve both goals."

After joining the mayor at a ribbon-cutting ceremony for the new Chicago Architecture Center, Ald. Brendan Reilly (42nd), vice-chairman of the City Council's Budget Committee, said he, too, has "reservations" about the pension borrowing that would dwarf the city budget.

"Versions of this idea have not gone well in other municipalities. That's why the details of this proposal are so important," Reilly said.

"If this is truly a different type of deal than other cities have done, then we need to see that on paper and understand the numbers and how those work. The last thing we want to do is saddle taxpayers with even more liabilities on the back end of this deal."

Emanuel points with pride to having identified dedicated funding sources for all four city employee pension funds. But Chicago taxpayers have paid a heavy price.

They have already endured a parade of property tax increases for police, fire and teacher pensions; two increases in the monthly tax tacked on to telephone bills; and a 29.5 percent surcharge on water and sewer bills.

If Emanuel decides to forge ahead, the city would take a portion of its $28 billion in pension debt and finance it at an interest rate considerably lower than the 7-to-7.5 percent annual rate of return assumed by the four city employee pension funds.

Last week, Chief Financial Officer Carole Brown told aldermen the city may sell even more than $10 billion in pension obligation bonds if there's enough available city revenue to support it. Brown has not explained what the city's fallback would be if the market tanks.

She promised a final decision on whether to proceed by early September.

The Chicago Sun-Times

By Fran Spielman

08/29/2018

- Seven Things to Know About the SEC's Amendments to Rule 15c2-12: McGuireWoods

- SEC Approves Narrower 15c2-12 Disclosure Amendments.
- Sneaky But Legal Use Of General Obligation Bonds.
- S&P: For Many Muni Issuers, Technology Brings Financial Benefits, But Also Increasing Credit Risks
- How Rising Interest Rates and Widening Credit Spreads Will Drive Greater Use of Bond Insurance.
- Trump Trade War Prompts State Warnings to Bond Investors.
- *Davis v. Detroit Public Schools Community District* – Court of Appeals holds that opponents of public financing for construction of sports arena lacked standing to seek declaratory and mandamus relief to require school board to place on next city election ballot question asking city voters to approve or disapprove of tax increment finance entities' use of property tax revenue intended for school operating purposes to finance sports arena.
- And finally, Ah, So *That's* What Happened To My Pants is brought to us this week by *Norfolk Southern Railway Company v. Johnson*, in which a man was reported as "possibly intoxicated, maybe on something" and was "stripping his clothes off and walking up towards the stockyards." As your Editor, I would like to take this opportunity to express my deepest regrets regarding my unacceptable conduct on the night of…. Wait. What? Some guy named Chris Matano? Not me, eh? Hmm… Suppose that particular apology has, over the years, simply become a bit of a reflex.

CITY COUNCILS - CALIFORNIA

Pease v. Zapf

Court of Appeal, Fourth District, Division 1, California - August 17, 2018 - Cal.Rptr.3d - 2018 WL 3948515 - 18 Cal. Daily Op. Serv. 8314

Unsuccessful primary election candidate for city council filed petition challenging successful candidate's eligibility for office.

The Superior Court entered judgment in favor of successful candidate. Unsuccessful candidate appealed.

The Court of Appeal held that:

- Laches doctrine did not preclude action even though it was brought after primary election, and
- City charter provision stating that no person may serve more than two consecutive four-year terms as "[c]ouncil member from any particular district" precluded a person from serving more than two consecutive terms while representing the same district, rather than precluding an individual from serving as a council member for more than two consecutive terms while residing in a given district.

EMINENT DOMAIN - ILLINOIS

Balagna v. United States

United States Court of Federal Claims - August 6, 2018 - Fed.Cl. - 2018 WL 3725495

After Surface Transportation Board (STB) issued a Notice of Interim Trail Use (NITU) based on railroad company's agreement to negotiate an interim trail use/rail banking agreement with city park district following company's application to abandon 14.5-mile right-of-way, opt-in class of plaintiffs, which included private landowners, filed separate complaints against the government, alleging a permanent taking of their property interests, even though no final trail use agreement was in place, and seeking just compensation based on issuance of NITU under methodology used in cases involving permanent takings.

Cases were consolidated, parties cross-moved for partial summary judgment, and government requested a stay.

The Court of Federal Claims held that:

- Plaintiffs suffered a taking of their property when STB issued the NITU;
- Plaintiffs were not entitled to computation of just compensation on the basis of the methodology that applied to permanent takings;
- Whether there was any diminution in value arising out of uncertainty regarding crossing rights following issuance of NITU was material fact issue precluding summary judgment in favor of government; and
- Government was not entitled to a stay.

In a rails-to-trails case, a taking occurs when the railroad and trail operator communicate to the Surface Transportation Board (STB) their intention to negotiate a trail use agreement and the agency issues a Notice of Interim Trail Use (NITU), for it is that action which operates to preclude abandonment of the railroad right-of-way, thereby blocking reversionary property interests and preventing the landowner from possessing their property unencumbered by the easement.

Private landowners were not entitled to computation of just compensation on the basis of the methodology that applied to permanent takings for taking of property that was subject to right-o--way easements for operation of railway when Surface Transportation Board (STB) issued a Notice of Interim Trail Use (NITU), since a trail use agreement had not been reached.

LIABILITY - KENTUCKY

Norfolk Southern Railway Company v. Johnson

Supreme Court of Kentucky - August 16, 2018 - S.W.3d - 2018 WL 3912866

City patrol officer, who was injured when she fell while descending embankment during pursuit of suspect, brought premises-liability action against landowner, asserting that embankment was dangerous condition.

The Circuit Court granted landowner’s motion for directed verdict. Patrol officer appealed. The Court of Appeals reversed and remanded. Landowner sought discretionary review.

The Supreme Court of Kentucky held that:

- Landowner did not call law enforcement about suspect did not preclude landowner from asserting firefighter rule to bar claim;
- Officer, as incident of her occupation, came to landowner’s property to engage specific risk, as supported application of firefighter’s rule; and
- Officer’s injury was result of risk that officer was called upon to engage, and thus firefighter’s rule barred claim.

DEVELOPMENT FEES - MINNESOTA

[Harstad v. City of Woodbury]

Supreme Court of Minnesota - August 15, 2018 - N.W.2d - 2018 WL 3868465

Developer filed suit against statutory city seeking declaration that city could not condition grant of application for subdivision on developer's payment of infrastructure charge representing amount for "major roadway and intersection improvements" that would be "required to accommodate traffic generated by [proposed development] and surrounding areas."

The District Court granted developer's motion for summary judgment and declared that assessment was unenforceable. City appealed. The Court of Appeals affirmed. City's petition for review was allowed.

The Supreme Court of Minnesota held that:

- Statutory city lacked statutory authority to condition grant of application for subdivision on developer's payment of infrastructure charge, and
- City's authority to enter into development contract embodying terms and conditions of approval of subdivision did not authorize city to condition approval on developer's payment of infrastructure charge.

Statute governing subdivision regulation, which authorized city to condition approval of subdivision application on developer either constructing or installing improvements or providing form of financial security that was sufficient to assure city that improvements will be constructed or installed according to city specifications did not confer statutory city with authority to condition grant of application for subdivision on developer's payment of infrastructure charge for major roadway and intersection improvements that would be required to accommodate traffic generated by proposed development and surrounding areas; infrastructure charge did not constitute "cash deposit" or "other financial security," where, if application was approved on condition that developer built agreed-upon infrastructure or improvement, and developer failed to meet condition, then financial security would serve to ensure funding and completion of improvements as approved by city, but if developer completed project and satisfied condition, then city was required to return to developer any financial security provided, and infrastructure charge was not program designed to provide financial security.

Statute governing subdivision regulation, which authorized city to condition approval of subdivision application on developer's "compliance with other requirements reasonably related to the provisions of the regulations and to execute development contracts embodying the terms and conditions of approval," did not confer statutory city with broad grant of authority to condition grant of subdivision application on developer's payment of infrastructure charge for major roadway and intersection improvements that would be required to accommodate traffic generated by proposed development and surrounding areas; infrastructure charge was not voluntary, and thus was not true negotiated term of development contract, since developer who failed to make payment in amount city found acceptable faced prospect of denial of application, power to enter into development contract did not include power to assess infrastructure charge, and because city lacked statutory authority to assess infrastructure charge, such authority could not be written into contract.

CONTRACTS - MISSISSIPPI

[Hemphill Construction Company, Inc. v. City of Clarksdale]

Supreme Court of Mississippi - August 16, 2018 - So.3d - 2018 WL 3913255

High bidder filed a bill of exceptions, appealing city's decision to award construction contract to low bidder.

The Circuit Court found city's award of construction project to low bidder did not violate state law, and high bidder appealed.

The Supreme Court of Mississippi held that:

- City was without statutory authority to either award a bid for public construction project, or to negotiate with the lowest bidder to enter into a contract for an amount greater than the amount of the funds allocated;
- It was unreasonable for city to infer that it had the authority to hold open bid that exceeded the funds allocated for a public construction project by more than ten percent while it attempted to secure additional funds; and
- Purpose of the law on public contract bidding to protect the public negated any inference that city could hold open lowest bid to allow it to secure additional funds.

EMINENT DOMAIN - NEW YORK

Johnson v. Town of Caroga

Supreme Court, Appellate Division, Third Department, New York - June 21, 2018 - N.Y.S.3d - 162 A.D.3d 1353 - 2018 WL 3058262 - 2018 N.Y. Slip Op. 04615

Property owners petitioned for review of town's determination condemning portion of their property for purpose of ensuring access to recreational trails.

The Supreme Court, Appellate Division, held that condemnation served public purpose as required for town to exercise eminent domain power.

Town's condemnation of strip of land served public purpose, as required for town to exercise eminent domain power, where condemnation ensured continued public access to trails on state lands for snowmobiling, hiking, and other recreational activities by residents and visitors, enhancing tourism and providing economic benefit; strip provided most direct, feasible, and safe means of accessing recreational trails, and condemnation protected abutting property owners from claims of liability by persons who traveled upon strip of land.

ZONING & LAND USE - VIRGINIA

Prince William Board of County Supervisors v. Archie

Supreme Court of Virginia - August 9, 2018 - S.E.2d - 2018 WL 3768771

Owner of automobile salvage business petitioned for writ of certiorari after county board of zoning appeals upheld zoning administrator's denial of a nonconforming use verification for parcel used by owner as an automobile graveyard.

The Circuit Court entered judgment reversing the board's decision, and county appealed.

The Supreme Court of Virginia held that:

- Owner's use of parcel as an automobile graveyard prior to county's enactment of zoning ordinance

established parcel’s status as a lawful nonconforming use, and
- Nonconforming use of parcel was not discontinued, so as to terminate its nonconforming use status under county zoning ordinance, when purchaser did not place junk vehicles or parts on the parcel throughout its five-year period of ownership.

Sneaky But Legal Use Of General Obligation Bonds.

Every time you read an article or see on television that someone was incarcerated for 20 years but later proven innocent, you’ve got to think, *how are they going to be repaid?* Or you read about a lawsuit against a city for police brutality, civil rights violations, or killing an innocent person—you know there’s going to be huge payout.

Perhaps it’s Michigan State University, or USC being sued for a faculty member’s grotesque misconduct against the school’s students while the university sat by doing nothing to avoid rocking their financial boat. There will be monetary damages. These atrocities, each and every one of them, have financial consequences to the cities and institutions that employed the guilty parties. Whether it’s a civil ruling or a settlement, money—lots of money—goes to the victims.

Where do these enormous amounts of money come from? Therein lies the problem. The payouts are growing fast. According to Bloomberg, states and municipalities so far in 2018 have raised $1.6 billion, up from $826 million in 2017 and just $281 million in 2016 to pay for legal judgments.

They certainly hadn’t budgeted for these expenses. The cash wasn’t in the city’s treasury. Where did it come from? Sometimes they borrowed it from the municipal bond market. Municipal indebtedness in the form of judgment bonds is growing fast. These bond issues leave state and local governments with decades of interest payments, leading up to the maturity date when they must cough up with the principal.

I’d say these judgment bonds are appropriately named. At least they tell buyers what the bond proceeds are used for. Contrast that with police-related settlements, wrongful death judgments, or payment for dastardly deeds perpetrated by city officials that are paid for by issuing general obligation bonds. This technique is sneaky, but so far legal.

You may think only obscure issuers would deliberately hide the true use of a bond’s proceeds—untrue. In August 2018 Dallas issued $58.7 million general obligation bonds (CUSIP: 235219NS7) whose sole purpose was to pay for the lawsuits associated with firefighter and police pay. The total amount needed to settle comes to $235 million so there will likely be more bonds issued. The Official Statement identifies the bonds as refunding and specifically says the debt is for legal settlements.

Wait a minute. Aren’t general obligation bonds issued for infrastructure projects like roads, parks, bridges and other capital improvements that serve the municipality and enable it to thrive? Apparently, not any more.

I am appalled at the ability of an issuer to conceal judgment liabilities under their general obligation umbrella. Legal, schmegal—do-it-yourself investors who don’t read their municipal bond Official Statements may never know. An investor would have to dig in and find—on page 35 of the Dallas Official Statement—where the city states the true intended use for the bond proceeds. Who’s going to do that? Professionals, yes. Individual investors, probably not.

Many investors will be morally outraged if they knew what these general obligation bonds were actually being used for and how the issuer was intentionally conducting such financial slight of hand.

Here are some other judgment bond issuers: Nassau County, New York for a wrongful conviction; Milwaukee, Wisconsin; San Juan Capistrano, CA for a real estate development lawsuit. Los Angeles has been on-again off-again to pay off legal settlements and court judgments against the city.

Although issuing GOs for specific purposes—such as the payment of lawsuits—is legal, I think it is deceptive. Caveat emptor.

Forbes

by Marilyn Cohen

Aug 20, 2018

Marilyn Cohen is founder and CEO of Envision Capital Management, a Los Angeles fixed-income money manager.

MSRB Supports SEC Decision Regarding Bank Loan Disclosure.

Washington, DC — The Municipal Securities Rulemaking Board (MSRB) today said it supports a decision by the Securities and Exchange Commission (SEC) that will result in issuers of municipal securities and obligated persons publicly disclosing additional information about bank loans and other material financial obligations, certain material terms in connection with financial obligations, and specified events that reflect financial difficulties.

"The MSRB believes this SEC action is a major step to ensure investors have a better understanding of the financial status of municipal securities issuers and conditions that could affect the repayment of bonds," said MSRB President and CEO Lynnette Kelly.

The SEC decision to amend its Rule 15c2-12, designed to ensure the public availability of certain disclosures about municipal securities, means that additional information about bond issuers will be available on the MSRB's Electronic Municipal Market Access (EMMA®) website. EMMA provides public access to municipal bond trade price, disclosure and other information.

Under Rule 15c2-12, municipal securities underwriters generally must secure an agreement from issuers and obligated persons to make publicly available certain ongoing information about the security. Examples include annual financial statements and the occurrence of certain material events. The new disclosures required by the SEC's action must be included in continuing disclosure agreements in connection with offerings that occur after the compliance date specified in the SEC's order (180 days following publication of the order in the Federal Register).

The MSRB is in the process of updating the EMMA website to accept and display the new disclosures. EMMA currently accepts and displays bank loan and alternative financing disclosures on a voluntary basis.

Date: August 21, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer

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[S&P: For Many Muni Issuers, Technology Brings Financial Benefits, But Also Increasing Credit Risks]()

The foundation of U.S. public finance (USPF) and governance is built upon a relationship of transparency and trust among public entities, financial institutions, and the constituencies they serve. The public finance sector largely benefits from disruptive technological innovation and tools that transform how entities do business.

[Continue Reading]()

Aug. 22, 2018

[How Rising Interest Rates and Widening Credit Spreads Will Drive Greater Use of Bond Insurance.]()

The use of municipal bond insurance has diminished substantially since the financial crisis. Low interest rates and tighter credit spreads have reduced the benefits of bond insurance for municipalities.

In this article, we examine why the use of bond insurance should grow as rising interest rates drive higher borrowing costs and concerns over rising credit risk make it difficult to make a sound investment decision.

The Case for Municipal Bond Insurance

Bond insurance is used to guarantee the timely principal and interest payments of a bond issuer or obligor. The bond insurer charges a premium to the bond obligor to insure or “wrap” the bonds. Bond insurance is structured so that it benefits the bond investor, the bond obligor and the bond insurer. The bond investor benefits from the protection provided by bond insurance in the event of a default. If the bond obligor defaults, the bond insurer makes the interest or principal payment and the bond investor avoids taking losses. Assuming the bond insurer has a higher creditworthiness than the obligor, the obligor benefits from lower borrowing costs. Lastly, the bond insurer benefits when they profit from the premium charged to bond obligors who do not default.

[Continue reading.]()

municipalbonds.com

by Joshua Hudson

Aug 22, 2018

Trump Trade War Prompts State Warnings to Bond Investors.

CHICAGO, Aug 27 (Reuters) – U.S. states worried about a negative impact on their finances from escalating trade disputes instigated by President Donald Trump are beginning to caution bond investors.

Washington and Illinois, two of last year's top five export states by dollar value, for the first time warned about potential trade-related consequences in documents for recent bond sales.

Issuers in the $3.8 trillion U.S. municipal bond market have previously disclosed possible financial risks due to other Trump administration policies. Last year, the president's move to repeal the U.S. Affordable Care Act and monetarily punish so-called sanctuary cities for their protection of undocumented immigrants popped up in bond documents from New York City, Oregon and others. here

Now an expanding tariff war with China and Trump's threat to withdraw from the 24-year-old North American Free Trade Agreement between the United States, Mexico and Canada are leading some of the biggest states for exports to issue new alerts to investors.

Washington state cited "international trade policy uncertainty" in a disclosure document for its $502 million general obligation bond sale this week.

"The federal administration and Congressional leaders have attempted, proposed or made major changes to the trade policy, in addition to other actions, which could potentially have detrimental effects on the state's budget," the bond issue's preliminary official statement (POS) said.

The document also noted that Washington is one of the "most trade-intensive" states with $90.4 billion in exports in 2016, largely going to Canada, China and Japan.

"At this point in time, we don't have a lot of concrete information, but we thought it was appropriate to acknowledge it's a concern," Jason Richter, the state's deputy treasurer, said in an interview.

Ahead of a $966 million GO refunding bond sale last week, Illinois also cited for the first time escalating trade wars that could negatively impact the state's agricultural and manufacturing industries and possibly the state's already shaky financial condition.

"Higher tariffs on imports will likely lead to retaliation by trading partners, which could reduce exports," the POS for Illinois' deal said.

While California had previously listed U.S. trade policy changes as being potentially detrimental to its budget, the POS for the state's Sept. 6 sale of $989 million of GO bonds cited changes to international trade relations due to federal policies as a potential recession trigger.

Texas, the top state for exports in 2017 according to the Census Bureau, is monitoring trade discussions and "should the outcomes have a material impact on our state economy, we'd provide appropriate disclosure," Kevin Lyons, spokesman for the state's Comptroller of Public Accounts, said in an email.

The disclosures follow increased vigilance by credit rating agencies.

Iowa, Kansas, Nebraska and North Dakota were cited by Moody's Investors Service earlier this month as the states most vulnerable to the nation's trade dispute with China due to their high dependence on agriculture. However, none of those states are big bond issuers.

S&P Global Ratings last month singled out West Coast states like Washington as at risk due to a big export-related labor force and noted that Texas and Louisiana "are particularly exposed as their economic industries are strongly intertwined with global supply chains and ancillary services which support local economies."

Reporting by Karen Pierog in Chicago Editing by Matthew Lewis

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Seven Things to Know About the SEC's Amendments to Rule 15c2-12: McGuireWoods

In about six months, municipal bond issuers and obligated persons will see additions to their continuing disclosure undertakings related to SEC Rule 15c2-12, and broker-dealers will need to have systems in place to ensure compliance with those new undertakings.

On Aug. 20, the Securities and Exchange Commission released adopted amendments to Rule 15c2-12, adding two events to the list of events needed to be included in continuing disclosure undertakings related to Rule 15c2-12. The amendments also add to Rule 15c2-12 a corresponding definition and make a technical amendment.

Pursuant to these amendments, future continuing disclosure undertakings must include the following notice events:

(a) Incurrence of a material financial obligation of the issuer or obligated person, or agreement to covenants, events of default, remedies, priority rights or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material; and

(b) Default, event of acceleration, termination event, modification of terms or other similar events under the terms of a financial obligation of the issuer or obligated person, any of which reflect financial difficulties.

The amendments define "financial obligation" as a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The definition does not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board (MSRB), consistent with Rule 15c2-12.

In addition to issuers and obligated persons updating the form of a continuing disclosure agreement (and their disclosure policies), and broker-dealers updating their 15c2-12 compliance procedures, below are seven notable takeaways from the adopting release (Exchange Act Release No. 34-83885):

1. **Existing continuing disclosure undertakings are unaffected.** The amendments apply only to "primary offerings" that close on or after the compliance date, which is 180 days after publication of the amendments in the Federal Register. A "primary offering" is an offering of municipal securities directly or indirectly by or on behalf of an issuer of such securities, including any remarketing of municipal securities (i) that is accompanied by a change in the authorized denomination of such securities from $100,000 or more to less than $100,000; or (ii) that is accompanied by a change in the period during which such securities may be tendered to an issuer

of such securities or its designated agent for redemption or purchase from a period of nine months or less to a period of more than nine months.In other words, after the amendments become effective, existing continuing disclosure undertakings will be unaffected by the amendments. However, existing undertakings related to securities that are remarketed as part of a primary offering under 15c2-12 (where the remarketing closes after the compliance date), will need to be revised to comply with the amendments.

2. **The definition of "financial obligation" includes only debt, debt-like and debt-related obligations, but it does not include ordinary liabilities.** In the adopting release, the SEC notes that ordinary financial and operating liabilities are not included in the definition of financial obligation. When earlier proposed, the amendments included a broader definition of financial obligation. However, based on public comments received, the SEC elected to narrow the definition of financial obligation to transactions that are debt, debt-like or debt-related because those transactions are more likely to affect liquidity, overall creditworthiness or an existing security holder's rights. (See Section III(A)(2)(i) of the adopting release.)
3. **Event notices must be filed upon the occurrence of any of the events that reflect financial difficulties, regardless of whether the related financial obligation was incurred before the effective date of the amendments.** Unlike the impact of the amendments on existing continuing disclosure undertakings described in (1) above, if a default or other event reflecting financial difficulties under any financial obligation occurs (regardless of when that financial obligation was incurred), an event notice would be required under an undertaking that includes the notice events added by the amendments. (See Section III(A)(3)(v) of the adopting release.)
4. **Broker-dealers will not need to perform diligence on an issuer's or obligated person's past compliance with the events added by the amendments unless the issuer or obligated person has a continuing disclosure undertaking that includes the added events.** The SEC recognized that for continuing disclosure agreements entered into before the compliance date, the recommending dealer would receive notice solely of those events covered by such continuing disclosure undertaking, which would likely not include any of the events added by the amendments. Consequently, the adopting release states that for municipal securities issued prior to the compliance date, broker-dealers will not need to have procedures in place that provide reasonable assurance that they will receive prompt notice of the events added by the amendments. However, a dealer cannot recommend the purchase or sale of a municipal security unless the dealer has procedures in place that provide reasonable assurance that it will receive prompt notice of any event disclosed pursuant to paragraphs (b)(5)(i)(C) and (D) and paragraph (d)(2)(ii)(B) of Rule 15c2-12 with respect to the security.
5. **Leases are not included in the definition of financial obligation, except when they are debt or debt-like.** The proposed definition of financial obligation included leases, but the SEC deleted lease from the definition in the adopted version because it considered the term too broad. However, any lease that operates as a vehicle to borrow money, such as an equipment financing lease, is included in the definition. (See Section III(A)(2)(i) of the adopting release.)
6. **A notice of the incurrence of a material financial obligation generally should include a description of the material terms of the financial obligation.** However, the SEC provided little guidance on its interpretation of materiality, leaving the determination to the reporting entity. The SEC provided the following examples of material terms: date of incurrence, principal amount, maturity and amortization, interest rate (if fixed) or method of computation (if variable) plus any default rates, and other terms, depending on the circumstances. The SEC acknowledges that this requirement may, depending on the facts, be achieved by submitting a summary of the terms, the term sheet or the applicable transaction documents, like a continuing covenant agreement.
7. **Derivative instruments of the type described in the definition of financial obligation must always be disclosed on EMMA, even if the underlying debt would be exempt from**

disclosure under the amendments because the underlying debt is the subject of a final official statement that was provided to the MSRB. Such exemption from disclosure extends only to securities for which a final official statement is required to be provided to the MSRB under Rule 15c2-12. It does not extend to the derivative instrument related to those securities. In addition, the exemption does not extend to securities for which the final official statement was provided to the MSRB voluntarily. Only securities in a primary offering that is subject to Rule 15c2-12 are exempt under the amendments.

McGuireWoods LLP

August 24 2018

SEC Adds Two New Disclosure Events to Rule 15c2-12.

On August 20, 2018, the US Securities and Exchange Commission (SEC) adopted amendments to Rule 15c2-12 under the Securities Exchange Act of 1934. These amendments require additional disclosure related to the material financial obligations of municipal issuers and conduit borrowers.

Through Rule 15c2-12, the SEC indirectly imposes disclosure obligations on municipal issuers and obligated persons by requiring that underwriters in primary offerings of municipal securities reasonably determine that the issuer or obligated person has agreed to provide certain annual financial and operating information, audited financial statements and timely notice of certain events to the Municipal Securities Rulemaking Board (MSRB). Previously, notice event obligations were largely tied to events affecting the securities issued in that particular offering—for example, payment defaults, changes to credit or liquidity providers, or adverse tax opinions to the extent that any of the foregoing affected those securities. These amendments represent a shift toward more timely and comprehensive disclosure about the issuer or obligated person's financial health.

The SEC has become more active in regulating the municipal securities markets in recent years. An increase in direct placements of debt obligations with banks or investors in lieu of public offerings has led regulators to focus more on general disclosure of financial obligations. The MSRB and other industry organizations had encouraged voluntary disclosure with respect to financial obligations. However, after these efforts elicited only limited participation, the SEC determined that amending Rule 15c2-12 was appropriate to "improve [investors'] ability to analyze their investments and, ultimately, make more informed investment decisions." Consequently, the amendments add the following two notice events:

- "Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material; and
- "Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties."

These notice events are consistent with the SEC's March 2017 proposed rule. In response to several commenters' concerns about the broad definition of "financial obligation" in the proposed rule, the SEC narrowed the definition of "financial obligation" in the final rule to mean a "(i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, and existing or planned debt obligation; or (iii) a guarantee of (i) or (ii)."

While there are substantive differences, these additional notice events will remind conduit borrowers that are also SEC registrants of the Form 8-K events relating to material definitive agreements, material financial obligations and triggering events that accelerate or increase a financial obligation.

The compliance date for these amendments will occur 180 days after the amendments are published in the Federal Register. Beginning on that date, municipal issuers and obligated persons entering into continuing disclosure agreements required by Rule 15c2-12 will need to include the new notice events. Continuing disclosure agreements entered into prior to the compliance date will not be affected.

For the SEC's press release regarding the amendments, see https://www.sec.gov/news/press-release/2018-158.

Eversheds Sutherland (US) LLP

by Herbert J. Short, Jr., Darryl F. Smith and Will Pickens

August 23 2018

SEC Adopts Amendments to Rule 15c2-12.

On August 20, 2018, the U.S. Securities and Exchange Commission ("SEC") announced it adopted amendments to Rule 15c2-12 of the Securities Exchange Act ("Rule 15c2-12"). Rule 15c2-12 requires brokers, dealers, and municipal securities dealers that are acting as underwriters in primary offerings of municipal securities to reasonably determine that the issuer or obligated person has agreed to provide to the Municipal Securities Rulemaking Board ("MSRB") timely notice of certain events.

The adopted amendments add two new events to the list included in the rule:

(15) Incurrence of a financial obligation of the issuer or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material; and
(16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation of the issuer or obligated person, any of which reflect financial difficulties.

The amendments define the term "financial obligation" to mean a: (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term financial obligation does not include municipal securities as to which a final official statement has been provided to the MSRB consistent with Rule 15c2-12.

While the amendments address some of the concerns raised by market participants, the amendments do not address all of the concerns. For example, numerous commenters asked the SEC to provide guidance on how to determine the materiality of a financial obligation. The SEC responds by stating that an issuer may consider a number of factors when assessing the materiality of a particular financial obligation, however, at this time, the SEC does not believe it is necessary to provide additional guidance.

The compliance date for the amendments is 180 days after the amendments are published in the Federal Register (the "Compliance Date"). The amendments will only affect those continuing disclosure agreements entered into on or after the Compliance Date. However, an event under the terms of a financial obligation pursuant to (b)(5)(i)(C)(16) that occurs on or after the Compliance Date must be disclosed regardless of whether such obligation was incurred before or after the Compliance Date.

A copy of the SEC's adopting release may be found here.

It is important that market participants understand the impact of the amendments on their current obligations, including under the federal securities laws and MSRB rules.

Bracewell LLP

by Paul S. Maco, Edward Fierro and Britt Cass Steckman

August 20 2018

How Bill Would Help Muni Bond Financing of Water, Sewer Projects.

WASHINGTON – Private activity bonds issued to finance water and sewer infrastructure projects would be exempted from state PAB volume caps under a bipartisan bill introduced this week by two Senators.

The "Sustainable Water Infrastructure Investment Act" (S. 3358) was introduced on Tuesday by Sens. Bob Menendez, D-N.J. and Mike Crapo, R-Idaho. They have introduced similar bills in past years.

The legislation has been referred to the Senate Finance Committee, on which both senators are members.

The bill is similar to one introduced in the House last year by Reps. John Duncan, R-Tenn., and Bill Pascrell, D-N.J. The two congressmen offered that bill, also called The Sustainable Water Infrastructure Investment Act (H.R. 3009), on June 22 of last year.

The bill in the House has seven other cosponsors and has been referred to the House Ways and Means Committee, on which Pascrell is a member.

The National Association of Water Companies applauded the bills in a release about the one offered by Menendez and Crapo.

"There's widespread consensus that our nation's water infrastructure needs an investment boost. And there's no doubt that investment is also good for our economy," said NAWC President and Chief Executive Officer Robert Powelson. "If enacted into law, this legislation could bring billions in new water infrastructure investment and help create and support more than 1.4 million jobs."

"Eliminating the volume cap on water infrastructure will lead to new drinking water and wastewater infrastructure investment, while allowing the issuance of exempt facility bonds to provide municipalities with a lower cost financing option," Powelson said, adding, "All of this adds up to a major win for our water systems, communities and each and every American."

The NAWC estimated that eliminating the PAB volume cap on water infrastructure and other regulatory changes could lead to an additional $43 billion in incremental private water infrastructure investment and $15 billion to $25 billion in incremental private wastewater infrastructure investment. It also could generate a potential $20 billion from public-private partnerships, the group said.

NAWC represents regulated water and wastewater companies, as well those engaging in partnerships with municipal utilities. NAWC members provide 73 million Americans with water service every day. Its six largest members collectively invest $2.7 billion each year in their water and wastewater systems, the group said.

PABS are typically issued by state, local, and territorial governments that want to partner with, and/or loan the proceeds to, private parties in conduit transactions to finance public needs.

Bonds are PABs most often if more than 10% of the proceeds are used by private parties and more than 10% of the debt service is paid or secured by private parties. PABS are tax-exempt only if the projects they finance fall within certain categories such as multi-family housing or so-called exempt facilities that include water and sewer projects.

PABs are issued under state volume caps, which are based on population figures from the U.S. Census Bureau and an Internal Revenue Service formula. In 2018, state and territorial volume caps will be $105.00 per capita or $311. 375 million, whichever is greater.

By Lynn Hume

BY SOURCEMEDIA | MUNICIPAL | 08/23/18 07:06 PM EDT

SEC Approves Narrower 15c2-12 Disclosure Amendments.

WASHINGTON — The Securities and Exchange Commission has released a final set of more narrowly tailored amendments to its Rule 15c2-12, which will create new disclosure obligations for issuers who incur debt outside of the municipal bond market.

The SEC said that the final rules, which were approved in writing by commissioners on Aug. 15 without a meeting, “will focus on material financial obligations that could impact an issuer’s liquidity, overall creditworthiness, or an existing security holder’s rights.”

The compliance date for the rules will be 180 days after they are published in the Federal Register.

Reaction to the final rules was mixed, with some groups saying the revisions are helpful and others suggesting more changes should have been made.

The SEC’s initial proposal last year to add two new event notices to the list of events issuers must agree to disclose through the Municipal Securities Rulemaking Board’s EMMA system met with backlash for what many issuers thought was an overly broad definition of a “financial obligation.”

“Our municipal securities market is a $3.844 trillion dollar market, with new issuances of approximately $448.1 billion in 2017,” SEC chairman Jay Clayton said in a statement on the final rules. “Our Main Street investors are exposed to this market through many channels, including through mutual funds, money market funds, closed-end funds, and exchange-traded funds.

Disclosures required by these rule amendments will better equip investors and intermediaries to make informed investment decisions about municipal securities."

The final rules will require disclosure of the incurrence of a financial obligation of the issuer or obligated person, if material, as well as any agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, if these are material.

Under the new rules, "financial obligation" means a debt obligation or derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation or a guarantee of a debt obligation or derivative.

Gone from the rules is the broader language that included leases and "a monetary obligation resulting from a judicial, administrative or arbitration proceeding."

That change is in line with what many bond lawyers had expected, as the SEC received close to 100 comments on the proposal and a large many of those arguing for a more narrow definition of "financial obligation."

The rules also will require an event notice to be filed for certain actions or events related to the financial obligation that "reflect financial difficulties" such as a default, event of acceleration, termination event, or modification of terms.

Underwriters will have to reasonably determine that an issuer or borrower has agreed to provide notice of such events in order to be able to underwrite the bonds.

The SEC approved the final rules in an effort to better reflect the reality that many issuers have been incurring debt outside of the traditional bond market, particularly through private transactions with banks.

The SEC cited the Federal Deposit Insurance Corp.'s Consolidated Reports of Condition and Income filed by financial institutions, which show that the dollar amount of commercial bank loans to state and local governments has tripled since the financial crisis, increasing to $190.5 billion by the end of the first quarter 2018 from $66.5 billion as of the end of 2010.

Reaction to the SEC's move varied.

Securities Industry and Financial Markets Association Managing Director and Associate General Counsel Leslie Norwood said the group is disappointed that the SEC did not incorporate into the revised rule any of SIFMA's suggestions from its 2016 white paper on Rule 15c2-12. In that paper, SIFMA suggested various changes, including asking that rating changes no longer be event notices since the MSRB's EMMA website now provides live ratings information.

