
EMINENT DOMAIN - LOUISIANA

Archbold-Garrett v. New Orleans City

United States Court of Appeals, Fifth Circuit - June 22, 2018 - F.3d - 2018 WL 3096680

Property owners brought action against city alleging violations of the Takings Clause, the Fourth Amendment, and the Due Process Clause, arising out of city's demolition of building on their property.

The United States District Court dismissed action. Owners appealed.

The Court of Appeals held that:

- Owners' procedural due process claim was not subsidiary to their takings claim and thus was not unripe along with the takings claim;
- Prudential concerns justified federal court's adjudication of owners' takings claim along with their due process claim; and
- Owners' Fourth Amendment seizure claim was ripe.

An inverse condemnation action under Louisiana law likely would not have fully compensated property owners for city's alleged violation of their due process rights in demolishing building on property without providing notice to owners, and thus owners' procedural due process claim was not subsidiary to their takings claim and was not unripe along with the takings claim, despite their failure to initiate inverse condemnation action in state court prior to bringing action in federal court; in addition to fair market value of property, owners sought relief from city's bill for demolition costs and lien on property and damages for their due process injury, which were not clearly provided for in an inverse condemnation action.

Prudential concerns justified federal court's adjudication of property owners' takings claim against city along with their due process claim, despite fact that owners' takings claim was not ripe due to their failure to initiate inverse condemnation action in state court prior to bringing action in federal court, where court had determined that owners' due process claim was ripe, and fairness and judicial economy would have been served by litigating the two actions that were based on the same set of facts together, rather than in parallel actions that would needlessly generate additional legal expenses for the parties.

Property owners' Fourth Amendment seizure claim arising out of city's demolition of building on their property without notice was ripe, where the building had been demolished, which was the seizure at issue.

BONDS - NEW JERSEY

Wisniewski v. Murphy

Superior Court of New Jersey, Appellate Division - May 10, 2018 - A.3d - 2018 WL 2140665

State legislator filed an action and order to show cause against New Jersey Economic Development Authority (NJEDA), State Capitol Joint Management Commission (JMC), Governor, Department of Treasury, and Treasurer, seeking injunctive relief and a declaration that the agencies' resolutions to finance the restoration of the capitol complex were invalid.

The Superior Court granted defendants' motion to dismiss. Legislator appealed, and the appeal was consolidated with his appeals from final agency decisions.

The Superior Court, Appellate Division, held that:

- The Appellate Division would address the merits of legislator's technically moot challenge;
- Issuance of bonds to finance renovation did not violate state constitution's debt limitation clause; and
- Final decisions to finance renovation did not exceed agencies' authority.

State legislator's technically moot challenge to decisions by two state agencies to finance comprehensive renovation of state capitol complex was of substantial importance, likely to reoccur in the future, and capable of evading review, and thus Appellate Division would address merits of challenge; even though substantial renovation of complex was unlikely to occur again in foreseeable future, legislator filed complaint day after bond resolution passed, but sale of bonds occurred on same day resolution was passed, and sale of bonds immediately after passing resolution was likely to reoccur in sale of bonds for other state agencies.

Issuance of bonds to finance comprehensive renovation of state capitol complex did not violate state constitution's debt limitation clause, where debt was assumed by New Jersey Economic Development Authority (NJEDA), an independent authority, bonds were used to fund capital expenditures, bonds stated on their face State would not be indebted, and NJEDA had separate source of revenue in form of rental payments through a lease and leaseback transaction to pay the debt.

Final decisions to finance, through the issuance of $300 million in bonds which were to be repaid with rental payments, comprehensive renovation of state capitol complex by State Capitol Joint Management Commission (JMC) and New Jersey Economic Development Authority (NJEDA) did not exceed agencies' authority; JMC acted within its delegated authority by approving renovation of the capitol complex, acquiring funds to accomplish renovation was implied power of JMC, and entering lease agreements that would generate rental payments was consistent with JMC's responsibility to maintain, preserve, and improve capitol complex.

ZONING & PLANNING - NEW JERSEY

Harz v. Borough of Spring Lake

Supreme Court of New Jersey - June 26, 2018 - A.3d - 2018 WL 3117016

Homeowner brought action under Civil Rights Act against borough and its zoning officer after challenging issuance of zoning permit allowing construction on neighboring property, and alleging

she was denied an opportunity to be heard.

The Superior Court granted summary judgment for defendants, and homeowner appealed. The Superior Court, Appellate Division, affirmed in part, reversed in part, and remanded. Borough and zoning officer petitioned for certification.

The Supreme Court of New Jersey held that borough did not deprive homeowner of a cognizable substantive right to be heard by the planning board, as required to support her claim under the New Jersey Civil Rights Act.

Borough did not deprive homeowner of a cognizable substantive right to be heard by the planning board under the Municipal Land Use Law (MLUL), as required to support her claim under the New Jersey Civil Rights Act; while homeowner was an interested party with a substantive right to be heard before the planning board on her appeal from the issuance of a zoning permit to her neighbor, the borough never deprived homeowner of her right to appeal from an adverse decision of the zoning officer or her right to be heard by the board, even if the zoning officer failed to transmit the record to the zoning board in response to homeowner's first complaint, as required by statute, when, because a stop work order was entered, homeowner suffered no adverseness to any property right, and homeowner failed to exhaust the statutory process for securing her right to be heard on her subsequent complaints under the MLUL.

IMMUNITY - RHODE ISLAND

Cancel v. City of Providence

Supreme Court of Rhode Island - June 22, 2018 - A.3d - 2018 WL 3078090

Administratrix of bicyclist's estate brought action against city and various city officials, alleging bicyclist had suffered serious personal injuries when he was thrown from his bicycle after striking a pothole on road in city park, as a result of city's negligence in maintaining the park.

The Superior Court granted city's motion for summary judgment, and administratrix appealed.

The Supreme Court of Rhode Island held that:

- Immunity under Recreational Use Statute applied to city with regard to negligence claim, and
- Exception to landowner immunity under the Recreational Use Statute for the willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity after discovering the user's peril did not apply.

IMMUNITY - TEXAS

Nazari v. State

Supreme Court of Texas - June 22, 2018 - S.W.3d - 2018 WL 3077659

State brought action against dental services providers alleging fraud in violation of the Texas Medicaid Fraud Prevention Act, and providers counterclaimed for conspiracy, breach of contract, and conversion and brought third-party claims against state contractor administering the program for common-law fraud, breach of contract, promissory estoppel, negligent hiring, negligent supervision, negligence, and gross negligence.

The District Court granted State's plea to the jurisdiction on the counterclaims and granted State's motion to dismiss third-party claims. Providers filed interlocutory appeal. The Austin Court of Appeals affirmed the dismissal of the counterclaims and dismissed the appeal regarding the third-party claims. Providers' petition for review was granted.

The Supreme Court of Texas held that:

- As a matter of first impression, State seeking a transfer of funds is insufficient to preclude protections of sovereign immunity;
- As a matter of first impression, sovereign immunity barred dental service providers from asserting counterclaims;
- As a matter of first impression, sovereign immunity protects State from counterclaims that seek to offset a penalty; and
- The appellate courts lacked interlocutory jurisdiction to address dismissal of third-party claims.

EMINENT DOMAIN - TEXAS

Morale v. State

Supreme Court of Texas - June 22, 2018 - S.W.3d - 2018 WL 3077320

State initiated condemnation proceedings and property owners demanded jury trial.

The Probate Court entered judgment on jury's verdict. Appeal was taken, and the Fort Worth Court of Appeals reversed and remanded for new trial. Property owners petitioned for review.

The Supreme Court of Texas held that:

- Evidence that State had initially classified property owners as displaced due to partial taking of land that would result in owners no longer being able to operate collision repair shop was relevant to determination of property's highest and best use and corresponding market value;
- Property owners' proffered evidence as to State's motive for revoking initial classification of property owners as displaced was relevant;
- Testimony of owners' appraiser as to displacement value of land was not speculative, conjectural, and remote;
- Testimony of city engineer and city attorney regarding town's prior grants of zoning variances on unrelated properties was not relevant; and
- Any error in exclusion of testimony of city engineer and city attorney concerning town's grant of variances on unrelated properties was harmless.

Fitch: SCOTUS Janus Ruling Impact Limited for State and Local Credit.

Fitch Ratings-New York-27 June 2018: Today's Supreme Court ruling regarding the funding of public sector collective bargaining activities is not likely to have a meaningful effect on state and local government finances, according to Fitch Ratings.

The ruling for the plaintiff in Janus vs. AFSCME Council 31 eliminates the requirement that non-union public sector employees pay "agency fees" to contribute to the cost of collective bargaining and related activities. It reverses a 40-year-old SCOTUS decision that allowed public sector unions to require such fees.

Regardless of the legal framework, state and local governments remain limited in their ability to control labor spending. This was recently demonstrated by the influence on budgeted spending of mass labor actions by public school teachers in several states.

Twenty-eight states have adopted right-to-work laws. The Janus ruling essentially creates the same framework for the other 22 states and the District of Columbia for public-sector employees. “States with right-to-work laws that limit collective bargaining powers can still confront labor-related spending pressures,” said Fitch Managing Director Amy Laskey.

Any change to a state or local government’s expenditure flexibility that arises from the decision is likely to be incremental. “A productive and flexible working relationship can be achieved regardless of the legal structure, in which case the workforce evaluation is a neutral factor,” said Laskey.

“‘What Investors Want to Know: The Impact of a Changing Labor Environment on Credit Quality” is available at www.fitchratings.com or by clicking on the above link.

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Fitch: Minor Stresses Emerging for U.S. NFP Children's Hospitals.

Fitch Ratings-Austin-25 June 2018: Operational stresses in the general acute health care sector are beginning to seep into some performance metrics for U.S. not-for-profit children’s hospitals, according to Fitch Ratings in a new report.

Fitch’s ‘AA-‘ median rating for stand-alone children’s hospitals is secure thanks to their robust liquidity, strong philanthropic support, solid operating margins and specialized clinical services relative to Fitch-rated general acute care hospitals. That said, median operating margins have fallen in each of the last two years.

Median operating margins declined sharply to 4.5% in fiscal 2017 from 6.1% in the prior year. Median operating EBITDA also declined last year albeit more subtly, falling to 11.9% in fiscal 2017 from 12.6% in fiscal 2016. Conversely, median EBITDA margins improved slightly to 14.5% last fiscal year compared to 14.2% for fiscal 2016. ‘Lower operating margins have been balanced out by stronger investment returns over the last year, which explains the mixed margin performance for

children’s not-for-profit hospitals,’ said Senior Director Kevin Holloran.

Stand-alone children’s hospitals may also be vulnerable to volume erosion over time as payors and patients become increasingly price sensitive. ‘The more aggressive push for risk-based contracts that have developed in several major metro areas could pose additional reimbursement pressure for those children’s hospitals not yet structured to manage risk,’ said Holloran.

Children’s hospitals’ high exposure to Medicaid and inherent vulnerability to governmental funding cuts will always be a credit concern. However, the sector will continue to be insulated from any decreases in either Medicaid or supplemental reimbursement. Helping matters is the strong political and public-policy support for specialized pediatric services that remains firmly in place. ‘Any further dismantling of the ACA would have, at worst, a marginal impact on stand-alone children’s hospitals since broad coverage for children already existed pre-ACA in most states,’ said Holloran.

‘2018 Median Ratios for Not-for-Profit Children’s Hospitals’ is available at ‘www.fitchratings.com’

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Fitch Updates Rating Criteria for U.S. Mortgage Insurance or Guarantee Fund Programs.

Fitch Ratings-New York-28 June 2018: Fitch Ratings has published an updated criteria report titled ‘U.S. State Housing Finance Agencies: Mortgage Insurance or Guarantee Fund Program Rating Criteria.’ The report replaces the existing criteria of the same title published on July 7, 2017. Criteria elements have been clarified from the previous report to provide greater detail regarding the relative importance of each key rating driver. There have been no material changes to Fitch’s underlying methodology and no rating actions are expected as a result of the application of the updated criteria.

Link to Fitch Ratings’ Report(s): U.S. State Housing Finance Agencies: Mortgage Insurance or Guarantee Fund Program Rating Criteria

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Why It May Be Time to Own Illinois, Connecticut Debt.

James Iselin, head of municipal finance for Neuberger Berman, discusses online tax collection and owning debt from Illinois and Connecticut. He speaks in this week's "Muni Moment" with Bloomberg's Taylor Riggs on "Bloomberg Markets."

Watch video.

Bloomberg Markets

June 29th, 2018, 7:33 AM PDT

Maine Forgets the Unwritten Rules of Muni-Bond Sales: Joe Mysak

- **Governor won't approve GO bonds sold at auction on June 12**
- **AA-rated bonds had been priced closer to triple-A scale**

This isn't how the municipal-bond market is supposed to work.

On June 12, Maine sold $112.86 million of general-obligation debt at auction. The securities were rated Aa2 by Moody's Investors Service and AA by S&P Global Ratings, the third-highest grades. When the bids were calculated, Wells Fargo & Co. won the $97.4 million in tax-exempts and Citigroup Inc. won the $15.4 million in taxables, and the state did very well.

The yields on the tax-exempt bonds maturing in 10 years priced to yield 9.9 basis points over comparable AAA debt. The taxables due in 2019 yielded just 13.4 basis points over Treasuries, while those due in 2020 came in even better at 6.7 basis points more than the federal government pays to borrow.

But last week, Governor Paul LePage — a pugnacious Republican first elected in the big Tea Party wave of 2010 — told State Treasurer Terry Hayes that he was having second thoughts and wouldn't approve the sale, according to the Bangor Daily News. On June 25, the newspaper reported that the governor wasn't approving the sale because of "excessive 11th hour legislative spending."

Which means that any investors who had purchased these bonds from the banks got to read this supplement to the official statement: "Notwithstanding the sale of the Bonds on June 12, the

Governor has subsequently determined that he does not want the Bonds to be issued at this time. Accordingly, the State will not deliver the Bonds and related documents as planned on June 26. Any future issuance of the Bonds, if any, will be pursuant to a new offering and sale thereof."

No.

Just: No. This isn't how the municipal bond market is supposed to work.

Yes, every once in a long while an issuer will choose to reject all the bids at an auction on the day of a sale.

And yes, buyers have been known to rebel and force the cancellation of a sale. This occurred in April of 2015 after Louisiana State University said budget cuts might force it into "exigency," a kind of collegiate restructuring, that took investors by surprise after the deal had gone through.

And yes, every once in a long while Wall Street itself will force the cancellation of a sale, which happened in December of 1986 when the Kansas Highway Department planned to borrow money to call some bonds that it had sold in January of 1985 and then escrowed "to maturity" in November of 1985.

But canceling the sale of general-obligation bonds approved by voters because of a political whim, because of some sort of spat between the legislative and executive branches of government? That's not done. That's against the unwritten rules.

And there are some. By pulling on this one thread, you threaten to unravel a very complicated fabric. The whole public finance business is based upon reputation, trust and strict adherence to law and convention.

Perhaps the biggest unwritten rule is not to tease, vex, antagonize, unsettle or otherwise discomfit the buyers. What happens next? As The Bond Buyer put it on June 25, the cancellation "may cost the state next time." The cynical part of me says that won't happen, because the market has no memory and because actions can have no consequences.

The more traditional part of me, though, says this is very different and those 10 bps spreads over triple-A should maybe be 40 or 50 bps. Why? Because inexplicably, Maine forgot the rules they've always abided by. Or maybe the underwriters will forget to show up altogether on the next day of sale.

Bloomberg Markets

By Joe Mysak

June 27, 2018, 5:14 AM PDT

(This column does not necessarily reflect the opinion of the editorial board or Bloomberg LP and its owners.)

University of Oklahoma Is Weighing Rent Subsidies for Troubled Dorm.

- **Apartment complex opening in August is only 28 percent leased**
- **Competitors have slashed rents as much as $100 per month**

The University of Oklahoma may aid a struggling municipal-bond financed luxury dorm by offering housing “scholarships” to help students afford rental payments, university administrators and the non-profit owner of the project said on a conference call with investors.

The university, which has about 27,000 students on its main campus in Norman, is also weighing whether to allow first year students to live in the 1,230-bed complex or reduce occupancy in other dorms. The new apartment building, known as Cross, opens in August and is just 28 percent leased. It features a “blow dry bar and salon,” cycling studio, cafe and a Lululemon store.

“We are keenly aware of the challenges that Cross is facing,” Steve Hicks, chief executive of Baton Rouge, Louisiana-based Provident Resources Group, a non-profit that financed the student housing with $250 million of municipal bonds, said on the call late Tuesday. “We have complete confidence that we have the right team to address these issues, these challenges and to effectively address them in the coming months.”

The Oklahoma project and another municipal-bond financed complex at Texas A&M, which had to slash rents to fill beds, underscore the risk to investors of overbuilding luxury accommodations as students become more cost-conscious. While many universities have tapped outsiders to finance and build dorms to conserve money for academics, the University of Oklahoma project shows that developers will turn to the universities for assistance if projects falter.

In late May, S&P Global Ratings downgraded the dormitory bonds to BB, two steps into junk, and left a negative outlook on the securities, signaling they may be cut deeper. Some of the taxable securities due in 2037 last traded for an average of 88 cents on the dollar, down from about 109 cents in October.

Cross is opening in a housing market in Norman that “is very different,” than originally anticipated, said Marty McBurney, an assistant vice president at a unit of Balfour Beatty Plc, which built and manages Cross Village. The average occupancy for off-campus student housing is 74 percent and competitors have cut rents by as much as $100 a month.

“Competitors lowering their rates definitely had an impact on our rates,” McBurney said.

Cross was too slow to cut rents and had trouble attracting students earlier this year because it was still under construction and prospective residents couldn’t tour it, said Provident and Balfour executives.

Provident has hired a consultant to review and improve advertising and the university is marketing the complex to prospective transfer students, executives said. But there is a limit to the university’s assistance: Oklahoma won’t require sophomores to live on campus or return a $20 million lease payment, officials said.

There’s no danger of imminent default on the bonds. Cross has enough money to pay debt service in 2018 and 2019. Provident is forecasting 60 percent occupancy in 2019.

The university must analyze the impact of opening Cross to first year students on the revenue that supports existing dorms and the debt that financed them, said Chris Kuwitzky, the university’s chief financial officer.

“We can’t do anything that would harm the debt service coverage ratio on that debt,” Kuwitzky said, adding he expected to report back to investors in 30 to 60 days.

Provident and its banker Royal Bank of Canada are also studying the feasibility of buying some of

the university's existing dorms to crate a "housing system." Provident would finance the purchase by selling new debt backed by revenue of the portfolio, allowing it to "cross-collateralize" the assets and revenue stream for the new bondholders.

Bloomberg

By Martin Z Braun

June 27, 2018, 7:17 AM PDT

See Public Records? Governments Are Making It Harder.

A growing number of states are limiting access to them.

The Holy Grail for government transparency is making it easy and simple for citizens to know what their government is doing and how it arrives at its decisions. We've always believed this can be achieved, in part, by providing access to public records.

Of course, transparency isn't open-ended. Every state has statutes clarifying what information must be made public and what information should be kept sealed. However, in recent years there's been a steady chipping away at the public's right to know. "This is a trend," says Barbara Petersen, president of the First Amendment Foundation, a Florida nonprofit that advocates for the public's right to oversee its government. "It's not just coming through legislation, but also through the agencies."

In Kentucky, for instance, the attorney general's office decided two years ago that government information transmitted through personally owned devices is immune from public scrutiny. In other words, if two council members sent emails back and forth using their own cellphones, the public would have no right to see those emails, no matter how much impact the conversation in them might have on a council decision. "If discussion about a dispute was conducted on these private devices," says Amye Bensenhaver, director of the Bluegrass Institute's Center for Open Government, "then when it came to the public meeting, everything could have already been worked out."

Even Florida, long known for its open public records law, has begun pulling back. The last time a systematic count was taken, the state had allowed for over 1,100 exemptions in which information could be concealed from the press and public.

What's more, although the state's law is expansive, there is no straightforward way to make sure it is implemented. "We're really stuck," says Petersen. "We've got this great law, but no means to enforce it other than through the courts."

Another burgeoning threat to the utility of public records laws is the exemption of legislative documents, a step such states as Iowa, Massachusetts and Oklahoma have taken. The state of Washington came close to enacting just such a bill, but the governor vetoed it and no attempt was made to override the veto thanks to a loud and effective outcry from the press.

There's another hitch to openness. Many records that would ordinarily be made public escape examination when the organization that maintains them is not a direct part of government. That is, the records have been transferred to a nonprofit or for-profit organization, both of which may not have to comply with freedom of information laws. "This is an issue that every city and state should

be aware of in their procurement," says Alex Howard, deputy director of the Sunlight Foundation, which advocates for transparency. "They should make sure the public's right to know isn't being lost."

These disclosure issues can wind up in the courts, where opinions have varied across the states, according to Adam Marshall, an attorney at the Reporters Committee for Freedom of the Press. Some of the factors the courts might take into account include how much funding the entity receives from the city or state, the functions it performs and the degree to which the government controls what the private entity does.

Another barrier to access exists when a state or locality charges high fees for providing information. For example, in Florida, Charlotte County approved one-sixth the number of requests for information that Polk County did, yet it collected three times the amount of money, according to the University of Florida and the First Amendment Foundation. The reason: Charlotte charged $50 for every request, no matter how small; Polk, $10 per request.

Clearly, in the best of all worlds, when a citizen is turned down on a request for public information, she should be able to seek out people who can help. But states and localities don't always publish their public record stewards' names. According to a Florida audit, "there's a substantial absence of so-called public report custodians in the state." The audit found that 10 percent of the agencies it surveyed did not have a designated public records custodian; 10 percent didn't have the custodian contact information on their website; and 1 in 5 said the information was online, but independent auditors could not find it.

Technology is becoming a means to effective gathering and analysis of data that can be used to guide management efforts. So, it's ironic and counterproductive that it's increasingly difficult for the public to get to the actual data. "This is becoming a bigger problem," says Daniel Bevarly, executive director of the National Freedom of Information Coalition. "The public sector is lagging behind the preferences of the people they represent."

governing.com

By Katherine Barrett & Richard Greene | Columnists
Government management experts. Their website is greenebarrett.com.

JUNE 2018

TAX - NEBRASKA

Upper Republican Natural Resources District v. Dundy County Board of Equalization

Supreme Court of Nebraska - June 15, 2018 - N.W.2d - 300 Neb. 256 - 2018 WL 2994350

County board of equalization appealed decision of the Nebraska Tax Equalization and Review Commission regarding proposed tax exempt status of land purchased by Natural Resources District as part of a ground water integrated management plan and leased for grazing and grain storage.

The Supreme Court of Nebraska held that:

- Only issue before Commission was whether parcels were being used for a public purpose as required for property tax exemption, and

- Land was being used for a public purpose and thus was entitled to property tax exemption.

Only issue raised on appeal to Nebraska Tax Equalization and Review Commission was whether Natural Resources District's parcels were being used for a public purpose as required for property tax exemption, and thus Commission could not consider questions beyond whether the parcels were being used for a public purpose, including whether the parcels were leased at fair market value and whether assessment of tax to surface lessees would violate due process.

Land which Natural Resources District purchased as part of a ground water integrated management plan and converted from irrigation use to grassland was being used for a public purpose and thus was entitled to property tax exemption, even if District leased much of the land for grazing and grain storage; district continually used property's underground aquifer, pipelines, and wells to carry out its water management duties, water management use of the property was significant not only in its physical scope but also in its benefit to the public, District implemented plan on property for reseeding of prairie and continuously maintained the ecologically unique surface prairie, grazing activity reduced weeds and helped maintained prairie, grazing lease income was minor, and grazing activity was seasonal.

TAX - OHIO

Fairfield Township Board of Trustees v. Testa

Supreme Court of Ohio - June 21, 2018 - N.E.3d - 2018 WL 3062413 - 2018 -Ohio- 2381

Township sought judicial review of a decision of the Board of Tax Appeals affirming tax commissioner's determination that a tax-increment financing (TIF) exemption was subordinate to property owner's house-of-worship exemption.

The Supreme Court of Ohio held that:

- Owner's house-of-worship exemption controlled over real covenant concerning service payments related to TIF exemption, and
- Township lacked standing to raise as-applied constitutional challenge to statute governing priority of tax exemptions.

Property owner's exemption from taxation as a house of worship controlled over a real covenant concerning service payments owed to township in connection with a tax-increment financing (TIF) exemption; statute governing priority of tax exemptions granted priority to the house-of-worship exemption and invalidated any requirement that the service payments be made, so that the real covenant was unenforceable as against public policy.

Township lacked standing to raise an as-applied challenge to the constitutionality of statute governing priority of tax exemptions on ground that the statute interfered with township's contractual right to service payments in connection with a tax-increment financing (TIF) exemption, where township failed to take action under the statute to preserve its right to service payments, so that township was injured by its own omissions rather than by operation of the statute itself.

New Riffs on TIFs: Lessons in Innovative Financing from Detroit

Wed, Jul 11, 2018 11:00 AM – 12:00 PM PDT

Detroit, Michigan has been using Tax Increment Financing (TIF) for 40 years to finance the redevelopment of a variety of properties and spur economic development across the city. Despite the use of this powerful tool and a local economy on the rebound, the redevelopment of many iconic buildings and properties in Detroit has not been economically viable. Learn how the City of Detroit and Bedrock Detroit/Quicken Loans have addressed these barriers by working to "supercharge" TIF and maintain a robust public process to create transformational redevelopment projects for the City of Detroit and the State of Michigan.

Click here to register.

2018 CDFA Original Research - Conduit Bond Fee Survey

Click here to take the CDFA survey.

CDFA | Jun. 29

Urban Institute Launches Community Development Financial Flows Tool.

How does your county fare in accessing federal community development funding?

Capital is vital for communities. Businesses depend on it to expand. Families need it to be safely and stably housed. Consumers need it to find affordable groceries. And cities need it to pave streets and update sewers.