"SIFMA's broker-dealer members are disappointed that the SEC did not take this opportunity to adopt any of the suggestions in SIFMA's Rule 15c2-12 white paper to streamline, update, and minimize unnecessary burdens of Rule 15c2-12," Norwood said. "We hope that the SEC will address these issues in the future."

Brett Bolton, vice president of federal legislative and regulatory policy at the Bond Dealers of America said BDA will be working to digest the changes.

"The lack of transparency of bank loans within the municipal securities market has created concerns among investors for many years," Bolton said.

Emily Brock, director of the Government Finance Officers Association's federal liaison center, said GFOA will be focused on how to help issuers make materiality determinations for these new event notices.

"While we are pleased to see a narrowing of the definition of financial obligations to be only related to debt obligations and derivative instruments, and not ordinary financial and operating liabilities nor judicial, administrative or arbitration proceedings, our focus will need to be on helping communities understand how to address these issues and discuss with counsel and their financing team how to determine and make such material event filings," she said.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 08/20/18 07:16 PM EDT

SEC Amends Municipal Bond Continuing Disclosure Rules.

On August 15, the Securities and Exchange Commission (SEC) adopted amendments to the Securities Exchange Act Rule 15c2-12 (the "Rule") intended to better inform investors and others about the current financial condition of issuers of municipal securities and obligated persons. In its press release announcing the amendments to the Rule, the SEC noted as background that "[d]irect placements by issuers and obligated persons as financing alternatives to public offerings of municipal securities have increased since 2009, demonstrating the need for more timely disclosure."

The Amendments

The Rule governs continuing disclosure by prohibiting an underwriter in a primary offering from underwriting most municipal securities unless the underwriter has reasonably determined that the issuer of such securities, or an obligated person, has agreed in writing (e.g., pursuant to a Continuing Disclosure Agreement) to make the required post-issuance disclosures. The amendments add additional events to the list of event notices that an issuer or obligated person needs to provide to the Municipal Securities Rulemaking Board via its electronic platform "EMMA" within 10 business days of the event's occurrence. The two new events are:

- incurrence of a financial obligation of the issuer or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material; and
- default, event of acceleration, termination event, modification of terms or other similar events under the terms of the financial obligation of the issuer or obligated person, any of which reflect financial difficulties.

The term "financial obligation" is defined as a (i) debt obligation, (ii) derivative instrument entered into in connection with or pledged as security or a source of payment for an existing or planned debt obligation, or (iii) guarantee of (i) or (ii). The term financial obligation does not include municipal securities for which a final official statement has been filed with EMMA pursuant to the Rule.

The Effective Date

The compliance date is 180 days after the final rule is published in the Federal Register.

The attorneys in Day Pitney's Municipal Finance Group routinely counsel clients on addressing compliance with their disclosure obligations. Please feel free to contact any of the attorneys listed to the right of this alert if you would like to discuss this alert or your disclosure obligations.

Day Pitney Alert

August 21, 2018

by Namita Tripathi Shah Judith A. Blank Douglas W. Gillette

Commentary: The Role of U.S. Municipal Debt in Institutional Portfolios

The municipal bond market historically has been retail-oriented, as high-net-worth individuals, particularly those in the highest tax bracket, benefit from the interest income tax-exemption. However, institutional investors, such as banks and insurance companies, have been some of the biggest buyers of municipals over the past several years and now represent approximately 30% of the market. Municipal bonds are issued as tax-exempt and taxable and, while both offer different attributes, each offers a role in institutional portfolios.

An important distinction between tax-exempt and taxable municipals is the traditional buyer base. Tax-exempt municipals traditionally are retail-led while taxable municipals offer attributes compelling to institutional buyers. In our view, recent structural changes have made taxable municipals an attractive strategic option for institutional investors while potentially offering a tactical opportunity in tax-exempt municipals.

Taxable municipals offer compelling attributes to institutional investors

The yield advantage taxable municipals offer relative to tax-exempt counterparts also extends to other fixed-income sectors (Figure 1). The municipal yield profile is attractive and comparable to investment-grade corporate bonds, however municipals maintain a higher quality standing: 92% of U.S. taxable municipals are rated A or better compared to 90% of the U.S. investment-grade corporate market, which is rated A or below (Figure 2). The sector historically exhibits a lower probability of default than U.S. corporates due to the higher quality nature of the taxable municipal market. This is of greater importance, particularly this late in the credit cycle and elevated corporate leverage metrics. Municipals are not guaranteed by the full faith and credit of the U.S. government, however, according to Moody's Investors Service, the 1970-2016 cumulative 10-year average default rate for all rated muni bonds was 0.15% compared to all rated global corporate bonds at 10.29%. Finally, municipals offer the ability to add diversity to a broader portfolio as the volatility is traditionally lower than other components of the market. The 10-year correlations of municipals to other broad U.S. fixed-income and equity sectors exemplify the substantial diversification benefit municipals offer (Figure 3).

Continue reading.

PENSIONS & INVESTMENTS

BY JULIO BONILLA · AUGUST 21, 2018 12:00 PM

Chicago Mulls $10 billion Debt Sale to Fill Pension Funding Hole - Here's Why It's a Bad Idea

Fiscally-strapped Chicago may issue $10 billion of pension obligation bonds to help pay down a $28 billion gap

As Chicago considers a multibillion sale of pension obligation bonds, analysts say such bonds have rarely succeeded at topping up unfunded public pensions, and are historically linked to fiscal stress and municipal debt defaults.

"Generally, most muni analytics folks don't look upon pension bonds favorably," said Alan Schankel, municipal strategist for Janney Montgomery Scott.

Pension obligation bonds, or POBs, have been connected with high-profile municipal defaults in California's San Bernadino and Stockton, as well as Detroit. At the state level, issuers of POBs including New Jersey and Connecticut, and the territory of Puerto Rico, have seen a decline in their pension funding ratios and suffered downgrades to their credit rating as a result, noted analysts at Municipal Market Analytics. Illinois, in fact, issued pension bonds in 2003 that only temporarily brought up funded ratios.

Continue reading.

MarketWatch

by Sunny Oh

Aug 22, 2018

In Unusual Move, Fifth + Broadway Developer Seeks $25M in Tax-Exempt Bonds from MDHA.

Concrete is finally rising from an enormous pit at the site of Nashville's former convention center, but the developers still have a $25 million hole in their financing plan.

The team led by longtime Nashville developer Pat Emery has asked the Metropolitan Development and Housing Agency to issue tax-exempt bonds to finance a portion of the project.

It would be an unprecedented arrangement for a Nashville redevelopment project, and may be a sign of trouble for the delayed high-profile development, now five years in the making. Nashville taxpayers have a large stake in the success of the $450 million office, retail and residential development at the corner of Fifth Avenue and Broadway, considered the city's most prime commercial real estate. City leaders targeted the site for development after the 2013 opening of Music City Center.

Continue reading.

Nashville Tennessean

by Mike Reicher

Aug. 19, 2018

[Battle Of The Bonds - Municipal And Government Bond Funds.]

Summary

- Closed End Funds are valuable to investors looking to diversify.
- Five municipal bond funds put to the 5Ds test.
- Always look beyond what the screener says when evaluating investments.

Bonds are an important part of any well-diversified portfolio. This article isn't going into why diversification is important or what the correct stock-bond-property-other split is (the answer, even for apparently quite similar investors is "it depends"). Unfortunately, the bond market is nowhere near as friendly to retail investors as the stock market. Bonds tend to only be available in rather large pieces and there is a lot more small print than with shares. So, most people tend to invest in a bond mutual fund or REITs (which can be great, but are fundamentally property investments rather than debt instruments).

However, there is a better way. A Closed End Fund (CEF) is like a mutual fund or ETF except all of the shares are sold when the fund launches. These funds then list on the stock-market which makes buying and selling them nice and easy.

This article will look at five CEFs that hold taxable municipal and government bonds and will rank them based on their performance in the following five categories:

Continue Reading.

Seeking Alpha

by Richard Bulkeley

Aug. 19, 2018

[Recap: BDA Institutional Fixed Income Roundtable August 16th, Chicago, IL]

On Thursday, August 16th over 50 fixed income leaders from BDA member firms attended BDA's Institutional Fixed Income Roundtable at the Four Seasons Hotel in Chicago, IL. Attendees heard from taxable and municipal market experts, engaged in active discussions on fixed income market structure and the SEC's focus, municipal market trends, and business conditions and opportunities in 2018 and enjoyed a cocktail and networking reception.

A recap of the key issues discussed at each session is below.

Hedging the Muni Market:

Discussion Leader: Ron Valinoti, Triangle Park Capital Markets Data; John Coleman, R.J. O'Brein

- Provided an update on the Municipal Spread Futures Contract
- Discussed the transition of the Contract from a LIBOR-based curve to a Treasury-based taxable component
- Discussed measures to ensure the MBIS' Curve Construction/Methodology Processes are compliant with IOSCO
- Provided an update on the dialogue being conducted with an Exchange
- You can review the presentation materials here.

Fixed Income Market Structure:

Discussion Leaders: Kevin McPartland, Greenwich Associates; Horace Carter, Raymond James; Matt Andresen, Headland Tech Global Markets

- Greenwich's recent survey of BDA members
- Discussed recent actions by SEC's FIMSAC Committee
- Debated the future of electronic trading
- Update on current buy-side trends

Municipal Market Trends:

Discussion Leader: Tom Kozlik, PNC Capital Markets

- Volume: Did predictions come true? What has happened so far, what is likely to happen the rest of the year, what about next year?
- Status of the buyers: are tax cuts and higher rates driving mutual fund, insurer, and bank demand
- Continued threat to the Tax Exemption and future of Advance Refundings
- Next phase of municipal bond market credit

Business Conditions, Opportunities, and Expectations:

Discussion Leaders: Brian Brennan, KeyBank Capital Markets; Brad Winges, Piper Jaffray; Don Winton, Crews & Associates

- Less new issuances in a higher interest environment
- Aging sales workforce
- Younger generation relying on technology instead of sale force
- Liquidity issues

Bond Dealers of America

August 21, 2018

Fitch Ratings: US States to Gain Modest Tax Revenue from Sports Gaming

Fitch Ratings-New York-21 August 2018: Initial data on US states' sports gaming revenues support Fitch Ratings' view that tax revenue increases will be relatively modest as most states will seek to balance tax gains with encouraging operator participation. However, secondary tax revenue benefits related to consumer participation in other gaming and entertainment, food, and lodging purchases, may provide a more significant boost to states' tax revenues, although still modest in the context of overall budgets.

A few states have begun to see the revenue benefits from the US Supreme Court's ruling in favor of legal sports gaming. Since the May 14, 2018 ruling nullifying the federal Professional and Amateur Sports Protection Act (PASPA), Delaware, Mississippi and New Jersey rolled out full scale sports gaming operations. West Virginia will begin on September 1. Previously, only Nevada offered a full array of sports betting.

Delaware's swift expansion on June 5 was facilitated by legal and administrative procedures already in place as it was one of four states with permitted sports betting under PASPA. Delaware's three casinos garnered $15 million in sports wagers through July with the state lottery's 50% share of residual earnings providing a modest $668,000 in tax revenue to the state in comparison to an approximate $212 million in total gaming tax revenue in fiscal 2018.

New Jersey sports wagering opened on June 14 with legal gaming at Atlantic City casinos, three racetracks and online sports books. The state recorded $57 million in sports wagers through July, providing for almost $7.3 million in gross gaming revenue. The 8.5% tax rate on in-person bets and 13.0% rate for online wagers garnered about $620,000 in tax revenue for the state. The state projects $25 million in sports gaming tax revenue for the fiscal year ending June 30, 2019; a small 11% of $233 million in gaming taxes and a negligible amount compared to $37 billion in total state revenue projected for fiscal 2019.

Yet, to the extent sports gaming boosts other consumption, the increase in gaming could modestly benefit Atlantic City's economy and finances, while boosting related state and local tax revenue. The city and gaming revenue recently benefitted from the opening of two new casinos, although revenue losses were recorded in July at the seven existing casinos as the new properties siphoned customers. Yoy in July, casino revenue was up at more than 10%, compared to July 2017 and total gaming revenue, which includes online gaming and sports wagering activity, was up almost 13.0%. Total state gaming tax revenue was up 12.5% yoy.

Mississippi began taking bets on August 1 through one casino, although this was followed by multiple opening announcements from among the state's 28 casinos. Given the sizable casino presence and current southern US monopoly on sports gaming, the state could provide a robust sports betting market, although mobile wagering is only permitted on casino premises. Moderate tax rates on net revenue of 8% to the state and 4% to host localities should also encourage casino participation.

States to watch include Pennsylvania, as the Gaming Control Board approved rules for sports betting on August 15, although casinos still need to apply for licenses at a considerable $10 million initial fee and develop infrastructure prior to taking first bets. Rhode Island's foray is expected in October at two casinos and similar to Delaware net revenue will be shared between the casinos and the state lottery. Other states continue to consider legalization and new regulations, including Connecticut, Indiana and New York.

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

Fitch Ratings: Louisiana Law Does Not Enhance Recovery Prospects and Ratings

Fitch Ratings-New York-21 August 2018: The recent revision of Louisiana's public finance laws does not offer sufficient protection to bondholders to result in rating uplift, according to Fitch Ratings. Louisiana Act No. 569, which amends the Consolidated Local Government Indebtedness Act, includes language meant to grant a statutory lien on taxes or other funds pledged to bondholders.

While the legislation intends to strengthen bondholder security by consolidating and clarifying laws related to the lien and security interest granted to repayment of debt issued by governmental entities, it falls short of creating a lien that is consistent with the definition of a statutory lien in the bankruptcy code. Therefore Fitch will not give credit to the legislation in assigning ratings to Louisiana local government debt.

The bankruptcy code defines a statutory lien as a "lien arising by force of a statute on specified circumstances or conditions." If the statute declares that the lien is created upon issuance of the bonds without the issuer needing to take any further action, then the lien arises automatically from the existence of the statute. Otherwise, bondholders do not benefit from a statutory lien.

The Louisiana legislation stipulates that the issuer has to pledge taxes or other funds to bondholders, suggesting that the lien does not arise automatically and is therefore a consensual rather than a statutory lien. The legislation differs from legislation in Rhode Island, Arizona and California, under which ad valorem taxes are automatically pledged upon issuance of general obligation bonds by a municipality. For more information see "Fitch Statutory Lien Treatment Lifts AZ, RI Local GO Ratings," dated July 12, 2018. There is a section of the Louisiana legislation that pledges the full faith and credit of a government entity to the payment of general obligation bonds, but this provision offers no specific revenue source upon which to place a lien.

In addition, the revised legislation does not apply to bonds issued prior to July 1, 2018. Fitch believes this exclusion adds a layer of ambiguity in a bankruptcy, since the court would have to determine that holders of two otherwise parity bonds would be entitled to different levels of recovery. For this reason Fitch does not give credit to California's statutory lien provisions.

Further clarifying the meaning of a statutory lien in bankruptcy was a ruling on Aug. 8, 2018 by the U.S. Court of Appeals for the First Circuit regarding Puerto Rico Highways and Transit Authority (HTA) bonds. The appeals court agreed with the district court's view that the HTA bonds are not secured by a statutory lien. The authority's enabling act permits but does not require that the authority secure the payment of bonds by making a pledge of revenues. Therefore it is consensual and not arising automatically. Fitch concurs with the district court ruling. For more information see

"Fitch: Recent Puerto Rico Ruling on Statutory Lien Consistent with Fitch's Views," dated Sept. 19, 2017.

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Illinois Prepares to Borrow After Moving Off Precipice of Junk.

- **Preliminary yields are about 30bps lower than April deal**
- **Illinois's 30-year bonds over AAA are near tightest since 2015**

Illinois is poised to reap lower borrowing costs as it returns to the municipal-bond market for the first time since pulling back from the brink of becoming the first junk-rated U.S. state.

Illinois is offering $920 million of general-obligation refunding bonds for yields ranging from 3.05 percent to 4.41 percent, according to three people familiar with the terms who declined to be named as the pricing isn't final. The preliminary yields are about 30 basis points lower than the state's deal in April, according to data compiled by Bloomberg. Proceeds from the negotiated offering will also pay termination payments to banks to cancel interest-rate swap agreements and eliminate Illinois's derivative exposure, bond documents show.

Bondholders and rating companies have praised Illinois's progress. Spreads on the worst-rated state's 30-year bonds over benchmark debt tightened to the lowest since March 2015 after Moody's Investors Service lifted its outlook to stable from negative last month. It's the first time Illinois has been at that level since December 2012, according to Moody's.

The so-called Illinois penalty, or extra yield that investors have long demanded to own the state's debt, has receded from the high of nearly 3 percentage points in June 2017. The premium was 1.4 percentage points on Monday.

"They've shown some progress with a successful budget," said Gabe Diederich, portfolio manager for Wells Fargo Asset Management, which oversees $39 billion of state and local bonds, including Illinois debt. “At the same time, I think the yield penalty is certainly not going to evaporate with this deal given some of the continued work that lies ahead for the state.”

Illinois’s fiscal woes are far from over. The budget, while enacted before the July 1 start of the 2019 fiscal year, has a $1.2 billion structural gap, and the state is struggling with $137 billion of unfunded pension liabilities, according to bond documents.

Debt Swaps

The deal will “de-risk” Illinois’s portfolio by refinancing $600 million of variable-rate debt from 2003 into fixed-rate, according to S&P Global Ratings, which rates the deal BBB-. Proceeds will also terminate interest rate swaps that Illinois originally entered into to hedge risk associated with the variable-rate bonds, S&P said.

The variable-rate debt was backed by six letters of credit that were going to expire in November 2016, and Illinois refunded that with proceeds from bonds sold to four banks under direct purchase agreements. Those agreement are set to expire in November, according to S&P. As of Aug. 1, the termination payments were estimated at $74 million, bond documents show.

There’s “clear market recognition” of the budget progress, said Neene Jenkins, a vice president and municipal analyst at AllianceBernstein, which oversees $42 billion of state and local bonds, including Illinois debt.

“I recognize both the tremendous amount of progress the state has made relative to last year and the challenges that still face the state moving forward,” said Jenkins, who is looking at the deal. “They have a lot of work to do.”

The effects of the record two-year impasse that wrecked havoc on Illinois’s finances haven’t disappeared. That political stalemate drove unpaid bills to a record $16.7 billion. That backlog is now about $7.8 billion, reduced because the state borrowed $6 billion in November to pay it down.

“We are optimistic because the state is in a better fiscal position today with enactment of a full-year budget,” Elizabeth Tomev, a spokeswoman for the governor’s office, said in an email. “The ratings agencies have acknowledged our efforts to address our pension burden and are encouraged by the budget’s passage into law.”

Slim Calendar

Wednesday’s bond sale comes amid a much smaller issuance calendar compared to last week. U.S. state and local governments are scheduled to sell about $4 billion of debt this week, compared with about $12 billion last week. Illinois’s offering is the largest long-term deal this week, according to data compiled by Bloomberg. Texas is scheduled to sell $7.2 billion in short-term notes on Wednesday.

The offering comes amid ongoing demand for high-yield paper in a low-rate environment. Investors added $244.2 million to high-yield municipal funds in the week ended Aug. 15, according to Lipper US Fund Flows data. Those funds have seen inflows in nine of the past 10 weeks.

“They still pay a penalty because of their history and because of the uncertainty going forward,” said Daniel Solender, head of municipal investments at Lord Abbett & Co., which manages $20 billion of state and local debt, including Illinois bonds. “They’re definitely headed in a better direction, but there’s still a lot of things that need to happen for the situation to materially improve.”

Bloomberg Business

By Elizabeth Campbell

August 21, 2018, 10:30 AM PDT

[Risky Trash-to-Treasure Ventures Backed by Muni Bonds Hit Snags.]

- **Fertilizer Plant and Desalination Project Plagued by Delays**
- **'There are a lot of moving parts,' one executive says**

A plant in Florida that converts excrement and food waste into fertilizer. A Washington mill that will produce pulp from straw that remains after wheat harvests. A Texas facility that takes brackish water from a desalination plant, extracts minerals and produces clean water.

These are among the businesses financed with unrated tax-exempt municipal bonds. They're also examples of projects that have run into construction delays or environmental problems, forcing them to restructure their debt or pile on more, underscoring the risks in buying high-yield municipal securities.

On August 7, Enviro Water Minerals Company issued $6.8 million of subordinate debt with a 15 percent interest rate to finish the first-of-its kind plant to convert wastewater from El Paso's desalination plant into fresh water and minerals for the agriculture and oil industries. The facility, initially financed with $48 million of municipal bonds in December 2015, was supposed to open last spring.

"Once you build one of these plants, you hope it's like a refrigerator, you plug it in and its cold, you're happy," said Hubble Hausman, EWM's chief executive officer. "But there are a lot of moving parts; we've just encountered more than our fair share of mechanical defects."

Financing of speculative projects that aim to turn trash into treasure have flourished in the $3.8 trillion municipal securities market as yield hungry investors pour money into mutual funds that invest in riskier debt. In the last 14 months, startups that plan to produce jet fuel from wood and lumber from rice waste have issued almost $650 million of tax-exempt bonds.

Boosted Returns

The influx of cash has boosted returns on the riskiest securities. High-yield municipal bonds have returned 4.83 percent this year, compared with 0.27 percent for investment grade state and local government debt. Over the last three years, non-investment grade tax-exempt securities has returned an annualized 7 percent.

Florida-based Anuvia Plant Nutrients borrowed $64 million of tax-exempt bonds with an 8 percent coupon in 2014 to build a plant that converts human waste and food industry byproducts like peanut shells and whey into "eco-friendly" fertilizer for farmers, golf courses and lawn-care operators. The fertilizer doesn't leach nitrogen, reducing greenhouse gas emissions and landfill waste, said Anuvia general counsel Margaret Richardson.

"If you're making peanut butter, you have a whole bunch of leftover stuff," she said. "We have a way to divert tons, literally, of product out of landfills."

The project, based about 25 miles (40 kilometers) northwest of Orlando, was hindered by construction delays, which prevented Anuvia from selling the fertilizer in the 2016 crop year. The following year, production was interrupted because of a local treatment plant's inability to process the volume of Anuvia's wastewater, even though officials had granted permits for that amount, according to securities filings. Anuvia changed its wastewater to meet the city's requirements.

'Breathing Room'

Anuvia's bondholders, including ColumbiaThreadneedle Investments and Macquarie Investment Management, agreed to defer interest payments due in January and July and cut principal by $14 million. The agreement also extends the maturity of the debt.

"The bondholders agreed to basically give us a little bit of breathing room as we continue to ramp up capacity," said Richardson. The plant will run at capacity in 2019, she said.

Bloomberg Valuation estimates that Anuvia's debt is worth 63.8 cents on the dollar, down from 106 cents two years ago. Liz Kennedy, a spokeswoman for ColumbiaThreadneedle and Jessica Fitzgerald, a spokeswoman for Macquarie, declined to comment.

Enviro Water Minerals was scheduled to open its facility at El Paso Water's Kay Bailey Hutchison Desalination Plant, the biggest inland desalination plant by volume in the U.S., in 2017. Getting the EWM facility running has taken longer than expected because valves haven't worked properly and the manufacturer of parts used in settling tanks sent the wrong ones, causing a 6-week delay, said CEO Hausman.

"It's nothing that's insurmountable, nothing that says this isn't going to work," he said.

Nuveen owned almost all of EWM's bonds as of July 31, according to securities filings. Hausman said the firm bought the subordinate debt. Kathleen Cardoza, a Nuveen spokeswoman, didn't respond to a request for comment. Under a forbearance agreement, the bond trustee acting on behalf of Nuveen and the trustee's engineers will get more access and information to the project.

EWM will "refine" waste brine from El Paso's desalination plant, extracting lye, gypsum and hydrochloric acid for sale to farmers and the oil industry. It then will then sell back the 2 million gallons of leftover clean water it will produce each day. El Paso, a city of 600,000 on the border with Mexico gets some of its water from the Rio Grande, which is drying up. The city's population is expected to double by 2040.

"'This is a really exciting project for the water industry," Hubble said.

Bloomberg Markets

By Martin Z Braun

August 23, 2018, 8:08 AM PDT

A Year After Devastating Storm, Houston Area Votes on Record Bond.

- **Measure would provide $2.5 billion to flood mitigation efforts**
- **Effort to place referendum on ballot got bipartisan support**

A year to the day after Hurricane Harvey ravaged the Gulf Coast of Texas, residents there head to the polls to decide a $2.5 billion bond referendum for critical flood control projects in an area that the Category 4 storm plunged underwater.

Harris County officials purposely chose Saturday's anniversary for the election, seeking to bring out voters and quickly cash in on matching federal funds. Proceeds from the bond, if approved, would finance about 237 projects, including repairs to flood-damaged drainage infrastructure, buyouts of flood-prone properties and channel modifications to improve the flow of storm water. It's the largest bond measure in the county's history.

The vote comes as coastal cities around the country are facing the threat of catastrophic infrastructure damage from storms exasperated by climate change. Last year, the U.S. was hit by three major storms that virtually destroyed Puerto Rico's electric grid, flooded Texas with record rains and ripped into Florida, sending the sea into the streets of Miami. The number of deaths is still uncertain and the storms racked up losses totaling more than $200 billion, the most ever.

For Houston Mayor Sylvester Turner, the vote is one of the most important decisions residents there will make. "We can't afford to wait any longer. We cannot afford to get this one wrong," he said during a press conference earlier this month.

A poll by the University of Houston found that 55 percent of residents support the bond referendum even though it would result in a 1.4 percent property-tax increase for the average homeowner in Harris County, the nation's third most populous. Just 10 percent of those surveyed said they would vote against it, while a third were undecided.

Before Harvey, the Houston area had never experienced flooding of the magnitude caused by the storm as it lingered over land for four days, dropping record rainfall. Even experts were unprepared. The National Weather Service had to add two colors to its graphics when mapping the storm movement because of the unprecedented amount of rain.

The National Oceanic and Atmospheric Administration estimates Harvey caused $125 billion in damages, making it the second costliest storm in recorded U.S. history behind the $161 billion in damages inflicted by 2005's Hurricane Katrina, according to Moody's Investors Service.

"It will not accomplish everything we need to accomplish. We need to recognize that," Judge Ed Emmett, head of the county commissioners court, the governing board for Harris County, said during a meeting in June prior to placing the measure on the ballot.

The storm was too much for the Harris County Flood Control District and its $120 million annual budget. "We just have a lot of ground to cover, a lot of infrastructure to maintain and a lot of problems to solve and $120 million doesn't go that far," said the district's director of operations Matthew Zeve.

Taking Action

Harris County isn't alone in asking voters to back bond sales to cope with climate change.

In 2012, Seattle voters overwhelmingly approved a $290 million debt measure to rebuild the Elliott Bay seawall that protects the downtown waterfront. In the San Francisco Bay area, residents approved a tax to fund a $500 million restoration of tidal marshes, which act as a buffer against storm surges. Following Hurricane Irma last year, Miami voters approved $400 million in bonds to finance projects to protect the city against the impact of global warming.

The Union of Concerned Scientists found that sea level rise, driven primarily by climate change, puts hundreds of thousands of homes and commercial properties in the U.S. at risk of being flooded at least 26 times per year by 2030. The incessant deluges would depreciate property values, erode infrastructure and eventually diminish tax revenue, causing local credit ratings to sour and making it more difficult to finance projects needed to contend with rising sea levels.

"The more that we wait the worse the effects of climate change will be," said AllianceBernstein LP's Eric Glass, who manages the firm's $365 million municipal-impact portfolio. "And the bigger investment in climate change we will have to make."

Bloomberg Markets

By Danielle Moran

August 24, 2018, 6:30 AM PDT

— With assistance by Sophie Alexander, Brian K Sullivan, and Joe Carroll

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Gun Politics Pit Louisiana Against Muni-Bond Market's Behemoths.

- **State barred Bank of America, Citi from deal over policies**
- **'Could it cost us money? Yes,' says Louisiana Treasurer**

Louisiana's treasurer is usually focused on how to get the best deal for taxpayers when the state turns to Wall Street to float bonds for roads, bridges and other public works.

But last week, John Schroder, an Army veteran and one-time narcotics detective, used his office to stand up for gun rights by persuading a state commission to banish Bank of America Corp. and Citigroup Inc. from a $100 million debt sale — a punishment for their stances on firearms. He said he shouldn't have any trouble finding banks willing to step in for the two biggest underwriters, who between them handle more than one-fourth of all state and local government bond offerings.

"The market's gonna set the rate," Schroder, a Republican, said in an interview. "Could it cost us more money? Yes. Could it not cost us more money? Yes."

The dustup is the latest between public officials in the Second Amendment friendly South and corporations that have been drawn into the polarizing debate over guns. This year, lawmakers in Georgia sought to eliminate a tax-break for Delta Air Lines Inc., a major employer, when the company ended a discount program for National Rifle Association members after a deadly school shooting in Florida. Some lawmakers in Florida sought to sanction Enterprise Rent-A-Car for doing the same.

Louisiana's decision came four months after Bank of America said it would stop making new loans to companies that produce military-style rifles for civilian use. Citigroup in March announced plans to prohibit retailers that are customers of the bank from offering bump stocks — like those used in the Las Vegas shooting that left 58 dead — or selling guns to people who haven't passed a background check or are younger than 21 without restrictions. That applies to companies that rely on the bank for store credit cards, lending and other services.

"Citi adopted this policy because we believe it is a positive and balanced step to promote gun safety without undermining free markets or Second Amendment rights," spokesman Scott Helfman said in an emailed statement. "It is disappointing that the taxpayers of Louisiana will be deprived from competitive bidding for necessary public works because the process has been politicized."

Bill Halldin, a spokesman for Bank of America, previously declined to comment.

Louisiana's pushback may discourage other banks from delving into gun policies, given that they need to do business with both Democrats and Republicans, Capital Alpha analyst Ian Katz wrote in a report this week. "Companies don't last generations by alienating large groups of customers," he said. "Citigroup and Bank of America have stuck their necks out on this one, and we suspect most others won't follow."

So far, no other state has shown signs of following Louisiana's lead, and the state's decision applies only to the upcoming sales of debt backed by federal transportation funds — a negligible amount of work for banks that underwrote about $110 billion of municipal debt last year. But the State Financial Officers Foundation, a group for conservative state treasurers and controllers, plans to discuss the ban at its meeting next month, Derek Kreifels, its president, said in an email.

In Louisiana, political support for gun rights runs deep. For years, the state held a sales-tax holiday for firearm sales, though it will be called off this year to help the state close its budget deficit. Even Governor John Bel Edwards, a Democrat, calls himself a "staunch defender" of the Second Amendment.

Last week's decision was prompted by U.S. Senator John Kennedy, the former Louisiana treasurer, who wrote letters to Bank of America CEO Brian Moynihan and Citigroup CEO Michael Corbat criticizing their policies. He also asked the Louisiana bond commission, which Schroder chairs, to look into any business it has with the banks. The decision to exclude the banks from the upcoming sale narrowly passed by a vote of 7 to 6.

Matthew Block, Edwards' executive counsel, was among those opposed. So was Jay Luneau, a Democratic state senator who said he was concerned that it could be costly to sever ties with the two biggest underwriters.

"It doesn't have to do with whether or not you support the Second Amendment," said Luneau, who said he was a gun collector himself. "I clearly do — not just in words, but in action. This was about political grandstanding, nothing more."

Bloomberg Business

By Amanda Albright

August 22, 2018, 8:32 AM PDT

— With assistance by Felice Maranz

No Conspirators or Smoking Gun in Puerto Rico Report: Joe Mysak

- **Good intentions, binge borrowing created muni debt debacle**
- **No one thing doomed Puerto Rico; it was everything combined**

The 608-page investigative report prepared for Puerto Rico's Financial Oversight & Management

Board isn't exactly a whodunit.

Who was responsible for Puerto Rico borrowing its way to bankruptcy? How was it even possible for the island to build up $74 billion in bonded debt and $49 billion of unfunded pension liabilities, a burden that is described as "catastrophic"?

Well, nobody, really. Or everybody. Puerto Rico's debt debacle, as recounted here in almost excruciating detail, was, so to speak, a crime without criminals. It was committed over more than a decade, very slowly and for the most part in plain sight.

For years, until that summer day in 2015 when Governor Alejandro Garcia Padilla declared on the front page of the New York Times that the debt was not payable, analysts and observers had to keep two conflicting premises in their heads.

The first was that Puerto Rico would repay its bonded debt, no matter what the financial or humanitarian cost, because that's what municipalities do. The second was that the territory's debt per capita, a multiple of that carried by the most indebted mainland states, was absurd and unsustainable. Now we know that only the second was valid.

The report, prepared by independent investigator Kobre & Kim LLP, is critical of the island's leadership and lawmakers and processes, but only up to a point. It's the same with the bond lawyers and bankers, advisers and analysts. Everything, it seems, was done with the best of intentions.

Consider, for example, the credit-rating companies. Couldn't the analysts involved been more aggressive in shutting down Puerto Rico's borrowing binge? "We have not seen any evidence to establish that the credit rating agencies did not genuinely believe that contemporaneous circumstances justified their assigned ratings," the report says.

Or take the Government Development Bank, which enabled so much of the borrowing to go on. "The evidence we examined does not support the conclusion that current or former GDB officials violated any applicable ethics restriction in connection with relevant Puerto Rico-related transactions."

Didn't the island violate its own constitutional debt limits? "The evidence we reviewed supports the conclusion that Puerto Rico employed a reasonably robust process for these Debt Limit Calculations," the report says. "We did not find any evidence that Puerto Rico's government personnel believed that Puerto Rico's interpretation of the Constitutional Debt Limit was wrong or that Puerto Rico performed the Debt Limit Calculation incorrectly."

And so on. The chapter on Puerto Rico's use of interest-rate swaps is the usual catalog of horrors, and there is a banker who does not recall a lot, but Puerto Rico wasn't alone in its enthusiasm for the things.

The enormity of the Puerto Rico blowup seems to demand conspiracy theories to explain it. You won't find them in the Final Investigative Report.

Bloomberg Business

By Joe Mysak

August 21, 2018, 12:26 PM PDT

(Joe Mysak is a municipal market columnist who writes for Bloomberg. The observations he makes are his own and are not intended as investment advice.)

[Yield Curve Distorted by Fear in Tax-Free Muni Bonds.]

Not all fixed-income investors are getting that flattening feeling.

By now, anyone who pays attention to financial markets has been inundated with reports about the flattening Treasury yield curve. The historical predictor of U.S. recessions is starting to flash signals that the economic recovery is getting long in the tooth.

But it seems as if the $3.8 trillion market for U.S. municipal bonds, a close cousin to Treasuries, missed the memo.

In fact, the difference in the slope of the two markets' yield curves is almost as large as it has ever been. In munis, 10-year AAA bonds yield about 85 basis points more than two-year obligations. For Treasuries, that gap is 25 basis points. Aside from a fleeting moment after the financial crisis, that spread is the widest since the U.S. yield curve was inverted in early 2006.

This oddity would seem to suggest that either the Treasury curve is too flat, munis are too steep, or that something is different this time that justifies the divergence. I tend to think it's the latter, with the culprits being the different buyer bases for the two fixed-income assets and years of ultra-loose monetary policy that distorted global debt markets.

There are a lot of sophisticated investors in the $15 trillion market for U.S. Treasuries. They include China, which oversees $3.1 trillion in foreign-currency reserves; Japan's Government Pension Investment Fund, the world's biggest retirement fund at $1.43 trillion; and any number of hedge funds and investment managers in the United States. Speculators can easily bet on a market sell-off by shorting futures contracts, and they've done so more than ever.

To put it bluntly, that just doesn't exist in the municipal market. There are no muni futures contracts. Many investors buy the bonds and hold until maturity, using the tax-free interest as a bedrock of their overall portfolio. Overseas investors don't benefit from the tax exemption, so the lower absolute yields are generally not enticing relative to sovereign debt or corporate securities.

This dynamic allows for a fear factor to creep in, helping explain the diverging yield curves. With the Federal Reserve raising interest rates six times in the past 20 months, it's only natural for "mom and pop" investors to wonder whether they're going to suffer losses on their fixed-income funds or individual holdings. It doesn't help that some market commentators have made headlines by warning of an impending "bond bear market."

As muni investors learned all too well during the "taper tantrum" in 2013 and after Meredith Whitney's incorrect forecast of "hundreds of billions of dollars" of defaults in the coming year in December 2010, those types of ominous outlooks can rattle the denizens of the tax-exempt market. Sure, funds aren't experiencing outflows as they did during those periods. But the refusal of long-term yields to come down speaks to the angst over extending portfolio durations, Barclays Plc strategists said last month. It's no wonder that Morningstar Inc. recently found that individual investors were more skittish in munis than any of the eight asset classes they examined.

It's not as if Wall Street is oblivious to this yield-curve decoupling. Barclays says 10-year munis have more value than shorter-dated debt. So does Tom Kennedy, head of fixed-income strategy at J.P. Morgan Private Bank. Here's what he said in a Bloomberg Radio interview last week.

"The municipal market is actually looking quite attractive. In the front end, we don't see it in your favor, but further out in the municipal curve, there’s actually a steepness in that curve. The muni yield curve is actually quite steep. So if you move further out to 10-year muni bonds, you can actually pick up 100 basis points.”

It’s worth noting that the tax-exempt yield curve never inverted before the previous recession, with the spread between two- and 10-year debt falling only to as low as 15 basis points in February 2007. Again, that speaks to the more buy-and-hold mentality. Conceptually, it’s hard for investors to wrap their minds around getting paid less to sock money away for 10 or 30 years than for two or three.

By contrast, inversion is seen as practically inevitable for Treasuries. That’s because corporate pension funds seeking to match their liabilities are snapping up long bonds in any sell-off, keeping the 30-year yield stuck below its year-to-date high. It also helps that yields in Europe and Japan remain suppressed by their central banks. Meanwhile, with traders fully on board with the Fed’s rate-hike plans, shorter-term yields keep climbing. And because futures give speculators the ability to bet that yields rise further (and prices sink), there’s no support for that segment of the market.

It’s gotten to the point that two-year munis were about the most expensive relative to Treasuries in recent history last month. The two-year tax-exempt yield on July 26 was 1.62 percent, while the two-year Treasury note yielded 2.68 percent. The ratio of the two fell to 60 percent, a steep departure from the 115 percent average since the start of 2009.

All signs suggest municipal-bond buyers should purchase longer-dated securities if they’re in the market for new investments. But no one has ever experienced a true Fed tightening cycle after years of keeping short-term rates near zero and multiple rounds of quantitative easing. It’s entirely possible that what appears to be a distortion is actually the natural response to the central bank’s actions. And munis lack easy ways to arbitrage away the difference.

That leaves it up to mom and pop to confront their fears and go long. Even though the “bond bear market” has hardly been devastating this year, those skittish tendencies may be too much to overcome.

Bloomberg Opinion

By Brian Chappatta

August 20, 2018, 4:00 AM PDT

Brian Chappatta is a Bloomberg Opinion columnist covering debt markets. He previously covered bonds for Bloomberg News. He is also a CFA charterholder.

Berkeley's Bold Bet on Bitcoin.

The California city, known for its out-there policies, will be the nation’s first to issue municipal bonds using cryptocurrency.

Berkeley, Calif., has always had an independent streak. It was named after Irish philosopher George Berkeley, who advanced the theory of immaterialism or the belief that material things have no objective existence. Located across the bay from San Francisco, Berkeley has long attracted people and ideas outside of the mainstream. In the 1960s, it was the birthplace of the free speech movement and hippie counterculture. In the 1990s, an advocacy group tried to bring back the bartering system in protest of economic globalization. And in the 2000s, voters overwhelmingly approved the nation's first-ever soda tax to counteract the damage done by high-sugar drinks.

But now this city known for its out-there policies is taking perhaps its biggest risk yet: Later this year, it plans on becoming the first municipality in the country to issue municipal bonds using the blockchain technology that underpins cryptocurrency. The project is the brainchild of Mayor Jesse Arreguín and Vice Mayor Ben Bartlett and is being billed as a way to make investing in municipal bonds more accessible than ever. That's because, unlike the minimum $5,000 bond denomination common today, "cryptobonds" can be issued in denominations as low as $5 or $10. The bonds also have the potential to open up a whole new way for the city to raise money for housing. This is an acute issue since the Trump administration has slashed the budget for the U.S. Department of Housing and Urban Development, cut funding for Section 8 housing credits and targeted sanctuary cities such as Berkeley for federal funding cuts.

In the crypto world, issuing a digital currency to raise capital is what's called an ICO, or initial coin offering. The most well-known digital currency is bitcoin, but new ones are issued all the time. Digital currencies are based on what's called digital ledger technology, which is often referred to as blockchain and cuts out the need for banks by allowing users to record data and transactions instantaneously in a way that is essentially unhackable. But the independence from a central bank also means the currency isn't regulated, making its value more volatile than paper money.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | AUGUST 2018

Even When Teams Pay, Stadiums Still Aren't Free for Cities.

MLS' Columbus Crew is willing to pay for a new stadium in Austin, but is the Texas city really getting a deal?

While many cities are no longer willing to foot the bill for sports stadiums, they are still facing other costs or lost revenue when teams come to town.

These can take several forms: forgone property tax revenue if cities offer an exemption, missed ticket and parking tax revenue if teams are allowed to keep it for themselves, or passed on stadium maintenance and improvement costs.

Who's responsible for maintenance and improvements can be a particular flashpoint as crumbling stadiums are often used as a reason by teams to relocate. That's what happened when Stan Kroenke moved the NFL's St. Louis Rams to Los Angeles in 2016 and what precipitated the sale of the NBA's Seattle SuperSonics and eventual move to Oklahoma City in 2008.

Continue reading.

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BY LIZ FARMER | AUGUST 22, 2018

TAX - MICHIGAN

Davis v. Detroit Public Schools Community District

United States Court of Appeals, Sixth Circuit - August 9, 2018 - F.3d - 2018 WL 3763429

Sports arena opponents brought action seeking declaratory judgment and mandamus relief alleging that school board had authority and obligation to place on next city election ballot question asking city voters to approve or disapprove of certain tax expenditures.

The United States District Court dismissed claims, and entered partial final judgment. Opponents appealed.

The Court of Appeals that opponents lacked standing to seek declaratory and mandamus relief.

Opponents of public financing for construction of sports arena lacked standing to seek declaratory and mandamus relief to require school board to place on next city election ballot question asking city voters to approve or disapprove of tax increment finance entities' use of property tax revenue intended for school operating purposes to finance sports arena, where opponents were not affected by school board's decision in any personal and individual way, and school board's failure to place tax question on ballot affected all city voters equally.

TAX - OHIO

Columbus City Schools Board of Education v. Franklin County Board of Revision

Supreme Court of Ohio - August 15, 2018 - N.E.3d - 2018 WL 3913177 - 2018 -Ohio- 3254

Owner of low-income-housing property filed a complaint seeking a reduction in the property's valuation for tax purposes. City board of education filed a countercomplaint urging retention of the auditor's valuation.

The county board of revision reduced the assessed value, and the board of education appealed. The Board of Tax Appeals increased the value. Owner appealed.

The Supreme Court of Ohio held that:

- Board of Tax Appeals was required to consider memorandum submitted by owner's appraiser purporting to show that adding in the property's rent subsidies resulted in a rent elevated above market rent;
- It lacked jurisdiction to consider whether property was 100 percent rent restricted; and
- Fact that contract establishing rent subsidies was not in the record did not preclude consideration of rent subsidies.

NAWC Applauds Introduction of "Sustainable Water Infrastructure Investment Act"

WASHINGTON–(BUSINESS WIRE)–The National Association of Water Companies (NAWC) applauds the reintroduction of the "Sustainable Water Infrastructure Investment Act" (S. 3358) by Senators

Bob Menendez (D-NJ) and Mike Crapo (R-ID). The “Sustainable Water Infrastructure Investment Act” would stimulate private investment in drinking water and wastewater systems by modifying the tax code to remove state volume caps on the issuances of government private activity bonds. This is the same tax treatment other types of public infrastructure already receive, including airports, high-speed rail, and the solid waste disposal industry.

“There’s widespread consensus that our nation’s water infrastructure needs an investment boost. And there’s no doubt that investment is also good for our economy. If enacted into law, this legislation could bring billions in new water infrastructure investment and help create and support more than 1.4 million jobs”

Private Activity Bonds (PAB) are a form of tax-exempt financing for state and municipal governments that want to partner with a private entity to meet a public need. Exempt facility bonds utilize private capital instead of public debt and shift the risk and long-term debt from the municipality to the private partner. The tax-exempt bonds provide lower cost financing, which, in turn, provides lower costs for customers. In addition, eliminating the volume cap on water infrastructure along with other regulatory changes could lead to an additional $43 billion in incremental private water infrastructure investment; $15-25 billion in incremental private wastewater infrastructure investment; and generate a potential $20 billion from public-private partnerships.

The “Sustainable Water Infrastructure Investment Act” (H.R. 3009) was introduced in the House by Congressmen John Duncan (R-TN) and Bill Pascrell (D-NJ). NAWC urges swift passage of the “Sustainable Water Infrastructure Investment Act” in order to facilitate and expedite investment in America’s water infrastructure.

August 22, 2018

Will This New Investor Tax-Incentive Policy Avoid Mistakes of the Past?

In an ideal world, Opportunity-Zone designation will infuse capital into low-income, historically marginalized communities. But without clear guidelines in place, will those benefits materialize?

Historians have meticulously documented how government policies and racial discrimination combined to result in billions of dollars invested in the creation of white-only, middle-class suburbs across the United States, while systematically denying the same investment to black people and black communities. You can read about it most recently in Richard Rothstein’s “The Color of Law.”

The consequences of this history remain firmly entrenched, as evidenced by today’s racially-segregated metropolitan areas and astounding levels of racial-wealth inequality. With government backing to build their homes and cement what was, in most cases, the primary source of wealth, white homeowners left other groups in the dust. In Boston, according to a study funded by the Federal Reserve, white households have a median net worth of $247,500, compared with just $8 (not a typo) in median net worth for U.S.-born black households. In Los Angeles, another Federal Reserve-funded study found that white households in that city have 100 times the median net worth of black and Latino households.

The next big chapter of this history is probably being written as you’re reading this, thanks to the new federal policy known as “Opportunity Zones,” passed as part of the Tax Cuts and Jobs Act at the end of 2017. A broad array of affordable housing developers, community development lenders, venture capitalists, real estate investment platforms, local housing and economic development agencies, bankers, and others have already lined up to utilize the new policy. It's intended to drive billions of dollars in private investment into communities of color and other low-income communities that previous policies have left behind. Whether the policy will actually benefit the current residents of those communities remains to be seen.

Continue reading.

NEXT CITY

By Oscar Perry Abello

Aug 22, 2018

New Jersey P3 Legislation Expands Opportunities for Major Infrastructure Projects, Including Roads: Ballard Spahr

New Jersey has enacted legislation that greatly expands the pool of public agencies authorized to enter into public-private partnerships (P3s) for capital projects in the state, in order to address growing infrastructure needs.

Only public colleges and universities were authorized to use P3s in New Jersey prior to Governor Phil Murphy signing Senate Bill No. 865 on August 14.

SB 865 authorizes local governments, school districts, public authorities, and state and county colleges to enter into P3s for capital projects. The new law also allows for statewide road or highway P3 projects, as long as a project includes an expenditure of at least $10 million in public funds or any expenditure of solely private funds.

With billions in upgrades needed throughout the state, the new law is expected to generate a significant number of new projects. New Jersey has 21 counties, 565 municipalities, and nearly 600 school districts in addition to hundreds of public authorities. The state recently ranked as one of the country's 10 worst for infrastructure.

Projects proposed under SB 865 must be submitted to the New Jersey Economic Development Authority (NJEDA) for review and approval, and are also subject to review and approval by the State Treasurer. NJEDA and the State Treasurer's Office will oversee New Jersey P3 projects. In accordance with the new law, NJEDA will post on its website the status of each P3 project.

SB 865 requires local public input and finance controls for any project proposed under the legislation, as well as land use and financial approvals. The process begins when a public agency issues a Request for Proposals (RFP).

Solicitation, Procurement, and Criteria

Under SB 865, a public entity, which may include a local government unit, school district, state government entity, and state or county college, will issue a request for proposals (RFP) with no more than a 45-day response period. The public entity must have qualifying proposals from at least at least two private entities in order to select one.

NJEDA will review all completed project applications and request additional information as needed. The application must include, among other things, a long-range maintenance plan and a long-range maintenance bond, and must specify the expenditures that qualify as an appropriate investment in maintenance.

The criteria for assessing the projects described in the application include:

feasibility and design of the project;
experience and qualifications of the private entity;
soundness of the financial plan;
adequacy of the required exhibits;
adequacy of the long-range maintenance plan;
evidence of a clear public benefit; and
a resolution by the applicable public entity of its intent to enter into P3 agreement for the project.

The procurement process cannot begin until NJEDA approves the application.

After the proposals have been received, and any public notification period has expired, the applicable public entity will rank the proposals in order of preference. The public entity will consider professional qualifications, innovative engineering, architectural services, cost-reduction terms, finance plans, and the need for public funds to deliver the project.

Following the procurement process, but before the public entity enters into a P3 agreement, the project and the resultant short list of private entities is submitted to NJEDA for final approval. NJEDA shall retain the right to revoke approval if it determines that the project has "substantially deviated" from the plan submitted, and retains the right to cancel a procurement after a short list of private entities is developed if deemed in the public interest to do so.

P3 Agreements

SB 865 establishes specific requirements for P3 agreements, including provisions that building construction projects contain a project labor agreement and affirming that the agreement and any work performed under it is subject to the provisions of the Construction Industry Independent Contractor Act. Each worker employed for the construction, rehabilitation, or building maintenance service of facilities by a private entity under a P3 agreement must be paid not less than the prevailing wage rate for such worker's craft or service in accordance with the New Jersey Prevailing Wage Act.

A project with an expenditure of under $50 million developed under a P3 agreement includes a requirement that precludes contractors from engaging in the project if the contractor has contributed to the private entity's financing of the project in an amount of more than 10 percent of the project's financing costs. If the agreement includes the lease of a new project in exchange for upfront or structured financing by the private entity, the term of the lease may not be for a period greater than 30 years.

Tax-Exemption

SB 865 provides that as long as a P3 project used in furtherance of the purposes of the applicable public entity is owned by or leased to a public entity, foreign or domestic nonprofit business entity, or a business entity wholly owned by the nonprofit business entity, then P3 projects under SB 865 are exempt from property taxes. The law further states that, notwithstanding any section of law to the contrary, P3 projects are not required to make payments in lieu of taxes. The project and land where it's located are not subject to the applicable provisions of law regarding the tax liability of private parties conducting for-profit activities on tax-exempt land, or the applicable provisions of law regarding the taxation of leasehold interests in exempt property that are held by nonexempt parties.

Costs

SB 865 requires that prior to the commencement of work on a project, the private entity establish a project-specific construction account that includes the funding and/or financial instruments that will be used to fully capitalize and fund the project. The legislation requires that the private entity appoint a third-party financial institution to act as a collateral agent, manage the construction account, and maintain a full accounting of the funds and instruments in the account. The funds and instruments in the construction account must be held in trust for the benefit of the contractor, construction manager, and design-build team involved in the project, and will not be the property of the private entity unless all amounts due to the construction account beneficiaries are paid in full.

The legislation states that, if required by the applicable public entity, the private entity shall assume responsibility for all costs incurred by the applicable public entity before execution of the P3 agreement, including costs of retaining independent experts to review, analyze, and advise the applicable public entity on the RFP.

SB 865 provides that, when there is a substantial opportunity for innovation for a particular P3 project and the costs for developing a proposal are significant, stipends may be used. The public entity may elect to pay unsuccessful proposers for the work product they submit in response to an RFP. The public entity's use of any design element contained in an unsuccessful proposal will be at the sole risk and discretion of the public entity unit and shall not confer liability on the recipient of the stipulated stipend amount.

After payment of the stipulated stipend amount, the applicable public entity and the unsuccessful proposer shall jointly own the rights to, and may make use of any work product contained in the proposal, including the technologies, techniques, methods, processes, ideas, and information contained in the proposal, project design, and project financial plan. The use by the unsuccessful proposer of any part of the work product contained in the proposal shall be at the sole risk of the unsuccessful proposer and shall not confer liability on the applicable public entity.

Ballard Spahr's P3/Infrastructure Group is a leader in representing government and private sector developers, investors, and lenders in innovative public-private projects that range from transportation systems and energy facilities to military and public housing.

www.ballardspahr.com

August 20, 2018

S&P Back-To-School Spotlight: S&P Global Ratings Examines Financing Trends Shaping Education

NEW YORK (S&P Global Ratings) Aug. 21, 2018–In a series of articles on higher education, S&P Global Ratings analysts provide their opinion on the financing conditions and trends that could influence the sector's credit quality going forward.

Continue Reading

Aug. 21, 2018

Short Supply Supports Muni Bonds This Year.

The Bloomberg Barclays Investment Grade Municipal Bond Index has returned 0.49% and the corresponding high yield municipal index has returned 1.07%, quarter-to-date.2 We believe this strong muni performance was due in part to investor risk aversion that has benefitted both municipal bonds and Treasuries as well as a reduction in muni supply following the 2017 tax reform.

Tax reform created a rush to market in late 2017

The Tax Cuts and Jobs Act (TCJA) introduced in November 2017 created new concerns for municipal bond issuers. Uncertainty about the implementation of new policies resulted in a surge of new issuance at the end of 2017 that was originally scheduled for early 2018.

Among the concerns ahead of the TCJA's final passage was it would eliminate private activity bonds (PABs), which help private companies, non-profit organizations and public authorities fund projects using tax-exempt municipal bonds. While this was not part of the final bill, uncertainty persisted until mid-December.

The law did, however, eliminate tax-exempt advance refunding bonds. These had allowed government issuers and non-profits to restructure eligible tax-exempt debt by refinancing at a lower rate or for a longer term. The uncertainty around PABs and the elimination of advance refunding bonds resulted in a spike of new issuance during December 2017 — $62.5 billion was issued that month alone. As a result, muni supply during the fourth quarter of 2017 was the highest it has been in the 32 years that the data have been recorded.3

Continue reading.

etfdailynews.com

August 25, 2018

S&P: The Credit Impact Of State-Funded Free Community College Is Still Uncertain

Tuition-free admission to community college has gathered momentum among U.S. states in recent years. These programs are primarily designed by state governments to make college more affordable and accessible for students and their families.

Continue Reading

Aug. 20, 2018

Keeping The School Bells Ringing: Considering The Financial Operating Frameworks Supporting 50 Million U.S. School Kids

Nearly 51 million students will head back to public elementary schools across the U.S. this fall. To keep these schools open and functioning, school districts must look beyond the three Rs to manage the financial aspects of educating these children. How that happens varies across states.

Continue Reading

Aug. 21, 2018

Houston's Multi-Billion-Dollar Bet to Survive the Next Harvey.

On August 25, the anniversary of Hurricane Harvey's landfall, Harris County will vote on a $2.5 billion flood-control bond package that one disaster expert calls "a first step."

August 25, 2017, is a date certain to be remembered as one of the worst in Houston's history. But officials are hoping that August 25, 2018, will stand out as the day the city took a giant step toward securing its long-term future.

On Saturday, one year on from Hurricane Harvey's landfall on the Texas coast, Harris County residents will decide whether to approve a $2.5 billion bond package that proponents say will deliver funds for crucial flood mitigation and prevention projects.

"This vote is one of the most important votes that the people of the City of Houston will cast," Houston Mayor Sylvester Turner said at a press conference. (Houston is the seat of Harris County.)

Continue reading.

CITY LAB

TOM DART

AUG 23, 2018

Ratings Agency Finds Evidence Wildfires Aren't Devastating Local Government Finances.

Tax bases and unemployment figures appear to be holding strong against the blazes.

The financial health of localities affected by wildfires have shown signs of strength despite the difficulties and destruction the blazes have caused, according to a credit ratings agency.

S&P Global Ratings found that assessed property values and unemployment rates have for the most part improved in certain jurisdictions affected by fires during the past year.

The ratings agency also says this year's fires have not led to any credit downgrades for local governments.

"We find that federal and state programs and fiscal backstops have helped with both immediate fiscal needs and the longer-term path to recovery in the wake of fires," an S&P report notes.

Continue reading.

ROUTE FIFTY

by BILL LUCIA

AUGUST 23, 2018

Cities Release Their Own Broadband Model Code.

While a federal committee struggles to reach consensus on a state broadband framework, the National League of Cities created its own stressing local needs.

The National League of Cities has released a model code that municipal leaders can consult when deploying small cell wireless infrastructure, emphasizing local needs over federal and industry interests.

Small cells form the backbone of fifth-generation wireless, or 5G, broadband service that internet providers have promised to begin rolling out in 2018.

NLC's model acknowledges "there is no single model code that will work for every jurisdiction" and attempts to balance providers' desire to densify their networks with city efforts to maintain uncluttered streets and sidewalks ahead of 5G.

Continue reading.

ROUTE FIFTY

By Dave Nyczepir

AUGUST 27, 2018

Underlying Government Units Report.

Truth in Accounting has released a new analysis of the biggest underlying government units in the 10 most populous U.S. cities, including some of the nation's largest counties and public school districts.

With the exception of New York City, most municipalities do not include in their annual financial report the finances of these large, local government units that city taxpayers are also responsible for, such as schools districts, transit and housing authorities.

This report takes into account these underlying government entities and provides residents and taxpayers in these cities with a more accurate and holistic view of their respective city's finances. When the unfunded debt of these local government units is combined with both the municipal and state debt, city taxpayers are the hook for much more than they think.

Continue reading.

Truth in Accounting

July 17, 2018

NJ Bill Authorizing Assessments, Bonds to Fund Replacement of Lead-Contaminated Water Lines Signed into Law.

(TRENTON) – Legislation sponsored by Assembly Democrats Eliana Pintor Marin, Cleopatra Tucker and Wayne DeAngelo authorizing municipalities to levy special assessments, and issue bonds, to replace certain lead-contaminated water service lines, has been signed into law.

"This law will put us one step closer to ensuring that our drinking water is safer to drink and lead free," said Pintor Marin (D-Essex). "In Newark alone, there are approximately 15,000 homes in which the water service lines connecting the property to the city's main water line are lead. This can lead to contaminated home drinking water."

"The impact of lead in plumbing systems can have adverse effects on public health," said Tucker (D-Essex). "This law will move us in the right direction by improving these plumbing systems, providing cleaner drinking water and producing better health outcomes."

"Clean drinking water is essential," said DeAngelo (D-Mercer/Middlesex). "This will help municipalities finance projects that will help replace lead-contaminated pipes to ensure the quality and safety of our drinking water."

Under current law (R.S.40:56-1), if a municipality engages in a project that is categorized as a "local improvement," the municipality may assess the cost of the project on local property owners in the vicinity who benefit from the project. The law (A-4120) signed today by Gov. Murphy adjusts language in R.S.40:56-1 to ensure that the replacement of certain lead-contaminated home service connections fall within this category, allowing those projects to be assessed as local improvements.

The law also amends a section of the local bond law to allow municipalities and counties to issue 30-year bonds to fund the replacement of lead-contaminated house connections to publicly-owned water systems. Specifically, these bonds will fund replacement of lead-contaminated house connections from the distribution main onto privately-owned real property, and into the privately-owned structure.

The law also amends the County and Municipal Water Supply Act, and the municipal and county utilities authorities law to provide that the public entities operating under those laws are not prevented from undertaking projects to replace lead-contaminated service connections, regardless of possible private service connection ownership.

The provisions of this law will only apply to service line replacement projects that are: (1) undertaken as environmental infrastructure projects; and (2) funded either by loans from the New

Jersey Infrastructure Bank, or by loans issued through the Department of Environmental Protection.

By NJ ASSEMBLY DEMOCRATS

August 24, 2018 at 10:25 PM

Frustrated Developers, Investors Seek Opportunity Zone Guidance.

Strategic Realty Holdings CEO and founder Eddie Lorin sums up the frustrations many real estate investors have when they further delve into the nuances of the new federal Opportunity Zone program.

Lorin recalled how, at a recent Opportunity Zones Coalition meeting, a venture capitalist came in, "high-fiving the people in the room and saying, 'This is the greatest thing [to happen] for distressed properties and distressed areas.'"

"And then he left and said, 'Oh, my God, we got more problems,'" Lorin told a crowd of more than 350 at Bisnow's Evolution of LA's Submarkets & The Impact of Opportunity Zones event Tuesday at the JW Marriott in downtown Los Angeles.

The story encapsulated the questions around the Opportunity Zone program, which passed late last year as part of President Donald Trump's Tax Cut and Jobs Act.

Continue reading.

bisnow.com

by Joseph Pimentel

August 16, 2018

Opportunity Zones May Help Investors And Syndicators More Than Distressed Communities.

The Tax Cuts and Jobs Act (TCJA) created a new tax-advantaged Opportunity Zone program to encourage investments in economically-distressed communities that are nominated by governors and certified by the Treasury Department. Congress had previously tried similar approaches with Empowerment Zones and Renewal Communities. But its latest effort is remarkable for its lack of a governmental oversight role and for its generosity to investors.

The law allows taxpayers to postpone until 2026 taxes on profits from the sale of any property, if the profits from the sale are reinvested in an Opportunity Zone fund that, in turn, invests in businesses in a targeted community. It also allows taxpayers to exclude from tax any gains that arise from investing in the fund if the fund is held for 10 years. This opens the door to big profits for both investors and syndicators, even as the social benefits of the initiative are unclear at best.

The process works like this: Assume a taxpayer recognizes a $200,000 profit on the sale of stock in a public company. By investing the amount of the gain in an Opportunity Zone fund, she can postpone capital gains taxes until 2026. If the taxpayer holds her Opportunity Zone fund shares for five years, her $200,000 deferred gain is reduced by 10 percent, to $180,000. After seven years, it is reduced by another 5 percent, to $170.000. And, if she sells after 10 years, she may exclude any appreciation in the value of the Opportunity Zone Fund shares. Thus, if she sold her fund shares for $300,000, she could exclude from tax her entire $100,000 gain (her basis would be $200,000, even though she had recognized only $170,000 of deferred gain). Investment banks, syndicators, or anyone else may establish opportunity zone funds. For a fee, of course.

The Joint Committee on Taxation scored the new tax incentive program as a small revenue loser over the budget window, primarily because the deferred gain must be recognized by 2026, which was within TCJA's 10-year budget window. But because the incentives for Opportunity Zone investments are so much more generous than prior programs, the revenue loss might turn out to be substantial, and far out of proportion to the local economic development they are intended to encourage.

The new Opportunity Zones have three novel features:

First, a taxpayer need only reinvest gains, not the entire proceeds from a sale of assets. The capital gains provisions of the earlier programs noted above required a taxpayer to reinvest all sales proceeds, not just profits. Other provisions in the tax code that defer gains also require reinvestment of all proceeds (e.g., like-kind exchanges, involuntary conversions, etc.).

Second, the other programs permitted a taxpayer to defer gains from the sale of assets within a qualified zone, but not defer gains from the sale of assets outside the zone. Another change: Empowerment Zone and Renewal Communities programs permitted only capital gains to be deferred, but the new program appears to permit other income to be deferred, like gains from the sale of inventory, though this may have been a drafting error.

Finally, syndicators may organize and market the opportunity funds, which can invest more expansively than earlier programs could. The Treasury has certified 8,700 Opportunity Zones, twelve percent of U.S. census tracts, many of which already attract businesses and investments. By comparison, Congress authorized only 40 empowerment zones and 40 renewal communities.

In addition, eligible Opportunity Zone businesses are more wide-ranging, including investments such as residential rental property businesses, which were excluded by the earlier programs. The additional businesses may be lower risk for investors and, perhaps, less beneficial for the community.

The fundamental problem with Opportunity Zones is the disconnect between the size of the potential tax costs, which are uncapped, and the social benefits from the investments, which will be hard to measure. Presumably, some taxpayers will recharacterize already-planned projects or restructure existing business arrangements through, for example, sale-leasebacks, to obtain the new tax incentives. Other taxpayers may try to invest in already-gentrifying areas that were nominated by governors, lessening the focus on economically distressed communities. And, syndicators may lure other taxpayers with the promise to delay and even eliminate taxes.

We will not know for some time whether the program is worthwhile since Congress asked the IRS to begin reporting on the operations of the program in 2022. But as with many tax incentive programs, Congress might have created a more effective program by investing directly in distressed communities rather than creating new tax subsidies for investors and additional cash flows for syndicators that develop and market the deals.

Forbes

by Steve Rosenthal

August 20, 2018

NHC Submits Opportunity Zones Comment Letter.

Read the letter.

National Housing Council

August 15, 2018

IRS Moves to Block Blue States From Getting Around GOP Limits on Tax Deductions.

The Trump administration has delivered another blow to California.

The Internal Revenue Service and Treasury Department on Thursday moved to block efforts by lawmakers in California and other Democratic-controlled states to help their residents avoid a new limit on state and local tax deductions.

The proposed rule targets legislation in those states that would allow taxpayers to claim a charitable deduction for state and local tax payments above the $10,000 limit set in the tax cuts passed by Congress last year.

The Treasury Department said the legislation being considered in various state s amounts to a tax dodge for wealthier Americans.

"Congress limited the deduction for state and local taxes that predominantly benefited high-income earners to help pay for major tax cuts for American families," Treasury Secretary Steven T. Mnuchin said.

"The proposed rule will uphold that limitation by preventing attempts to convert tax payments into charitable contributions," he said.

The IRS will accept comments on the rule through Oct. 11 and then will hold a public hearing on it Nov. 5.

Thursday's announcement escalated a partisan battle over the tax-cut law that was pushed through by President Trump and congressional Republicans with no Democratic support.

California and New York are among the states that have been looking for ways around the limit on state-and-local tax deductions that Republicans included in the $1.5-trillion tax-cut law that took effect Jan. 1.

Many of the states hardest hit by the limit are high-tax ones controlled by Democrats, and leaders there have complained the tax bill targeted the deduction for political reasons.

A bill from state Sen. Kevin de Leon (D-Los Angeles) would allow California residents to circumvent the new $10,000 deduction limit through a complicated process involving state tax credits for contributions to school districts, charter schools, child-care centers operated by local educational agencies and community college districts.

Under the bill, taxpayers would be able to deduct 100 percent of the contributions on their federal tax returns because there are no limits on charitable deductions.

But the Treasury rule released Thursday would require taxpayers to reduce the federal charitable tax deduction they are claiming by the amount of any credit they receive on their state and local taxes. That would effectively prevent taxpayers from circumventing the cap through the workaround programs.

It also would hit some existing, limited programs in dozens of states that offer federal charitable deductions for contributions to fund schools and other programs.

The federal state-and-local tax deduction had been unlimited until this year, with the new limit projected to generate billions of dollars a year in additional revenue to the U.S. Treasury to help offset money lost by the bill's cuts to corporate and individual rates.

Rep. Kevin Brady (R-Texas), a lead author of the tax bill, cheered the new rule.

"These Treasury regulations rightly close the door on improper tax evasion schemes conjured up by state and local politicians who insist on brutally taxing local families and businesses," he said.

However, the limits on state-and-local tax deductions will hit some families hard. The average state-and-local deduction taken by the 6.1 million California residents who filed for it in 2015 was $18,438, according to the Tax Policy Center. Only New York and Connecticut had a higher average deduction.

Eight tax experts released a 44-page research paper in January arguing that California and other states would be allowed to turn state and local tax payments into charitable contributions based on previous IRS rulings and court opinions.

Some tax law experts also have said that it would be very difficult for the IRS to prohibit efforts designed to circumvent the state-and-local tax-deduction limit without also disallowing the federal tax deduction for contributions to more than 100 existing charitable programs in 33 states.

Those programs, many of them in Republican-controlled states, fund state-supported activities such as public schools and college scholarship programs.

The Treasury Department said Thursday that it expected some spillover effect on those other programs, but that only about 1 percent of taxpayers would see an effect on tax benefits for donations to school tax credit programs.

By Jim Puzzanghera

BY TRIBUNE NEWS SERVICE | AUGUST 24, 2018

IRS Proposal Would Sink States' Tax Deduction Workarounds.

The U.S. Treasury Department and IRS released their highly anticipated regulatory proposal on Thursday.

Proposed regulations the U.S. Treasury Department and IRS issued Thursday would block state attempts to provide taxpayers with a way around the recently imposed cap on state and local tax deductions.

Last year's Republican-led tax overhaul capped the federal deduction that individual taxpayers can claim for certain state and local taxes they pay at $10,000. Some states have sought to create a pathway for circumventing this cap by relying on charitable contributions, which remain fully deductible under the federal tax code.

These workarounds involved soliciting contributions to help pay for public services, and then allowing people to claim a state tax credit on par with the contributions to lower the state taxes they owe.

Continue reading.

ROUTE FIFTY

by BILL LUCIA

AUGUST 23, 2018

IRS Moves to Block New York Plan to Skirt SALT Deduction Cap.