But how well are federal community development finance flows targeted to areas that need them? Relatively little is known about community development investment trends at the local level. Our new Community Development Financial Flows data tool shows which counties are doing better at accessing federal funds and which are facing serious shortfalls.

We measured federally sponsored or incentivized community development capital to all US counties with populations greater than 50,000 (which accounts for 88 percent of the US population) using data from 2011 to 2015. We tracked funding in four dimensions—housing, small business, impact finance, and other community development—and created a combined measure that averages those four categories.

Continue reading.

The Urban Institute

by Brett Theodos

June 26, 2018

Confirmed, Again: Cost of Community Development Tax Incentives is Comparatively Small.

Late last month the Joint Committee on Taxation (JCT) released its Estimates of Federal Tax Expenditures for Fiscal Years 2017-2021. As in years past, the report highlights the comparatively low cost of the low-income housing tax credit (LIHTC), historic tax credit (HTC), renewable energy production tax credit (PTC), renewable energy investment tax credit (ITC), and new markets tax credit (NMTC) compared to other tax expenditures. New this year is the Opportunity Zones (OZ) incentive, created as a result of tax reform in late 2017.

The effects of tax reform can be seen when looking at the yearly forgone revenue for certain expenditures. Itemized deductions represent the largest government revenue costs and the three listed in the table below will see significant decreases in expenditures. The mortgage interest deduction will cost $216.6 billion between 2017 and 2021, down from $357 billion estimated for 2016 to 2020. One of the largest decreases over the five-year period can be found in the deduction of state and local taxes. The 2017 estimate is for $100.9 billion in expenditures. As a result of tax reform and the limitation placed on state and local tax deductions, the 2018 estimate is for just $36.6 billion. The annual tax expenditure is expected to increase to $173 billion in 2026, when the $10,000 limitation on deductions is scheduled to expire.

Continue reading.

Published by Michael Novogradac on Friday, June 22, 2018 – 12:00am

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Public Banking Will Be on the Ballot in L.A. this Fall.

The Los Angeles City Council is moving forward with a proposed ballot measure that would ask voters this fall whether they want to create a publicly owned bank.

In a unanimous vote, council members on Tuesday, June 26, gave the go-ahead to begin the process of adding a measure on the November 2018 ballot that would amend city charter in order to create a city-owned bank. The city's code currently prohibits it from entering into a "purely commercial venture," unless it's approved by voters.

To advocates, this move is a historic one that can set the tone for other public banking movements happening across the nation.

"The outcome will reflect the pulse of the national movement," says Trinity Tran with the Public Bank LA campaign.

Continue reading.

NEXT CITY

BY ALEJANDRA MOLINA | JUNE 29, 2018

Muni Market Recap: Continued Trade Tension Keeping Things Interesting.

The bond markets rallied this week, 4 to 7 basis points with the yield curve continuing to flatten. Still, trade tensions, Yuan volatility, and focus on central bank future actions kept everyone on their toes.

I woke up in the middle of the night to find out the President Trump had declared beef with Harley Davidson and the World Trade Organization. It made me think of The Notorious B.I.G. song, "What's Beef", Beef is when you can't sleep.

Stocks were volatile but ended higher on the week. U.S. Government Bond Yields rallied and the curve continued to flatten: 2yr 30yr yield difference declined from 50 basis points to 44 basis points differential, 2.97% vs 2.53%. Muni yields underperformed in the rally, with 30yr yields lower by 2 basis points and 2yr yields unchanged. 2yr 30yr yield difference on the Municipal curve declined by 2 basis points, from 32 basis points to 30 basis points. Muni yields are approximately 2yr 1.64% and 30yr 2.94% to end the week. In the Bay Area, the market move that mattered most was the continued decline of cryptocurrencies.

Continue reading.

Posted 06/29/2018 by Homero Radway

Neighborly Insights

Municipal Bonds Weekly Market Report: Fed Chair Powell Expects Rates to Keep Rising

MunicipalBonds.com provides information regarding the performance of muni bonds for the past week in comparison with Treasury yields and net fund flows, as well as the impact of monetary policies and relevant economic news.

- Treasury and municipal yields mostly dropped this week.
- Muni bond funds saw inflows for the third week in a row.
- Be sure to review our previous week's report to track the changing market conditions.

Continue reading.

municipalbonds.com

by Brian Mathews

Jun 26, 2018

Bill Making Munis HQLA Passed.

It's an exciting time to be in the municipal bond market after the U.S. Senate passed new legislation that reclassifies municipal debt as a High-Quality Liquid Asset (HQLA). For investors, this means municipal securities will fall under bank liquidity rules, making them

instantly more attractive.

The House of Representatives last month passed the Economic Growth, Regulatory Relief, and Consumer Protection Act by a vote of 258 to 159 after the Senate approved the bill in March. The bill, which was sponsored by Senate Banking Committee Chairman Mike Crapo, will roll back some key provisions of President Obama's landmark 2010 Dodd-Frank Act. Once approved, the new legislation will make fewer banks systemically important by raising the amount of assets to $250 billion from $50 billion. By raising the threshold five times, fewer banks would be deemed "too big to fail" under the new guidelines.

In addition to the above, the new legislation will ease the impact of the so-called Volcker Rule, which had restricted U.S. banks from making certain speculative investments.

Under the new legislation, banks will be able to treat some municipal bonds as level 2B HQLAs, which proponents say will help ensure steady financing for state and local governments. The level 2B classification, which also applies to mortgage-backed securities, is a step down from 2A HQLAs. The market was hoping that munis would be placed into the 2A HQLA bracket, which would have put them on the same level as sovereign debt.

Continue reading.

municipalbonds.com

by Sam Bourgi

Jun 28, 2018

L.A. Metro P3 Funding Options and the California Infrastructure Financing Act .

The Los Angeles County Metropolitan Transportation Authority (Metro) is the agency that operates public transportation for all of Los Angeles County. With the passage of Measure M by voters in 2016, Metro has signaled their intent to improve and expand public transit in L.A. County. Just this year, Metro adopted "Twenty-Eight by '28," an initiative spearheaded by Mayor Eric Garcetti. The initiative aims to complete 28 major transportation projects by the 2028 Summer Olympic Games, set to be hosted in Los Angeles. This is an ambitious goal. Of the projects listed, 17 are already scheduled to be completed by 2028; however, eight have schedules that would need to be advanced, and three would need new funding resources.

In order to secure accelerated funding, Metro has been publicly exploring the option of using Public-Private Partnerships (P3). In this type of partnership, a public agency trades some sort of long-term return, such as fares or tolls collected, in return for a private investment. P3s, while becoming increasingly common in the United States, have never been used on the scale of a multi-billion dollar rail line through one of the most densely populated corridors in the country. Given the uptick in interest by local governments to utilizing P3s to fund infrastructure projects, an understanding of the P3 laws in California will be extremely important for companies hoping to take advantage of such opportunities.

The California Infrastructure Financing Act (IFA; Cal. Gov't Code § 5956 et seq.) is broadly applicable to California public agencies below the state level, including cities, counties, joint powers

authorities, local transportation commissions or authorities, or “any other public or municipal corporation.”

The IFA states, “a governmental agency may use private infrastructure financing pursuant to this chapter as the exclusive revenue source or as a supplemental revenue source with federal or local funds” (Cal. Gov’t Code § 5956.9). The statute does prohibit the use of the act for “state projects” though, including “state-financed projects” (Cal. Gov’t Code § 5956.10).

One of the main advantages of the IFA for both the public and private partner are the broad exemptions granted from many standard contracting limitation in the Government and Public Contract Codes. This flexibility was intentional—giving local agencies broad latitude to “utilize private investment capital” to meet their needs (Cal. Gov’t Code § 5956.1). Instead of the traditional public bidding process, the statute requires “competitive negotiation” and also affirmatively allows agencies to consider unsolicited proposals. Competitive negotiation is something different, and less stringent, than competitive bidding. Local government agencies have the authority to develop projects proposed by a private entity and then competitively negotiate exclusively with that single entity (Cal. Gov’t Code § 5956.5). This competitive negotiation process works like an arms-length transaction in the private sector and is based on a best value methodology.

Other than competitive negotiation, the only other constraints on the selection process written into the IFA are three general requirements:

1. The primary selection criteria must be demonstrated competence and qualifications of the private entity for the relevant tasks;
2. The selection criteria shall ensure that the facility be operated at fair and reasonable prices to users; and
3. The competitive negotiation process must prohibit illegal practices such as kickbacks and participation in the selection process by government employees who have a relationship with a private entity.

Nevertheless, the IFA does limit an agency’s authority to pursue P3s to “fee-producing infrastructure project[s] or fee-producing infrastructure facilit[ies],” meaning the “project or facility will be paid for by the persons or entities benefited by or utilizing the project or facility” (Cal. Gov’t Code § 5956.3). Examples of fee-producing infrastructure facilities or projects include airports and runways, tunnels, highways or bridges, commuter and light rail, and municipal improvements, among others (Cal. Gov’t Code § 5956.4). It should also be noted that revenues cannot be diverted by the local governmental agency for other purposes (Cal. Gov’t Code § 5956.6). Additionally, any agreement for the government entity to lease the facilities to the private entity is limited to a maximum of 35 years, at the end of which, ownership and possession must revert to the agency at no charge.

Though the positives and negatives of public-private partnerships differ from project to project, it’s easy to see the appeal of P3 in situations where time is of the essence. Traditional contracts without any private financing typically require a cumbersome competition process. P3s, on the other hand, can be awarded on a sole-source basis as long as the finalized contract followed a “competitive negotiation” process.

by Kevin Massoudi

USA June 29 2018

Pillsbury Winthrop Shaw Pittman LLP

Building More Resilient Cities: A Case for Blockchain

Discussion around the benefits of blockchain technology — security, transparency and efficiency — has pushed forward conversations about how additional sectors can benefit from this innovation. In addition to financial applications allowing the immediate, secure and transparent transfer of assets with no central administrator, blockchain technology can make cities more efficient and resilient — from giving homeless residents the ability to access critical services to making decentralized energy grids resistant to central power outages.

More than half of the global population live in cities, a number expected to rise to nearly 70% by 2050. In response, local governments are learning to become more bold, nimble and thoughtful to accommodate this rising urbanization along with other challenges like climate change. Examples of these efforts include Rockefeller Foundation's 100 Resilient Cities and Bloomberg Philanthropies' Mayors Challenge. Cities are changing old ways of doing business, leveraging greater technology to serve more residents.

Continue reading.

Neighborly Issuer Briefs

Posted 06/29/2018 by Kiran Jain

What the FCC Chairman's Visit to Ammon, Idaho Means for Municipal Broadband.

Last week, FCC chairman Ajit Pai — infamous for axing the Net Neutrality rules late last year and no friend of open internet advocates — embarked on a four-state road trip of the Northwestern United States to highlight how high-speed broadband has the potential to create jobs and unlock economic opportunity. Along the way, he stopped in Ammon, Idaho, a city of about 15,000 in the southeastern part of the state that has gained some fame for pioneering a broadband network known as the "Ammon Model."

The Ammon Model is many things to many people — city-owned broadband infrastructure; inexpensive, reliable internet; network virtualization. As Bruce Patterson, Ammon's Technology Director succinctly puts it, the Ammon Model is about "democratizing critical infrastructure." It is a city-owned broadband network that has built a virtual software layer to create a competitive marketplace for services, the most crucial being high-speed internet.

Continue reading.

Posted 06/28/2018 by Garrett Brinker

Neighborly Issuer Briefs

The Week in Public Finance: Will Weaker Unions Mean More Money for

States?

The Supreme Court dealt a blow to public-sector unions this week. Whether it'll save governments labor costs is debatable.

The U.S. Supreme Court dealt a potentially crippling blow this week to public-sector labor unions when it eliminated the requirement for non-union employees to pay "agency fees" to contribute to the cost of collective bargaining and related activities.

The decision is expected to cause a drop in union membership, which has fallen in nearly every state over the past decade, and a subsequent decline in unions' revenue and power. A big question for governments is whether a weakening of labor unions will translate to lower labor costs in the 22 states that have not already adopted right-to-work laws, which let workers opt out of union fees.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | JUNE 29, 2018

States, Cities Win Edge in Pension War With Supreme Court Ruling.

- **Court decision allows public workers to skip union fees**
- **Unions may have less bargaining power with fewer members**

No financial issue has dominated American states and cities in recent years as much as the massive shortfalls in their workers' retirement funds, which have triggered battles between politicians and unions from New Jersey to California and helped push Detroit into a record-setting bankruptcy.

On Wednesday, the U.S. Supreme Court may have given governments a bit more of an upper hand.

The court ruled 5-to-4 that government employees have a constitutional right not to pay union fees, dealing a potentially heavy blow to the economic clout of the labor movement through a decision that affects 5 million workers. That may leave unions with a weaker voice in benefit and pay negotiations and curtail their power at the polls.

State and city pension funds were hit hard by the credit market crisis a decade ago, when stock prices plunged. That's left them with about $1.8 trillion less than they need to cover all the promised benefits, putting pressure on governments and workers to set aside more money to make up the difference.