- **Taxpayers won't get big federal write-off above state credit**
- **Regulations are likely to face challenges from high-tax states**

The Internal Revenue Service put the tri-state area on notice: The charitable workarounds New York, New Jersey and Connecticut approved following the new federal cap on deductions for state and local taxes aren't acceptable to the federal government.

Taxpayers who itemize will only be eligible for a federal deduction that's a small fraction of their charitable donations for property tax payments, according to proposed regulations issued by the Treasury Department on Thursday. The charitable contribution strategies in high-tax states were created so taxpayers would be able to write off the full donation amount from their federal taxes.

President Donald Trump's tax overhaul created a $10,000 limit for state and local tax deductions, a pittance for Northeastern states that have high property taxes. Democratic governors in those states have battled the Republican law's cap, saying they're being unfairly targeted.

"The IRS is hastily proposing politically motivated regulations to further the agenda of the Trump administration and block reforms that deliver relief to New York taxpayers," New York Governor Andrew Cuomo said in a statement. "Make no mistake: we will use every tool at our disposal, including litigation, to fight back."

The Treasury regulations say taxpayers can receive a federal tax write-off equal to the difference between the state tax credits they get and their charitable donations. That means a New Jersey taxpayer who makes a $30,000 charitable donation to pay property taxes and receives a $27,000 state tax credit would only be able to write off $3,000 on a federal tax bill.

"Congress limited the deduction for state and local taxes that predominantly benefited high-income earners to help pay for major tax cuts for American families," Treasury Secretary Steven Mnuchin said in a statement. "The proposed rule will uphold that limitation by preventing attempts to convert tax payments into charitable contributions."

Earlier this year, Cuomo and New Jersey Governor Phil Murphy signed legislation allowing local governments to set up charitable organizations to accept property tax payments. In turn, homeowners receive credits for those donations to offset federal taxable income.

New Jersey gives taxpayers a 90 percent state tax credit for donations made to local municipalities, counties and school districts. Under the IRS proposal, only 10 percent of the donation amount would now be eligible for a federal tax break. New York provides an 85 percent state credit.

Connecticut approved similar legislation and one of three California bills to allow taxpayers to make charitable contributions has advanced through its first Assembly committee.

The Treasury rules provide some leeway for states that provide credits of 15 percent or less of the donation amount. In those cases, taxpayers can deduct the full charitable contribution on their federal taxes.

Municipalities had been awaiting IRS guidance before creating the charitable funds. The IRS had warned taxpayers in May to proceed with caution after the states approved the maneuvers involving charitable organizations to circumvent the new federal limits. The rules released Thursday are likely to be contested by those states.

"I have no doubt this is going to get challenged," Stu Gibson, a tax litigator with law firm Schiff Hardin, said before the regulations were released. "State legislatures are being very creative in how they approach this."

School Voucher Programs

Cuomo is also spearheading a lawsuit by four states to have the so-called SALT cap struck down. He's said the state is "ready to fight if the IRS takes hasty and politically motivated action" against New York's efforts to avoid the deduction cap.

New York, New Jersey, Connecticut and Maryland sued the Trump administration in July saying the new cap unfairly targets them. The states claim the tax law overturned more than 150 years of precedent. The state and local tax deduction is essential to prevent federal tax powers from interfering with constitutionally guaranteed state rights, according to the lawsuit. Legal experts have said the suit has little chance of success.

Treasury faced a complex task in creating regulations that block the new SALT workaround proposals while taking into account existing programs in states such as Georgia and Alabama that give donors credits for making contributions to hospitals and schools. More than 30 states have programs that give taxpayers breaks for charitable donations.

Most taxpayers won't be affected by the new Treasury rules since the majority of Americans don't itemize, or if they do, their SALT deductions are less than $10,000, according to Treasury officials. But those who make contributions to existing school voucher programs could see some changes to their tax benefits under the proposal.

“The proposed IRS rule issued by the Treasury Department will harm state tax credit scholarship programs that are currently benefiting more than 250,000 students,” John Schilling, the president of the American Federation for Children, a lobbying group for private schools, said in a statement. Taxpayers who previously donated to the programs will likely be advised by their accountants to stop because of a reduced tax benefit, Schilling said.

Regulations that distinguish the SALT credit programs from tax credit arrangements used to fund education vouchers could have put Treasury in a tricky political spot for seemingly preferring red states over blue states, said Glenn Newman, a former president of the New York City Tax Commission.

“In theory, the tax law should be the tax law across the board,” Newman, now a shareholder at law firm Greenberg Traurig, said in an interview prior to the proposal’s release.

Bloomberg Politics

By Laura Davison

August 24, 2018

— With assistance by Gerald Silverman

New York Taxpayers Have Four-Day Window to Try to Beat SALT Cap.

- **IRS move to block workarounds would take effect after Aug. 27**
- **Places like Scarsdale have already created charitable funds**

Some New Yorkers successfully prepaid a portion of their property taxes at the end of last year in a bid to ease the hit from a new federal cap on state and local tax deductions. Those who want to try to lessen the pain this year may just have a few days left before the window closes.

The Internal Revenue Service took an important step on Thursday toward blocking the charitable workarounds high-tax states like New York approved in response to the tax law’s $10,000 limit. But the agency said the regulations take effect after Aug. 27, giving New York taxpayers who have already made donations to charitable funds this year — or can hustle and make them in the next four days — a possible break on their 2018 taxes, according to tax experts.

“I would think you would clearly want to take advantage of it, assuming that the fund is up and running,” Howard Wagner, a director in the national tax services group at Crowe, said referring to the four-day window.

The so-called SALT cap limit is one of the most disputed provisions of President Donald Trump’s tax law. The overhaul created a $10,000 limit for state and local tax deductions, a pittance for Northeastern states that have high property taxes. Democratic governors in those states have battled the Republican law’s cap, saying they’re being unfairly targeted.

While some municipalities had been awaiting IRS guidance before creating funds and accepting donations, others went ahead and established them. In New York, the villages of Rye Brook, Scarsdale, Upper Brookville, Roslyn Harbor, Cove Neck and Matinecock have created charitable trusts, according to Peter Baynes, executive director of the New York State Conference of Mayors and Municipal Officials.

So far in Rye Brook, just six taxpayers donated to the village's charitable fund, even though about 100 people inquired about it, according to Nicholas Mecca, the Receiver of Taxes in the Town of Rye.

New York State has set up a special revenue fund, but there isn't any money in it yet, said Jennifer Freeman, director of communications for New York State Comptroller Thomas DiNapoli. The state's department of taxation and finance has received inquiries from taxpayers interested in making charitable donations for income tax payments and updated its website Friday with details on how to make the donations.

Still, taxpayers should be cautious about contributing to funds before Aug. 27 because the IRS proposal makes it clear that the agency considers its position to be settled law, according to Michael Greenwald, a partner at accounting firm Friedman.

"It is possible that contributions before the effective date will be challenged," Greenwald said.

Brian Streig, a tax director at accounting firm Calhoun, Thomson + Matza said he thinks taxpayers will have a case: "Your rebuttal is that the IRS's reg says Aug. 27 is the effective date," he said. "I think you could win."

After Aug. 27, taxpayers who itemize will only be eligible for a federal deduction that's a small fraction of their charitable donations for property tax payments, according to proposed regulations issued by the Treasury Department on Thursday. The charitable contribution strategies in high-tax states like New York were created so taxpayers would be able to write off the full donation amount from their federal taxes.

The Treasury regulations say taxpayers can receive a federal tax write-off equal to the difference between the state tax credits they get and their charitable donations. That means a New York taxpayer who makes a $20,000 charitable donation to pay property taxes and receives a $17,000 state tax credit would only be able to write off $3,000 on a federal tax bill.

Property Tax Prepayments

Since New York, New Jersey and Connecticut just passed laws this year allowing for charitable contributions, some systems in those states may still not be ready to take payments.

In New Jersey, no county has set one up, and "I'm not aware of any county that is thinking about setting one up at this time," said John Donnadio, executive director of the New Jersey Association of Counties.

Even if one has been set up, there could be practical barriers. Many villages and towns have already collected their 2018 taxes, and residents may have missed their chance to donate. And many homeowners' tax payments are made automatically by banks, so it's not clear those can be adjusted on such short notice.

It isn't the first time municipalities have been caught off guard by the SALT deduction changes. Taxpayers stood in line outside county offices at the end of last year, rushing to prepay their 2018 real estate tax bills in the hopes they could apply it to their 2017 tax return, which allowed for unlimited SALT deductions.

Only those who already had their taxes assessed ended up qualifying for the the additional tax write-off for their 2017 tax bills following IRS guidance on the matter.

Residents of states that have had charitable tax break programs in effect for some time, such as Georgia and South Carolina, that benefit hospitals or schools, will probably have an easier time writing checks before the new rules go into effect, said Steve Rosenthal, a senior fellow at the Urban-Brookings Tax Policy Center.

“The reality is that the red states are further along in setting up their high-percentage credit schemes,” said Carl Davis, research director at the Institute on Taxation and Economic Policy. “So it may be easier for folks in red states to rush to claim credits before Aug. 27.”

‘Politically Motivated Regulations’

It’s a short window, but it may be taxpayers only shot, since the proposed rules “completely eliminate the reason to use the SALT deduction cap workarounds,” said Jared Walczak, a senior policy analyst at the Tax Foundation.

Earlier this year, New York Governor Andrew Cuomo signed legislation allowing local governments to set up charitable organizations to accept property tax payments. In turn, homeowners receive credits for those donations to offset federal taxable income. New York provides an 85 percent state credit, so under the Treasury rules, only 15 percent of the donation amount would be eligible for a federal tax break.

New Jersey and Connecticut approved similar legislation. One of three California bills to allow taxpayers to make charitable contributions has advanced through its first Assembly committee.

The Treasury rules are likely to be contested by high-tax states.

New Jersey Governor Phil Murphy said Friday that the state will wage a a three-front fight by pursuing legal action, considering any possible state legislative remedies and working with the state’s congressional delegation.

Cuomo is spearheading a lawsuit by four states, including New Jersey, to have the SALT cap struck down, which legal experts have said has little chance of success.

“The IRS proposed new politically-motivated regulations to block reforms that deliver relief to New York taxpayers,” Cuomo said in a statement Friday. “As we take steps to undo this new attack on our state, I want to alert New Yorkers to the Aug. 27 deadline.”

Bloomberg Wealth

By Laura Davison, Lynnley Browning, and Ben Steverman

August 24, 2018

— With assistance by Gerald Silverman, and Robert Lee

[Federal Lawsuit: Stockbridge Claims Creating City of Eagle's Landing Violates Voter Rights, Bond Credibility]

Lawyers for the city of Stockbridge, Georgia, claim in a federal lawsuit that a plan to carve off parts of the city to form a new, wealthier, whiter city impairs its citizens' right to vote and harms the city's ability to pay municipal bond obligations.

The lawsuit was filed Monday against the state of Georgia, Gov. Nathan Deal and other state officials. It comes just days after Capital One Public Funding—one of the nation's largest issuers of municipal bonds—filed a similar lawsuit seeking to stop the referendum to create the new city of Eagles Landing from moving forward as planned in November.

Deal signed legislation in May allowing for the creation of Eagle's Landing, in part from land currently in Stockbridge. The new city's formation must first be approved by local voters, and a referendum is planned for November's midterm elections. Stockbridge residents outside the proposed new city won't get a vote.

If created, Eagle's Landing would take approximately one-third of Stockbridge's residents and about half of its tax revenue.

Christopher Anulewicz, an attorney representing Stockbridge, said the city's lawsuit centers on three claims. "Two of them deal with voting rights, one of them deals with the right to have integrity in our contracts," he said.

Anulewicz said the creation of Eagle's Landing would bring African-American voters from a majority voting bloc in Stockbridge to a minority position in the new city and would hurt the city's obligation to pay bond debts taken out in 2005 and 2006, thereby harming an existing contract between the city and its lenders.

A Henry County Superior Court judge in July declined to issue an injunction stopping the vote from proceeding. The city is appealing the ruling.

Vikki Consiglio, chairman of the committee for the city of Eagle's Landing, dismissed the lawsuits and said that proponents were pushing forward to the vote in November.

"Anybody can file a lawsuit for anything," Consiglio said. "A lawsuit has already been filed, and the courts have ruled in our favor."

"This is all about the vote and them trying to do everything they can to stop the vote," she said. The lawsuit filed by Capital One Public Funding, says the company currently holds $11.75 million of bonds from Stockbridge, which mature in 2031. It says that the creation of Eagle's Landing will shrink Stockbridge's tax revenue by half, thereby "severely reducing" the "collateral that was contractually promised and pledged to (Capital One Public Funding)."

It follows a report issued by Moody's Investor Service in May that said the creation of Eagle's Landing would be "credit negative for local governments in Georgia generally because they establish a precedent that the state can act to divide local tax bases, potentially lowering the credit quality of one city for the benefit of another."

Residents pushing for the new city say they are driven by a desire to secure better city services, increase property values and attract high-end businesses. But opponents of Eagle's Landing, including several elected officials from the area, say race is a factor.

Stockbridge, about 20 miles southeast of Atlanta, is predominantly black, while the proposed city of Eagle's Landing would have a higher proportion of white residents.

By BEN NADLER | Associated Press | August 22, 2018 at 01:58 PM

- SEC Forces Cities to Reveal Wall Street Loans With Holdings Surging.
- Preston Hollow Capital Brings Private Debt to Municipal Market.
- BDA Submits Comment Letter on CFTC's Proposed Amendments to the De Minimis Exception to the Swap Dealer Definition.
- SIFMA and ISDA Comments to De Minimis Exception to the Swap Dealer Definition.
- MSRB Seeks Input on Draft FAQs on Use of Social Media in Advertising.
- MSRB Requests Comment on Draft FAQs Related to the Use of Social Media under Advertising Rules.
- Louisiana Bans Bank of America, Citi from Bond Sale Over Gun Policies.
- And finally, That's Nice Jeff, But Keep An Eye Out For The Little Yellow Ones is brought to us this week by *Maytown Sand and Gravel, LLC v. Thurston County*, a Supreme Court of Washington case concerning a "gravel mine." For those of you out there concerned that your children will be met with an endless series of commercial failures, may we suggest gravel mining? Perhaps we now have an anticlimax to rival, "For God, For Country, For Yale." "Eureka! I've struck gravel!"

SCHOOLS - FLORIDA

Fernandez v. School Board of Miami-Dade County, Florida

United States Court of Appeals, Eleventh Circuit - August 10, 2018 - F.3d - 2018 WL 3801616

Public school administrators, who served as principal and assistant principal, brought action against public school board, alleging that they were retaliated against for exercising their First Amendment rights to free speech and association.

The District Court granted the board's motion for summary judgment. Administrators appealed.

The Court of Appeals held that administrators spoke pursuant to their official duties when they advocated for their school to convert into charter school.

Public school administrators spoke pursuant to their official duties, as principal and assistant principal of public school, when they advocated for their school to convert into charter school, and thus their speech was not protected by First Amendment; administrators' job duties as listed in their job descriptions included "developing and implementing" educational plans and "providing effective education leadership," principals were expressly included in school officials who were authorized to apply for charter conversion under Florida statute, administrators held numerous staff meetings about charter conversion, and principal described his conversion efforts in memoranda as "an official request" and part of his "official duties."

IMMUNITY - ILLINOIS

Monson v. City of Danville

Supreme Court of Illinois - August 2, 2018 - N.E.3d - 2018 IL 122486 - 2018 WL 3650216

Pedestrian filed a complaint against city after she tripped and fell on city sidewalk.

The Circuit Court granted city summary judgment and pedestrian appealed. The Appellate Court affirmed. Pedestrian appealed.

The Supreme Court of Illinois held that:

- Provision of the Local Governmental and Governmental Employees Tort Immunity Act that set forth a general duty on the part of a local public entity to maintain its property in a reasonably safe condition under certain circumstances did not operate to override or supersede the discretionary immunities afforded city under other provisions of the Act;
- No evidence existed to demonstrate that city's decision not to repair section of sidewalk on which pedestrian tripped and fell constituted an exercise of discretion, as required to entitle the city to discretionary immunity; but
- A genuine issue of material fact existed as to whether alleged sidewalk defect was so minimal that no danger to pedestrians could be seen, precluding summary judgment.

EMINENT DOMAIN - NEVADA

Clark County v. HQ Metro, LLC

Supreme Court of Nevada - August 2, 2018 - P.3d - 2018 WL 3655607 - 134 Nev. Adv. Op. 56

Electric utility filed eminent domain complaint to obtain permanent easement for installation of electrical transmission lines on landowner's property that had been leased to county but then later sold to county after entry of order granting utility immediate occupancy but before utility physically entered property to begin construction.

The District Court ordered apportionment of just compensation proceeds for landowner. County appealed.

The Supreme Court of Nevada held that right to compensation vested upon entry of order of immediate occupancy, and thus landowner was entitled to compensation.

Order granting immediate occupancy to electric utility as condemnor constituted a taking of landowner's property rights, and the right to compensation vested at that time, and therefore landowner, and not county as landowner's former lessee that purchased property before utility physically entered property to begin construction, was entitled to compensation for the permanent easement for electrical transmission lines, where the order authorized utility to permanently occupy the easement area and restrained and enjoined landowner from interfering with that occupancy and performance of the work required for the easement.

INSURANCE - NORTH CAROLINA

Hunter v. Town of Mocksville, North Carolina

United States Court of Appeals, Fourth Circuit - July 26, 2018 - F.3d - 2018 WL 3579678

Three town police officers brought action against town and town officials, alleging that they were terminated in violation of their free speech rights in violation of federal and North Carolina Constitutions, and that they were terminated against public policy in violation of North Carolina law.

After summary judgment on some First Amendment claims was granted and after jury found for officers on remaining claims, the United States District Court granted in part and denied in part officers' motion to reconsider court's decision to award front pay in lieu of reinstatement, and found that town's liability insurance limited officers' aggregate recovery to $1 million.

The Court of Appeals held that:

- Meaning of term "interrelated" in town's employment liability insurance policy was ambiguous;
- Town manager was final policymaker of town with respect to officers' terminations;
- Town police chief was not final policymaker of town with respect to officers' terminations;
- District court did not abuse its discretion in awarding front pay in lieu of reinstatement; and
- District court did not abuse its discretion in reducing front pay award.

Under North Carolina law, meaning of term "interrelated" in town's employment liability insurance policy, under which per-claim recovery limit of $1 million applied to claims based on "same or interrelated employment wrongful acts," was ambiguous, and thus term would be construed in favor of three town police officers to allow them to each recover up to $1 million from town in their wrongful discharge action; policy did not define "interrelated," and courts and other insurance policies did not define "interrelated" in a uniform matter.

EMINENT DOMAIN - SOUTH CAROLINA

South Carolina Department of Transportation v. Powell

Supreme Court of South Carolina - August 8, 2018 - S.E.2d - 2018 WL 3748876

The Department of Transportation (DOT) filed a condemnation notice.

The Circuit Court granted partial summary judgment and determined that landowner was not entitled to compensation for any diminution in value of his remaining property due to the rerouting of a major highway which previously was easily accessible from his property. Landowner appealed. The Court of Appeals affirmed. Landowner appealed.

The Supreme Court of South Carolina held that a genuine issue of material fact existed as to the amount of compensation landowner was entitled to for any diminution in the value of his remaining property as a result on the State's taking of property through condemnation action.

A genuine issue of material fact existed as to the amount of compensation landowner was entitled to for any diminution in the value of his remaining property as a result of the State's taking of property through condemnation action, precluding summary judgment in action to determine just compensation for landowner following a taking to reroute major highway, which eliminated landowner's easy access to highway.

CONTRACTS - WASHINGTON

Specialty Asphalt & Construction, LLC v. Lincoln County

Supreme Court of Washington - July 26, 2018 - 421 P.3d 925

Licensed contractor that performed paving and maintenance work and its female owner brought action against county, asserting claims for gender discrimination, negligent misrepresentation, and breach of contract arising out of county's bidding and contracting process for paving project that was awarded to contractor.

The Superior Court granted partial summary judgment in favor of county on discrimination and negligent misrepresentation claims and dismissed breach of contract claim as moot. Contractor and owner appealed. The Court of Appeals affirmed. Contractor and owner petitioned for review, which the Supreme Court granted.

The Supreme Court of Washington held that:

- Reasonable but competing inferences of both discrimination and nondiscrimination supported gender discrimination claim, as required to defeat summary judgment motion;
- Contractor showed that it suffered reliance damages as result of county's purported clerical error in project's bid proposal that stated no bond was required, as required for contractor to prevail on negligent misrepresentation claim;
- County and contractor formed special relationship, and thus, public duty doctrine did not bar contractor's negligent misrepresentation claim; and
- Injunctive relief was contractor's exclusive remedy for its breach of contract claim.

ZONING & LAND USE - WASHINGTON

Maytown Sand and Gravel, LLC v. Thurston County

Supreme Court of Washington - August 9, 2018 - P.3d - 2018 WL 3765517

Gravel company and port brought action against county for tortious interference, negligent misrepresentation, and a violation of substantive due process, based on county's handling of company's special use permit to mine gravel.

After county's motions for summary judgment were denied and after a jury trial, the Superior Court entered judgment in favor of gravel company and port. County appealed and gravel company and port cross-appealed. The Court of Appeals affirmed and remanded for a trial on attorney fees. County's petition for review was granted.

The Supreme Court of Washington held that:

- County's allegedly tortious actions were not "land use decisions" subject to administrative exhaustion requirement;
- Gravel company had constitutionally protected property right to mine;
- County's actions shocked the conscience, as required to support § 1983 due process action;
- As a matter of first impression, gravel company and port were not entitled to prelitigation attorney fees as damages;
- Attorney fees are not recoverable as damages under the tort of wrongful use of civil proceedings, abrogating *Davis v. Cox*, 183 Wash.2d 269, 351 P.3d 862;
- Bad faith exception to the American rule does not apply to prelitigation attorney fees; and
- Reverse-Erie doctrine does not bar application of state appellate rule to § 1983 and § 1988 requests for appellate attorney fees.

Some States Sitting on Piles of Cash, and Cities Want a Cut.

States like Ohio are placing their surpluses in rainy-day funds, but cities that have suffered because of cuts since the recession say it is time to loosen up.

LORAIN, Ohio — Welcome to Lorain, where the mayor, Chase Ritenauer, would like to show you around.

The police car over there? It broke down during a pursuit not long ago, leaving the officer to continue the chase on foot. The new high school? It is part of a school system so badly underfunded that it is now overseen by the state. Traffic signals are kept operating with parts recycled from discarded traffic lights.

This city of 63,000 is in such dire financial straits that it has ceded part of an administrative building to raccoons; repeatedly calling the exterminator was too costly.

Continue reading.

THE NEW YORK TIMES

By Timothy Williams

Aug. 17, 2018

Environmental Impact Bonds Can Help Make Coastal Communities Safer, Sooner. Here's How.

Last year's hurricane season was the most destructive disaster season in U.S. history, causing $265 billion in damage and forcing more than one million Americans from their homes.

As climate change causes weather to get more extreme, coastal communities across the country are struggling to find cost-effective solutions to enhance their resiliency to storms and develop new ways to finance that work.

How can we help make coastal communities more resilient more quickly? How can we engage the private sector in coastal resiliency efforts and generate a financial return for investors?

Together with my EDF colleagues and partners, I set out to explore how one innovative financing mechanism – environmental impact bonds – might help.

Continue reading.

The Environmental Defense Fund

By Shannon Cunniff

August 14, 2018

Louisiana Beefs Up Statutory Lien in Rewrite of Local Bond Financing Law.

In a revamp of Louisiana's public financing laws, state legislators strengthened the statutory lien on local governmental bonds, a move prompted by high-profile municipal bankruptcies such as Detroit's.

Clarifying the lien wasn't the Legislature's primary goal in revising the state's bond laws, which was the result of a comprehensive effort to modernize and consolidate financing regulations, according to those who spearheaded it.

"The reorganization and new laws put into place will provide additional confidence to investors," said Sen. Eric LaFleur, D-Ville Platte. "It may mean savings to issuers in the form of lower rates."

LaFleur sponsored Senate Bill 426 – the Consolidated Local Government Public Finance Act – which lawmakers approved unanimously earlier this year and was signed into law by Gov. John Bel Edwards.

The new law was the result of a two-year project led by LaFleur, who consulted with a group of about 20 volunteer public finance officials across the state – bond attorneys, financial advisors and underwriters – who agreed to participate in a process LaFleur said was necessary to eliminate old rules and modernize the bond statute.

Among the many changes, the act clarifies that the statutory lien on bonds issued by local governments "shall be secured debt entitled to the highest possible protection and priority afforded by the bankruptcy laws of the United States and this state."

The old law said nothing about protection of the lien in bankruptcy.

"It wasn't clear how strong the lien was on the revenue stream that secured the debt," said LaFleur, a bond attorney and partner at Mahtook & LaFleur in Lafayette. "So we went in and clarified that."

LaFleur, 54, is also chairman of the Senate Finance Committee and a member of the State Bond Commission, which by law approves bonds issued by the state and local agencies. LaFleur says he recuses himself from voting when his clients appear before the commission.

Many of Louisiana's local municipal finance laws had been on the books since the early 1980s and needed to be updated or rewritten, according to LaFleur.

Some regulations were placed into various statutes in a piecemeal fashion, he said, while others required more clarification to provide uniformity in nomenclature and some needed to be deleted.

SB 426 became Act 569 in state law. It clarifies things such as when issuers can use bond resolutions or ordinances, deletes the requirement that issuers register sales tax bonds with the secretary of state, and provides for less ambiguity, LaFleur said.

The law also clarifies that school districts can issue all kinds of revenue bonds. The previous law was more narrowly interpreted.

The new law also clarifies the definitions of general obligation bonds, limited tax bonds, sales tax revenue bonds, and more.

"Deals are cleaner, and [easier] to understand," LaFleur said.

This is not the first time LaFleur has tackled Louisiana municipal bond issues.

In 2014, he got SB 384 passed requiring that municipal securities issuers in Louisiana comply with the Securities and Exchange Commission's Rule 15c2-12, as well as maintain a list of securities, continuing disclosure agreements, and current ratings.

SB 384 also requires that auditors make sure issuers are fulfilling recordkeeping duties, and that they review a sample of filings on the Municipal Securities Rulemaking Board's EMMA filing system to determine if they comply with disclosure agreements.

If issuers don't comply with the state's disclosure requirements, they are "flagged" but not penalized.

The disclosure law is working, LaFleur said in an interview Tuesday. "Now [issuers] are regularly updating disclosures, at least that's what I'm finding," he said.

This year's new bond law applies to traditional local governmental bonds.

It doesn't apply to New Orleans because it operates under a charter, and it doesn't apply to conduit issuers, 501(c)(3) tax-exempt nonprofit organizations, or exempt activity and multifamily bonds.

The new law says bondholders "have a statutory lien on and a security interest in such taxes, income, revenues, net revenues, monies, payments, receipts, agreements, contract rights, funds, or accounts as are pledged to the payment of such bonds," and any pledge or grant of a lien or security interest shall be valid, binding, and perfected from the time when the pledge or grant of lien or security interest is made.

The lien will have first priority and will be binding as against all parties having claims of any kind in "tort, contract, bankruptcy, or otherwise against the governmental entity," the law says.

Extreme diligence is warranted when investors consider whether a statutory lien exists, Municipal Market Analytics Managing Director Lisa Washburn wrote Monday in a comment about the financial struggles of Puerto Rico.

"There should be no optionality or action required for the lien to attach within the statute that is the basis for determining the existence of a statutory lien," Washburn wrote in MMA's Weekly Outlook. "If the language is unclear or leaves doubts, consultation with an experienced attorney may be needed."

LaFleur said Louisiana's original law on statutory liens was not clear or uniform, and that the law was rewritten in part because of Detroit's Chapter 9 bankruptcy case.

Detroit exited bankruptcy in December 2014, shedding $7 billion of its $18 billion in debts, which included losses for holders of the city's unlimited tax general obligation bonds.

Presiding U.S. Bankruptcy Judge Steven Rhodes questioned whether Michigan's law created a statutory lien on Detroit's ad valorem taxes because the statute didn't include the word "lien," according to a 2015 report by Breckinridge Capital Advisors on "The Changing Status of Statutory Liens."

Detroit defaulted on all its bond debt, highlighting the need for there to be precise statutory language regarding liens in order to benefit bondholders, the Breckinridge report said.

In Louisiana, the state's statutory lien law is now "more explicit than it was before" Act 569 was passed, said David M. Wolf, a bond attorney who worked with LaFleur on changes to the local public finance law.

Wolf said the old state law language on the lien was enacted in the early 1980s.

"I thought it would be better to write something that was written specifically with a bankruptcy case and a bankruptcy judge in mind," said Wolf, who is special counsel for Adams and Reese LLP based in the firm's New Orleans office. "There were uncertainties about the nature of bondholders' rights," he said.

"We were in a position of redrafting the law and one thing we wanted to do is think about changes in case law and practices," he said. "We also made sure that same kind of language would apply to all municipal bonds."

In Louisiana, cities and parishes can file for bankruptcy with the approval of the State Bond Commission and the governor.

Wolf said he was not aware of any municipal bankruptcies in Louisiana since he began practicing 36 years ago, but before that there may have been Depression-era Chapter 9 cases and some water district defaults on USDA loans.

The precise wording in Act 569 came about because of difficulties lawyers faced in places such as Michigan, he said.

"You never know when a bankruptcy is going to come about," Wolf said.

"Because in Louisiana almost all debt is secured by a specific stream of revenue, we now have a uniform place to go once it's decided what the source of security will be," he said. "You come to this statute."

One new feature of the financing law, he said, is the authorization that a limited revenue bond can be secured by parcel fees or service charges. Fire departments, for example, can leverage a fee charged for fire services.

"We just tried to make [the new law] consistent with the way the markets and regulations have evolved the last 30-40 years," he said. "We consolidated, modernized and streamlined. I hope it's an approach other states adopt."

LaFleur said the state has been proactive about updating bond laws, and he expects some tweaks to Act 569 to be made during next year's legislative session.

The new public financing act will make it easier for bondholders to understand Louisiana's laws, said LaFleur, who believes the State Bond Commission will consider approving local bond issues under the law as early as the panel's meeting on Thursday.

"I'm hoping someone out there will say Louisiana is trying to be progressive," he said.

The Bond Buyer

By Shelly Sigo

Published August 15 2018

Chicago Has Another Bond for You.

The city may try to paper over its pension woes with new debt.

If Chicago politicians applied as much cunning to solving their fiscal problems as financially engineering their way out of them, the city would be a triple-A credit.

Last year we wrote about Chicago's scheme to reduce its borrowing costs by floating low-interes--rate bonds securitized by sales tax revenue. Investors snapped up the bonds, which fetched a triple-A rating from Fitch and yields as low as 2.22%. By comparison, Chicago's junk-rated general obligation bonds landed above a 6% yield.

But junk by any other name is still junk, and Chicago's finances have continued to erode even as property taxes soar to pay for pensions that remain woefully underfunded. Last year the city smacked homeowners with a 10% increase and this year they will have to pay 2.75% more. Mayor Rahm Emanuel is preparing to run for re-election next year, and he'd rather not raise taxes again.

So he's now considering a plan by Michael Sacks, CEO of asset management firm GCM Grosvenor, to issue $10 billion in bonds to backfill the city's pension funds. The details will have to be worked out, but the idea is to transfer the investment risk from workers and retirees to creditors while exploiting interest-rate arbitrage.

Chicago would presumably issue the bonds at a lower rate than the 7% expected return on its pension fund assets. Over time this would supposedly add to pension fund assets. In the short term, dumping $10 billion into the pension funds would also reduce the city's annual pension payments since liabilities would appear to be smaller.

Caveat, creditors. The cities of Detroit and Stockton and San Bernardino in California defaulted on their pension obligation bonds in Chapter 9 bankruptcy. Stockton's bond insurers got 50 cents on the dollar. Puerto Rico in 2008 issued $3 billion in pension bonds. But Congress in 2016 passed legislation allowing the commonwealth to wriggle out of those obligations. Hedge funds have sued the federal government and are demanding that U.S. taxpayers bail them out.

Like those other pension bonds, Chicago's version would also have to be financed every year out of city revenues. A chunk of sales tax revenue is already earmarked for other bonds. If revenues shrink in the next recession, pension bondholders would compete with city services for payment priority. Who do you think wins if the city has to start laying off police officers to pay bondholders who have been getting 5% or 6% a year?

Investors might be willing to take these political risks if they can snatch a hefty enough interest-rate premium. And if they haven't learned from the experience of Detroit and Puerto Rico, they will deserve whatever political haircut they eventually get.

THE WALL STREET JOURNAL

By The Editorial Board

Aug. 17, 2018

MSRB Seeks Input on Draft FAQs on Use of Social Media in Advertising.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today sought comment from regulated entities and other stakeholders about draft answers to frequently asked questions (FAQs) addressing the use of social media in advertising by municipal advisors and municipal securities dealers and their associated persons.

"As social media becomes a more common communication tool, developing effective compliance policies and procedures for digital interactions is increasingly important for municipal market participants," said MSRB President and CEO Lynnette Kelly. "The MSRB recognizes that municipal advisors, in particular, need guidance as they prepare to comply with newly established advertising regulations."

New MSRB Rule G-40, on advertising by municipal advisors – together with amendments to MSRB Rule G-21, on advertising by municipal securities dealers – becomes effective on February 7, 2019. The MSRB has committed to providing guidance in advance of the effective date to assist regulated entities as they develop their compliance policies and procedures. In addition to today's draft guidance on social media, the MSRB has sought feedback on draft FAQs on the use of municipal advisory client lists and case studies under Rule G-40. Next month, the MSRB plans to seek input on draft guidance related to Rule G-40's content standards.

The MSRB developed today's draft FAQs to enhance market participants' understanding of permissible and impermissible uses of social media in the context of MSRB advertising regulations and certain other MSRB rules. The draft guidance was crafted with the purpose of maintaining consistency with the guidance of other regulators under comparable advertising regulations.

Read the request for comment. Comments should be submitted no later than September 14, 2018.

Date: August 14, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
jgalloway@msrb.org

MSRB Requests Comment on Draft FAQs Related to the Use of Social Media under Advertising Rules.

The MSRB is seeking public comment on a draft set of frequently asked questions (FAQs) related to the use of social media in advertising by municipal advisors and municipal securities dealers applicable under Rule G-21 and Rule G-40.

The draft FAQs can be viewed here.

In May, the SEC approved the MSRB's proposed Rule G-40, on advertising by municipal advisors, and amendments to MSRB Rule G-21, on advertising by municipal securities, despite opposition from almost all broker-dealer groups. Both new Rule G-40 and amendments to G-21 are set to be effective on February 7, 2019.

In July, the BDA submitted a comment letter to the MSRB concerning a draft set of frequently asked questions (FAQs) related to the use of municipal advisory client lists and case studies under Rule G-40. The final comment letter can be viewed here.

Bond Dealers of America

August 14, 2018

BDA Continues to Be Leading Voice in Opposition to Michigan Senate Bill Restricting Negotiating Underwriting.

WASHINGTON – Municipal bond market players in Michigan are at odds over a bill pending in the state Senate would require localities to sell municipal bond issues over $500,000 on a competitive or public basis to the underwriter offering the lowest interest cost. The municipalities also would have to publish a notice of sale at least seven days before the sale under amendments to the Revised Municipal Finance Act (Senate Bill No. 1054), which was drafted by John Axe, senior counsel at Clark Hill in Detroit. The measure was introduced on June 7 by Senate Finance Committee Chair Jack Brandenburg, a Republican from the eighth district in Harrison Township.

Axe, who said his clients include the Detroit Legal News, said the bill is an attempt to go back almost 20 years ago when the Municipal Finance Act required local governments to sell bonds competitively with public notices of the sales. In 2001, he said, the Michigan Legislature revised the Municipal Finance Act to allow municipalities to sell bonds on a negotiated or a competitive basis. At the time, state lawmakers promised to revise the new law if it didn't work, Axe said. During the last four years, fewer than 10% to 15% of bond issues have been sold on a competitive basis, which saves issuers money, Axe said, adding, "We even require competitive bidding for a garbage truck." "It's changed dramatically," said Axe. "But there's no way of tracking it because there's no public sale notice requirement." But Patrick McGow, a principal at Miller Canfield and head of its public finance group, said the earlier bill, which dated back to the 1940s, only required certain bond issues to be sold competitively and contained many exceptions. The Revised Municipal Finance Law was passed in 2001 to allow local governments to decide how to sell their bonds, he said. The pending bill would amend that law. "From my perspective, we oppose [the bill] because the legislation would restrict the ability of local governments and school districts to select the best method to sell bonds at the lowest rate and cost to the taxpayer," he said. "There are many issuers, credits, financial structures, and programs where a competitive sale is not the best choice." McGow also noted the bill would treat state and local issuers differently.

Mike Nicholas, chief executive officer of the Bond Dealers of America, warned the bill "would create unintended consequences by increasing debt cost for municipalities and schools, reducing timely access to the capital markets, and isolating municipalities from much of the municipal securities market and advisors in that market." Nicholas stressed that BDA is not taking a position in the long-standing debate over whether competitive or negotiated underwritings are more cost-effective for municipal issuers. "However, what is beyond debate is that categorically eliminating the ability of Michigan municipalities to access the marketplace through negotiated underwritings will limit their ability to respond to market conditions, create unnecessary hurdles to market access, and diminish the cost-effectiveness of their bond issuances," Nicholas said. "The end result will be increased costs to the taxpayer, especially for those constituents of issuers whose bond offerings are more complex, whose credit quality is less than ideal, or who sell public debt in distressed or volatile market environments."

“We call on the Senate to reject Senate Bill No. 1054 and allow municipalities to be able to continue to issue debt in the manner that works best for them, and not to force a one-size-fits-all methodology that will cost taxpayers more of their hard-earned money,” he said. Some legislative observers in Michigan said the bill doesn’t have much of a chance of passage because the Legislature is currently out on summer recess and there are not many legislative days left in the session.

“At this point I don’t think it has much legs,” said one source who did not want to be identified. But Axe said, “I think we’ve got a good chance of getting it passed.” Brandenburg is term-limited and must leave the Michigan Senate at the end of the session. State senators are limited to two four-year terms, sources said. Brandenburg would like this bill to be part of his legacy, they said.

Bond Dealers of America

August 15, 2018

By Lynn Hume

BDA Submits Comment Letter on CFTC’s Proposed Amendments to the De Minimis Exception to the Swap Dealer Definition.

Today, August 13, 2018, the BDA submitted a comment letter to the Commodities Futures Trading Commission (CFTC) in response to its request for comment on proposed amendments to the de minimis exception within the swap dealer definition. You can review a copy of the BDA’s draft letter here.

BDA Comment Letter Summary–Primary Areas of Focus:

- The aggregate gross notional amount threshold for the de minimis exception should be set at $8 billion in swap dealing activity or an amount in excess of $8 billion
- An exception should exist for swaps entered into by insured depository institutions in connection with originating loans
- An exclusion should exist for swaps entered into to hedge financial risk
- Wholesale changes to the calculations of notional amounts should be subject to market comment and review
- The CFTC should clarify Risk Participation Agreements as “swaps” or to be excluded as “dealing activity”

Additional Documents:

You can read more of the proposed changes from the CFTC here.

Bond Dealers of America

August 13, 2018

SIFMA and ISDA Comments to De Minimis Exception to the Swap Dealer

Definition.

Summary

SIFMA and ISDA provided comments to the CFTC on the Notice of Proposed Rulemaking regarding the De Minimis Exception to the Swap Dealer Definition published by the U.S. Commodity Futures Trading Commission. The Associations support the Proposal to set the aggregate gross notional amount threshold ("AGNA") at $8 billion in swap dealing activity. Maintaining the de minmis threshold is the right outcome to ensure that banks and dealers can continue meeting their clients' risk management needs. As we have stated in the past, decreasing the size of the de minimis threshold would lead to a reduction in the number of swap market participants willing to engage in swap dealing activity with commercial end-users for fear of going above a lower threshold and triggering the SD registration requirement.

See also:

De Minimis Exception to the Swap Dealer Definition

Preston Hollow Capital Brings Private Debt to Municipal Market.

- **Dallas firm has raised more than $1 billion from investors**
- **New Orleans convention center hotel would be biggest deal yet**

The agency that runs New Orleans' convention center may build a 1,200-room Omni Hotel attached to the exhibition hall, a project that local tourism officials say is needed to boost business in the Big Easy.

If the project is given the go ahead, the $516.5 million needed to finance it won't come from selling tax-exempt bonds to mutual-fund managers and individual investors in a public offering, as is typically done. It will come from a loan from Preston Hollow Capital, a little known company that's looking to shake up the $3.8 trillion state and local government bond market with a direct-lending model that's ballooned in corporate America.

Since its founding four years ago, Preston Hollow has extended $2 billion of loans. It has financed a hotel in a Dallas suburb, hospitals in California and New York, student housing in Pennsylvania, and roads, sewers and other infrastructure for economic redevelopment projects in the suburbs of New York City, Cleveland and Atlanta.

In New Orleans, it's pitching its biggest deal yet, a little more than month after closing an equity commitment of more than $225 million from investors, including funds managed by HarbourVest Partners, Stone Point Capital LLC and Pathway Capital Management, bringing its permanent equity capital to more than $1.3 billion.

Preston Hollow occupies a niche between banks that lend to municipalities with strong credit ratings — a market that exploded after the financial crisis — and individuals and mutual funds that buy traditional bonds. Preston Hollow lends over the long-term, as much as 40 years, to projects that banks won't finance because they're too risky, require more time to repay — or both. It stands to get an 8.2 percent interest rate on the New Orleans loan if it goes through, more than twice the yield on benchmark 30-year municipal bonds.

“There was this wide gap between the bank market and the capital markets marketplace for a committed buyer,” said Ramiro Albarran, managing director at Preston Hollow.

Banks Retreat

Outside of the municipal market, lending by private equity funds and asset management firms to companies has ballooned to more than $600 billion as stiffer regulations led banks to pull back, according to researcher Preqin Ltd. The corporate-tax cut law has also made state and local government debt less lucrative to banks, leading them to cut their holdings during the first three months of the year for the first time since 2009, according to the Federal Reserve.

Loans are attractive to investors because they’re immune from the price swings of publicly traded assets, said Albarran, while borrowers can cut out the fees for lawyers and credit rating companies associated with bond offerings.

“Often there’s a lack of risk appetite from the borrower’s standpoint to go through all the steps necessary for doing a capital markets transaction and hoping the buyer will be there at the end of the day,” said Albarran.

Preston Hollow Capital was founded by Jim Thompson, who worked at Orix USA, a subsidiary of Japan’s Orix Corp., for 22 years, including 10 years as chief executive officer. He invested $100 million of his own money in Preston Hollow Capital, named after the wealthy Dallas neighborhood where he lives.

Thompson, an avid pilot who owned a Czech-made military training jet and flew his Cessna Citation CJ3 to Europe, built Orix USA from a company that securitized mortgage-backed securities into a 1,400-employee firm with $5 billion in assets.

’Wasn’t Ready’

Orix invested in energy, real estate, and municipal projects and acquired Mariner Investment Management and mergers adviser Houlihan Lokey.

“I wasn’t ready to stop working,” Thompson said in an email.

Thompson’s departure from Orix wasn’t amicable. Orix sued Thompson, accusing him of planning the new firm while still at there and poaching its employees. Thompson, who said his compensation included a five percent share of Orix’s value, sued after the company denied the options existed and didn’t pay him, according to the lawsuits. The cases were settled and terms are confidential.

Thompson brought along 10 of his Orix colleagues to his new firm. Now, Preston Hollow and its 32 employees focus on sourcing deals — “where public policy and private capital intersect — rather than purchasing companies,” Thompson said in an email.

And while Preston Hollow started with a focus on financing infrastructure for economic development projects, it’s diversified into higher education and healthcare investments.

In April, Preston Hollow closed a $125 million loan with El Centro Regional Medical Center in California’s Imperial Valley near the Mexican border to bring the city-owned hospital into compliance with seismic safety standards and refinance existing debt. About a quarter of El Centro’s residents live in poverty and suffer from high rates of diabetes and cancer.

Preston Hollow bought the hospital’s tax-exempt bonds yielding 5 percent to 6.38 percent. “They gave us terms better than what we would have had seeking the markets," said hospital Chief Executive Officer Dr. Adolphe Edward.

The New Orleans hotel deal has attracted scrutiny from a non-partisan research group, which estimates the development team is seeking cash and subsidies with a present value of $330 million. These include tax rebates of 10 percent of room revenue, 4 percent of food and beverage revenue, and a property tax exemption until the debt is repaid in 40 years.

On August 9, New Orleans Mayor LaToya Cantrell, wrote a letter to the chair of the the Ernest N. Morial New Orleans Exhibition Hall Authority opposing the proposed deal and saying she had "grave concerns" about the size of the public subsidy, future implications of the project on tax revenue and the plan's scant details.

The mayor also said she was concerned about the interest rate on the tax-exempt bonds Preston Hollow would purchase. Thompson declined to comment.

Bloomberg Markets

By Martin Z Braun

August 17, 2018, 7:50 AM PDT

— With assistance by Alan Levin

Louisiana Bans Bank of America, Citi from Bond Sale Over Gun Policies.

- **Commission votes to exclude top U.S. underwriters from deal**
- **Bank policies seen 'infringement on the rights' of residents**

Louisiana is using the bond market to stick up for the Second Amendment.

The state's bond commission voted 7 to 6 Thursday to ban Bank of America Corp. and Citigroup Inc. from working on its upcoming debt sale because of the banks' "restrictive gun policies," the state treasury said in a statement. Bank of America and Citigroup are the two top-ranked underwriters of long-term municipal debt, according to data compiled by Bloomberg.

"I personally believe the policies of these banks are an infringement on the rights of Louisiana citizens," Treasurer John Schroder said in a statement. "As a veteran and former member of law enforcement, I take the Second Amendment very seriously."

The ban is the latest example of how corporate America has been drawn into the nation's polarizing debate over gun control. Earlier this year, Chicago Mayor Rahm Emanuel proposed using the city's business to push for stricter gun controls by limiting work with Wall Street firms that didn't cut ties with companies that sold firearms to people under the age of 21 or dealt in high-capacity magazines.

The decision by Louisiana comes after Bank of America in April said it would stop making new loans to companies that make military-style rifles for civilian use. At the time, the bank said at least 150 of its employees had been affected by gun violence over the years. Bill Halldin, a spokesman for Bank of America, declined to comment.

Citigroup was the first major banking institution to set restrictions on the firearm industry in March, when it announced plans to prohibit retailers that are customers of the bank from offering bump stocks or selling guns to people who haven't passed a background check or are younger than 21. The restrictions applied to companies that rely on the bank for store credit cards, lending and other services.

"Citi adopted this policy because we believe it is a positive and balanced step to promote gun safety without undermining free markets or Second Amendment rights," spokesman Scott Helfman said in an emailed statement. "It is disappointing that the taxpayers of Louisiana will be deprived from competitive bidding for necessary public works because the process has been politicized."

Second Amendment

During 90 minutes of deliberations during a state bond commission meeting on Thursday, Louisiana legislators discussed the merits of the ban. The state said it received solicitations from 19 banks interested in underwriting the $600 million sale of so-called Garvee bonds, which would finance interstate improvements and tunnel replacements.

The exclusion won't be a major hit to Bank of America or Citigroup, which together underwrote about $110 billion of municipal bonds last year, about 27 percent of those that were issued, according to data compiled by Bloomberg.

Louisiana state senator Jay Luneau voiced concern that the state would no longer get the best rate on the bond sale if it were to exclude the biggest underwriters. Luneau also asked the commission whether the state would also prohibit the bank awarded the bond deal from re-selling some of the debt to Bank of America and Citigroup on the secondary market.

"What I'm trying to point out is they could still be involved — even if we did this — in the secondary market," said Luneau, a Democrat. "Some of our intent is to do business with who is best for the state of Louisiana from a financial perspective with these bonds because we're talking about a lot of money here."

Other state officials took Bank of America and Citigroup to task on Thursday over the gun policies, delivering a simple message: Stick to banking.

"Do you realize how important the second amendment is to the people of Louisiana?" Blake Miguez, a Republican member of Louisiana's House of Representatives, asked Citigroup's Brandee McHale, the company's head of corporate citizenship.

Bloomberg Markets

By Amanda Albright and Jennifer Surane

August 17, 2018

SEC Says Muni Bond Firm in Boca Raton Committed Fraud.

A Boca Raton company improperly diverted municipal bonds at the expense of retail investors, the Securities and Exchange Commission said Tuesday.

The SEC alleges that from 2009 to 2016, two agents of Core Performance Management LLC of Boca

Raton lied about their identities to cut in line in bond allocations.

The SEC says Core Performance Management's representatives bought new-issue muni bonds by posing as retail investors to gain priority in bond allocations. The defendants then flipped the bonds to broker-dealers for a fee. The SEC also alleged a municipal underwriter took kickbacks from one of the flippers.

The SEC names as defendants James Scherr of Boca Raton, the owner of Core Performance Management, and Deborah Dora of Lighthouse Point and Sharlene Mesite of Port St. Lucie, who are accused of using phony identities.

Also named in the SEC's suit is James O'Neil of Jupiter, who's accused of acting as an unregistered broker.

"My clients cooperated cooperated fully with the SEC investigation, and they're happy to put this behind them without protracted litigation," said James Sallah, the defendants' attorney.

As part of the scheme, the defendants lied about their Zip codes, because investors who live in the jurisdiction issuing the bonds often can move to the front of the line. The defendants also used phony business names to disguise their true intentions, the SEC said.

"By improperly placing retail orders on behalf of broker-dealers, we allege the flippers prevented true retail investors from receiving priority in municipal bond offerings," said LeeAnn G. Gaunt, chief of the SEC Division of Enforcement's Public Finance Abuse Unit.

Core Performance Management ceased operations in 2016, the SEC said.

Palm Beach Post

By Jeff Ostrowski

August 14, 2018

SEC Alleges Firms Conspired in 'Flipping' Deal With Muni Bonds.

- **Two investment firms, 18 people charged in bond trading case**
- **Related SEC case targets former employee of underwriting firm**

The U.S. Securities and Exchange Commission said two investment firms and an underwriter settled charges of conspiring to make quick profits by trading newly issued municipal bonds, a practice known as flipping.

The agency Tuesday said that Core Performance Management LLC, based in Boca Raton, Florida, and Chula Vista, California-based RMR Asset Management Co. used fictitious business names and posed as individual investors to get newly offered securities that were then immediately resold at higher prices. The SEC said the former head of municipal underwriting for NW Capital Markets purchased securities from Core Performance at above-market prices in exchange for a cut of the profits.

"More than a dozen of the individuals charged today are alleged to have engaged in plainly deceptive conduct," said Stephanie Avakian, co-director of the enforcement division. "We are committed to investigating and charging individuals, especially where, as here, the alleged misconduct by many of these industry professionals harmed retail investors."

The case provides a window into how professional investors may seek to game the $3.8 trillion state and local-government bond market to make short term profits, not unlike those that can be reaped by getting in on initial stock offerings. It is part of a broader push by the SEC to crack down on fraud in the state and local government debt market and marks a departure from recent cases that largely focused on misleading disclosures by borrowers.

The SEC said the investigation is ongoing, indicating that it may bring more cases.

"We are continuing our investigation to determine whether other market professionals had a role in these improper practices," said LeeAnn Gaunt, the head of the agency's Public Finance Abuse Unit.

While prices of municipal bonds are far less volatile than newly issued stocks, the debt offerings can be heavily sought after because many governments seek to ensure that some of them are sold to individuals, rather than just investment firms. Those small buyers are often given special priority.

The SEC said that Core Performance and RMR posed as so-called retail investors to purchase the newly issued bonds that were then resold to other firms at a profit.

They did that by using fictitious business names, falsely linking their orders to zip codes in the area where the bonds were being issued and dividing up its orders among dozens of accounts. Once the bonds were purchased, they were typically resold to dealers at a pre-arranged price, according to the SEC. The agency said 18 individuals were involved.

Core Performance and managing director James Scherr, RMR and its president, Ralph Riccardi, and 13 of their associates settled the SEC's charges without admitting or denying the allegations, the SEC said in a statement. NW Capital and its former underwriting head, Charles Kerry Morris, also settled without admitting or denying the charges.

A phone number listed for Core Performance in Boca Raton was disconnected. Loren Washburn, a lawyer for RMR, said the firm fully cooperated with the SEC and is glad to have resolved the matter. A message left with NW Capital's James Fagan, who supervised Morris and agreed to the settlement, wasn't immediately returned.

Bloomberg Markets

By William Selway

August 14, 2018

S&P Extra Credit: U.S. Not-For-Profit Health Care, Medians And Trends And Disruption. Oh My!

In this Extra Credit Lisa Schroeer talks with S&P Global Ratings' not-for-profit health care industry experts Martin Arrick and Cynthia Keller about the sector's median performance, overall trends, and potential disruptors.

Listen to Audio

Aug. 13, 2018

Muni Market Recap: Slow & Steady Wins the Race.

Municipal bond markets have been slowly and steadily grinding to lower yields and lower ratios over the summer. As a reminder, when yields are lower prices are higher due to the inverse relationship between yields and prices. Ratios represent the yield of the U.S. Government bond divided by the yield of the Municipal bond. Municipal front end yields, observed by bonds maturing in 2020, have declined from 1.65% to 1.62%, and 10 year yields have declined from 2.50% to 2.43% (based on MSRB trade data). Ratios in the front end of the yield curve (2 year) declined, 65% to 63%, and 10 year ratios have been steady at 85% (based on MSRB trade data). The long end of the muni curve has remained around 3.00% at 99% ratio to US Government 30 year debt (based on MSRB trade data).

The steady market has benefited large issuers trying to bring bonds to market. The demand has been relatively steady and has, at times, allowed large issuers to price deals in excess of $1 billion with no new issue discount. New issue discount is usually a function of a sudden increase in supply for a given issuer results in a widening of spreads or higher yields to compensate for the increased supply. The most recent example is the Denver Airport transaction that was brought to market this week: Denver Airport planned to raise $2.3bn and the deal had enough demand to issue $5 billion in bonds. The airport has a $3.5 billion capital program to expand the capacity of travellers coming into Denver. Miami Dade Aviation also sold $790 million of bonds this week to refund a past deal.

In a year with lower overall municipal bond issuance, down 11% relative to 2017, airports issuance is up 49 percent (source: Bloomberg) so far in 2018 with over $11 billion of bonds coming to market.

Posted 08/17/2018 by Homero Radway

Neighborly Insights

The Fast Lane – Demography, Regional Competitiveness, City Finances.

Demography is destiny, goes the old saying. In the United States, a changing and growing population may help spare our society from the workforce shortfalls afflicting many other industrialized countries. Yet the transition to a more diverse America, including the first recorded decline in the country’s white population, is causing palpable anxiety in our politics and reigniting core tensions around race. In the San Francisco Chronicle, Bill Frey explains why America’s growing minority youth population is good news for the nation’s future, building on the second edition of his book, Diversity Explosion.

At the same time, it’s clear that demographic margins alone won’t automatically translate into broadly shared opportunity. Writing in The New York Times from his fast-changing majority-black hometown near Pittsburgh, Andre Perry urges investors and technology companies to bridge the gaps that too often separate diverse communities from the urban tech boom.

Continue reading.

The Brookings Institute

by David Lanham and Rachel Barker

August 14, 2018

TAX - FLORIDA

Andrews v. City of Jacksonville

District Court of Appeal of Florida, First District - June 18, 2018 - So.3d - 2018 WL 3015264 - 43 Fla. L. Weekly D1370 - 2018 Employee Benefits Cas. 214, 374

Citizens brought action against city council challenging referendum on whether to adopt a one-hal--cent sales surtax to address underfunded pension liability.

After the surtax was approved in the election, the Circuit Court granted city's motion for summary judgment. Citizens appealed.

The District Court of Appeal held that:

- Ballot title and summary were not misleading and clearly articulated chief purpose of referendum, and
- Ordinance setting date of referendum was within city council's legal authority, such that referendum was not void ab initio.

Ballot title and summary were not misleading and clearly articulated chief purpose of referendum, which was to reduce or eliminate city's unfunded pension liability through the use of a sales surtax, though summary did not contain every detail or ramification of proposed surtax; summary declared what state law would require of city in order to levy surtax, summary allowed voters to comprehend the sweep of measure, and summary could not and was not required to contain every detail of proposed tax, as state statute limited length of summary to 75 words.

Ordinance setting date of referendum on surtax for purposes of reducing or eliminating unfunded pension liabilities was within city council's legal authority, such that the referendum was not void ab initio, though city council passed ordinance prior to effective date of statute authorizing counties to levy surtax; statute did not prescribe date that ordinances could be passed to set referendum, ordinance merely authorized vote on whether to adopt surtax and did not attempt to levy a premature surtax, several preconditions still had to be met before the surtax could go into effect, and the ordinance recognized the requirement to meet those preconditions by providing for future "separate legislative action" before actually levying the surtax.

TAX - CALIFORNIA

Johnson v. County of Mendocino

Court of Appeal, First District, Division 2, California - August 8, 2018 - Cal.Rptr.3d - 2018 WL 3750338 - 18 Cal. Daily Op. Serv. 7881

Objectors brought declaratory judgment action against county, challenging validity of county ballot measure imposing tax on commercial cannabis businesses.

The Superior Court dismissed action. Objectors appealed.

The Court of Appeal held that:

- Tax imposed was a general tax rather than a special tax that would require two-thirds majority, and
- County was not required to prove that so-called tax was in fact a tax rather than a fee.

Tax imposed on commercial cannabis businesses by county pursuant to ballot measure was a general tax rather than a special tax, and therefore simple rather than two-thirds majority was required for approval of tax, even though ballot measure listed certain types of services for which tax might be allocated; funds from tax were not earmarked or dedicated to any specific project but rather were described as being for support of general county services, and measure did not in any way limit county's ability to spend proceeds collected under tax.

Pursuant to Proposition 26, which had amended constitution to define a tax as opposed to a fee, county was not required to prove that so-called tax, which was imposed on commercial cannabis businesses pursuant to ballot measure, was in fact a tax rather than a fee disguised as a tax; Proposition 26 was concerned with requiring government to prove that a fee was not in fact a tax, rather than the other way around.

SEC Forces Cities to Reveal Wall Street Loans With Holdings Surging.

- **Step aimed at addressing concerns bondholders left in dark**
- **Loans to states, localities have nearly tripled since 2010**

The U.S. Securities and Exchange Commission moved to require states and local governments to disclose bank loans and privately placed debt, seeking to address concerns that bondholders are being left in the dark about a fast-growing segment of public finance.

The SEC adopted amendments to a rule, known as 15c2-12, that obligates securities dealers to ensure that municipalities report updated financial information and material events to bondholders. The amendments will force the disclosure of loans incurred by municipalities, loan defaults and changes to financial covenants that affect bondholders within 10 business days.

"Disclosures required by these rule amendments will better equip investors and intermediaries to make informed investment decisions about municipal securities," SEC Chairman Jay Clayton said Monday in a statement.

Direct lending by banks has proliferated since the financial crisis as states, local governments and non-profits found they could borrow at rates comparable to those on bonds, without the fees or disclosure requirements associated with public-debt offerings. Commercial bank loans to municipalities nearly tripled to $190.5 billion by the first quarter of 2018 from $66.5 billion at the end of 2010, according to the Federal Deposit Insurance Corp.

While investors may eventually learn about a locality's loans through annual financial reports, the obligations often aren't reported to regulators or made public immediately. The lag has meant that investors have had to wait months before finding out about new debt. The loan terms can favor banks over other investors and add to a borrower's financial risk.

The compliance date for the amendments to rule 15c2-12 is 180 days after they are published in the Federal Register.

Bloomberg News

By Martin Z Braun

August 20, 2018, 10:49 AM PDT

— With assistance by Benjamin Bain

The Dos and Don'ts of Leasing Property Owned by a Municipality.

Most municipalities own at least some real property and often such property is underutilized. An effective way for a municipality to monetize that asset, and raise extra revenue, is to lease the property to a tenant. However, the successful completion of a municipal lease—like any commercial lease—requires that municipalities think carefully, and negotiate thoroughly, regarding a number of legal issues.

1. Written Lease Agreement

"Get it in writing." You've undoubtedly heard this advice countless times, and for good reason—it is critical to spell out with specificity the rights and obligations of each party in a written lease agreement. While a lease agreement does not necessarily need to be in writing to be enforceable by a court, having a well-defined lease in place with your tenant is a good way to avoid having to go to court in the first place. As with any business relationship, things will go wrong, mistakes will be made, and misunderstandings will happen in the course of a landlord/tenant relationship. Having a comprehensive lease in place, which covers issues such as how much rent is due and when, who is responsible for damages and repairs, and how long a lease term lasts, along with a host of other issues, can help municipalities ensure beneficial and amicable relationships with tenants.

2. Term

Every lease agreement should clearly define the length of the lease, as well as specific start and end dates. Depending on the terms of a lease deal struck by a municipality and tenant, a lease agreement may have several start dates, including when a tenant can enter the premises to set up, when rent is due, when the tenant must secure insurance, and when business may commence. In addition, the lease agreement should identify under what conditions the parties may terminate the lease, and the parties' respective rights and obligations upon lease termination. Events of default, triggering the rights of a party to terminate the lease, as well as any opportunities to cure defaults, should also be spelled out in the lease.

3. Insurance

To the extent a municipality becomes a landlord, it should ensure, and require documentation in the lease agreement, that its tenant has sufficient insurance for its business. Once a municipality allows another party to operate on its property, it must concern itself with the types of activities that the tenant is engaging in, and whether such activities put the property or people at risk. As discussed below, in a typical lease scenario, risks are divided between landlord and tenant for repairs, maintenance, and damages to the property. If a municipal landlord doesn't require coverage, it may have to bear the full cost of repairs. Further, requiring insurance is simply good business. If a tenant doesn't have sufficient insurance for its business, it may choose to use its next rent payment for an expense, such as damage or an accident that would otherwise have been covered by insurance.

4. Use Clause

To the extent that a municipality is concerned about how a tenant may use its leased property, it should include a "use clause" that limits and defines permitted activities in the space. The limitations can be broad or narrow, and should be tailored based on concerns related to risks of liability related to certain kinds of businesses, and/or if the municipality has an aversion to certain kinds of business activities.

5. Taxes

While property owned by a municipality for a "public purpose" may be exempt from taxes, if such property is leased to a for-profit business for a non-public purpose, such exemption does not apply. Specifically, MCL 211.181(1) provides:

Except as provided in this section, if real property exempt for any reason from ad valorem property taxation is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit, the lessee or user of the real property is subject to taxation in the same amount and to the same extent as though the lessee or user owned the real property.

Accordingly, a lease agreement should make clear that a tenant is responsible for all taxes and should be listed on the tax rolls as the taxpayer.

6. Repairs, Maintenance, and Improvements

A lease agreement should identify whether the municipal landlord or tenant is responsible for major and minor repairs and maintenance for the leased building or space within a building. Typically, tenants are also responsible for paying a proportionate share of common area maintenance within a building. In addition, a lease should address the parties' agreement about any improvements that the tenant intends to make to the space, including who is responsible for the work, when it must get done, and who must pay for it.

7. Miscellaneous Expenses and Obligations

Many other issues can and should be addressed in a lease agreement between a municipality and a tenant. For example, the agreement should document who is responsible for procuring and paying for janitorial services, how utilities should be apportioned in a multi-tenant building, who is responsible for exterior maintenance such as landscaping and snow plowing, and what dedicated parking, if any, is available to the tenant.

These issues must also be considered when a municipality leases space from a private landlord or a municipal landlord.

In sum, municipalities that intend to lease space to tenants should not simply rely on a "boilerplate" lease agreement when negotiating and memorializing terms with a tenant. Each term of the lease must be carefully considered and reduced to a written agreement. By working with experienced legal counsel to craft an agreement, municipalities can avoid hidden, onerous traps that can result in expensive and time-consuming litigation.

Foster Swift Collins & Smith PC

by Scott H. Hogan

August 15, 2018

Climate Change AG Investigations and Municipal Litigation.

Increasing Challenges for Energy Producers

Several state attorneys general ("state AGs") recently have undertaken high-profile investigations into energy producers' research and public statements about the potential effects of climate change. Thus far, energy companies like ExxonMobil ("Exxon") have encountered limited success challenging these investigations. In addition, a number of cities and municipalities have filed lawsuits against major energy producers, alleging that these companies knowingly contributed to the harmful effects of climate change.

This article surveys recent developments in these state AG investigations and municipal lawsuits against energy companies. Although these investigative and litigation trends remain in their early stages, it appears that energy producers may continue to face increasing climate-change government investigations and related litigation.

Continue reading.

King & Spalding

by John C. Richter, Brandt Leibe, William S. McClintock

August 15, 2018

IRS Issues Guidance on ITC Eligibility for Solar Projects in Notice 2018-59 Including Methods for Establishing Beginning of Construction and Eligibility of Transferred Energy Property.

On June 22, 2018, the IRS issued Notice 2018-59 (the "ITC Notice"), providing guidance as to how a taxpayer establishes that construction has begun with respect to solar facilities qualifying for the Internal Revenue Code Section 48 investment tax credit (the "ITC"). The ITC provides a credit to taxpayers equal to a percentage of the basis of qualifying energy property, which percentage varies depending on the type of such property, the year in which construction begins, and the year in which the property was placed in service. In general, the ITC Notice is similar to guidance provided for wind facilities qualifying for the ITC or the Internal Revenue Code Section 45 production tax credit and promulgated in Notice 2013-29, as clarified and modified by later notices.

Construction has begun when a taxpayer establishes either of the following:

1. Physical work of a significant nature has begun and the taxpayer maintains a continuous program of construction. Work performed for the taxpayer pursuant to a binding written contract entered into

prior to the manufacture, construction or production of the energy property or components of energy property for use by the taxpayer in the taxpayer's trade or business (or for the taxpayer's production of income) is taken into account in making this determination. This test depends on the relevant facts and circumstances and is focused on the nature of the work performed rather than the amount or the cost; it is not subject to a fixed minimum amount of work or cost threshold. The test includes both on-site and off-site work, such as off-site manufacture of components and on-site installation of racks or other structures to attach photovoltaic panels to a site. Preliminary activities, such as clearing a site, are not physical work of a significant nature under this test.

A continuous program of construction involves continuing physical work of a significant nature, as determined based on the facts and circumstances. Certain disruptions beyond the taxpayer's control, such as severe weather conditions and natural disasters and delays in obtaining permits and licenses, are treated as excusable and will not cause a taxpayer to fail to satisfy the continuity requirement. Notwithstanding the foregoing, if a taxpayer places an energy property in service by the end of a calendar year that is no more than four calendar years after the calendar year during which construction of the energy property began, the continuity requirement will be deemed satisfied with respect to the energy property.

2. The taxpayer has paid or incurred five percent (5%) or more of the total cost of the energy property and makes continuous efforts to advance toward completion of the energy property. All costs properly included in the depreciable basis of the energy property are taken into account to determine whether this test is met. The total cost of energy property does not include the cost of land or any property not integral to the energy property. If the total cost of an energy project that is a single project comprised of multiple energy properties exceeds its anticipated total cost such that less than 5% of the total cost of the project at the time it is placed in service was in fact paid or incurred at the time the 5% standard is tested, the five percent safe harbor is not met with respect to the entire project but may met with respect to some of the energy properties comprising the project so long as the total aggregate cost of such energy properties is not more than twenty times greater than the amount the taxpayer paid or incurred. This relief is not available where a single project is not comprised of multiple energy properties.

The determination of whether multiple energy properties are operated as part of a single energy project is made during the calendar year during which the last of the properties is placed in service and depends on the relevant facts and circumstances, including whether the properties have a common intertie, share a common substation, were financed pursuant to the same loan agreement, and other non-exclusive factors. However, the taxpayer may disaggregate such property for purposes of applying the continuity requirement.

The five percent safe harbor test also includes a continuity requirement that, based on the relevant facts and circumstances, a taxpayer make continuous efforts to advance towards completion of an energy property. This may generally include paying or incurring additional amounts, entering into binding written contracts for future work to construct the energy property, obtaining necessary permits, or performing physical work of a significant nature. As with the physical work test, certain disruptions beyond the taxpayer's control are considered excusable for purposes of the continuity requirement and the continuity requirement is deemed met if certain timelines are met, as described above.

With respect to facilities that are transferred, a fully or partially developed energy property that satisfies the "begun construction" qualification will continue to satisfy such qualification with respect to a transferee acquiring such property before the facility is placed in service. However, in the case of a transfer of solely tangible personal property to an unrelated transferee, amounts paid or work performed by the transferor with respect to such transferred property will not be taken into account to determine whether construction has begun.

The IRS also advised in the ITC Notice that it will not issue private letter rulings to taxpayers regarding the application of the ITC Notice or the beginning of construction requirement of Internal Revenue Code Section 48.

Locke Lord LLP

August 13, 2018

In Opportunity Zones, Good Things Come to Those Who Hustle.