Such unfunded obligations contributed to bankruptcies in Detroit and Puerto Rico that left bondholders and pensioners squaring off in court. In New Jersey, former Republican Governor Chris Christie fought with the state's labor unions over their benefits for years, even as his failure to make full annual pension payments caused the pension system to fall deeper behind. Illinois's bonds have been downgraded to one level above junk because of retirement system debt that stood at $137 billion by last June.

"The issue with resistance to alter pension agreements is a big one in states with underfunded pensions like Illinois," Daniel Solender, head of municipal investments at Lord Abbett & Co., which

holds $20 billion of state and local debt, said in an email. “Up until now it has been unions versus the government on these issues but if workers do not need to financially support the unions and if they can act more independently, it might open the door for more compromises.”

Union opposition to pension changes has been a major force in Illinois. In 2013, Illinois lawmakers approved a restructuring of the pension system, seeking to cut cost-of-living adjustments and raise the retirement age for some workers. But unions sued, and the state’s supreme court sided with unions, saying it illegally cut benefits protected by the Illinois constitution.

“This is historic win for taxpayers,” Governor Bruce Rauner, a Republican, said in a Bloomberg Television interview from Washington. “Taxpayers for too long have suffered from the excessive, unfair costs of the unfair, conflicted relationship between government union leaders and the politicians who they helped elect as well as negotiate with.”

While the legal obstacles haven’t changed, the Supreme Court decision could chip away at the resources that unions can bring to such fights. That could help states and local governments seeking to lower salaries and reduce benefits.

“We expect the Supreme Court decision may lower public union revenues, membership, and bargaining power in the 22 states that can no longer allow mandatory fees,” Emily Raimes, an analyst at Moody’s Investors Service, said in a statement. “These developments could change how state and local governments set employee wages and pensions, resulting in a positive long-term impact on government finances.”

Bloomberg Markets

By Elizabeth Campbell and Michelle Kaske

June 27, 2018, 10:30 AM PDT

Public Pension Network Responds to Introduction of the Public Employee Pension Transparency Act.

Members of the Public Pension Network have submitted a letter to Congress regarding introduction of the Public Employee Pension Transparency Act (PEPTA). The letter notes that PEPTA, if passed, “…would set a dangerous precedent with regard to unfunded federal mandates, taxation of municipal bonds, and intrusion into the operations of state and local governments.” The groups are urging members of Congress to oppose the bill.

Read the full letter.

June 25, 2018

4210 Update: Rep Hultgren Sends Letter to SEC Chair Raising Anti-Competitive and FINRA Statutory Authority Concerns.

House Municipal Finance Caucus Chairman Randy Hultgren (R-IL) last week wrote a letter to the

SEC and FINRA, in favor of the BDA "Capital Charge" proposal and warns of regulatory overreach by FINRA.

The letter highlights the potential effects of implementation of the rule on small and medium sized dealers in Illinois. The Congressman is strongly in support of the Capital Charge proposal stating, " These margin requirements will push small-to-medium sized dealers nationwide out of the trading of these securities with large buy-side-institutions." Further he added concern about competition, "A capital charge would allow these dealers to remain competitive and still manage any systematic risk."

In addition to strong support of the BDA proposal, the Congressman raised concerns of FINRA overreach stating, " FINRA may be overstepping Congressional intent by attempting to regulate credit markets, this authority has been traditionally reserved for the Federal Reserve Board." He concluded by saying, "I again urge the Commission to carefully reconsider the potential impacts and statutory limitations of this proposal. "

BDA Leading Advocacy

The BDA continues to work with partners on the House Financial Services Committee and Senate Banking Committee to pressure the SEC and FINRA to rethink the rule. This includes both advocating for the "Capital Charge" proposal as well for outright termination of the amendment due to its anti-competitive nature before implementation on March 25, 2019.

The strategy also includes direct engagement with the regulators. Last week, the BDA submitted a letter of support of the "Capital Charge" proposal to FINRA. The letter featured two smaller firms, Duncan-Williams and NatAlliance, and how the proposal would better the rule without creating a "race to the bottom."

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

Bond Dealers of America

June 28, 2018

It's Unanimous – All Nine U.S. Supreme Court Justices Agree that Quill Corp. v. North Dakota was Wrongly Decided, and Five Vote to Overrule It in South Dakota v. Wayfair, Inc.

Yes, you read that correctly. On June 21, 2018, the United States Supreme Court handed down its decision in *South Dakota v. Wayfair, Inc*. [1] (We've discussed the background to *Wayfair* here, here, here, and here.) The Court, by a 5 – 4 majority, held that a vendor need not have a physical presence in a state in order to have a "substantial nexus" with the state under the Commerce Clause that could obligate the vendor to collect sales or use taxes on sales made to customers who reside in the state and to remit those taxes to the state. Consequently, the Court overruled its prior holdings in *National Bellas Hess, Inc. v. Department of Revenue of Illinois*, 386 U.S. 753 (1967), and *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), that a vendor must have a physical presence in a state to be required to collect sales/use taxes on sales made to residents of that state.

To learn what three things you should know about *Wayfair* and its effect on remote (read: Internet-based) vendors, read on after the jump.

Continue Reading

By Michael Cullers on June 28, 2018

The Public Finance Tax Blog

Squire Patton Boggs

The Evolution of Online Sales Taxes and What's Next For States.

National Bellas Hess to Quill to Wayfair

Abstract

In 1967, the Supreme Court ruled in National Bellas Hess v. Department of Revenue of Illinois, that a business must have a physical presence within a state's borders for the state to collect sales taxes from that business. In 1992, the court reaffirmed the physical presence requirement in Quill Corp. v. North Dakota, striking down a North Dakota law that required "every person who engages in regular or systematic solicitation of a consumer market in th[e] state" to collect the state's sales tax. North Dakota enacted the law because it feared that residents were eroding the state's sales tax revenue by purchasing goods in catalogues from sellers that did not collect tax. Over the 51 years since National Bellas Hess, the ruling has become increasingly problematic as untaxed online purchases increase and states grapple with collecting revenue from these remote sources.

Download PDF.

The Urban Institute

by Richard C. Auxier & Kim S. Rueben

June 26, 2018

PILT Counties: Feds May Owe You Money.

Counties receiving PILT payments may be due reimbursements for underpayment from 2015-2017

In 2008, Congress significantly amended the Payments In-Lieu of Taxes (PILT) statute by mandating full funding through 2014. Congress also repealed the original statute language that made the program discretionary and subject to the annual congressional appropriations process. Due to insufficient appropriations for 2015–2017, PILT recipients did not receive the full amount to which they were entitled under the PILT statute based on the Department of the Interior's full payment calculation.

As a result, Kane County, Utah filed a lawsuit in the U.S. Court of Federal Claims in June 2017, seeking to recover its own underpayments and the underpayments of all other PILT recipients nationwide for those years. In December, the court ruled in Kane County's favor for FY2015 and 2016 underpayments and issued a similar ruling on FY2017 underpayments in March 2018.

How to Join the Class Action Suit

To participate in the class action lawsuit and collect possible amounts due them, each underpaid PILT recipient must complete and submit a form "opting into" the lawsuit. If a county does not elect to join the class, they will not be included in the class action lawsuit—and will not receive any recovered funds. Counties will have until mid-September to opt into the class. Click here for more information and to access the opt-in form.

The federal government argued in court that despite Congress' removal of the original statute language treating PILT as a discretionary program, Congress placed the 2008–2014 timeline limitation on the current statute language making PILT mandatory. Federal Judge Elaine Kaplan disagreed, calling the government's argument "untenable."

In her December 2017 ruling, Judge Kaplan elaborated that the federal government "is urging the Court to read the current statute as though it still contained the limiting language that Congress repealed in October of 2008; in other words, the government asks the Court to find that Congress resurrected a repealed provision of law by implication…The government does not cite a single case that supports the resurrection of a repealed provision of law by implication."

The court also certified the lawsuit as a class action, and ordered that an official notice of the formation of a class be sent to each underpaid PILT recipient. That notice of the class formation will be mailed on June 19. Smith, Currie and Hancock, LLP will serve as class counsel.

The exact amount each county may receive from Interior and the length of the legal of time before issuing of payments remain unsettled issues. It is also unclear if the government will appeal the rulings.

National Association of Counties

By Jonathan Shuffield

Jun. 25, 2018

Ransom Demands and Frozen Computers: Hackers Hit Towns Across the U.S.

Online extortionists search for vulnerabilities, offer instructions on how to pay in bitcoin

Town officials in Rockport, Maine, were closing up shop on Friday, April 13, when they realized they couldn't open files on their computers.

After fielding messages from town workers, local information-technology contractor Gus Natale said he "went straight to the town office and started yanking plugs."

An unknown hacker had snuck malicious software onto the network and was demanding a payment of roughly $1,200 in bitcoin in return for codes to unlock the town's files.

"My thinking was, let's just get this paid. It's a small amount," said Town Manager Rick Bates. But, he added, Mr. Natale and a helper "did not want the bad guys to beat them."

Continue reading.

The Wall Street Journal

By Jon Kamp and Scott Calvert

June 24, 2018 7:00 a.m. ET

Puerto Rico Overseers Scale Back Spending After Labor-Law Changes Fail.

The U.S. territory's financial supervisors cut bondholder payments by more than half over 30 years

Puerto Rico's federal supervisors said they would cut government spending and scale back economic growth projections after the U.S. territory's legislature declined to overhaul labor laws.

The federal board overseeing Puerto Rico's finances voted to cut bondholder payments, university scholarships, municipal subsidies and public employee bonuses after lawmakers didn't adopt at-will employment laws designed to spark hiring and economic growth.

The revised fiscal framework also leaves less money for infrastructure investments and for Puerto Rico's legislature and judiciary. The pot of money available for bondholders was slashed to $14 billion over 30 years from $39 billion, according to the oversight board's executive director Natalie Jaresko.

Revising labor laws has been a top priority for the oversight board. Puerto Rico's 40% labor participation rate is the lowest in the U.S., while youth unemployment on the island is 24%, more than double the overall U.S. rate, according to World Bank data.

Puerto Rico owes roughly $70 billion to bondholders and $50 billion in unfunded pension obligations and is restructuring those debts under a court-supervised bankruptcy proceeding. The oversight board was counting on bringing more residents into the workforce to increase tax collections.

But lawmakers balked at repealing labor protections that impose strict liability on employers for discharging workers.

The reduction in debt payments could complicate Puerto Rico's exit from court protection—the larger the losses that need to be imposed on bondholders, the harder it will be to negotiate settlements with them.

"When reforms to increase economic growth are not implemented, unfortunately, more cuts and more controls are needed," oversight board member Ana Matosantos said at a Friday news conference.

The oversight board is also clashing with Puerto Rico Gov. Ricardo Rosselló over pension cuts and other austerity measures as bondholders and retirees compete for top status in the restructuring.

Puerto Rico is struggling to rebuild following a devastating hurricane season last year that destroyed the power grid, killed an unknown number of residents and drove hundreds of thousands more to the mainland U.S.

The electric power authority known as Prepa is $9 billion in debt and under bankruptcy protection as well. Harvard University researchers last month estimated the death toll from Hurricane Maria at

more than 4,600, far exceeding previous official figures.

Puerto Rico bonds have nonetheless rallied in recent months as government revenue rebounded stronger than expected and insurance payments rolled in for property damage and lost business.

The Wall Street Journal

By Andrew Scurria

June 29, 2018 6:58 p.m. ET

Why California Is Losing Teachers and Laying Off Secretaries.

Sacramento is flush, but cities and school districts can't keep up with rising public pension costs.

Nine years into a bull market, housing prices in California have reached record highs. Investors are enjoying soaring capital gains, which in turn has created a windfall for the state budget. California is now sitting on $16 billion in budget reserves while many states struggle to balance their budgets. But beneath this patina of prosperity, many cities are careening toward bankruptcy. Schools are laying off employees and slashing programs. Some districts complain they are having trouble retaining teachers. What gives?

California property taxes, which fund local governments, are capped by the state constitution's Proposition 13 at 1% of a home's value and can't rise by more than 2% annually. So although housing costs have soared since the recession—the median home price in San Francisco is $1.6 million—cities and school districts aren't rolling in the dough.

At the same time, municipalities are getting socked with big bills from the California Public Employees' Retirement System and the California State Teachers' Retirement System, known as Calpers and Calstrs. For years the two funds overestimated their investment returns while underestimating their expected payouts. This helped keep local-government and worker pension costs low for a while, but now the state, cities and school districts are having to play catch-up.

Continue reading.

The Wall Street Journal

By Allysia Finley

June 29, 2018 7:23 p.m. ET

Michigan Cities Move Off the State's Critical List.

For the first time in 18 years, no city or school district is under the control of an emergency manager

It wasn't just Detroit and Flint. Dearborn, Pontiac, Benton Harbor—all were run by state-appointed

emergency financial managers in recent years.

For the first time since 2000, no city or school district in Michigan is under such control, a sign the state has put the auto industry's downturn and other financial woes in the rearview mirror.

Gov. Rick Snyder, who appointed 22 emergency managers—more than all his predecessors combined—credits his use of emergency managers with controlling costs and resolving issues like unfunded liabilities of cities. Last week, he released the Highland Park School District from receivership, the most-recent case in which the state has handed control back to elected officials.

"The fact that the state now has no emergency managers in place for the first time in 18 years shows how well that commitment has worked," Mr. Snyder said.

Michigan has been more aggressive in its use of emergency managers compared with other states. The state law authorizing the governor to appoint emergency managers has existed since 1988 but became controversial after Mr. Snyder expanded their authority in 2011. After voters overturned the law in 2012, the governor signed another version that couldn't be challenged by referendum.

At the time, the state was still reeling from the 2007 financial crisis and the downturn of the auto industry, including the bankruptcy of Detroit-based General Motors in 2009. Most states allow for some fiscal oversight of municipalities, but Michigan grants managers the most authority, experts say.

Many credit the appointment of emergency manager Kevyn Orr with helping Detroit work through its fiscal emergency and bankruptcy. But Flint, which had four different managers between late 2011 and early 2015, also shows why some voters object to the use of emergency managers.

The state attorney general has charged two former emergency managers in Flint for their role in changing the city's water source, which caused lead to leach from aging pipes, making water unsafe to drink for nearly 100,000 residents and catapulting drinking-water contamination to a national issue.

A task force appointed by Mr. Snyder to investigate Flint's water crisis recommended revising the emergency-manager law, but no changes have been made.

The governor appointed an emergency manager in Highland Park in 2012 after annual budget deficits ballooned from lower revenues tied to declining school enrollment. A recovery plan will enable the district to pay off its debt, state officials said.

In many cases, the financial problems of cities and school districts stemmed from unsustainable pension liabilities, financial mismanagement and troubles in the auto industry, which caused regional declines in jobs, population and revenue.

Michigan's unemployment rate, which now stands at 4.6%, hit 13.7% in 2009, its highest level since the early 1980s. Wayne County, where Detroit is located, lost 286,000 residents, or nearly 14% of its population between 2000 and 2013, the year the city filed for bankruptcy.

More recently, the auto sector's rebound, including the proliferation of high-tech companies that support the industry, has boosted jobs and tax revenue in and around Detroit.

"Like most policies, there's good and bad. In a lot of those communities, there still remain a lot of long-term challenges," said Eric Scorsone, a Michigan State University economics professor who recently served as the state's interim deputy treasurer overseeing the emergency-management

program.

The Wall Street Journal

By Kris Maher

July 1, 2018 8:00 a.m. ET

Write to Kris Maher at kris.maher@wsj.com

GASB: From the President's Desk - Independence Day Special Issue

Read the Column.

06/28/18

NFMA Municipal Analysts Bulletin Vol. 28, No. 2

The NFMA publishes its newsletter, the Municipal Analysts Bulletin, three times per year. The current issue, Vol. 28, No. 2, is now available and includes photos and news from the 35th Annual Conference. The newsletter also provides members with the opportunity to hear from NFMA officers and committees, as well as constituent societies, with news about past and upcoming initiatives and events. You can find past newsletters under Resources on the navigation bar on the NFMA home page.

BDA: MSRB Requests Comment on Draft FAQs for Rule G-40.

The MSRB is seeking comment on a draft set of frequently asked questions (FAQs) related to the application of Rule G-40, on advertising by municipal advisors, to the use of municipal advisory client lists and case studies by municipal advisors.

- **Comments on the draft FAQs are due by July 27, 2018.**
- **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.

As part of our advocacy efforts:

- BDA met with senior staff of the SEC's Office of Municipal Securities prior to the approval of the rules to reiterate our opposition to the proposed changes.
- In May, BDA, along with the National Association of Municipal Advisors and the Securities Industry and Financial Markets Association, sent a letter to the SEC requesting that they institute disapproval proceedings with respect to the MSRB's proposed amendments to Rule G-21 and new

Rule G-40 until the MSRB further clarifies and addresses key issues within the text of the rules themselves. A copy of the letter can be viewed here.
- In February, the BDA submitted a comment letter to the SEC in response to the MSRB's proposed new advertising rule change. You can view BDA's final comment letter here.

Bond Dealers of America

June 27, 2018

MSRB Seeks Input on Draft FAQ on Use of Municipal Advisory Client Lists and Case Studies.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today sought input from municipal advisors and other market participants about draft guidance to support understanding of the application of new advertising standards to the use of municipal advisory client lists and case studies.

MSRB Rule G-40, on advertising by municipal advisors, becomes effective February 7, 2019. The MSRB has committed to providing guidance in advance of the effective date to assist municipal advisors as they develop their compliance policies and procedures. In addition to today's draft guidance on client lists and case studies, the MSRB plans to seek input on draft guidance related to social media and Rule G-40's content standards. Although the MSRB intends to provide stakeholders a 60-day comment period whenever possible, the comment periods for advertising guidance will be shortened to 30 days to ensure guidance on all three topics is finalized and made available to municipal advisors as they are developing compliance policies and procedures for the new rule.

Today's draft guidance, which takes the form of answers to frequently asked questions (FAQs), addresses potential permissible and impermissible uses of municipal advisory client lists and case studies in light of the prohibition on the use of testimonials in advertising under the new rule. The FAQs also illustrate the potential application of certain other MSRB rules to municipal advisors' use of municipal advisory client lists and case studies.

"Recognizing the diversity of the municipal advisor industry, the MSRB welcomes insight from a variety of perspectives to help ensure that the FAQs provide practical compliance assistance and speak to relevant scenarios," said MSRB President and CEO Lynnette Kelly.

Read the request for comment. Comments should be submitted no later than July 27, 2018.

Date: June 27, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
jgalloway@msrb.org

Tulsa School District Tops U.S. Municipal Bond Deals Next Week.

NEW YORK, June 29 (Reuters) – A school district in Tulsa, Oklahoma, will issue $57.8 million of

general obligation bonds in a competitive sale next week, the largest deal on a tiny calendar as the market takes a breather for the Fourth of July holiday on Wednesday.

Just $170 million of estimated bond and note sales are scheduled next week, none of them negotiated. Tulsa's school district will also price $10 million of technology equipment taxable GO bonds.

Tulsa's deal comes in the wake of an Oklahoma Supreme Court ruling on June 22 that threw out a petition seeking to block tax hikes that will fund teacher pay raises.

The court decision is a boost for school districts statewide because it preserves tax increases on gasoline and oil production, Moody's Investors Service said on Wednesday.

Oklahoma lawmakers passed the tax hikes in March to fund an average $6,100 pay increase for teachers, who were among the lowest paid in the nation. Despite the pay raise, teachers went on strike for nine days, demanding more education funding.

If the move to block tax hikes had succeeded, school districts likely would still have had to pay the salary increases, Moody's said.

But the court ruling reduces the prospects that school districts will have to make mid-year cuts to fund those salaries.

The effort to undue tax hikes, however, might not be dead. Activists have until July 18 to submit a new petition that meets legal requirements for a November ballot referendum.

Next week's light issuance will run past July 1, which is usually the busiest day of the year for maturing municipal bonds, Janney Montgomery Scott analysts said in a Friday note.

"There will be plenty of money from maturities, redemptions and interest payments to put to work next week," Janney said. "The challenge will be finding bonds."

Total issuance by par amount in the second quarter was $93.5 billion, 7 percent lower than the same quarter in 2017 and 21.8 percent lower than the same period in 2016, according to preliminary Thomson Reuters data.

For the first half of the year, issuance fell 17 percent, pulled down by a nearly 57 percent drop in refundings that was too large to be fully offset by a 29 percent increase in new money bonds.

Investors have poured cash into municipal mutual funds for eight straight weeks. Inflows were $421 million in the week ended June 27, according to data from Lipper, a Thomson Reuters unit.

(Reporting by Hilary Russ Editing by Leslie Adler)

Why Issuers Want to Undo Money Market Mutual Fund Rules.

WASHINGTON – Pending legislation that would partially roll back regulations on money market mutual funds would be good for issuers of municipal bonds, issuer groups told a Senate panel Tuesday.

The Government Finance Officers Association and National Association of Health and Educational

Facilities Finance Authorities both provided testimony in support of S.1117: The Consumer Financial Choice and Capital Markets Protection Act of 2017. The bill, introduced more than a year ago by Sen. Pat Toomey, R-Pa., would allow institutional money market funds to return to a fixed net asset value after a 2014 SEC rule change required those MMFs to use a floating NAV.

The SEC rule, which took effect in 2016, allows funds investing in federal government securities, as well as "retail" funds that have policies and procedures in place designed to limit investors to "natural persons," to use a stable NAV. Natural persons means human beings, rather than business entities. Other MMFs were required to "float" their NAVs, meaning that the value of a share can fluctuate rather than remain at a fixed $1. The change was designed to prevent investors from causing a "run" on MMFs by pulling out of them in a scenario similar to one that occurred during the financial crisis in 2008.

Muni groups have said requiring a floating NAV for so many MMFs would hurt issuers by both reducing demand for their short-term debt and locking them out of the funds they use as vehicles for short-term cash flow. The result, then-GFOA president Pat McCoy told lawmakers in 2017, is that issuers pay more to finance their infrastructure.

Christopher Daniel, chief investment officer of Albuquerque, New Mexico, testified for the GFOA Tuesday, telling members of the Senate Committee on Banking, Housing, and Urban Affairs that most local governments have policies or even state or local laws on the books requiring them to invest only in funds with a stable NAV. This is to ensure that public money is properly safeguarded, he said. With the effectiveness of the SEC's floating NAV requirement, Daniel said, local governments have been forced to use lower-yielding funds investing in U.S. government securities.

"By allowing all MMFs — prime, tax-exempt and government funds accessible to both retail and institutional investors — to offer a stable NAV, S. 1117 would allow state and local governments to once again utilize suitable investments as defined by state and local elected officials, rather than by the SEC," Daniel testified.

Chuck Samuels, general counsel to NAHEFFA, submitted written testimony. He said MMFs are among the largest purchasers of the short-term notes the authorities he represents issue, and that the rule has damaged that market.

"Unfortunately, funds that purchase the variable rate notes of the institutions we serve have experienced a nearly 50% decline as a result of the SEC's floating NAV rule, thereby driving up the cost of borrowing for investments aimed at improving the quality of health care and education in our country," Samuels wrote.

Mercer Bullard, a professor at the University of Mississippi School of Law, told the committee that he didn't believe the SEC's rule change was necessary to reduce systemic risk, but that he recommended against passage of S. 1117.

Bullard said he had four reasons for opposing the bill. First, he said that there has not been enough study on the impact of undoing the rule and that passing the bill now would risk rushing into a mistake the same way the SEC did in passing the floating NAV rule. Instead, Congress should instruct the SEC to analyze what effect the bill would have, said Bullard. Next, he said he does not have faith that the SEC is equipped to manage fund risk in the absence of the rule. Bullard's third point was that banking regulators might use any future MMF failure as an excuse to impose crippling restrictions on all funds.

Lastly, the Dodd-Frank Act stripped banking regulators of the emergency powers they would need to

handle another “severe liquidity event,” Bullard said, explaining that Dodd-Frank restricted banking regulators’ authority to extend credit to non-banking institutions. As such, he told the committee, he couldn’t recommend reviving the risks that existed under the old rules.

S. 1117 has an identical companion bill in the House: H.R. 2319. Like the Senate bill, it remains pending before committee.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 06/26/18 07:10 PM EDT

Hospitals are Moving to Single Ratings: Here's Why

Through the first six months of 2018, 39 percent of hospital tax exempt fixed rate bond issues came with a single rating, up from 21 percent during the same period in 2017, according to new research from HFA Partners.

In addition, the total number of bonds that carried a rating from all three credit agencies — Fitch Ratings, Moody’s Investors Service and S&P Global Ratings — declined from 19 percent in 2017 to 14 percent in 2018. The average number of ratings per bond issue also declined from 1.8 in 2017 to 1.5 in 2018.

This emerging trend of single-rated issuance is most evident in the “BBB” rating space, because it tends to draw more sophisticated investors, according to HFA Partners.

While HFA Partners acknowledged that spotting a move toward single-rated bond issues is difficult because hospitals sold $5 billion worth of bonds in the first half of 2018, compared to $14 billion in 2017, they noted this trend is occurring across multiple sectors and emphasized several reasons why hospitals may move toward single-rated issuance.

Here are four reasons:

1. Cost. Each rating agency charges fees that add cost to the issuance. For example, S&P charges $100,000 for bond issues that range from $100 million to $200 million and a surveillance fee around $20,000. While those fees are small in comparison to the larger bond issue, they can add up over the life of the bonds.

2. Administrative burden. Dealing with multiple credit agencies, especially if reviews are done at different times per year, can take away from day-to-day operations.

3. Bank placements. “Over the last several years, hospitals have moved away from public bonds towards bank placements, which are typically unrated. With less public debt outstanding, borrowers aren’t as dependent on rating agencies and are better positioned to pare down on ratings,” the report from HFA Partners reads.