An important milestone in America's economic recovery was reached last month when the Treasury Department approved the last round of Opportunity Zone designations.

The Tax Cuts and Jobs Act of 2017 created a new financial product called "Opportunity Funds," which allow investors to defer and reduce their capital gains tax bills in exchange for investing in projects located in economically distressed areas referred to as Opportunity Zones.

An initial review of the 8,700 designated Opportunity Zones reveals just how far removed these communities are from the national economic recovery. The average unemployment rate is a stubbornly high 14.4 percent. These communities typically have 38 percent of prime age adults out of the workforce — nearly 10 points higher than the country as a whole. Median household income is lower, and these areas are twice as likely as other communities to be located in a county where (at the very least) 20 percent of the population has been living below the poverty line for 30 years.

Continue reading.

e21

by John Bailey

August 14, 2018

The Public Finance Opportunity.

If you're a certain age, it's likely that you've never given a second thought to buying a municipal bond or the process of bond buying, even if you've intuited, rightly, that's it's an intentionally opaque business.

Yet there could be a big opportunity for startups, and for people looking for places to invest, and for cities with crumbling infrastructures, in disrupting the status quo.

First, there's a strong case for buying bonds. Late last year, the Trump administration capped at $10,000 the amount that taxpayers can deduct in property tax and local and state income tax. Most people with hefty tax bills are benefiting in other ways from that same new tax bill, but this aspect of it isn't so great for them, and municipal bonds can help. The reason: interest income paid on muni bonds is exempt from federal tax. (Bonds issued within one's state can also be free of state tax.)

Continue reading.

Tech Crunch

by Connie Loizo

Your Tax Dollars At Play: How Stadium Tax Scams Pick Fans' Pockets.

Tax dollars build sports stadiums far more often than they should, which is going to make this entire column possible.

Stadium finance is so awash in public money that it is difficult to imagine how stadiums and arenas are built *without* tax dollars. Occasionally, a city and its taxpayers get a freebie: Anschutz Entertainment Group and MGM Grand covered the cost of T-Mobile Arena in Las Vegas. The New York Jets and Giants built their Met Life Stadium without tax dollars. Los Angeles Rams owner Stan Kroenke so desperately wanted to drag his team out of St. Louis that he’s footing the bill for a stadium for both the Rams and the Chargers. The Golden State Warriors, meanwhile, are privately funding a new arena in San Francisco’s Mission Bay.

Continue reading.

Forbes

by Jason Notte

Aug 17, 2018

Can States Tax Gas Stations on Tribal Lands?

After years of fights between Washington state and the Yakama Nation, the debate is heading to the U.S. Supreme Court.

The Yakama Nation and Washington state have been fighting over governance issues ever since the tribe signed its 1855 treaty with the federal government. Recently, those fights have involved fees on cigarettes and rules for logging trucks. But the biggest dispute over the years has been about fuel taxes. And now the U.S. Supreme Court is stepping in.

Washington state lawmakers have tried repeatedly to impose fuel taxes on Indian tribes, and the tribes have repeatedly fought back. The Yakama have been especially adamant in their resistance, arguing that the fuel taxes violate a provision of their treaty that guarantees them the right to travel freely on public highways.

The Yakama convinced the Washington Supreme Court to uphold their exemption even though lawmakers crafted the current tax in 2007 to avoid the legal pitfalls of previous fuel tax levies that Native Americans were able to avoid. The state high court’s decision in March was such a jolt to state taxing authority that Idaho, Kansas, Nebraska, North Dakota, South Dakota and Wyoming supported Washington’s last-ditch effort to get the U.S. Supreme Court to reverse the ruling and reimpose the tax.

In general, states cannot tax Native Americans for activity on reservations, but they can for most activities that occur off tribal lands. Courts determined that Washington's previous fuel taxes, which were collected at gas stations, didn't apply to those on tribal lands.

That's why the state legislature changed the tax scheme in 2007. It imposed a per-gallon fuel tax on suppliers, blenders, distributors, exporters and importers of motor fuels. Whoever owned the fuel first inside Washington state's borders had to pay it. Because the Yakama fuel stations imported their fuel from Oregon, the state said, they would have to pay the tax.

States, though, don't have the last word on the matter. The federal government does. Treaties with Indian tribes are part of federal law. Under the 1855 treaty with the Yakama Nation, the federal government guaranteed that the tribe would have the "right, in common with citizens of the United States, to travel upon all public highways." The state Supreme Court relied on that language to determine that the right to travel meant the Yakama shouldn't have to pay the fuel tax, since it's impossible to import fuel without traveling on public highways.

The state isn't buying this. "The challenged law does not restrict [a Yakama-owned company's] right to travel on Washington public highways," according to the state's brief. It simply asks them to pay for importing fuel the way every other business does.

Other states, specifically those that have joined the case, have reason to be concerned. Idaho, for example, has tribes within its borders whose treaties with the U.S. government include the same "right to travel" language that the Yakama have in Washington. Now that the U.S. Supreme Court has taken the case, those states will soon find out whether the Yakama's fuel tax exemption applies more broadly or not at all.

GOVERNING.COM

BY DANIEL C. VOCK | AUGUST 2018

S&P: New Jersey's Revised School Funding Formula Leads To Mixed Results For Districts.

S&P Global Ratings believes about 5% of the New Jersey school districts it rates are left with aid awards significantly lower than amounts included in districts' adopted budgets due to changes to state aid allocations in the adopted fiscal 2019 state budget, and this could pressure ratings.

Continue Reading

Aug. 10, 2018

A Huge Win for Keeping Water Systems under Public Control.

Baltimore is poised to become the first major U.S. city to prohibit privatization of its water system and the first to do so by amending its city charter.

"Water privatization is simply unethical, immoral, and dangerous," said Rianna Eckel, Maryland organizer with Food and Water Watch and convener of the Right to Water Coalition Eckel, at a press conference at City Hall on August 6, 2018. Behind her stood Baltimore Mayor Catherine Pugh, City Council President Jack Young, and dozens of members of the Right to Water Coalition.

An hour later, Baltimore City Council overwhelmingly voted to approve the measure. Council President Young, who introduced the amendment, fast-tracked the bill through the legislature. Mayor Catherine Pugh signed it earlier this week. It will now go before voters on the November ballot, where it is expected to pass.

Continue reading.

NEXT CITY

BY DHARNA NOOR | AUGUST 17, 2018

Proposed Infrastructure Plan Would Increase WIFIA Appropriations.

As part of a draft infrastructure bill released last week by House Transportation and Infrastructure Committee Chairman Bill Shuster (R-Pa.), the U.S. Environmental Protection Agency's (EPA) Water Infrastructure Finance and Innovation Act (WIFIA) program would be reauthorized at $250 million over five years.

According to the Association of Metropolitan Water Agencies (AMWA), Shuster's bill is not expected to advance through Congress in its entirety this year. However, the WIFIA component and other water-related provisions could lay a marker ahead of the House's anticipated negotiations with the Senate later this year over another water resources bill that includes a controversial SRF WIN provision that proposes to create a new version of WIFIA exclusively for state infrastructure finance agencies.

According to AMWA, Shuster's draft legislation features a number of water, transportation and infrastructure policies "intended to further the national conversation about the current state of America's infrastructure" and set a course for effective reforms.

In addition to authorizing Congress to appropriate up to $50 million for WIFIA in each of the next five years, the bill would make a number of relatively modest changes to improve operation of the program. These include allowing EPA to aid the U.S. Army Corps of Engineers in standing up its own version of WIFIA (a concept featured in legislation earlier endorsed by AMWA); increasing from 49 percent to 80 percent the maximum amount of a project's cost that may be financed through a WIFIA loan; and requiring applicants to produce a final credit rating opinion letter from only one rating agency, rather than two.

According to AMWA, absent from Shuster's bill are major provisions that resemble components of the controversial SRF WIN Act, legislation incorporated into a Senate water resource bill that would establish a separate version of WIFIA – with preferred loan terms – exclusively for state infrastructure financing authorities.

AMWA has strongly opposed the SRF WIN Act due to its potential to undercut the leveraging ability of the current WIFIA program and its unequal interest rate treatment of different states. The lack of SRF WIN language in Shuster's proposal indicates that House Republican leaders share these concerns. Shuster's draft bill does include some streamlining for WIFIA applications compiled by states – such as helping them avoid duplicative environmental reviews, allowing EPA to offset some processing fees and establishing an expedited application review timeline – but these fall well short of the numerous preferences given to state-compiled projects under the SRF WIN proposal.

RELATED: Senate hearing avoids SRF WIN details, AMWA says

Other parts of Shuster's bill would reauthorize the Clean Water State Revolving Fund (SRF) at $15 billion over five years and create a new EPA technical assistance program for small and rural treatment works. The bill does not contain any policy reforms or reauthorizations related to the Drinking Water SRF, as that program falls outside the authority of Shuster's committee.

Although Shuster's bill is not expected to receive a vote in the House before the end of the year, Congressional staff have indicated that its water infrastructure provisions may serve as the House's starting point when the time comes for the House and Senate to negotiate SRF WIN and a number of other changes to EPA programs proposed by a Water Resources Development Act (WRDA) reauthorization bill pending in the Senate.

Separate WRDA legislation approved by the House in May left EPA programs untouched, so Shuster's draft bill may be viewed as his initial counteroffer to changes proposed in the Senate's WRDA bill.

JULY 30, 2018

BY WFM STAFF

Department of Agriculture Funds Wastewater Infrastructure For Rural Communities.

Federal funding of rural wastewater infrastructure projects is often assumed to predominantly flow through the Environmental Protection Agency (U. S. EPA)'s Clean Water State Revolving Fund created in 1987 under the Clean Water Act. However, in an interesting development, Anne Hazlett, Assistant to the Secretary for Rural Development at the U.S. Department of Agriculture (USDA), recently announced that the USDA would make a historic commitment to upgrade and rebuild rural wastewater infrastructure.

USDA is providing the funding through its Water and Waste Disposal Loan and Grant Program. It can be used to finance drinking water, stormwater, and wastewater systems for rural communities with 10,000 or fewer residents. The commitment follows the findings of President Trump's Interagency Task Force on Agriculture and Rural Prosperity which recommended investing in rural infrastructure as a means to support and sustain rural communities.

"USDA is committed to being a strong partner to rural communities in building their futures," Hazlett said. "All people — regardless of their zip code — need modern, reliable infrastructure to thrive, and we have found that when we address this need, many other challenges in rural places become much more manageable."

According to the Rural Community Assistance Program (RCAP), 51,356 water systems in the U.S. serve less than 3,500 customers (83 percent of all systems) and of that number, 65 percent serve less than 500. In FY 2018, Congress provided a historic level of funding for water and wastewater infrastructure through the USDA with the 2018 Omnibus spending bill including $5.2 billion for

USDA loans and grants, up from $1.2 billion in FY 2017. The bill directs Agriculture Secretary Sonny Perdue to make investments in rural communities with the greatest infrastructure needs.

As many of the water and wastewater treatment industry are aware, EPA officials have been working with the States to shed or share responsibilities, under the pressure of proposed cuts to its budget. However, this move suggests that offsetting funding for wastewater infrastructure may flow through the USDA. Ironically, it's the non-point source runoff from agriculture that wastewater industry professionals often point to as the main source of nutrients causing harmful algal blooms (HABs) in the Country's lakes, oceans and gulfs. The investment in wastewater infrastructure for rural communities can only help the agricultural community to focus in on efforts to reduce non-point source nutrient pollution.

wateronline.com

The $1.4 Billion Transit Fund the U.S. Government Won't Release.

From El Paso to Minneapolis, local rail and bus projects are waiting on federal money that should have arrived by now.

Remember the $1 trillion federal infrastructure bill? Heavily touted by President Donald Trump on the campaign trail and in his first year of office as a plan to "build gleaming new roads, bridges, highways, railways, and waterways all across our land," the idea is all but dead in Congress 18 months into his administration.

Like a nasty pothole, Trump's unkept promises on road-and-rail dollars have given transportation fans a mild case of whiplash. But there may be worse harm in another infrastructure lapse on the part of this administration, this one more basic: $1.4 billion promised to transit projects across the U.S., still unallocated by the Federal Transit Administration for no clear reason.

From New York to Los Angeles, El Paso to Minneapolis, 17 rail and rapid bus projects are awaiting grants promised by the federal appropriations bill signed into law by Trump in March 2018. But the funds have still not been delivered nearly five months later. Make that 144 days, 20 hours, and 15 minutes later, as of this writing, according to a splashy countdown clock built by Transportation For America, a progressive transportation policy organization.

Here's the full list of projects counting down the minutes, from TFA:

- Albuquerque, NM Central Avenue BRT
- Dallas, TX DART Red & Blue Line Platform Extensions
- El Paso, TX BRT Extension
- Jacksonville, FL Southwest BRT
- Los Angeles, CA Purple Line Extension (LRT), Section 3
- Minneapolis, MN Blue Line (LRT) Extension
- Minneapolis, MN Green Line (LRT) Extension
- Minneapolis, MN Orange Line BRT
- New York City, NY Canarsie (L) Line Improvements
- Orange County, CA Streetcar
- Reno, NV Virginia Street BRT
- Sacramento, CA Riverfront Streetcar
- Seattle, WA Lynnwood LRT extension

- Seattle, WA Madison Street BRT
- South Shore (IN/IL) Commuter Rail Double Tracking
- St. Petersburg, FL Central Avenue BRT
- Tempe, AZ StreetcarContinue reading.

NEXT CITY

LAURA BLISS AUG 15, 2018

The Rust Belt Needs Capital to Turn Talent and Innovation Into Jobs.

Since Rust Belt voters tipped the results of the 2016 election, interest in effective strategies for supporting new business and job growth in this important region has intensified.

Such interest recognizes that the states of the upper Midwest share more than their swing state status. A unique economic and social development storyline unites the industrial heartland, extending across all or part of 12 states from Minnesota and Missouri in the West, through the Great Lakes and up the Ohio River Valley to Western New York, and to Pennsylvania and West Virginia in the East. The region has many economic challenges, but also boasts important economic strengths, perhaps none as important as the tremendous innovation and talent emerging from its companies and universities.

Yet a lack of risk capital in the Rust Belt has held back the region's capacity to translate its formidable innovation and talent assets into new businesses and jobs. That's beginning to change, but public policies could do much more to accelerate the development of a robust innovation infrastructure equal to the Midwest's potential.

Continue reading.

The Brookings Institute

by John C. Austin

August 14, 2018

An Exception to an Exemption: Michigan's Lessee-User Tax

Under various statutes, certain types of property, owned by certain entities, and used for certain purposes, are exempt from paying property taxes in Michigan. But there is an exception to this exemption meant to address situations where the property is exempt based on ownership, but is leased to a non-exempt entity.

In order to deal with this scenario, the Michigan legislature created the "Lessee-User Tax" under MCL 211.181. The Lessee-User Tax provides:

If real property exempt for any reason from ad valorem property taxation is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit, the lessee or user of the real property is subject to taxation in the same amount and to the same extent as though the lessee or user owned the real property.

For example, if an exempt hospital or medical facility leases space to for-profit doctors, it's likely that the leased real property owned by the exempt hospital/medical facility is taxable to the lessee. However, there is an exception to the Lessee-User Tax (you might call it an exception to the exception on exemption – quite the tongue twister): it does not apply to property that is used as a concession at a public airport, park, market, or similar property and that is available for use by the general public.

The issue of what constitutes a "concession" has been the subject of considerable litigation over the years. One of the more recent appellate decisions dealing with the issue is the 2005 case of *Services System Assoc v City of Royal Oak*, also known as "The Detroit Zoo" case.

The case involved a for-profit company providing food and catering services to the public at the Detroit Zoo (an exempt non-profit). Royal Oak sought to tax the company for its equipment, buildings, and other improvements, and the company claimed to be a concession. It was undisputed that the zoo was a "public park" open to the public, so the court looked to the agreement at issue between the zoo and the company, and found that the zoo retained control over the company's operations – a fact that weighs in favor of a concession.

Ultimately, the court found that the company was a concession, in light of its agreement that "imposes standards of service, minimum hours of operation, and oversight of petitioner's concession stand at the Detroit Zoological Institute" and "infringes on the control of petitioner's rights, the hours that can be worked, the foods that can be sold, and provides for unilateral termination by the Detroit Zoo."

Property tax exemptions are an important issue for both those claiming exemptions, as well as municipalities and their assessing departments who rely on property tax revenue to fund community operations and services. Therefore, understanding the nuances of the statutory framework – such as when the Lessee-User Tax applies – that gives rise to these exemptions is critical.

Foster Swift Collins & Smith PC

by Laura J. Genovich

USA August 16 2018

[Florida Banks and Mortgage Servicers: Claims Following Tax Deed Sales Must Now be Filed Early]

While banks and other mortgage holders have recently been obtaining windfalls on dormant mortgages, recent changes to Florida Statute Section 197.582 will require early filing of claims following tax deed sales.

What does this change mean?

The new rules apply the same procedure to tax deed sales that now apply to ordinary foreclosure sales: lienholders must make a timely post-sale administrative claim or it's lost. The new amendments still require administrative notice to go to all lienholders. From there, recipients have

"120 days from the date of the notice to file a written claim with the clerk for the surplus proceeds." Fla. Stat. § 197.582 (3). The most important change, however, is that "[e]xcept for claims by a property owner, claims that are not filed on or before close of business on the 120th day after the date of the mailed notice as required by Section 197.582(2), are barred. A person, other than the property owner, who fails to file a proper and timely claim is barred from receiving any disbursement of the surplus funds." Fla. Stat. § 197.582(5).

What do banks and servicers need to know about the new system?

Under the new system, the clerk still has the right to institute an interpleader action in the case of competing claims, but this is likely to occur much less often, because competing claims will appear less often because many will be barred by the failure to file a timely administrative claim. Fla. Stat. § 197.582(6). While the legacy procedures will apply for a short while longer, the new statutory bar applies to "tax deed application filed on or after October 1, 2018." 2018 Fla. HB 1383 § 4. This change does not allow mortgagees to passively await a clerk's interpleader action, as they might have in recent years. If they fail to institute new procedures to monitor and respond to notices related to tax deed surpluses, they will lose and the owners, who long ago defaulted on the record, will get the last laugh, as they do not face the same 120 bar as lienholders and could obtain the entire surplus for themselves.

Background on Florida's tax deed surplus law

In the deepest depth of the economic crisis of 2008–2012, many banks and mortgage servicers in Florida abandoned their residential foreclosure lawsuits, often dismissing a case before, or even after, a final judgment was obtained. Frequently, economics dictated the course. More than being merely undersecured—"upside down"—certain assets were negative value when the cost of repairs, taxes, curing code violations and past-due homeowners' assessments were taken into account. Under these circumstances, a successful foreclosure would be a Pyrrhic Victory at best.

Following dismissals, the moribund, defaulted mortgages remained public records and valid liens. They provided an opportunity for compensation to the mortgage holder if the homes were ever sold. In the meantime, homeowners often remained in their homes, because Florida is a "lien theory" state, where the homeowner's rights of ownership and possession usually continue until the finalization of a foreclosure.

The "free house" deal usually came to an end. When homeowners stop paying their mortgages, they typically defaulted on tax obligations as well. The normal procedure is straightforward. After paying past due taxes, outside investors obtain tax certificates, which can be sold at a judicial sale after two years; the winning bidder obtains the property through a tax deed. The tax deed wipes out nearly all other liens, including first position mortgages and homeowners association liens. *See A to Z Props. v. Fairway Palms II Condo. Assoc.*, 137 So. 3d 453 (Fla. 4th DCA 2014)

After the tax certificates and accrued interest are paid at the tax deed judicial sale, the remainder is deemed a tax deed surplus. The mortgagee (or other lienholders) historically were entitled to that tax surplus in their order of lien priority; their liens, which formerly attached to the property, now attached to the surplus, while the property itself would be owned free and clear by the winning bidder.

Historically, when there were competing liens in a property generating a tax deed surplus, parallel and slightly contradictory mechanisms were set in motion for asserting lien rights. Initially, the tax collector was supposed to send out notice of the surplus to all the known and possible lienholders, who would then file a claim within 90 days. Fla. Admin. Rule 12D-13.065(4). However, in the case of competing liens—including overlapping mortgages, judgment liens, and homeowner association lien claims—the clerk of the court was obliged to begin an interpleader action and send notice again to the lienholders.

In these lawsuits, regardless of whether or not a claim had earlier been filed, lien priority controlled. *See generally DeMario v. Franklin Mortg. & Inv. Co., Inc.*, 648 So. 2d 210, 214 (Fla. 4th DCA 1994) (holding that in spite of failure to file administrative claim, mortgagee "as superior lienholders, their claim must be recognized and they are entitled to the excess proceeds of the tax sale."); *Kerr v. Broward Cnty.*, 718 So.2d 197 (Fla. 4th DCA 1998). This lien priority rule allowed lienholders to obtain recompense, even though they had not responded within the 90 day administrative claim filing deadline and may have otherwise sat on their rights for many years.

The changes to the statute now require swift action at the administrative level in order to secure the benefits of the rising housing market.

Adams and Reese LLP

byChristopher A. Roach

August 20, 2018

Environmental Impact Bonds Could Help Pay for Louisiana Coastal Restoration.

Environmental impact bonds can help restore Louisiana's coast more efficiently than previous methods of funding, according to a report released Tuesday by the Environmental Defense Fund.

The bonds are a financing tool in which repayment to investors is linked to the achievement of a desired environmental outcome. In this case, the outcome is sustained wetlands that help curb land loss and provide risk reduction for coastal residents and businesses. The bonds can be scaled and replicated to support efforts across Louisiana and beyond to help areas coping with sea level rise, land loss and damaging storms.

In the study, the EDF and Quantified Ventures will pilot the program on restoration efforts near the Belle Pass-Golden Meadow Marsh Creation project adjacent to Port Fourchon.

The organization said the bonds will allow coastal projects to be constructed more quickly than waiting on other money sources. The bond would be repaid through future BP oil spill settlement payments.

"Using environmental impact bonds provides Louisiana the opportunity to put more capital to work now and to find new sources of capital," said Steve Cochran, associate vice president for coastal resilience at EDF. "Those are great outcomes for Louisiana's coastal communities and can provide a model for other coastal areas around the world."

The state will lose 4,000 square miles of land in the next 50 years if nothing is done, according the EDF. That would add to the 2,000 square miles of land loss that has occurred since the 1930s. The state has a vision for restoring and protecting its coast through its $50 billion Coastal Master Plan, but it has identified only $9 billion to $12 billion of the money needed to fully implement the plan.

The director of coastal resilience at EDF, Shannon Cunniff, said that the bonds work like other bonds but come with a bonus.

“These bonds are a new form of pay-for-success debt financing,” said Cunniff. “The big difference is that the repayment of the bond depends on the extent to which the desired environmental benefits are achieved.”

The director said a third-party will be used to help define exactly what would qualify as meeting the desired benefits. The investors will get a bonus if the project exceeds the defined goals.

“Environmental impact bonds can be a big-time game changer for Louisiana’s disappearing coastline. This (bond) will have major implications for coastal restoration efforts around the world,” said Eric Lestinger, founder and CEO of Quantified Ventures.

To help assess the feasibility of using the bonds for Louisiana’s coastal restoration efforts, EDF brought in Quantified Ventures. The firm was instrumental in designing the nation’s first environmental impact bond, which financed the restructuring of the Washing, D.C., Water and Sewage Authority.

“We looked at 31 coastal restoration projects across the coast at their potential economic benefit,” said Cunniff.

The EDF representatives said they picked the Port Fourchon area because of the site’s role in the offshore oil industry.

“It’s a great port in terms of the local, regional and national economy,” said Cunniff. “All of these factors made it an ideal location for facilitating the piloting of the partner payer transaction.”

The bonds would allow the state to use its money more efficiently by building wetland restoration projects sooner, involve local owners who benefit from restoration and reward high-performing wetland projects and the contractors who build them, according to the EDF.

“Environmental impact bonds provide the state of Louisiana with another outcome-based performance tool that can help us speed up coastal restoration while lowering costs and involving local partners in financing those efforts,” said Johnny Bradberry, the Louisiana Governor’s Executive Assistant for Coastal Activities. “This approach to bonding shows that (the state) is looking to innovate on all sides of our business: the projects, the procurement and the financing.”

The report outlines the next steps the state has to take to test the bonds, noting that many steps – including establishing credit rating, resolving any issues with Gulf oil spill money and determining the bonds’ tax-exempt status – are the same as those necessary to pursue a more traditional bond.

By Scott McLendon

Aug 14, 2018

New Jersey Governor Murphy Signs New Public-Private Partnership Law.

A bill signed into law by Governor Murphy expands the use of public-private partnerships to develop essential projects and grow the state’s economy.

Senate President Steve Sweeney says those partnerships helped colleges get private capital to build new facilities, and the bill he sponsored will give the state, county, and local governments more flexibility to advance critical infrastructure projects.

“Public-private partnerships are the most important thing we could be doing in the state. As the governor calls for a stronger fairer economy, this is one the pieces that will actually build that. With private sector ingenuity, technology they can do it better.”

Jack Kocsis is CEO of the Associated Construction Contractors of New Jersey. He says the law has the potential to spur development of much needed public works projects and create additional work opportunities.

“It really has the ability to advance New Jersey’s economy. It really demonstrates that New Jersey is serious about working with private entities to actually attract capital to improve our infrastructure.”

Governor Murphy expects the new law will enable vital projects to replace water lines and upgrade the transportation infrastructure without putting a burden on taxpayers.

“Many of them would stretch government entities far beyond the ability of taxpayers to pay, but this newfound ability and flexibility will go a long way to allowing us to get vital statewide and community-focused improvements off the drawing boards and into reality.”

The legislation provides for financial oversight and approval of the partnership agreements by the State Treasurer.

WBGO.COM

By PHIL GREGORY • AUG 14, 2018

New Jersey Governor Signs Bill Modifying Sewer and Water Connection Fee Calculations Into Law.

On August 10, Governor Murphy signed into law S1247/A2779, which amends the sewer and water connection fee law in several ways to address existing inequities regarding connection fees (or tapping fees) (the Law). Then-Governor Christie previously pocket-vetoed a substantially similar bill earlier this year, but the bill made it back through the legislature and onto Governor Murphy’s desk. The Law establishes certain credits and reductions for sewer and water connection fees, including for all affordable housing.

New Jersey sewer and water laws have frustrated developers for many years because they are outdated and charge connection fees based on math that is not transparent. Sewer and water connection fees are typically an important line item in a developer’s pro forma. This Law will be welcomed by both residential and commercial developers.

Most notably, under the prior statute, public housing authorities and non-profit organizations building affordable housing projects (but not for-profit developers) were entitled to a 50 percent reduction in sewer and water connection fees for new affordable unit connections to the sewer and water system. The Law amended this section of the statute to expand to all affordable housing (including for-profit developers) the 50 percent reduction in new connection fees for affordable units and the credit against the connection fee for affordable units previously connected to the sewer and water system that were demolished or refurbished.

Additionally, the Law generally allows for credits to be applied to connection fees for a reconnection of certain disconnected properties that were previously connected to the sewer or water system for at least 20 years and have not been disconnected for more than five years. The credit is calculated based on several factors, including but not limited to, whether the reconnection does not require any new physical connection or increase the nature or size of service or expand the use of the system, or whether a connection fee was previously paid for the existing use.

For properties already connected to the sewer and water system, the Law allows local or regional authorities to charge a new connection fee for an addition, alteration or change in use that "materially increases" (as defined in the Law) the level of use and imposes a greater demand on the utility system, but does not involve a new physical connection of the property to the system. The connection fees for any new or additional connections are still imposed.

This Law is a first step in addressing some of the shortcomings of the existing sewer and water laws. This alert serves only as a summary of the Law. For more information or questions, please contact the authors or any member of the Day Pitney real estate team.

Day Pitney Alert

August 14, 2018

Day Pitney Author(s) Craig M. Gianetti Nicole M. Magdziak

- GASB Proposes Improvements to Reporting of Conduit Debt Obligations.
- How GASB Might Change Conduit Debt Reporting.
- BDA Submits Comment Letter on MSRB Retrospective Review of Underwriter Disclosures to Issuers.
- MSRB Notes Compliance Risks of Issuer-Solicited Charitable Donations: Skadden
- Evaluating Municipal Debt Instruments Using Muni Bond Indices.
- Fitch: Rating Normalcy Awaits U.S. NFP Hospitals After Rating Criteria Rollout.
- The World Bank is Betting Big on Blockchain-Based Bonds.
- NFMA Advanced Seminar on the Impact of ESG & Resiliency Issues on Credit Analysis.
- And finally, BCB's Department of Unfortunate Optics is this week proud to present *Michigan Gun Owners, Inc. v. Ann Arbor Public Schools*. We most assuredly will not be wading into the substance of this issue, for fear of blundering into someone's sights, be they literal or figurative. But I believe we can all agree that something like Very Nice People vs. Other Very Nice People Who Don't Agree With the First Group of Very Nice People would look a little better.

EMINENT DOMAIN - COLORADO

City of Lafayette v. Town of Erie Urban Renewal Authority

Colorado Court of Appeals, Division VI - June 14, 2018 - P.3d - 2018 WL 2976324 - 2018 COA 87

City, a home rule municipality, filed petition in condemnation and motion for immediate possession of parcel of land owned by statutory town.

The District Court granted town's motion to dismiss. City appealed.

The Court of Appeals held that home rule city's condemnation of property that statutory town was planning to develop was motivated by bad faith and thus was not for lawful purpose.

Home rule city's condemnation of property that statutory town was planning to develop was motivated by bad faith and thus was not for lawful purpose; stated public purpose of open space buffer was valid, but blocking town's planned development that predated city's condemnation petition was not lawful, city had no interest in property until it learned of town's proposed development, city presented no evidence showing why setback incorporated in town's development plans would have been insufficient to serve as community buffer, and city's public officials were highly motivated to keep potential tenant within city.

ANNEXATION - ILLINOIS

Chicago Title Land Trust Company v. County of Will

Appellate Court of Illinois, Third District - May 18, 2018 - N.E.3d - 2018 IL App (3d) 160713 - 2018 WL 2277764

Landowner whose property was acquired by village through involuntary annexation brought a quo warranto action against the village, alleging that village had acquired the adjacent property through a sham transaction in order to force annexation of landowner's property.

The Circuit Court granted summary judgment for village. Landowner appealed.

The Appellate Court held that annexation of the adjacent property was a sham transaction, precluding village's acquisition of landowner's property.

Village's annexation of property adjacent to landowner's property, pursuant to the adjacent property owner's petition for voluntary annexation, was a sham transaction to allow village to acquire the landowner's property by involuntary annexation, and therefore, both annexations were invalid; the adjacent owner had no independent interest in becoming part of the village, but only petitioned for voluntary annexation because village proposed it, and parties' annexation agreement contained village's promise not to tax the adjacent owner or subject it to enforcement of village regulations and zoning requirements, and also allowed adjacent owner to disconnect from the village within one year.

SCHOOLS - MICHIGAN

Michigan Gun Owners, Inc. v. Ann Arbor Public Schools

Supreme Court of Michigan - July 27, 2018 - N.W.2d - 2018 WL 3614337

Gun owners association and holder of concealed pistol license brought actions challenging school district's policy banning possession of firearms in schools and at school-sponsored events.

In one action, the Circuit Court granted district's motion for summary disposition. In second action, the Circuit Court granted summary disposition to plaintiffs. Plaintiffs appealed. The Court of Appeals affirmed in former case, and the Court of Appeals reversed in latter case. Plaintiffs sought leave to appeal.

In lieu of granting leave to appeal, the Supreme Court of Michigan held that state statutes excluding school districts from an otherwise precise list of “local units of government” which were prohibited from regulating firearms resulted in school district regulation of firearms not being field-preempted; overruling *Mich. Coalition for Responsible Gun Owners*, 256 Mich. App. 401, 662 N.W.2d 864.

REFERENDA - MICHIGAN

Citizens Protecting Michigan's Constitution v. Secretary of State

Supreme Court of Michigan - July 31, 2018 - N.W.2d - 2018 WL 3635832

Objectors brought action for a writ of mandamus ordering Secretary of State and Board of State Canvassers to reject an initiative petition to amend the state constitution to reestablish a commission to oversee legislative redistricting.

After organizations supporting the proposed amendment intervened as defendants and filed a cross-complaint for a writ of mandamus requiring the proposed amendment to be placed on the ballot, the Court of Appeals denied objectors’ request for relief and ordered the placement of the proposed amendment on the ballot. Objectors sought leave to appeal.

The Supreme Court of Michigan held that:

- When determining whether an initiative amendment significantly alters or abolishes the form or structure of state’s government in a manner equivalent to creating a new constitution, it is not necessarily the impact on the operations of government that matters; abrogating *Sch. Dist. of City of Pontiac v. City of Pontiac*, 262 Mich. 338, 247 N.W. 474, and
- Proposed amendment did not significantly alter or abolish the form or structure of state’s government in a manner that was tantamount to creating a new constitution.

SCHOOLS - MINNESOTA

Lapenotiere v. State

Supreme Court of Minnesota - August 1, 2018 - N.W.2d - 2018 WL 3637374

Defendant petitioned for postconviction relief after he was convicted of second-degree sale of a controlled substance in a school zone.

The District Court denied petition. Defendant appealed. The Court of Appeals affirmed. Defendant appealed.

The Supreme Court of Minnesota held that:

- Entire area of a city block that is kitty-corner to school property is included in the school zone when the area surrounding school property is organized in a city-block system, and
- Evidence was sufficient to prove the school-zone element of the offense.

ZONING & PLANNING - NEW JERSEY

[Cherokee LCP Land, LLC v. City of Linden Planning Board]

Supreme Court of New Jersey - August 2, 2018 - A.3d - 2018 WL 3650226

Objectors brought action challenging approval of developer's land use application. The Superior Court, Chancery Division, dismissed the complaint with prejudice. Objectors appealed.

The Superior Court, Appellate Division, affirmed, and objectors petitioned for certification.

The Supreme Court of New Jersey held that:

- Objectors may qualify as interested parties with standing to challenge planning board's approval of land use application of neighboring property owner, and
- The Municipal Land Use Law's (MLUL) statutory notice requirement had no bearing on whether objectors, as tax lienholders, would qualify as "interested parties" to challenge planning board's action.

Tax lienholders, who had the right acquire title to the property, and to use the property in a limited manner in order to make repairs, or abate, remove or correct any condition on the property harmful to the public health, safety and welfare, may qualify as interested parties with standing to challenge planning board's approval of land use application of neighboring property owner; lienholders alleged that the proposed land use project would eliminate certain points of access to the neighboring property, interfere with an existing easement, and substantially modify storm water management on the property, which would affect their limited possessory interest in the property.