4. Worries about updated criteria. Some hospitals worry the more ratings that exist, the more likely the agency will change its criteria and approach to rating the healthcare sector. Both S&P and Fitch ratings already changed their rating criteria and approach in 2018. Worries of credit approach changes. “While this [update] can result in an upgrade, the impact of a downgrade is greater since investors base pricing on the lower of all available ratings,” the report states.

“Whatever the rationale is for hospitals to cut back on ratings, it is clear that municipal bond funds, who make up the bulk of buyers, have stepped up their analytical capabilities and are less reliant on rating agencies,” the report concluded. “As a result, the pricing penalty from carrying fewer ratings isn’t as significant for borrowers as it used to be.”

Read the full report here.

Becker’s Hospital CFO Report

Written by Alia Paavola | June 25, 2018

UBS to Pay $4.3 million in Puerto Rico Bonds Claim.

The claimant’s broker at UBS has 183 disclosures on his BrokerCheck report

UBS Financial Services Inc. has lost another multi-million-dollar Finra arbitration award stemming from the sale of individual Puerto Rico bonds and closed-end funds.

According to the arbitration award, which was decided last Friday by a three-person Financial Industry Regulatory Authority Inc. dispute resolution panel, the claimants, the family and relatives of Jacobo and Raquel Bender, were awarded close to $4.3 million in compensatory damages and costs.

Mr. Bender and his wife alleged negligence, negligent supervision, fraud and other charges in their claim. The family invested in Puerto Rico bonds, including those underwritten by UBS, according to the award, as well as proprietary closed-end funds that invested predominately in Puerto Rico bonds.

The family’s broker was Ramon Almonte, said the family’s lawyer, Jeffrey Erez. According to his BrokerCheck report, Mr. Almonte has 183 “disclosures” in his work history, the overwhelming majority of which stem from sales of Puerto Rico bonds.

The market for Puerto Rico’s $70 billion in muni debt bottomed out over the summer of 2013 after Detroit filed for bankruptcy that July. Puerto Rico has been struggling to stave off a widespread default ever since.

The Bender family sought between $1 million and $5 million in damages, according to the award.

“For all intents and purposes, the $4.2 million in damages and almost $100,000 in costs represents the complete return of the family’s loss of capital,” Mr. Erez said. “This was a great award. When an arbitration panel gives the claimants an award like this, they basically are rejecting every argument made by UBS during the hearings.”

Mr. Almonte, a managing director at UBS Financial Services Inc. of Puerto Rico, did not return a call Wednesday to comment.

“While we respectfully disagree with this decision, it is important to note that the claimants were awarded less than they sought, perhaps because for over twenty years Puerto Rico bonds provided steady and substantial returns also coupled with extraordinary tax advantages available only to Puerto Rico residents,” UBS spokesperson Maya Dillon wrote in an email.

UBS Financial Services has lost a handful of large arbitration claims stemming from losses in Puerto Rico bonds and closed-end funds, including investor claims of $4.4 million and $9 million in 2017.

Investment News

By Bruce Kelly

Jun 27, 2018 @ 4:25 pm

UBS Ordered to Pay $4.3M Over Puerto Rico Bonds Case.

UBS Financial Services must pay $4.3 million more to claimants who lost money in Puerto Rico bonds, InvestmentNews writes.

In an arbitration award decided Friday a Finra dispute resolution panel ruled UBS must pay compensatory damages and costs to the family and relatives of Jacobo and Raquel Bender, according to the publication. The Benders, who allege negligent supervision and fraud, among other charges, had bought Puerto Rico bonds, some of which were underwritten by UBS, as well as proprietary closed-end funds whose investment focus were also Puerto Rico bonds, according to the award cited by InvestmentNews.

The market for Puerto Rico's municipal bonds collapsed in 2013, the publication writes. UBS has since lost several arbitration claims arising from the losses in the bonds and closed-end funds brought by investors, according to InvestmentNews.

Last year, UBS lost a $4.4 million claim and another worth $9 million, the publication writes.

Just how many claims there are out there related to the Puerto Rico bonds is perhaps best demonstrated by the BrokerCheck record of the Benders' broker at UBS.

The family's lawyer tells InvestmentNews that its broker was Ramon Almonte — who has 183 disclosures on his record, most of which are tied to the sales of the bonds, according to the publication.

The Benders were seeking $1 million to $5 million in damages, and the $4.3 million award "represents the complete return of the family's loss of capital," Jeffrey Erez, the family's lawyer, tells InvestmentNews.

"This was a great award," he says, according to the publication. "When an arbitration panel gives the claimants an award like this, they basically are rejecting every argument made by UBS during the hearings."

A UBS spokeswoman tells the publication in an email that the firm disagrees with the decision but considers it important to note that the Benders were awarded less than they sought. Almonte, who's currently a managing director UBS Financial Services Inc. of Puerto Rico, didn't return InvestmentNews' call for comment.

To read the *InvestmentNews* article cited in this story, click here.

Financial Advisor

By Alex Padalka

June 28, 2018

Court Ruling on Unions No Lifesaver for Illinois' Sinking Finances.

CHICAGO (Reuters) – A U.S. Supreme Court ruling on Wednesday that dealt a blow to public sector labor unions will not be a fix, at least in the short term, for massive financial problems in Illinois, where the case was filed, public finance and economic experts said.

Illinois Republican Governor Bruce Rauner, who backed the lawsuit against the state government's biggest union, hailed the court's decision as a major victory for taxpayers, "who must bear the high cost of government."

The 5-4 ruling in the case brought by state worker Mark Janus found that forcing workers who opt out of unions to pay so-called fair-share dues to labor organizations violated free speech rights. But the opinion also noted that nationally, the "ascendance of public-sector unions has been marked by a parallel increase in public spending."

The opinion cited Illinois' "severe budget problems," including a nearly $160 billion unfunded liability for pensions and retiree healthcare in 2013, a huge pile of unpaid bills, and near-junk level credit ratings.

NEGATIVE ECONOMIC IMPACT

"We think the Janus decision does little to nothing to solve the state's financial situation," said Frank Manzo, policy director at the Illinois Economic Policy Institute.

The ruling would negatively impact Illinois' tax collections, he said, as the institute projects the number of state and local government union members to drop by 49,000 to 268,000 and average annual government worker wages to fall by $1,767 given the impact right-to-work laws have had on lowering incomes.

It could take years before union membership and revenue are diminished to a point where labor organizations are rendered irrelevant to politicians who control the purse strings. In the short term, the court's decision could fuel labor discontent in Illinois and stymie fiscal progress.

"To the extent that this decision gets government workers agitated and undercuts their trust in their employer, they might resist reform efforts and that could make it harder to control costs or restructure," said David Merriman, director of the Fiscal Futures Project at the University of Illinois' Institute of Government & Public Affairs.

The Rauner Administration and American Federation of State, County and Municipal Employees Council 31, the defendant in the Janus case, are already embroiled in battles over $400 million in back pay owed to state workers, and a new contract.

S&P Global Ratings analyst Gabriel Petek said the ruling will have no immediate effect on Illinois' BBB-minus rating.

"We will be watching with an eye toward how, following the Supreme Court's ruling, the state might be able to better manage its baseline cost trajectory related to employee compensation," Petek said.

He added that the ruling does not help the state alter pension benefits. Past efforts to reduce costly benefits have been halted by the Illinois Supreme Court on state constitutional grounds.

In the U.S. municipal bond market where the state pays a big yield penalty, Illinois' so-called credit spread for 10-year bonds narrowed by 2 basis points on Wednesday to 170 basis points over Municipal Market Data's benchmark triple-A yield scale.

Richard Ciccarone, who heads Merritt Research Services, a muni bond data and research provider, said the ruling has potential over the long run to impact Illinois' political culture and possibly move the state towards some fiscal balance.

"The idea that we're going to cure all of our financial problems immediately is probably more of a dream than it is a reality," he said.

By Karen Pierog

Thursday, June 28, 2018 5:17 p.m. CDT

(Reporting By Karen Pierog; Editing by Daniel Bases and Frances Kerry)

- GASB Establishes New Guidance for Interest Cost Incurred Before the End of a Construction Period.
- CDFA & ICSC Tax Increment Financing Resources.
- Preparing for the Consolidated FINRA Registration Rules and Restructured Examination Requirements. Note that, under the new rules, Municipal Securities Representative must pass both the Securities Industry Essentials Examination (SIE) and the Revised Series 52.
- The Markup Rule for Municipal Bonds.
- Tax Law Spurs New Marketing Approach for Georgia GO Deal.
- State Sales Tax Collections Finally Move Into the Internet Age.
- And finally, The World Owl Trust Presents is brought to us this week by State v. Sallee, in which the court's opinion refers to that beloved family institution – Hooters – as "a place to eat, a bar and grill." (Cue tittering judicial clerks.) This leaves unaddressed the avian in the room. Not only is Hooters a place to eat, it is also known for its unceasing dedication to the welfare and preservation of the 200 species of mostly solitary and nocturnal birds of prey typified by an upright stance, a large, broad head, binocular vision, binaural hearing, sharp talons, and feathers adapted for silent flight. At least that's my understanding.

MUNICIPAL CORPORATIONS - CALIFORNIA

Kaura v. Stabilis Fund II, LLC

Court of Appeal, Fourth District, Division 2, California - June 13, 2018 - Cal.Rptr.3d - 2018 WL 2946763 - 18 Cal. Daily Op. Serv. 5746

Mortgagee brought judicial foreclosure action against mortgagors. After receiver was appointed, city intervened, alleging property was public nuisance and in violation of state and local law.

The Superior Court granted city's motion to modify receivership and awarded fees and expenses to city. Mortgagee appealed.

The Court of Appeal held that:

- Statute providing for award of attorney fees to prevailing party, in an action against a property owner when owner fails to comply with housing code enforcement order or notice, does not apply when a receiver has been appointed for property, and
- Even if mortgagee and receiver were successors in interest to property owner after appointment of receiver in judicial foreclosure action, mortgagee and receiver did not have actual or constructive knowledge of housing code enforcement notice and thus were not "owners" against whom attorney fees and expenses could be awarded.

IMMUNITY - IOWA

Johnson v. Humboldt County

Supreme Court of Iowa - June 8, 2018 - N.W.2d - 2018 WL 2746320

Vehicle passenger filed negligence suit against county and landowner, following injuries she sustained when vehicle went off a county road into a ditch and then struck concrete embankment constructed by landowner's predecessor in the ditch, alleging that county should have caused removal of the embankment.

The District Court granted summary judgment in favor of the county. Passenger appealed.

The Supreme Court of Iowa held that:

- Section of Restatement (Third) of Torts governing statutory violations as negligence per se does not vitiate public-duty doctrine where the statute protects the public generally;
- Section of Restatement (Third) of Torts allowing court to rely on statute requiring actor to act for protection of another when court decides whether affirmative duty exists and scope of duty does not vitiate public-duty doctrine;
- Public-duty doctrine may be raised regarding claims brought under the Municipal Tort Claims Act;
- Public-duty doctrine applied even when grave danger presented by matters of highway safety were involved;
- Public-duty doctrine applies to nuisance and premises-liability claims.

MUNICIPAL ORDINANCE - MISSOURI

State v. Sallee

Missouri Court of Appeals, Southern District, Division One - June 18, 2018 - S.W.3d - 2018 WL 3017223

Defendant was convicted of driving while intoxicated (DWI) as a chronic offender. Defendant appealed.

The Court of Appeals held that:

- Evidence that restaurant employee reported to police dispatch that an intoxicated man had left the restaurant, got into a vehicle, and then drove behind a nearby store was not hearsay, and
- Out-of-state municipal court judgments reflecting ordinance violations of "Driving While Intoxicated" qualified as prior intoxication-related traffic offenses of driving while intoxicated (DWI), as required to prove DWI as a chronic offender.

ZONING & LAND USE - NEW JERSEY

Dunbar Homes, Inc. v. Zoning Board of Adjustment of Township of Franklin

Supreme Court of New Jersey - June 20, 2018 - A.3d - 2018 WL 3041000

Landowner sought review of planning board's ruling that landowner was not entitled to benefit of time of application statute in determining what conditional use variance was required for site plan approval.

The Superior Court reversed. Township appealed. The Superior Court, Appellate Division, reversed. Landowner petitioned for certification.

The Supreme Court of New Jersey held that:

- To benefit from the protections of the "time of application rule" (TOA) landowner was required to submit the application for development form and all accompanying documents required by ordinance, and
- Landowner's application for development was incomplete, and thus, TOA rule was not triggered.

To benefit from the protections of the "time of application rule" (TOA) embodied in the Municipal Land Use Law (MLUL), providing that regulations in effect on date of submission of application for development governed review of that application, landowner was required to submit the application for development form and all accompanying documents required by ordinance for approval of a site plan, conditional use, zoning variance, or direction of the issuance of a permit.

The submission of an application for development will provisionally trigger the "time of application" (TOA) rule embodied in the Municipal Land Use Law (MLUL), providing that regulations in effect on date of submission of application for development governed review of that application, if a waiver request for one or more items accompanies all other required materials; if the zoning board grants the waiver, then the application will be deemed complete; if the board denies the waiver, its decision will be subject to review under the customary arbitrary and capricious or unreasonable standard.