The Municipal Land Use Law's (MLUL) statutory notice requirement had no bearing on whether tax lienholders would qualify as "interested parties" to challenge planning board's action in approving neighboring property owner's land use application; if the Legislature had intended for only parties required to be notified to have standing, it would have said so and restricted the standing requirements accordingly, but instead, the Legislature allowed for any "interested party" to appeal a board action, which was discrete from a noticed party under the MLUL.

ZONING & PLANNING - NEW JERSEY

[Montclair State University v. County of Passaic]

Supreme Court of New Jersey - August 6, 2018 - A.3d - 2018 WL 3716020

State university brought action against county, seeking an order directing county to issue permits or declaring university exempt from local permitting requirements or approval for its desired road improvements, and city intervened.

The Superior Court dismissed the action. University appealed. The Superior Court, Appellate Division, reversed. City's petition for certification was granted.

The Supreme Court of New Jersey held that:

- University enjoyed qualified immunity from local land use controls;
- City and county raised legitimate public safety concerns for public traveling on county road; and
- As a matter of first impression, a state entity must reasonably address public safety concerns, if raised, to receive immunity.

State university was state entity that enjoyed qualified immunity from local land use controls with respect to management of its own land and property; university's board of trustees was statutorily granted broadly autonomous governmental powers, and university acted for state when, in furtherance of its overall statutory educational mission, it determined to improve its campus roads to better manage intra-campus traffic concerns.

City and county raised legitimate public safety concerns for public traveling on county road based on state university's planned changes to campus road intersecting with county road, and therefore for university to be immune from local land use regulations it must make showing and receive judicial determination that it has reasonably addressed safety concerns; city and county raised safety issue with planned curve and speed limit, and university was not legislatively authorized to act on issues of public safety on county roads.

Where a facially legitimate public safety concern is raised about a state entity's planned improvement to lands, which would have a direct impact on non-state-owned property, a showing by the entity that its planning has reasonably addressed the public safety concern, and a judicial finding as to the reasonableness of the action, are required to grant immunity to the entity from local land use regulations.

BANKRUPTCY - PUERTO RICO

In re Financial Oversight and Management Board for Puerto Rico

United States Court of Appeals, First Circuit - August 8, 2018 - F.3d - 2018 WL 3751014

In debt adjustment case of the Puerto Rico Electric Power Authority (PREPA), a public corporation and government instrumentality of the Commonwealth of Puerto Rico, under Title III of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), holders and/or issuers of $5.3 billion of the $8.3 billion of bonds issued by PREPA moved for stay relief to commence litigation against PREPA for the appointment of a receiver to manage the utility and seek electricity rate increases to protect bondholders' economic rights.

PREPA and the Financial Oversight and Management Board for Puerto Rico (Oversight Board) opposed motion. The United States District Court for the District of Puerto Rico denied motion. Bondholders appealed.

The Court of Appeals held that:

- The section of PROMESA governing limitation on jurisdiction and powers of court did not prohibit the district court, as a Title III court, from lifting the automatic stay to enable another court to take action interfering with the debtor's property, and
- The section of PROMESA giving the Title III court exclusive jurisdiction over the debtor's property does not prevent a Title III court from, after a determination of "cause," lifting the stay to allow a creditor to seek the appointment of a receiver in another court.

EMINENT DOMAIN - WASHINGTON

Central Puget Sound Regional Transit Authority v. WR-SRI 120th North LLC

Supreme Court of Washington - August 2, 2018 - P.3d - 2018 WL 3655879

City brought four actions against regional transit authority to contest authority's condemnation of city’s electrical transmission line easements.

The Superior Court ruled in favor of authority and entered public use and necessity judgments. City appealed, and the parties’ request for consolidation was granted.

The Supreme Court of Washington held that:

- Authority had power to condemn city-owned property;
- Authority’s condemnation of city’s easements met public use and necessity requirements;
- Prior public use doctrine applied to limit authority’s ability to condemn city’s easements;
- Substantial evidence did not support finding that authority’s use was compatible with city’s use; and
- When two public uses are incompatible, remedy is restricting prospective use to an extent that it is compatible with current use, abrogating *State ex rel. Washington Boom Co. v. Chehalis Boom Co.*, 82 Wash. 509, 144 P. 719.

Transit authority had power to condemn property owned by city, including electrical transmission line easements, as such power was express or, at the least, necessarily implied by statutes; authority was granted the power to acquire by condemnation “all” lands, rights-of-way, and property necessary to build light rail system, and legislature implied right to condemn city property by specifically requiring consent only to acquire city’s public transportation facilities.

Transit authority’s condemnation of city’s electrical transmission line easements to build light rail system met public use and necessity requirements; public transportation was a public use, there was no evidence of fraud or arbitrary and capricious conduct by legislature’s determination of necessity, and authority adopted resolutions authorizing condemnation as needed for extension of light rail system.

City’s easements that were previously acquired for purpose of distributing electricity, but some of which were not currently being used for that purpose, were being put to public use, and thus transit authority’s ability to condemn city’s easements was limited by prior public use doctrine; even though easements were acquired 86 years prior and there were no immediate plans to begin building transmission lines on currently unused easements, electrical utilities had to plan long term for future needs, and there were complex logistics to building electric transmission corridor.

Substantial evidence did not support trial court’s finding that transit authority’s use of property to build light rail system was compatible with city’s prior public use of holding property for future electrical transmission lines, and thus prior public use doctrine may have limited authority’s condemnation of city’s property; authority and city submitted competing declarations, there was no trial for court to weigh credibility of competing declarations, and issue of compatibility was highly technical and there was a factually correct answer.

In situations where the prior public use doctrine applies and the two public uses on the property to be condemned are found to be incompatible with one another, the remedy is an order that the prospective public use be restricted to an extent that the current public use would be compatible with it; abrogating State ex rel. Washington Boom Co. v. Chehalis Boom Co., 82 Wash. 509, 144 P. 719.

PUBLIC UTILITIES - WASHINGTON

Port of Tacoma v. Save Tacoma Water

Court of Appeals of Washington, Division 2 - July 25, 2018 - P.3d - 2018 WL 3582419

Sponsor of local initiative measures that would have required voter approval for large water utility service requests appealed from declaratory judgment and permanent injunction issued by the Superior Court preventing it from placing the measures on the municipal ballot.

The Court of Appeals held that:

- Pre-election review of the proposed initiatives to determine if they were beyond the scope of the initiative power did not offend separation of powers principles;
- Initiatives related to an administrative matter and thus were beyond the scope of the local initiative power;
- Initiatives impermissibly conflicted with statute placing a duty on city to provide retail water service if its requirements were met;
- Invalid provisions of the initiatives were not severable from any remaining valid provisions;
- Sponsor did not have a First Amendment free speech right to place the initiatives on the ballot; and
- Injunction did not violate sponsor's right to free speech under the state constitution.

Chicago's Fiscal Storm.

The deeply indebted city, with bonds already rated as junk, considers borrowing billions to cover its pension costs.

When Chicago issued half a billion dollars in new bonds late last year, some investors balked, though the offering was designed to protect them by guaranteeing that they would be paid with tax revenues that Illinois sends to its biggest city. "It's an untested model," the research head at Gurtin, a municipal bond firm, said of the offering—Chicago's first under a new state law. Ominously, he worried that if Chicago defaults, it was unclear how much protection holders of the new debt would really get.

Even as Chicago grapples with nightmarish violent crime, the city faces imposing fiscal challenges. The city, which says that it will collect about $8.5 billion in local revenues this year, is burdened by an astounding $28 billion in unfunded pension liabilities and another $9 billion or so in money that it owes to general-obligation bondholders, as well as billions more in other debts. Chicago's bonds, graded as "junk" by analysts, are among the lowest-rated of any major municipality. That forces the city to stretch the limits of municipal finance, seeking innovative techniques that might get new borrowers on board, but at the potential expense of taxpayers and holders of Chicago's other debts. It's becoming increasingly difficult to see how this ends well in the Windy City.

Chicago's latest fiscal scheme is already making headlines at home and in municipal-finance circles. Late last week, Chicago's chief financial officer and a financier close to Mayor Rahm Emanuel proposed the idea that the city would borrow $10 billion through a bond offering to shore up its pension system, using a dedicated revenue stream in order to persuade investors to come on board. The plan would seek to offset the pressure that the city faces from accelerating pension payments that it must make in coming years. Chicago's pension costs have doubled in the last decade—from $416 million in 2008 to $1 billion last year—and that's just 42 percent of what it should be paying to fund new retirement credits that workers are earning, and to wipe out its debt. Under a long-term plan, the city must double its pension payments again over the next five years, and then keep increasing payments steadily every year for the next 30 years. Even then, the plan would get the system back to only 80 percent funded, if everything else about the system's projections stays on course.

Chicago's bond offering would raise money for the pension system, where the money can then be deposited in financial markets to earn returns. The idea sounds simple. Chicago could borrow the cash, officials predict, by issuing bonds that pay between 5 percent and 5.5 percent annually. The city's pension system, meanwhile, projects that it will earn between 7 percent and 7.5 percent annually in the market over the long term. By simple math, earning 7 percent on money that costs you just 5 percent is a winner. "It would be irresponsible for me not to look at it," Chicago CFO Carole Brown told the press last week.

The problem is that those kinds of returns are far from a sure thing. That's why pension bonds have been behind some of the biggest fiscal meltdowns in recent years. Stockton, California, for instance, borrowed $125 million in 2007 to bolster its underfunded retirement plans and gave the money to California's public-pension system to invest. The system's investment professionals promptly lost more than a quarter of the principal, exacerbating an already-emerging crisis, which provoked city officials to file for bankruptcy. Detroit, eyeing the same kind of sharp increases in pension payments that Chicago faces, created a complex pension-financing scheme in 2005 to raise money by circumventing Michigan's limits on municipal debt. After the market crashed in 2008, the deal blew up. A financial manager brought in to clean up the mess took one look at Detroit's retirement obligations and hauled the city into federal bankruptcy court.

Brown justified considering the maneuver because the city can't reasonably dig its way out of its pension mess with taxpayer dollars. She's right: Chicago has already raised taxes by more than $800 million in the last few years to bolster pension payments. Even so, the system's funded ratio keeps dropping. If the $28 billion that Chicago is missing from its pension system existed, and was earning 7 percent in the market, the city would be garnering nearly $2 billion a year in new capital. That's money that—based on the design of the pension system—it's supposed to be earning. The missing investment returns, however, amount to far more than taxpayers can make up, so despite Chicago's best efforts, its pension situation keeps deteriorating. Brown said that the city needs to replace some of that missing money; if it can't, then Chicago's pension-funding status will fall even lower when the next market downturn occurs. But the Detroit and Stockton examples illustrate how things can get even worse with a big loan and a bad market bet.

The big losers in all this may be taxpayers and borrowers of previous Chicago debt, who should be looking with panic at the city's maneuvering. Chicago is now guaranteeing the debt of its newest bondholders by dedicating specific tax dollars to repay them. Detroit did the same thing, pledging revenues from casino taxes to reimburse some lenders. Those lenders did get paid in full during the bankruptcy, but other Detroit bondholders, including some who held Detroit's general-obligation debt, previously thought to be among the most secure forms of municipal debt, took a big loss, or "haircut," when the city went bust. With every new, secured deal that Chicago engineers, the risks for holders of the city's older debt grows.

Taxpayers face their own risks. Loans secured by dedicated revenue streams tie up tax proceeds. The more a municipality borrows in these kinds of transactions, locking up future revenues, the more it reduces its fiscal flexibility. Detroit eventually wound up in what fiscal experts call "service insolvency," that is, it didn't have enough money left over to spend on basic municipal services. Chicago has a far more vibrant economy than Detroit's, but it also has more pension debt, and Illinois judges have granted public workers extraordinary pension protections. The city isn't even allowed to reduce the rate at which workers earn benefits for work that they haven't done yet, so the pension system just keeps racking up new debt at alarming rates.

There's little precedent for what's happening in Chicago, and no clear path out. Illinois doesn't let cities file for federal bankruptcy protection, and that's unlikely to change because the municipal unions that have so much political power in the Land of Lincoln hate bankruptcy, where contracts can be busted and pension debt cancelled. Still, as economist Herb Stein famously observed, "If something cannot go on forever, it will stop." But when, and how?

City Journal

by Steven Malanga

August 9, 2018

How GASB Might Change Conduit Debt Reporting.

WASHINGTON — The Governmental Accounting Standards Board is proposing to standardize the way issuers of municipal bonds report conduit debt that is repaid by a third-party borrower.

The proposal, released last week by GASB, which is seeking comments, seeks to create uniformity in the way conduit issuers report information. There has been confusion over what constitutes a conduit debt obligation and GASB hopes to improve the quality of disclosure by clarifying that definition and making clear that such obligations are the responsibility of the conduit borrower rather than the issuer.

Bonds sold by issuers for borrowers in conduit transactions often support such revenue-producing infrastructure such as higher educational facilities and hospitals. The bonds are issued to allow such projects to access capital more affordably than would otherwise be possible.

The draft would define a conduit debt instrument as one that includes an issuer, an obligor, and a trustee, where the obligor receives the proceeds of the bonds and is responsible for their repayment, among other things.

The issuer would not recognize such an issuance as a liability, but would recognize related liabilities and expenses if it appears "more likely than not" that the issuer will support debt service payments.

The draft provides a list of factors that could be involved in such an analysis, including litigation that would negatively affect the project being financed or the conduit borrower entering into bankruptcy.

GASB first dealt with conduit obligations in Interpretation 2 in 1995. Under Interpretation 2, issuers were permitted to report conduit issuances as their own liabilities if they chose to do so. The new draft would improve disclosure by ending "significant diversity in practice." The proposal would not only provide better information, according to GASB, but also would allow for better apples-to-apples comparisons of different government financial statements.

"The clarified definition would resolve stakeholders' uncertainty as to whether a given financing is, in fact, a conduit debt obligation," GASB said in the draft.

The National Association of Health and Educational Facilities Finance Authorities, which represents conduit issuers, suggested it would submit comments to GASB.

"NAHEFFA will take a careful look at this draft and respond to GASB as required," the group's counsel and Mintz Levin member Charles Samuels told The Bond Buyer. “We will consider whether any real problem is being solved and new regulatory burdens are being imposed without justification.”

Samuels said that while his group would be reviewing the proposal, it is not clear to him that it would apply to NAHEFFA members.

GASB standards are not binding on state and local governments but they must be adhered to in order for governments to receive clean opinions on audits of financial statements. The board periodically publishes updates to its reporting standards, and did so earlier this year with respect to reporting of bank loans and private placements of municipal debt.

Comments on the proposed statement governing reporting of conduit obligations are due by Nov. 2. If approved, it would take effect for reporting periods.

The Bond Buyer

By Kyle Glazier

August 07 2018

Retrospective Review of 2012 Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities.

SUMMARY

SIFMA provided comments to the MSRB on existing interpretive guidance that addresses the application of the MSRB’s fair-dealing rule to underwriters of municipal securities. The guidance, adopted in 2012, established obligations for underwriters, including requirements to disclose information to issuers about the nature of their relationship and risks of transactions recommended by the underwriters, among other information. Some market participants have indicated that underwriters’ disclosures are duplicative, often boilerplate and burdensome for issuers to review.

View the comments.

See also: MSRB Notice

GASB Proposes Improvements to Reporting of Conduit Debt Obligations.

Norwalk, CT, August 6, 2018 — The Governmental Accounting Standards Board (GASB) has proposed revised guidance that would provide a single method for government issuers to report conduit debt obligations and related obligations. This proposed guidance would eliminate diversity in practice associated with these issues.

Conduit debt obligations are debt instruments issued by a state or local government to provide financing for a specific third party that is primarily liable for repaying the debt instrument. Third parties sometimes seek this kind of financing for projects such as not-for-profit hospitals and universities and qualifying private businesses.

The GASB's review of the existing standards—Interpretation No. 2, Disclosure of Conduit Debt Obligations—found variation in practice among governments that issue conduit debt obligations, which adversely affects the comparability of financial statement information. The variation arose from (1) the option in the standards that allowed government issuers to recognize conduit debt obligations as their own debt or just disclose the transactions and (2) diversity in how additional commitments associated with these transaction are reported by governments..

The GASB is proposing in the Exposure Draft, *Conduit Debt Obligations*, to address the variation in practice by:

- Clarifying what is a conduit debt obligation
- Eliminating the option for government issuers to recognize conduit debt obligations, thereby providing a single method of reporting
- Clarifying accounting and financial reporting guidance for (1) additional commitments extended by government issuers and (2) arrangements—often characterized in practice as leases—associated with conduit debt obligations
- Enhancing note disclosures.

The Exposure Draft is available on the GASB website, www.gasb.org. The GASB invites stakeholders to review the proposal and provide comments by November 2, 2018.

BDA Submits Comment Letter on MSRB Retrospective Review of Underwriter Disclosures to Issuers.

Today, August 6, 2018, the BDA submitted a comment letter in response to the MSRB's request for public comment on existing interpretive guidance on the application of MSRB Rule G-17.

The letter can be viewed here.

The comment letter requests that the 2012 Guidance:

- Should be modified to allow for the timing of some of the Rule G-17 Disclosures to vary depending on the circumstances; and to
- Allow for the timing of some of the Rule G-17 Disclosures to vary depending on the circumstances; and to
- Clarify that only material, actual conflicts of interests should be disclosed; and to
- Clarify that co-managers usually have no requirement to deliver Rule G-17 Disclosures.

The MSRB issued a notice requesting comment on existing interpretive guidance on the application of MSRB Rule G-17 that addresses the application of the MSRB's fair-dealing rule to underwriters of municipal securities. The guidance, adopted in 2012, established obligations for underwriters, including requirements to disclose information to issuers about the nature of their relationship and risks of transactions recommended by the underwriters, among other information.

August 6, 2018

Digital Innovation in Public Finance.

By Mark Howard, Global Administration Segment Lead, Public Service, Accenture

If you attended recent NASACT or NASC events, you may have heard my colleague, Bill Kilmartin, or me discussing digital innovation in finance. We highlighted the potential of digital technologies and shared insights gained through Accenture's experience with commercial organizations. I've also written extensively about the opportunity to use digital technologies to transform the government back office into a Center of Innovation. That includes realigning the finance function around its true mission: creating a performance-focused organization that is financially sustainable.

We're eager to continue the conversation at next month's NASACT Annual Conference, where instead of *telling* you about digital innovation—we'll be ***showing*** how it's already underway within state governments. One state is testing a chatbot to guide users through its procurement process. Another is applying automation tools to perform massive reconciliation on 100% of records rather than sampling at a fraction of the time previously required, freeing substantial 'human' time to focus on resolving issues rather than compiling data.

These are no longer futuristic concepts. Today digital innovations are within reach for state agencies—and these examples are only the beginning of what's possible.

How can your agency tap into here-and-now digital innovation? Consider a recent Accenture study of government innovation. Spanning nearly 600 government executives in 10 countries, the survey set out to understand what it takes to be innovative—in other words, what an agency must do culturally and operationally to transform itself into a Center of Innovation.

Using the five pillars of the Accenture Innovation Framework—Strategy, Ideation, Execution, Impact & Benefits, and Absorption—we asked about the "what" and "how" of innovation within respondents' government agencies. While our analysis revealed that just 8 percent of agencies can be considered government innovation leaders, it also pointed to some practices and habits that set these leaders apart from the crowd. That includes insights about execution—the important work of turning creative ideas into real-world results.

At the core, executing government innovation requires a sound process and the right skills for evaluating ideas, using a Proof of Concept (POC) to test the highest-potential ideas, rigorously assessing the results of the POC, and, finally, scaling the innovation and continually evaluating performance.

Our study found that for about three-quarters (77 percent) of agencies, moving from pilot to broad implementation at scale remains a significant challenge. Why? The most-cited barriers were budgetary constraints and lack of technological capabilities (cited by 82 percent and 83 percent, respectively). About three-quarters of respondents also pointed to a risk-averse culture (77 percent) and a lack of support from leadership and key decision-makers (73 percent) as barriers to executing innovation at scale. In addition, respondents identified lack of skills as a key obstacle. Sixty-two percent reported that they need more access to user experience (UX) design skills, design thinking skills and research skills—competencies that have become essential to serving digital citizens.

The good news: These obstacles can be overcome. Based on our findings about government innovation leaders and what we've seen in the real world—including the innovative work we'll be highlighting at the NASACT Annual Conference—Accenture has identified four steps to better execution:

- **Go talk with citizens (your "customers").** Set up a structured mechanism for uncovering customers' needs. Be disciplined and consistent in asking customers what's working—and what's not—with your existing services.
- **Put a process in place.** Be rigorous in managing execution, with a strong tie to the impact and benefits of government innovation. Establish a strong practice for each step of execution—evaluating ideas, executing POCs, assessing POC results, scaling quickly to production and evaluating results once in production.
- **Think like entrepreneurs.** Embrace iterative, agile methods, including willingness to rapidly change course. Build the discipline to end at any point in the cycle based on how well or poorly benefits are realized.
- **Assess skills (technical and "soft").** Perform an objective evaluation of your skills gap. Where gaps exist, determine if you truly need those skills. Where you need skills but have gaps, fill them through partners.

We look forward to expanding on our frontline experience and research findings next month at the NASACT Annual Conference. We hope to inform, inspire and learn from you as we all work to turn digital innovation ideas into actions that make a real impact for agencies and the people they serve.

To learn more about how to bring the back office to the forefront of government innovation visit us here.

MARK HOWARD is the global lead for Accenture's public administration/regulatory industry group. His team focuses on helping clients implement leading practices, systems and organizational designs in government administrative and regulatory agencies. He spent four years as Accenture's global program director for government finance and performance management. His clients in the U.S. include cities, counties, states, special districts, universities and federal agencies. Overseas, he has worked with the French Ministry of Finance and several United Nations agencies. He helped develop and lead with Bill Kilmartin Accenture's participation in the performance benchmarking program of NASACT. Prior to joining Accenture, Mark spent 10 years in city management in various roles with cities in Texas, Colorado and Wisconsin. He has a master's in public affairs from the LBJ School of Public Affairs at the University of Texas-Austin and a bachelor of arts in history from Northwestern University.

What If Banks Were Publicly Owned? In LA, This May Soon Be A Reality.

Voters will decide in November whether to take city money out of the hands of big banks.

Trinity Tran is a powerful speaker. Addressing a rally in downtown Los Angeles for New York congressional nominee Alexandria Ocasio-Cortez, the 33-year-old activist and organizer thundered, "We are witnessing the emergence of a solution, from profit and greed to collective prosperity. We can empower our community from the ground up. It's time to take our power back."

Tran's organization, Public Bank LA, is leading the revival of an idea that had largely been discarded until the financial crisis. In November, Los Angeles voters will have the opportunity to approve a public bank for the city. If the measure passes, it would become the first government-owned bank developed in the United States since 1919.

The term “public bank” may confuse some into thinking that Los Angeles is about to create a bunch of branch offices where residents can open a free checking account. The idea is much more ambitious. Public bank enthusiasts want to finance local improvements in housing, infrastructure, and community development by employing the money citizens already pay to state and local governments for services. To them, it’s about democratizing the financial system.

Continue reading.

The Huffington Post

By David Dayen

8/10/18

Huntington Buys Chicago-Based Public Finance Investment Bank.

Huntington Bancshares is buying Chicago-based Hutchinson, Shockey, Erley & Co., a public-finance investment bank and broker-dealer with a focus on municipal securities.

The purchase price was not disclosed. The deal is expected to close before the end of the year.

Founded in 1957, the company serves state and local government and nonprofits. It underwrites and structures debt that funds school construction, infrastructure development and other capital projects.

The company has 11 offices in nine states with 51 employees.

The current management team will continue to be led by CEO Ton Dannenberg. The company will continue to operate under the same name and remain in Chicago.

The Columbus Dispatch

by Mark Williams

Wells Fargo Public Finance Hires Two Ex-Morgan Stanley Bankers.

Wells Fargo Securities, the investment banking and capital markets business of Wells Fargo, has hired two former Morgan Stanley investment banking leaders: Randy Campbell heads the Public-Private-Partnership (P3) and Sports Financing group, and Jim Perry leads the Southern regional group.

Edward Boyles will continue to serve as head of the Atlantic region. Kevin Carney, managing director, and Julie Burger, director, will continue to work on transportation-related P3 financings.

“As we continue to invest in our public finance business, hiring Randy and Jim — both leaders in the industry — will bring additional experience and increased capabilities that we can offer to our clients,” said Stratford Shields, head of Public Finance. “Wells Fargo offers full-service financial capabilities, including underwriting and balance sheet solutions through an integrated Government and Institutional Banking platform, which few other firms offer." All report to Shields.

Campbell has 30 years of public and corporate finance experience, working on sports-related, general infrastructure and P3 advisory and financing transactions. He previously headed the sports finance investment banking practice at Societe Generale. As head of Public-Private-Partnership and Sports Financing, Campbell will work on buy- and sell-side advisory and financing opportunities in the P3 business, covering municipal entities, infrastructure firms and other sponsors. He also will oversee the firm's investment banking efforts related to both sports team and stadium financing and will be based in New York.

Perry, a 10-year veteran of public finance, worked as deputy chief of staff and policy director to Mississippi Governor Haley Barbour prior to becoming an investment banker. Perry oversees the seven-state Southern Region, with a focus on complex financing structures for a variety of state and local government entities. He will also be a part of the P3 investment banking team. His territory includes Alabama, Mississippi, Louisiana, Texas, Oklahoma, Kansas and New Mexico and he will be based in Jackson, MS.

Wells Fargo Government & Institutional Banking supports more than 4,000 government, education, nonprofit and healthcare clients across the U.S. The firm organizes specialized commercial banking and capital markets teams under one business, offering an integrated approach to provide the most value for its clients. Government Banking serves federal, state, county and city governments, government agencies and authorities, municipal utilities, school districts and specialty public sectors such as public power, housing, finance and transportation. The Education and Nonprofit group serves colleges, universities, 501(c) organizations, foundations, endowments and national nonprofits. Healthcare Financial Services serves nonprofit hospitals systems, nonprofit healthcare insurers and academic medical centers.

AUG 7, 2018

Airports Find a New Source of Revenue: Attaching Hotels to Terminals.

- Recently, Twin Cities officially cut the ribbon on a new four-star hotel at the Minneapolis-St. Paul International Airport (MSP).
- A growing number of travel hubs gives flyers new accommodations that let them skip a hectic commute to a hotel, and go straight to a comfortable room with all the perks.

Recently, Twin Cities officially cut the ribbon on a new four-star hotel at the Minneapolis-St. Paul International Airport (MSP). It gives travelers new accommodations that let them skip a hectic commute to a hotel, and go straight to a comfortable bed with all the perks.

Designed with the corporate traveler in mind, the 12-story, 300 room InterContinental Minneapolis-St. Paul Airport Hotel is connected to Terminal 1 via a sky bridge and has a spa, conference center and its own security checkpoint, offering quick access to the gates for those flying with just hand baggage.

"At-the-airport hotels are particularly convenient to the business traveler who stays only a few days – a demographic in abundance at MSP," said airport spokeswoman Melissa Scovronski.

Continue reading.

CNBC

Harriet Baskas | @hbaskas

Published 9:01 AM ET Sun, 5 Aug 2018

California Becomes First State to Pledge to Use 'Green' Financing to Combat Climate Change.

SACRAMENTO – California's treasurer has signed on to a document committing to to fight climate change through a strategy using green financing.

"President Trump may dial up his efforts to mislead the American people into believing climate change is a hoax created by the Chinese, but we Californians laugh at such lunacy because we know – without doubt or reservation – that the fate of the planet is at stake. Building critical public infrastructure and a future that does not depend on fossil fuels is now deadly serious business," California Treasurer John Chiang said to a gathering of policymakers and top-level executives at the Milken Institute California Policy Summit in Sacramento on Tuesday.

While speaking with attendees, Chiang signed the "Green Bond Pledge." A declaration with broad and far-reaching impact, states and cities across the nation are being urged to take the pledge that would commit them to a strategy that will finance infrastructure and capital projects that meet the challenges of climate change with "green bonds," or green financing.

"Treasurer Chiang is taking smart action to strengthen the market for climate-friendly bonds," said California Governor Edmund G. Brown Jr., who is hosting the Global Climate Action Summit in San Francisco in mid-September. The summit will showcase actions – including the Green Bond Pledge – states and regions, cities, companies, investors, and individual citizens are taking to realize the goals of the historic 2015 Paris Agreement.

Those signing the green bond pledge agree that climate change poses an existential threat and that the rapid growth of a green bonds market will not only meet the unique challenges the world faces, but will do so while making communities more economically competitive, prosperous, and productive.

"As the world's fifth largest economy, California will lead the way and help finance as much new clean infrastructure as we possibly can," said Chiang. "While Washington continues to deny the irrefutable science that proves climate change, the Golden State has embarked on an unstoppable path to reduce the dangerous effects of greenhouse gases and build a future that is climate resilient."

Next, the governor and treasurer are establishing a working group to develop and implement a green bonds strategy to fulfill the commitments outlined in the Green Bond Pledge.

Green bonds may be sold by governments, as well as by private entities, to finance projects that have positive environmental or climate attributes. The projects can range from clean transportation to renewable energy.

The American Society of Civil Engineers estimates the U.S. currently has a multi-trillion dollar shortfall in funding its infrastructure needs in the coming decades. In California alone, independent reports estimate the shortfall will exceed $400 billion over the next 10 years.

The green bond market started in 2007 with bonds issued by the World Bank and the European Investment Bank. By 2017, both California and New York had issued more than $4 billion in bonds to finance such things as clean water projects, green schools, mass transit, land preservation, and green housing. The state is now looking to build on that start and help grow a much more robust market for green bond financing.

The Green Bond Pledge aims to help establish the market and accelerate its growth. The pledge was developed and designed by international climate finance and environmental groups.

Treasurer Chiang has devoted considerable energy and time to unlocking the potential of the green bond market. His office has handled more than $2.2 billion in green bonds for mass transit, clean water, and pollution control projects, as well as for Kaiser Hospital green buildings, and a rice-straw fiberboard plant. The treasurer's senior team will also be discussing green bonds with Chinese provincial government officials in the fall.

In 2016, Treasurer Chiang conducted a five-city, national listening tour, meeting with market experts and investors to identify barriers and challenges to growing the green finance market. In February 2018, he convened a green bond symposium with the Milken Institute and tasked its blue-ribbon Financial Innovations Lab® with developing actionable paths to creating a more robust green bonds market. The result was two ground-breaking studies. The first, issued in 2017, identified the barriers and challenges to growing the green bond market. The second was unveiled today.

Chiang added, "Today's report provides strategies and solutions aimed at turbocharging a new and growing financial market that can help provide more affordable capital to not only meet California's growing infrastructure needs, but also steel ourselves against wildfires, rising sea levels, and extreme weather."

The report issued today includes, among its suggestions, improving market standardization, defining what is green, and streamlining pricing. It concludes that, "Because California is widely recognized as a leader in environmental sustainability, pioneering efforts to streamline the green bond market can serve as a model for other states and countries.Building public infrastructure with future generations in mind is a must, not just in California, but everywhere on the planet."

A copy of the Green Bonds Pledge can be found here.

CALIFORNIA TREASURER'S OFFICE | POSTED ON WEDNESDAY, 08 AUGUST 2018 02:15

CDFI Fund Releases Application Demand for 2018 Round of NMTC Program.

The U.S. Department of the Treasury's Community Development Financial Institutions Fund (CDFI Fund) announced today that it received a total of 214 applications under the 2018 round of the New Markets Tax Credit Program (NMTC Program). The NMTC Program advances economic development in economically distressed communities by making tax credit allocations available to Community Development Entities (CDEs) for targeted investments in eligible areas.

The CDEs that applied under the 2018 round are headquartered in 43 states, the District of Columbia, and Puerto Rico. These applicants requested an aggregate total of $14.8 billion in NMTC allocation authority, over four times the $3.5 billion in authority available for the 2018 round.

The NMTC Program was established by Congress in December of 2000 and permits individual and corporate taxpayers to receive a credit against federal income taxes for making qualified equity investments in CDEs. The credit provided to the investor totals 39 percent of the cost of the investment and is claimed over a seven-year period. Substantially all of the taxpayer's investment must be used by the CDE to make qualified investments in low-income communities. Successful applicants are selected only after a competitive application and rigorous review process that is administered by the CDFI Fund.

Through the first fourteen rounds of the NMTC Program, the CDFI Fund has made 1,105 awards totaling $54 billion in tax credit allocation authority. This $54 billion includes $3 billion in Recovery Act Awards and $1 billion of special allocation authority to be used for the recovery and redevelopment of the Gulf Opportunity Zone.

For more information about the NMTC Program, visit the [CDFI Fund's website](#).

Wednesday, August 8, 2018

[Incentives Watch: State Tax Incentive Review Programs Come of Age.](#)

State governments across the country have fallen in love with the use of credits and incentives to spur economic growth and social progress. The last twenty years have seen an explosion of state tax credit programs, including historic rehabilitation/preservation credits, economic development credits, and even individual credits to assist first responders and veterans. But growing with this expansion is concern that states have no way of knowing whether a particular program is working. Reform in this area is picking up steam, and seeks not just to understand the bald dollar value of credits offered but also evaluate the return on investment the state receives. Though most evaluation is done in monetary terms, some states are beginning to look past finances to determine a credit's effect on homelessness, poverty rates, and educational access. Several recent pieces of legislation seek to obtain this information in order to guide policy makers toward programs that are worth the public's time and resources.

Credit Evaluation: Flying Blind?

Current state evaluation of credit offerings is uneven and incomplete. Just 10 states have an established method in place of reviewing major tax incentives, according to a [report](#) by Pew Charitable Trusts in 2017. The evaluation was based on three criteria: 1) well-designed plans for regular reviews, 2) experience in producing quality evaluations, and 3) a process for informing policy choices. Too often states merely collect information on the total value of credits offered in a given year, and perhaps the identities of the recipients. States rated as "leaders" in the Pew report seek to understand efficacy, through both achieving the desired result and understanding the cost.

[Continue reading.](#)

Bloomberg BNA

Aug 7, 2018 / by Kevin Thayer

[House Bill to Expand Tax Credit Program Would Target Rural Areas.]

Legislation introduced in late July would add authority to the New Markets Tax Credit program.

Two lawmakers in the U.S. House are proposing to expand the size of a tax credit program, in an effort to drive new investment in rural America.

Reps. Jason Smith, a Missouri Republican, and Terri Sewell, an Alabama Democrat, in late July introduced legislation dubbed the Rural Jobs Zones Act. They're both members of the tax-writing Ways and Means Committee. Their bill would provide $500 million annually in 2018 and 2019 in additional New Markets Tax Credit authority, specifically aimed at rural areas.