Landowner's application for development form was incomplete, and thus, time of application (TOA) rule, which would allow review of application to be governed by regulations in effect on date of submission of application, was not triggered; landowner's submission lacked numerous ordinance requirements for a use variance application, including drainage calculations, a site plan indicating domestic water demand, a submittal letter to the Department of Transportation, and four additions copies of the site plan and architectural documents.

SALES OF PUBLIC PROPERTY - PENNSYLVANIA

Matter of Private Sale of Property by Millcreek Township School District

Supreme Court of Pennsylvania - June 1, 2018 - A.3d - 2018 WL 2448800

School district filed petition for approval of private sale of school property.

The Court of Common Pleas entered order approving sale. Challenger appealed. The Commonwealth Court reversed. School district filed petition for allowance of appeal.

The Supreme Court of Pennsylvania held that trial court's role was limited to approving or disapproving sale of school property based on its assessment of evidence that proposed sale price was a fair and reasonable one and a better price than could be obtained at public sale, abrogating *Swift v. Abington School Dist.*, 7 Pa.Cmwlth. 26, 297 A.2d 538, and *Petition of Bd. of Public Ed. of School Dist. of Pittsburgh*, 44 Pa.Cmwlth. 468, 405 A.2d 556.

PUBLIC PENSIONS - RHODE ISLAND

Clifford v. Raimondo

Supreme Court of Rhode Island - May 25, 2018 - A.3d - 2018 WL 2374886

Group of public employees brought class action suit against state and municipal defendants based on depletion of funding in state and municipal employee retirement systems.

The Superior Court approved a class settlement. Union plaintiffs appealed, joined by state defendants.

The Supreme Court of Rhode Island held that:

- Plaintiffs had factual and legal questions common to entire class;
- Claims of the class representatives were typical of the claims of the entire class;
- Requirement of adequate representation of class was met;
- No conflicts of interest existed between class representatives and class members;
- Settlement was procedurally fair; and
- Settlement was substantively fair.

Class action settlement was substantively fair in action brought against state and municipal defendants based on depletion of funding in state and municipal employee retirement systems; where out of 60,000 settlement notices sent, only 400 written objections were received, complexity of cases and the duration of the controversy weighed in favor of settlement, discovery in the cases was adequate, the risk of failure to establish liability and prove damages was high because plaintiffs had nine pending dispositive motions to overcome to reach trial, and trial court determined that the combination of the low likelihood of success and the length of time the cases had been pending weighed in favor of a finding that settlement was reasonable.

ZONING & LAND USE - SOUTH DAKOTA

City of Rapid City v. Big Sky, LLC

Supreme Court of South Dakota - June 13, 2018 - N.W.2d - 2018 WL 2976314 - 2018 S.D. 45

City brought action against subdivision developers, which were a limited liability company (LLC) and its owner, seeking damages for prospective cost of repairing roads in subdivision and also alleging public nuisance.

The Circuit Court granted owner's motion for judgment as a matter of law and entered judgment on jury's general verdict for LLC. City appealed.

The Supreme Court of South Dakota held that:

- The Court's prior decision as to effect of expiration of bonds given in lieu of completing public improvements was not the law of the case as to developers' liability;
- Owner was not personally liable for any damages;
- Evidence supported developers' requested instruction on estoppel; and
- City could not use a public nuisance cause of action to recover the anticipated cost of abatement.

Supreme Court's prior decision holding that expiration of bonds given in lieu of completing public improvements in subdivision development did not release developers from obligation of making those improvements was not the law of the case as to developers' liability to city for road repairs, where developers' defenses, including the period of limitation, waiver, and estoppel, were not in issue in the prior decision.

Owner of subdivision development company that was a limited liability company (LLC) was not personally liable to city for damages for prospective costs of repairing roads in development, where developer was a valid LLC, developer was sole owner of the subdivision plats with deficiencies, and owner did not act in such a way that he should have been stripped of protections of an LLC.

Evidence supported subdivision developers' requested instruction on estoppel in city's action seeking to recover prospective cost of repairing roads in subdivision; evidence showed that developers began paving streets and installing curbs after city's inspector concluded that related phases had passed compaction testing, inspector testified that his primary responsibility was to be construction observer, that he visited the job site daily, spoke with foreman, inspected work, and filled out a daily construction diary, inspector's daily notes indicated that three of phases passed compaction testing, city's construction close-out checklist indicated that the fourth phase passed compaction testing, and inspector testified that compaction test failures would have been readily apparent to everyone.

City could not use a public nuisance cause of action to recover, from subdivision developers, damages in the form of the anticipated cost of abatement of allegedly unsafe roads in subdivision; nuisance statute did not allow city to recover the cost of abatement prior to undertaking such abatement.

ZONING & LAND USE - TEXAS

Meyers v. JDC/Firethorne, Ltd.

Supreme Court of Texas - June 8, 2018 - S.W.3d - 2018 WL 2749769

Land developer, as part of an action for mandamus relief, sought a permanent injunction that would direct county commissioner to cease and desist from instructing county engineering department from holding, delaying, or otherwise impeding plat applications and construction plans submitted by developer, which developer claimed was ultra vires conduct.

The District Court denied commissioner's plea to the jurisdiction. Commissioner appealed. The Houston Court of Appeals affirmed and remanded. Commissioner petitioned for review.

The Supreme Court of Texas held that developer's alleged injury was not redressable in a permanent injunction.

Land developer's alleged injury from county commissioner's purported directing of the county engineering department to delay acting on developer's plat applications and construction plans, which developer claimed was ultra vires conduct, was not redressable in a permanent injunction,

and thus developer lacked standing to pursue commissioner in his official capacity for a permanent injunction to cease and desist from instructing engineering department from holding, delaying, or otherwise impeding developer's plat applications and construction plans; commissioner alone could not present a completed plat application to the commissioners court for approval, nor did he have authority, as an individual commissioner, to approve a plat application.

EMINENT DOMAIN - WISCONSIN

Adams Outdoor Advertising Limited Partnership v. City of Madison

Supreme Court of Wisconsin - June 19, 2018 - N.W.2d - 2018 WL 3032401 - 2018 WI 70

Outdoor advertising company brought inverse condemnation claim against city, alleging that construction of pedestrian bridge over road which blocked visibility of billboard sign constituted a taking without compensation.

The Circuit Court granted summary judgment dismissing the claim. Company appealed, and the Court of Appeals affirmed. The Supreme Court granted petition for review.

The Supreme Court of Wisconsin held that company did not have protected property interest in right to visibility from road.

Outdoor advertising company forfeited any claim in inverse condemnation action that billboard permit constituted a property interest, where company consistently and expressly framed its property interest as the "property rights in the property and sign," complaint did not mention any "permit," neither party saw it necessary to introduce the permit into evidence and there was no billboard permit in the record, and company conceded several times during oral argument that it did not make a claim that its billboard permit was the property interest that was taken.

Outdoor advertising company which owned nonconforming billboard along highway did not have protected property interest in right to visibility from highway, and thus could not maintain inverse condemnation action against city after city erected pedestrian bridge across highway which obstructed view of billboard from highway; company was on notice that city could change or improve road, and city did not invade or restrict company's property.

A right to visibility of private property from a public road is not a cognizable right giving rise to a protected property interest.

Why Do Cities Want Their Own Cryptocurrencies?

The allure of digital currencies has hit Dubai, Seoul, Berkeley, and more. What looks like another offshoot of the Bitcoin craze could be an evolution of the municipal bond.

Coming soon to Slovenia: a brand new city that runs completely on cryptocurrency.

If all goes according to plan, BTC City will rise from the ashes of a former commercial shopping district in the country's capital of Lubljana, offering wallet-less shoppers and wide-eyed tech enthusiasts a chance to engage in a more modern brand of conspicuous consumption. Every store in the 1.5 million-square-foot plot will stop accepting cash and start accepting crypto.

It’s a big deal for the small, former Yugoslav country. But it’s small potatoes compared to some other municipal efforts to wade into the world of digital financial systems. BTC City’s aim is to get people to use the dozens of digital currencies that already exist. Elsewhere, cities are vying to create new ones from scratch.

Continue reading.

CITY LAB

SARAH HOLDER & LINDA POON

JUN 20, 2018

Once-Safest Muni Bonds Tainted as Investors Await Downgrades.

- **Rating cut to Illinois sales-tax bonds may herald others**
- **SNW Asset Management sees less value, shifts to ‘underweight’**

Late last month, Fitch Ratings downgraded $2.5 billion of Illinois’s sales-tax bonds by five steps, dropping them closer to debt backed only by the state’s promise to repay.

It may not be the last ratings cut for state and local-government bonds backed by dedicated revenue including tolls, fees or specific taxes — a pledge that investors once assumed protected them from a government’s financial distress.

SNW Asset Management, a unit of OppenheimerFunds, sees less value in such bonds because of the risk of deep downgrades, said Mark Stockwell, a municipal analyst at the Seattle-based firm. He said the sector is “devolving” and becoming more closely correlated with general-obligation debt or securities repaid with money that lawmakers have to appropriate each year.

In a research note to clients last week, the company said it has shifted its recommendation on the tax-backed bonds to “underweight.”

“Some of these bonds that look like they provide value may be downgraded,” said Stockwell. “We could see AA or AAA rated bonds go to single A or triple B. In some cases, you could have a BBB dedicated tax bond go to a non-investment grade category.”

The reassessment is coming after some recent cases made it clear that the securities aren’t necessarily immune from the impact of a government’s fiscal strains. Puerto Rico sales-tax bondholders haven’t received payments amid the island’s bankruptcy, belying the perceived safety that kept the securities investment grade after the territory’s rating was dropped to junk. A trustee is holding the revenue pledged to bondholders while creditors face off in court.

In 2015, S&P Global Ratings downgraded Illinois’ Metropolitan Pier & Exposition Authority’s sales-tax bonds to BBB+ from AAA after the Illinois legislature failed to appropriate the revenue needed to cover monthly debt payments amid a stalemate over the budget. The state eventually allocated the funds.

“You have these bondholder protections and you thought it was going to work, and then it didn’t,” Stockwell said.

S&P is currently considering whether to change its method for rating “priority lien” bonds to tie them more closely to a municipality’s full faith and credit. The rating company currently grades about 1,300 of those securities.

Less Safety

Moody’s Investors Service already discounts the safety of the securities. It generally caps the ratings of dedicated-tax bonds at the same level as an issuer’s general-obligation bonds. The ratings can be higher only when the pledged revenue stream is legally separated from the issuer’s general finances, such as through a constitutional amendment to pledge certain revenue to the debt.

Fitch lowered its rating on the Illinois sales-tax bonds to A- as a result of changing its state dedicated tax rating criteria in April. The securities have a first claim on the state’s share of the 6.25 percent sales tax. But because the revenue flows to the general fund after paying debt service, Fitch applied its new criteria, which takes into account the state’s BBB rating.

Fitch changed its rating criteria on state tax bonds because there’s more uncertainty about how they would be treated during a time of severe financial pressure, given that states can’t file for bankruptcy the way cities can, said Eric Kim, an analyst for the company. By contrast, Chapter 9 precedents provide a framework for how the debt would be treated if a municipality goes broke, he said.

Local dedicated tax bonds are generally capped at the issuer rating by Fitch, although there are instances in which the securities could have a higher rating.

Fitch is evaluating whether to downgrade Pennsylvania Turnpike Commission bonds backed by registration fees and revenue debt issued by transit agencies in the Philadelphia and Pittsburgh metropolitan areas. The local transit agencies get some revenue from a state transportation fund, which in turn relies on state sales-tax money.

“For certain types of state dedicated-tax bonds, while the legal structure may permit a rating above the credit quality of the state issuer default rating, we think in most cases there will continue to be some linkage to the state because of the potential for impairment of bondholders,” said Kim.

Bloomberg

By Martin Z Braun

June 20, 2018, 5:28 AM PDT Updated on June 20, 2018, 11:10 AM PDT

— With assistance by Michelle Kaske

Selling Government Assets Would be a Responsible Move in Infrastructure Deal.

It’s common in Washington to enact a law and pay for it by simply putting on the country’s metaphorical “credit card.” So with the conversation about revitalizing America’s infrastructure heating up, will we pump trillions more into the deficit? With the national debt already at a staggering $21 trillion, taxpayers have good reasons to be cautious. However, a new plan is gaining traction among Democrats and Republicans that would fund infrastructure projects while cutting

into the national debt.

The National Taxpayers Union recently released guiding principles that lawmakers should follow when crafting a legislative package. Among the principles that need to be prioritized are using competitive bidding processes, implementing regulatory reform, and that revenue-raisers should be user-funded. For infrastructure policy, private capital should always be put ahead of public funding.

Each party has already laid their plan on the table and they'll need to a build a bridge to connect the space between them. President Trump supports a plan that prioritizes private capital, relies heavily on state and local spending, and possibly increases the national gas tax. The Democratic plan crafted by Sen. Chuck Schumer (D-N.Y.) would eliminate roughly two-thirds of the already successful Tax Cuts and Jobs Act, effectively raising taxes on families and businesses. These two approaches are radically different, but bipartisanship might be the road forward.