The tax credit program was enacted in 2000 and is designed to draw investment capital to low-income communities. Through 2017, Treasury made awards totaling $54 billion in New Markets Tax Credit authority, according to a July report from the department.

Continue reading.

Route Fifty

by Bill Lucia

AUg 6, 2018

S&P State Brief: South Dakota

South Dakota boasts a structurally balanced budget, diverse economy, and growing population. Thanks to strong financial and budgetary management through the recession, the state continues to fund its reserves according to its policy to maintain 10% of budgeted expenses.

Continue Reading

Aug. 3, 2018

TAX - ILLINOIS

Keystone Montessori School v. Village of River Forest

United States District Court, N.D. Illinois, Eastern Division - July 17, 2018 - F.Supp.3d - 2018 WL 3438940

Primary and secondary school with tax-exempt status, which was a not-for-profit Illinois corporation, brought action in state court against village, alleging claims including a class-of-one equal protection claim regarding development permit which required school to forfeit its right to a property tax exemption to operate on property that zoning ordinance otherwise prohibited.

Village removed case to federal court and moved to dismiss for failure to state a claim.

The District Court held that:

- Unconstitutional conditions doctrine did not apply, and
- Allegations did not raise a plausible inference that village targeted school for less favorable tax treatment than it accorded other not-for-profit entities.

Payment of property taxes to village did not implicate the Takings Clause, and thus unconstitutional conditions doctrine did not apply to claim by primary and secondary school with tax-exempt status that village violated the federal and Illinois constitutions by conditioning a development permit on school's payment of property taxes; right to seek a property tax exemption was rooted in the Illinois tax statute.

Allegations in class-of-one equal protection complaint by primary and secondary school with tax exempt status did not raise a plausible inference that village targeted school for less favorable tax treatment than it accorded other not-for-profit entities in violation of the Equal Protection Clause by granting development permit requiring school to forfeit tax exempt status; permit singled out school for favorable treatment by authorizing it to operate at a location where it was otherwise prohibited by village's generally-applicable zoning ordinance, and no other not-for-profit entity operated in an area where its activities were otherwise prohibited by zoning ordinance, or owned and occupied a presumptively tax-generating property, but still exercised its statutory right to property tax exemption.

TAX - WEST VIRGINIA

Charleston Area Medical Center, Inc. v. United States

United States Court of Federal Claims - July 31, 2018 - Fed.Cl. - 2018 WL 3629294

Two nonprofit medical centers brought putative class action against the United States, seeking to recover statutory interest paid at higher, standard rate, rather than lower corporate rate, for their tax refunds.

The government moved for judgment on the pleadings, and medical centers moved for summary judgment.

The District Court held that nonprofit medical centers were "corporations" subject to lower corporate interest rate on tax refunds.

Nonprofit medical centers, which were incorporated under provisions of state law, were "corporations" within meaning of the Internal Revenue Code (IRC), and were thus subject to lower corporate interest rate on refunds of the employer portion of Federal Insurance Contributions Act (FICA) taxes they paid for medical residents whom IRS subsequently determined were students exempt from such taxes; common usage and definition, IRC's own definition, structure of the specific statutory provision at hand, and use of the term in the IRC as a whole, all indicated that term "corporation" in interest rate provision of the IRC plainly encompassed both for-profit and not-fo--profit corporations.

District court would decline to look to Treasury regulations that formerly set forth IRS's views on the essential characteristics of a corporate entity, so as to find that nonprofit medical centers were not "corporations" subject to lower corporate interest rate on refund of employer portion of Federal Insurance Contributions Act (FICA) taxes they paid for medical residents whom IRS subsequently determined were student exempt from such taxes; medical centers were unambiguously "corporations" under the definition in Internal Revenue Code (IRC) section governing statutory interest on tax refunds, regulations upon which medical centers relied were repealed and superseded by “check the box” regulations that harmonized with the foregoing interpretation of the statutory interest provision, and even if the now-superseded regulations had remained in effect, they would not apply to medical centers, since they were incorporated under state law.

More Counties Join PILT Class-Action Lawsuit Against the Feds.

STATE AND LOCAL ROUNDUP | Fact-checking Trump’s claims on Calif. wildfires … a big N.M. groundwater ruling … and Detroit’s dismal rental inspection compliance.

Good morning, it’s Wednesday, Aug. 8, 2018. Budget and finance news leads Route Fifty’s state and local government news roundup but there’s a lot more. Scroll down for more news from places like Wilmington, North Carolina; Utah County, Utah; and the Plains of St. Augustin in New Mexico.

Continue reading.

Route Fifty

By Michael Grass,
Executive Editor

August 8, 2018

Evaluating Municipal Debt Instruments Using Muni Bond Indices.

Like other capital markets, municipal debt markets are made up of a wide array of debt instruments and serve investors from all walks of life. Whether you are a conservative investor looking for principal protection while earning enough to keep up with inflation or a moderate risk taker who might be looking for high returns on your municipal debt portfolio, you’ll find many debt instruments to fit your profile.

Similarly, these various debt issues are unique in their own way with differing characteristics like the risk profiles associated with their credit quality and the duration of their potential returns. To help investors compare and evaluate their potential investments, these characteristics are summed up into benchmarks and market indices.

These benchmarks are quite helpful for issuers and investors in evaluating a debt instrument’s yield and comparing that to a particular sector or the municipal debt markets as a whole.

In this article, we will take a closer look at a bond index, its composition, its uses and how it can provide a competitive edge to an informed investor.

Continue reading.

municipalbonds.com

by Jayden Sangha

Aug 08, 2018

Fitch: Rating Normalcy Awaits U.S. NFP Hospitals After Rating Criteria Rollout.

Link to Fitch Ratings' Report(s): U.S. Not-for-Profit Hospitals and Health Systems Rating Criteria Update: Implementation Complete

Fitch Ratings-Austin-07 August 2018: The 'Rating Watch' is officially over for Fitch-rated U.S. not-for-hospitals and health systems with most systems performing as expected and upgrades outpacing downgrades, as detailed by Fitch Ratings in a new report.

Fitch completed its hospitals and health systems criteria rollout mid-July. Of the 16 issuers placed on Rating Watch Negative at the start of its rating review, Fitch affirmed six and downgraded 10. Conversely, Fitch affirmed five and upgraded nine issuers of the 14 it placed on Rating Watch Positive. That said, the overarching theme of the rating review is the majority of hospitals are performing up to par as Fitch had initially projected (52% ratings affirmed, another 28% upgraded). Still, that upgrades occurred more frequently than downgrades was somewhat of a surprise according to Senior Director Kevin Holloran.

"Upgrades generally came from long-time consistent performers that benefited from a 'new look' through the lens of our updated criteria,' said Holloran. 'Conversely, downgrades were more varied with balance sheet strength an overarching need over size or market share, asserting our view that balance sheet strength translates into more predictable credit stability."

While more than 93% of Fitch's rating changes were subtle in scope (one to two notches), there were two extreme outliers. The first was a provider, Lexington Medical Center, which Fitch downgraded six notches due to a GASB 68 pension liability factored into its analysis. On the opposite end of the rating spectrum was a seven-notch upgrade Fitch took on Presence Health Network, due to an MTI substitution.

So the logical question now is 'What does the future rating trajectory look like for NFP hospitals going forward?' With Fitch's criteria implementation resulting in what it called a 'normalized distribution curve', the short answer appears to be 'normalcy'. 'The short term volatility that criteria change often brings, will result in longer term rating stability,' said Holloran. The sector, however, is dealing with various operational challenges so far this year, some of which could persist into 2019. As a result, Holloran concluded that 'numerous external factors could dictate how frequently Fitch takes future rating actions on select hospitals and health systems.'

Fitch's 'U.S. Not-for-Profit Hospitals and Health Systems Rating Criteria Update' is available at 'www.fitchratings.com' or by clicking on the above link.

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Fitch Ratings: Demographic Volatility A Risk for Some States in Downturn

Fitch Ratings-New York-06 August 2018: US states with the strongest and most stable demographic and economic factors are generally expected to be less impacted by a cyclical downturn than those with strong but more volatile underlying trends, Fitch Ratings says.

We recently reviewed eight factors to assess demographic and economic trends at the US state level. The trends and absolute levels for these factors, and others, can provide insight into states' resilience against cyclical stresses to general economic forces, or more narrow secular trends in some cases. Demographic growth has been strong for many states in the West Coast, Plains and Rocky Mountain regions whereas weakness has been evident in the Great Lakes, New England and Middle-Atlantic regions. Some states that have exhibited relative strength over the intermediate to longer-term, with regard to population trends and various economic and wealth measurements, include Texas, the State of Washington, North Dakota and Wyoming.

Continue reading.

Muni-Bond Manager Buys Treasuries as Rally Erodes the Tax Breaks.

- **AllianceBernstein sees value in Treasuries in lieu of munis**
- **"Very happy" their strategies allow this type of flexibility**

Terrance Hults, a portfolio manager at AllianceBernstein Holding LP, is paid to invest money in state and local government bonds. But lately, he's been moving into Treasuries instead.

That's because the clamor for munis that mature in two years or less — driven by rising interest rates — has pushed the securities to their most expensive level relative to Treasuries in nearly four years. The dwindling yield has wiped away much of the tax benefit that investors get by buying state and local debt instead of other securities.

As a result, AllianceBernstein., with $40 billion in municipal bonds under management, has shifted some of cash in mutual funds and privately run accounts into short-dated Treasuries instead of municipals.

"We're very happy that most of our strategies tend to have flexibility to not only invest across different areas of the muni market but also, when it makes sense on an after-tax basis, to own a modest amount of taxable securities," Hults said. "In certain short maturities, municipals in general are expensive, so we think it makes sense to take advantage of that flexibility to have a small position in Treasures in the very short end."

Yields on two-year tax-exempt bonds have declined to about 1.6 percent, some 62 percent of what investors receive on similarly dated Treasuries. That ratio, a key measure of relative value, has dropped 15 percent since May 31 and is only up slightly from the 60 percent hit late last month —

the lowest since Sept. 2014.

The difference between after-tax yields on short-term Treasuries and tax-exempt municipals is "only a couple of basis points," Hults said. Historically, that figure has been about 30-40 basis points, he said.

"You pick up liquidity to go into a small weight — for context, about a 5% weight in a top tax-bracket account — to go into Treasuries."

Bloomberg Business

By Danielle Moran and Amanda Albright

August 7, 2018, 10:30 AM PDT

[The Week in Public Finance: Is Your City Positioned to Weather the Next Recession?]

A new report identifies the different factors affecting a city's ability to respond to a fiscal crisis — and what policymakers can do about it.

What's true for one city isn't always true for another. Demographics and state policies say a lot about a city's ability to respond to a fiscal crisis.

A new report, published by the Brookings Institution's Metropolitan Policy Program, looks at these factors, as well as how state and federal policies may influence how a city weathers a recession or other major disruption in revenue. "Part of what we're trying to understand here," says Michael Pagano, dean of the College of Urban Planning and Public Affairs at the University of Illinois at Chicago and a coauthor of the report, "is if there's a shock to the system, [how will] cities respond to those changes."

The report focuses specifically on the different limits cities have on their taxing power, such as the kinds of taxes a city is authorized by the state to levy, limits on raising the rates of those taxes and how a city's taxing structure aligns with its overall economy.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | AUGUST 10, 2018

BDA 3rd Qtr Advocacy Priorities 2018

Read the Priorities.

Bond Dealers of America

August 9, 2018

MSRB Notes Compliance Risks of Issuer-Solicited Charitable Donations: Skadden

Recently, the Municipal Securities Rulemaking Board (MSRB) noted in its quarterly compliance newsletter dated June 8, 2018 that it has “compliance concerns” regarding issuer-solicited charitable donations. The MSRB’s quarterly newsletter does not have the force of formal agency guidance, however, it does offer insight into how the MSRB may view issuer-solicited charitable donations.

Though charitable donations do not implicate the MSRB’s pay-to-play Rule G-37, the MSRB notes that the donations may have implications under other rules, as described below.

- **Rule G-17:** This rule requires dealers acting as underwriters in a negotiated underwriting to disclose actual or potential material conflicts of interest with respect to the issuance. The MSRB noted in its newsletter that it would be a violation of Rule G-17 for an underwriter to compensate any undisclosed third party in order to secure municipal securities business. Thus, if an underwriter makes a charitable donation for these purposes, the underwriter must disclose the donation to the issuer as a conflict of interest.
- **Rule G-42:** This rule generally prohibits municipal advisors from making payments for the purpose of obtaining or retaining an engagement. The MSRB noted that if a municipal advisor makes a charitable donation for these purposes, it would violate Rule G-42.
- **Rule G-20:** This rule prohibits, with some exceptions, any regulated entity or its associated persons from directly or indirectly giving any thing or service with value in excess of $100 to a person if such payments or services are in relation to the municipal securities or municipal advisory activities of the recipient’s employer. The MSRB noted that, where a regulated entity makes a directed donation to a charity that is closely aligned with the third party requesting the donation, it may be deemed an indirect gift or gratuity under Rule G-20. Therefore, if that person is an official of an issuer and the donation is in excess of $100, the regulated entity may be in violation of Rule G-20.

Please note that the Financial Industry Regulatory Authority (FINRA, then known as the National Association of Securities Dealers), issued a similar cautionary notice to its members in 2006. However, FINRA expressed these concerns only to prevent a conflict of interest. The new MSRB guidance is notable in that it, for the first time, indicates that an issuer-solicited charitable donation also may be considered a gift under Rule G-20.

In light of this new guidance, it is more important than ever for municipal securities dealers and municipal advisors to have a robust company policy concerning charitable donations. For assistance in developing such a policy, please reach out to your usual Skadden contact.

The newsletter is available here.

Skadden Arps Slate Meagher & Flom LLP

by Kenneth A. Gross, Ki P. Hong, Matthew Bobys, Melissa L. Miles, Charles M. Ricciardelli, Samuel Levor, Shayla K. Parker, Jeremy F. Regan and Tyler Rosen

NFMA Advanced Seminar on the Impact of ESG & Resiliency Issues on Credit Analysis.

Registration is open for the NFMA's Advanced Seminar on The Impact of ESG & Resiliency Issues on Credit Analysis, to be held at the Westin Copley Place, **Boston, on October 11 & 12**.

To view the program, click here.

To register, click here.

Puerto Rico Sends Costlier Reconstruction Plan to U.S. Congress.

(Reuters) – Puerto Rico submitted a recovery plan to the U.S. Congress on Wednesday that carries an estimated price tag of $139 billion, which is 47 percent more than the bankrupt U.S. commonwealth requested in November.

The economic and disaster recovery plan allocates the money to housing, water and energy systems, education, transportation, public buildings, communications, planning, municipalities, as well as to the economy and environment, according to Governor Ricardo Rossello's office.

Puerto Rico's severe financial problems, which led to bankruptcy court in May 2017 to restructure about $120 billion of debt and pension obligations, were compounded by destructive hurricanes that hit the island in September.

"Puerto Rico has a unique opportunity to innovate and rebuild in order to become that Puerto Rico we all want," Rossello said in a statement.

He added that the initiatives were aimed at "making us stronger and resilient, while guaranteeing a long-term economic recovery."

Last November, Rossello requested $94.4 billion from Congress to rebuild the island's infrastructure, housing, schools and hospitals devastated by Hurricanes Maria and Irma.

That so-called Build Back Better plan contained a preliminary assessment of damages and an initial estimate of money the island needs to rebuild, according to the statement.

The final plan, which was submitted on the deadline day set in the 2018 U.S. budget act, expanded the scope of the November request and was developed with input from federal agencies, the governor's office said. It was also posted on the internet and subjected to public hearings prior to its submission.

Near-term priorities for the money include restoring Puerto Rico's ailing electrical system, which was devastated by Hurricane Maria, improving emergency preparedness, and repairing public facilities. Long-term objectives include stopping emigration and boosting economic growth.

By Reuters

Aug. 8, 2018

(Reporting By Karen Pierog in Chicago; Editing by Daniel Bases and Alistair Bell)

World Bank Taps Australia's CBA for Blockchain Bond.

MELBOURNE (Reuters) – Commonwealth Bank of Australia (CBA.AX) has won a mandate from the World Bank to arrange a pioneering bond issue to be created and run using only blockchain, aiming to simplify capital raising and trading.

The World Bank and CBA said on Friday indicative interest in the blockchain operated new debt instrument, nicknamed “bond-i” after Australia’s iconic beach, had been strong.

No size or date was given for the issue, a first for the World Bank using blockchain technology, but the two said it would be launched after a period of consultation with more investors.

Using distributed ledger technology, best known as the technology underpinning the bitcoin crypto-currency, would help simplify capital raising and trading and improve regulatory oversight, the World Bank and CBA, Australia’s biggest bank, said.

The World Bank issues between $50 billion and $60 billion a year in bonds to back development in emerging economies.

“This pioneering bond is a milestone in our efforts to learn how we can advise our client countries on the opportunities and risk that disruptive technologies offer,” World Bank chief information officer Denis Robitaille said in a statement.

CBA said it had found solutions to technical and legal issues to make the transaction work.

CBA’s blockchain push come as the Australian Securities Exchange plans to switch to using the distributed ledger technology to clear and settle equities trades from 2020 to help cut costs.

Reporting by Sonali Paul; Editing by Shri Navaratnam

AUGUST 9, 2018

The World Bank is Betting Big on Blockchain-Based Bonds.

The World Bank has announced that it has hired one of Australia’s biggest banks to manage what it calls the “first bond globally to be created, allocated, transferred and managed” using a blockchain—one of the clearest signs yet that the technology is going mainstream.

The “bond-i”: The World Bank, which issues between $50 billion and $60 billion annually in bonds to fund sustainable development in emerging economies, believes that blockchain technology can make the process more efficient by reducing the number of necessary intermediaries. The bank did not say when the new “blockchain operated new debt instrument” (apparently named after a famous Australian beach) will launch, but investor interest “has been strong,” according to a press release.

Not like Bitcoin: There aren’t many details available yet on how this will actually work from a technical or logistical standpoint. But unlike Bitcoin, where anyone can engage in mining, the process of verifying new transactions, the World Bank will use a private version of Ethereum in which validators must have permission. The computing infrastructure will run on Microsoft’s Azure cloud platform.

An emerging trend: The idea of using blockchains to manage bonds is gaining traction. Last year, a company in the UK issued a bond using Ethereum's public blockchain. The city government of Berkeley, California, is exploring the use of blockchain technology to issue municipal bonds. The World Bank's endorsement of the idea is the highest-profile one to date.

MIT Technology Review

August 10, 2018

World Bank Mandates Commonwealth Bank of Australia for World's First Blockchain Bond.

WASHINGTON/SYDNEY, August 9/10, 2018—The World Bank (International Bank for Reconstruction and Development, IBRD rated Aaa/AAA) has mandated the Commonwealth Bank of Australia (CBA) as the sole arranger of the first bond globally to be created, allocated, transferred and managed through its life cycle using distributed ledger technology.

Indicative investor interest in bond-i (blockchain operated new debt instrument) has been strong. The World Bank and CBA expect to launch the transaction following a period of consultation with a broader set of investors.

Blockchain has the potential to streamline processes among numerous debt capital market intermediaries and agents. This can help simplify raising capital and trading securities; improve operational efficiencies; and enhance regulatory oversight.

The World Bank issues between US$50-US$60 billion annually in bonds for sustainable development. It has a 70-year track record of innovation in the capital markets. Among its pioneering issuances are the first bond in global format—a globally traded and settled bond issued in September 1989; and the first e-bond, a fully integrated electronic bond issued in January 2000. As a frequent issuer in the Australian dollar market, it has since 1986 raised nearly A$60 billion from investors globally.

Arunma Oteh, World Bank Treasurer, said: "Since our first bond transaction in 1947, innovation and investor satisfaction have been important hallmarks of our success with leveraging capital markets for development. Today, we believe that emerging technologies, equally offer transformative, yet prudent possibilities for us to continue to innovate, respond to investor needs and strengthen markets. We are therefore delighted that after working with our information technology colleagues and the Commonwealth Bank of Australia over several months, that we are now in a position to launch our first blockchain bond transaction. CBA's commitment and Microsoft's wealth of experience have been instrumental to achieving this historic milestone.

Our sincere appreciation to our pioneer blockchain bond investors, who are partnering with us on this transaction because of our common desire to champion greater efficiency, and transparency as well as more robust issuance processes.

Our goal is to continue to harness innovation for the benefit of markets and our mission of ending poverty and boosting shared prosperity."

Denis Robitaille, World Bank Group Chief Information Officer, said: "Helping countries transition to technology-led development is key to our goals of reducing poverty and promoting lasting development. This is at the heart of the World Bank's Innovation Lab—and this pioneering bond is a milestone in our efforts to learn how we can advise our client countries on the opportunities and risk that disruptive technologies offer as we strive to achieve the Sustainable Development Goals."

James Wall, Executive General Manager of International, CBA said: "We take a collaborative approach to innovating and have a track record of partnering with other leading financial institutions, government bodies and corporates to innovate through blockchain. We believe that this transaction will be ground breaking as a demonstration of how blockchain technology can act as a facilitating platform for different participants. We are delighted to have partnered with the World Bank and fully support its vision of making innovative use of technology such as blockchain to increase the efficiency of financing solutions to better achieve their goal to end extreme poverty."

The bond-i blockchain platform was built and developed by the CBA Blockchain Centre of Excellence. Since 2009, CBA has acted as lead manager for a number of IBRD bond issuances in the Australian and New Zealand capital markets. CBA's dedicated blockchain team has taken a lead role in applying blockchain technology to capital markets.

Sophie Gilder, Head of Blockchain, Innovation Labs, CBA said: "We know blockchain has the potential to revolutionize financial services and markets, and this transaction is a significant step towards that future state. By working collaboratively with the World Bank, we were able to find solutions to technical and legal considerations to make this ground-breaking transaction a reality. This project further solidifies CBA's position at the forefront of blockchain technology and we are excited to build on this, in partnership with our clients."

The development of this offering has been conducted with the support and input of the investor community including Northern Trust, QBE and Treasury Corporation of Victoria.

World Bank infrastructure for the bond will run in Washington, D.C. on the Microsoft Azure cloud computing platform. Microsoft validated the system's operational capabilities, security and scale.

Matt Kerner, general manager, Azure Blockchain Engineering at Microsoft, said:
"Microsoft's mission to empower every person and organization on the planet aligns well with the noble work of World Bank."

The law firm of King & Wood Mallesons acted as deal counsel on the bond issue and advised on the legal architecture for its implementation.

For Puerto Rico, Dream of Financial Recovery Masks Grim Reality.

- **Island has reached two crucial agreements with bondholders**
- **Recession, power grid failures continue to plague the island**

Slowly and painfully, Puerto Rico is inching toward what passes for a financial recovery on the bankrupt and devastated island.

Eleven months after Hurricane Maria, Puerto Rico has reached two crucial agreements with some creditors — key steps toward emerging from what was, even before the storm, the largest municipal bankruptcy in U.S. history. A tentative agreement announced Wednesday sent the price of certain Puerto Rico bonds soaring as much as 30 percent, a boon for anyone who'd bought them at rock-bottom prices only months ago.

Yet for many thousands of ordinary people on the island, recovery — financial and otherwise — remains elusive. Just this week, key stretches of its rickety power grid failed once again; the U.S. Army had to send 13 soldiers to help deal with a backlog of corpses at the island's morgue. And the economy remains mired in a decade-old recession that's sent hundreds of thousands fleeing to the mainland, including many young and educated workers.

"The future of Puerto Rico looks sad and depressing," said Flor de Oro Quinones, a Puerto Rican retiree from the nearby municipality of Trujillo Alto, who was walking through San Juan's business district Thursday. "This is going to be an island of the old and poor."

She's worried regular Puerto Ricans will shoulder the cost of the settlement with bondholders, and that the ongoing debt burden — reduced as it may be — will ultimately accelerate the brain drain.

Painful Austerity

What's more, a court ruling Monday had the island bracing for painful new austerity measures that some economists argue could accelerate a mass exodus to the U.S. mainland. U.S. District Court Judge Laura Taylor Swain sided with a federal oversight board installed by Congress to look after the island's spending, affirming its right to give binding recommendations about the budget. Governor Ricardo Rossello portrayed the decision as an attack on democracy, saying it gave the board the power to unilaterally overrule elected representatives.

The latest preliminary debt-restructuring deal announced late Wednesday involved bonds backed by revenue from sales-tax collections. It was a feature that was supposed to have made them more secure investments than other bonds, and it ultimately made them easier to sell when they went to market over the past decade or so.

Now, with the island short of cash, owners of the debt with top claim to the revenue would recoup 93 percent of their investments under the latest agreement, while subordinated bondholders would get 56 percent. While the securities surged on the news, they still hovered below the proposed deal prices, suggesting the market didn't see the transaction as a done deal.

Late last month, Puerto Rico's beleaguered electric utility struck a deal with its bondholders to reduce its $9 billion of debt.

Just about everyone — including bondholders, who would get new Puerto Rican securities in the latest restructuring agreement — has a stake in seeing Puerto Rico emerge from its decade-old recession. But opinions differ drastically on the most effective path, and whether it's even possible to return to growth amid an austerity campaign.

Steeper Discount

"I'm a little skeptical of sort of the long-term economy and ability to pay debt service," said Craig Brandon, co-director of municipal investments at Eaton Vance Management, which owns some insured Puerto Rico sales-tax bonds, which are known as Cofinas. "I don't think economically things have gotten any better on the island."

Many islanders think the government should have negotiated a steeper discount, and some had held out hope that Puerto Rico's debt could be wiped out completely.

"The more money that goes to debt payment, the less there is for operations and investment here," said Gustavo Velez, a Guaynabo, Puerto Rico based economist and head of consulting firm Inteligencia Economica. "By the looks of it, that agreement is quite generous with the Cofina bondholders, based on the money available and the sustainability of economic growth."

But the deals aren't all about Wall Street profiting at residents' expense. For starters, the sales-tax bonds had been popular among residents themselves, including many working-class retirees who stood to take sharp losses under a less favorable accord.

Rossello held the pact out as good for all parties. He touted it as an example of his commitment to consensual dealmaking — as opposed to pricey and divisive litigation — and said it moved Puerto Rico one step closer toward accessing capital markets again, a key goal for full economic recovery.

"The public policy of my administration has always been to reach consensual agreements with our creditors that do not affect the services that the government provides to the most vulnerable," Rossello said.

Bloomberg Business

By Jonathan Levin and Yalixa Rivera

August 10, 2018, 3:00 AM PDT

— With assistance by Amanda Albright

Puerto Rico's Biggest Bond Challenge Is Yet to Come.

It's still unknown how much the island's full-faith-and-credit pledge is worth.

Puerto Rico has been gradually moving along with its debt-restructuring efforts for months. On Wednesday, the beleaguered commonwealth took a big leap forward, announcing a deal with its sales-tax bondholders.

Make no mistake: This is a significant step. Investors in the bonds, known by the Spanish acronym Cofina, have more money at stake than any of the other groups of creditors that have come to an agreement with Puerto Rico. According to Governor Ricardo Rossello, the deal would save the commonwealth $17.5 billion in interest payments over the life of the securities. While that sounds like a victory, bondholders come out quite nicely, too. Owners of senior Cofinas, with the highest claim on sales taxes, would recoup 93 percent of their investment, while subordinated securities get a 56 percent recovery.

That's way better than what the market was indicating (the bonds soared in price Thursday). And for the senior Cofinas, which traded at less than 40 cents on the dollar at the start of the year, it's an even bigger windfall than what Moody's Investors Service thought way back in July 2015. The credit rater set the expected recovery rate at 65 percent to 80 percent.

Nothing is easy when it comes to Puerto Rico. By all accounts, this was a hard-fought compromise. It's the second significant deal for the island in as many weeks, following an agreement with its power company's bondholders in late July.

But the most-scrutinized deal for the commonwealth — and the $3.8 trillion municipal market as a whole — is still to come.

The fate of Puerto Rico's roughly $18 billion general-obligation bonds, backed by the island's full faith and credit, remains firmly in limbo. In theory, because Cofina securities will now have the first right to 53.65 percent of collected sales taxes, that should free up cash for G.O. debt. Court documents filed in June essentially said as much, adding that the extra funds could also cover essential services.

It's telling, though, that Puerto Rico's benchmark general-obligation bond is still trading at 50 cents. On the one hand, that's the highest price since Hurricane Maria devastated the island more than 10 months ago. But for debt that's perceived to have at least equal standing to senior Cofinas, it has an awfully long way to go to catch up to the announced recovery rate.

It speaks to the uncertainty around what a general-obligation pledge means in times of deep distress. In Detroit, holders of "unlimited-tax" G.O. debt received 74 cents, while "limited-tax" G.O. bonds recovered 34 percent. There really isn't a robust playbook.

Many investors in Puerto Rico counted on two things. First, the commonwealth's constitution, which guaranteed G.O. payments before all else. But in reality, elected officials were always going to provide essential services to its citizens before accommodating Wall Street. Second, that the territory couldn't file for bankruptcy protection and potentially cram down a debt deal. That didn't last, either.

The past year of ultra-depressed prices gives Puerto Rico an advantage. My Bloomberg Opinion colleague Joe Nocera wrote recently about Aurelius Capital Management LLP, which owns $558 million of Puerto Rico's general obligation bonds and wants to get paid in full. But would Mark Brodsky — or any investor, for that matter — really quibble with a 93 percent recovery, like the senior Cofinas? Remember, the benchmark debt was issued in March 2014 at precisely 93 cents on the dollar.

General obligations have always had one chief flaw: there's no clear revenue steam for investors to point to and claim as their own. By contrast, Cofina investors will have a senior lien on the agreed upon portion of sales taxes. A term sheet from Citigroup Inc. projects that revenue will cover debt service more than 2.6 times over, placing the bonds in a similar tier as double-A rated issuers like the Massachusetts School Building Authority and Utah Transit Authority.

The G.O. investors are going to want a similar deal, with all the legally enforceable structures they can get. Because for all the talk of recovery rates, Puerto Rico has a massive recovery of its own ahead. The commonwealth just now conceded that Hurricane Maria killed more than 1,400 people on the island last year, far greater than the 64 in the official death toll. Add that to the mass population exodus that was already taking place, and there's no guarantee that projections about the commonwealth's future will pan out.

In that sense, it seems comparatively easy to dole out various revenue streams. But judging how much Puerto Rico's full faith and credit is worth, after the constitutional guarantee was all but eviscerated? That will be the biggest challenge yet.

Bloomberg Opinion

By Brian Chappatta

August 9, 2018, 8:54 AM PDT

Brian Chappatta is a Bloomberg Opinion columnist covering debt markets. He previously covered bonds for Bloomberg News. He is also a CFA charterholder.

[Investing In Qualified Opportunity Zones.]

The new tax law created a new investment vehicle called " qualified opportunity funds" that have tax advantages. The rationale for the tax benefits is to direct resources to low-income communities – "qualified opportunity zones." Each state nominates communities as qualified opportunity. Qualified opportunity zones can be found by going [here].

"A qualified opportunity fund is an investment vehicle that can be organized as a corporation or a partnership that holds at least 90% of its assets in qualified opportunity zones," says John Bowen, cofounder of BSW Inner Circle and author of *Elite Wealth Planning: Lessons from the Super Rich*. "From the date of sale of an appreciated asset, the investor has 180 days to invest in a qualified opportunity fund. The investor receives either stock or an interest in the fund."

According to Edward Renn, an internationally acclaimed tax lawyer at WithersBergman, "There are a number of tax incentives of qualified opportunity funds including (1) the deferral of capital gains taxes from the sale of appreciated assets until the earlier of December 31, 2026 or the disposition of the qualified opportunity fund, (2) possibly lowering of the capital gains tax up to 15% because of an increase in the basis of the appreciated assets used to buy the fund interest, (3) possibly eliminating capital gains due on the appreciation in a qualified opportunity fund if it is held for 10 years or longer."

Example: Sale of a Business

John sold a business for a $12 million capital gain in June of 2018. John located three properties in two Qualified Opportunity Zones with a total purchase price of $12 million. John formed a limited partnership as his Qualified Opportunity Fund and his attorney made sure the partnership agreement contained appropriate language to be treated as a Qualified Opportunity Fund.

If John holds the Qualified Opportunity Fund until December 31, 2026 instead of paying $671,000 in federal tax by April 15, 2019, $570,000 of tax will be due by April 15, 2027.

The tax reduction is attributable to the 10% basis bump after holding the Qualified Opportunity Fund for five years and an additional 5% basis bump for holding the Qualified Opportunity Zone for seven years.

If John waits at least ten years to sell the three properties consisting of the Qualified Opportunity Fund investments, any gain on the properties will escape tax.

John gets eight years of federal tax deferral, a reduction of 15% on the deferred gain, and tax-free proceeds on the sale of the Qualified Opportunity Zone property.

Forbes

by Russ Alan Prince

I am president of R.A. Prince & Associates, Inc. I consult with family offices, the ultra-wealthy and select professionals.

Aug 6, 2018, 05:33am

Figuring Out If 'Opportunity Zones' Can Revitalize Struggling Neighborhoods.

In two Alabama cities, those laying groundwork for the new tax incentive program see both promise and risks in the investments it could spur.

BIRMINGHAM, Ala. — Boarded-up houses and vacant storefronts dot the streets of Woodlawn.

They're are a reminder of the uphill economic battle the community is fighting, and of its history as a place that had a freeway carved through it, and that saw white families move away in the years after school desegregation began in Alabama in the 1960s. The neighborhood is also located in a county that underwent one of the biggest municipal bankruptcies in U.S. history.

But Perry Macon, pastor at the First Baptist Church of Woodlawn, warns against portraying the neighborhood in too harsh a light. "As you drive through, you will see some deterioration in housing and business. But see, in my mind, I wouldn't see that as a negative," he said.

Continue reading.

Route Fifty

by Bill Lucia

Aug 5, 2018

Opportunity Zones: Moving Toward a Shared Impact Framework.

Introduction

The tax bill passed in 2017 includes a provision creating various benefits for investors that move capital gains into designated low-income census tracts, known as Opportunity Zones, through special investment vehicles known as Opportunity Funds.

This tax benefit has captured the attention of a wide range of stakeholders—from investors attracted by a new tax incentive to community development practitioners drawn by the promise of increased investment in low-income areas.

Many elements of this new investment tool are uncertain, including if and how Opportunity Funds will manage and report on the social and environmental impact of their investments. Yet even amid this uncertainty, investors are looking to take advantage of the benefit.

Continue reading.

Federal Reserve Bank of New York