A new initiative introduced by Republican Rep. Mike Kelly, Democratic Rep. William Lacy Clay of the Congressional Black Caucus, and Rep. Ted Budd of the House Freedom Caucus shows promise for a new and debt-friendly way forward on infrastructure policy. The Generating American Infrastructure and Income Now (GAIIN) Act would sell off some government assets and use the generated revenue in two unique ways: half would be sent to the Treasury Department to pay down existing debt and the other half would be used to fund projects in the 100 poorest communities around the U.S. While selling government assets isn't new (it was proposed by President Reagan to pay for tax reform and mentioned by President Trump last year), taxpayers should appreciate lawmakers looking for creative ways to generate revenue without levying a tax increase.

Here's how such a plan would work: The government would package certain assets, like buildings or debt, and auction them off to institutions that are willing to pay the highest price. Sale of government assets can have a substantial societal benefit if the private market can maximize their potential. For investment firms, this proposal could actually be a much sounder investment than investing in public-private partnerships because the market does not like uncertainty. Private investors could be willing to pay a higher price for an existing asset that could immediately be monetized rather than fund a construction project that could take years to design, approve, and construct with no certainty that it will be successful.

In most recent data from FY17, the government held about $3.5 trillion in assets, not counting any mineral or natural resource assets. These government assets include net loans, net property, plant, and equipment. According to a recent report, the government owns over 45,000 underutilized buildings which carry operating costs close to $2 billion annually.

Politicians love enacting infrastructure laws because they result in construction projects that generate jobs and economic activity. By allocating money into the poorest communities, the work would create jobs for people in areas that lack sufficient job opportunities. Creating jobs in low-income communities could spark new commerce, investment and development in urban areas like Detroit, Michigan and Camden, New Jersey, as well as in rural areas in the South and struggling former mining towns in West Virginia and Pennsylvania.

Taxpayers should be receptive to this plan because it accomplishes three main things: First, it avoids having to raise the gas tax by a significant amount. Increasing this tax would disproportionately harm lower-income Americans and a gasoline tax increase of 25 cents could wipe away 60 percent of the last year's tax cut benefit for consumers. Second, this plan would not require new government spending. This means Washington can put the credit card away (for the time-being) and pay the bill up front. Finally, using some of the revenue to pay down the debt will put America's finances in a better position than they would otherwise be.

Selling public assets can be a fiscally responsible solution especially in the context of a comprehensive infrastructure package. Lawmakers should use all the tools at their disposal to ensure there is a balance between taxpayer interests and an infrastructure system that promotes economic growth and efficiency.

THE HILL

BY THOMAS AIELLO, OPINION CONTRIBUTOR

06/19/18

Thomas Aiello is a policy and government affairs analyst with the National Taxpayers Union, a nonprofit dedicated to lower and fairer taxes at all levels of government.

U.S. Muni Bond Trading Stable Despite Dealer Drop - Study

CHICAGO, June 19 (Reuters) – U.S. municipal bond market trading has been relatively stable over the last 11 years despite a drop in the number of dealers and the amount of the debt kept in dealers' inventories, the Municipal Securities Rulemaking Board (MSRB) said on Tuesday.

The self-regulator of the $3.8 trillion market where states, cities, schools, hospitals and other issuers sell debt said its first-ever report analyzing changes and trends in dealers' customer trading activity found dealer participation became less-concentrated, but still "robust."

The number of registered municipal securities dealers fell to 1,346 last year from 1,967 in 2009, while muni bonds held by dealers dropped by about 67 percent since 2006, according to the report.

"Our analysis shows that most dealers that have exited the market provided little liquidity and participated in very few trades – typically fewer than 10 trades in a year," said MSRB Director of Research Marcelo Vieira in a statement.

Meanwhile, the number of dealers executing more than 10,000 trades annually increased to 69 in 2017 from 56 in 2006.

The report also found that the top five dealers' market share has decreased, falling to 34.6 percent of all customer trades in 2017 from 42.2 percent in 2006.

At around 50,000 issuers, the fragmented muni market has fives times more debt issuers than the corporate bond market and 33 times more individual securities at around 1 million, according to the MSRB. There were nearly 39,000 muni bond trades daily on average from 2006 to 2017, with an average total trading value of about $14 billion a day.

About 45 percent of all muni trades during that time period were dealer sales to customers, with dealer purchases from customers accounting for 22 percent.

Reporting by Karen Pierog in Chicago Editing by Matthew Lewis

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How the Koch Brothers Are Killing Public Transit Projects Around the Country.

NASHVILLE, Tenn. — A team of political activists huddled at a Hardee's one rainy Saturday, wolfing down a breakfast of biscuits and gravy. Then they descended on Antioch, a quiet Nashville suburb, armed with iPads full of voter data and a fiery script.

The group, the local chapter for Americans for Prosperity, which is financed by the oil billionaires Charles G. and David H. Koch to advance conservative causes, fanned out and began strategically knocking on doors. Their targets: voters most likely to oppose a local plan to build light-rail trains, a traffic-easing tunnel and new bus routes.

"Do you agree that raising the sales tax to the highest rate in the nation must be stopped?" Samuel Nienow, one of the organizers, asked a startled man who answered the door at his ranch-style home in March. "Can we count on you to vote 'no' on the transit plan?"

In cities and counties across the country — including Little Rock, Ark.; Phoenix, Ariz.; southeast Michigan; central Utah; and here in Tennessee — the Koch brothers are fueling a fight against public transit, an offshoot of their longstanding national crusade for lower taxes and smaller government.

Continue reading.

The New York Times

By Hiroko Tabuchi

June 19, 2018

New MSRB Report Examines Trends in Customer Trading Activity of Municipal Securities Dealers.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today published a report that shows—despite sharp declines in dealer inventories of municipal securities and the number of dealers—municipal securities trading activity on behalf of investors has remained relatively stable over the past several years, with robust dealer participation and less concentration among top dealers.

Today's report is the first-ever to analyze changes and trends in the customer trading activity of municipal securities dealers. The report notes the steady decline in the number of municipal securities dealers since 2006 but finds that most dealers that have exited the market were infrequent traders of municipal securities.

"Our analysis shows that most dealers that have exited the market provided little liquidity and participated in very few trades—typically fewer than 10 trades in a year," said MSRB Director of Research Marcelo Vieira. "Meanwhile, the number of dealers with substantial municipal business—those executing more than 25,000 trades per year—has increased."

The MSRB's *Dealer Participation and Concentration in Municipal Securities Trading* report also examines dealer concentration, or the dealer market share of municipal customer trades. Market

share of top dealers has declined since 2006, when the top five dealers accounted for 42.2 percent of municipal customer trades. In 2017, the top five dealers accounted for 34.6 percent of all municipal customer trades. The report includes detailed tables and statistics on dealer participation and concentration, aggregated by bands of trade volume and most-active dealers.

The MSRB evaluates municipal market trends as part of its mission to promote a fair and efficient market and plans to continue studying dealer data. Public and industry input on additional topics, including trends in the inter-dealer market, is welcome and should be referred to Marcelo Vieira at mvieira@msrb.org.

Date: June 19, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
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GASB Establishes New Guidance for Interest Cost Incurred Before the End of a Construction Period.

Norwalk, CT, June 22, 2018 — The Governmental Accounting Standards Board (GASB) today released guidance establishing accounting requirements for interest cost incurred before the end of a construction period.

Statement No. 89, *Accounting for Interest Cost Incurred before the End of a Construction Period*, establishes guidance designed to enhance the relevance and comparability of information about capital assets and the cost of borrowing for a reporting period. It also simplifies accounting for interest cost incurred before the end of a construction period.

For financial statements prepared using the economic resources measurement focus, interest cost incurred before the end of a construction period should be recognized as an expense in the period in which the cost is incurred. Such interest cost should not be capitalized as part of the historical cost of a capital asset.

For financial statements prepared using the current financial resources measurement focus, interest incurred before the end of a construction period should continue to be recognized as an expenditure on a basis consistent with governmental fund accounting principles.

The full text of Statement 89 is available on the GASB website, www.gasb.org.

Michigan State to Fund $500 Million Sex-Abuse Settlement Through Bond Offering.

Board also votes to retain interim President John Engler, despite recent calls for his resignation

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Michigan State University will fund its unprecedented $500 million settlement with survivors of Larry Nassar’s sex abuse through proceeds from a bond offering, after the board of trustees

unanimously approved the settlement and bond amount at a raucous meeting Friday morning.

The board also voted to retain interim President John Engler, despite recent calls for his resignation by two trustees and multiple state officials.

The school, a Midwest powerhouse with an enrollment of 50,000 students, said it won't tap any state appropriations or use tuition funds for the settlement payout. It is in talks with its insurers, and has said it expects to recover at least some funds through them.

Any recovered funds will go directly toward paying down the debt, the board said at a packed meeting marked by shouts of "Shame on you, MSU" and calls for the interim president, Mr. Engler, to resign.

Melanie Foster, who chairs the finance committee on the board of trustees, said the money to repay the bond will come from income from the school's investments. Last year the school generated about $391 million of which a little less than half is nonrestricted.

The money the school has invested comes from any annual surplus in the general fund, which includes tuition, money from housing and athletics among other sources.

"The truth is the money is fungible, it all goes into a general revenue pot and it's collectively invested and it's collectively spent," said Mark Haas, the school's vice president for finance and treasurer.

Service on the bond will be roughly $35 million a year. The school is also instituting a 1% across the board cut on its $2.6 billion operating budget, which will generate roughly $26 million a year. In addition, the future pace of new construction will likely be slowed, Ms. Foster said.

"We're tightening our belts," she said.

Nassar pleaded guilty last year to state sexual-abuse charges in Michigan and to federal child-pornography charges, for which he is serving an effective life sentence. He was accused of sexual abuse by hundreds of women, while working as a team physician at MSU and for the U.S. Olympics gymnastics team.

Michigan State agreed in principle to the settlement last month, but at the time it wasn't clear how the school would cover the costs.

Before any payout begins, the plaintiffs and Michigan State still need to sign off on a final agreement, and the settlement must be approved by the federal judge handling the case.

MSU General Counsel Robert Young said Friday that the parties are in "the final stages" of drafting the final agreement.

In a court filing Wednesday, lawyers for the plaintiffs and Michigan State agreed to appoint a former California superior court judge to administer payments from the settlement fund.

The board voted 6 to 2 at the start of the meeting to retain Mr. Engler. Earlier this month the Chronicle of Higher Education reported that he had suggested in emails with other administrators that one of the lead plaintiffs would get a kickback for rounding up other survivors.

The first speaker in the public comment portion of Friday's meeting was Kaylee Lorincz, a woman who alleged in April that Mr. Engler had offered her a $250,000 settlement without her lawyer

present.

Approaching the microphone to cheers from the audience, she reiterated the earlier claim. Mr. Engler has said that he and Ms. Lorincz have different “memories and interpretations” of the meeting at which the offer was allegedly made.

“Everything I said in that statement and the statements that followed is the complete and honest truth,” she said Friday.

Grace French, who was abused by Nassar, said during the comment period that it was “incredibly dangerous” for Mr. Engler to remain in his leadership role after accusing survivors of being manipulative and of lying, as it could deter others from coming forward and reporting their abuse, she said.

In an emotional appeal to the board, Bryant Tarrant, whose daughter Jessica was a patient of Nassar, said, “You have failed my daughter and you continue to fail.”

“There’s been a serious lack of leadership from this board and from this current interim president,” he said, adding that the board has “no business selecting the next university president.”

Despite the vote at the start of the meeting in favor of keeping Mr. Engler at the helm, people in the crowd continued to yell for him—and, in some cases, trustees—to resign. Trustee Mitch Lyons addressed those complaints, saying the best course was to keep Mr. Engler on and find a permanent president instead of pausing to find another interim president and potentially scaring off candidates for the permanent job.

“Nobody wants to walk into this hot mess right now,” Mr. Lyons said. “John said some really stupid things, and I’ve told John that, but John has moved the ball forward in terms of making this campus safer.”

Michigan State’s bond offering is likely to find an audience in the municipal bond market because the supply of high-quality debt has been scarce this year, depressed by changes in the 2017 tax-cut law.

“I would think it’s going to be well received, even though the purpose is kind of tainted,” said Gary Pollack, head of fixed-income trading at Deutsche Bank Private Wealth Management. While municipalities have sold bonds to fund legal settlements in the past, “normally they’re not as high profile as this one,” he said.

The Wall Street Journal

By Melissa Korn and Douglas Belkin

Updated June 22, 2018 4:14 p.m. ET

—Daniel Kruger contributed to this article.

Write to Melissa Korn at melissa.korn@wsj.com and Douglas Belkin at doug.belkin@wsj.com

BDA's 2nd Qtr Advocacy Priorities.

Read the BDA Priorities.

Bond Dealers of America

June 20, 2018

Tax Law Spurs New Marketing Approach for Georgia GO Deal.

Top-rated Georgia brings $1.23 billion of state general obligation bonds to market with a new marketing strategy prompted by recent changes in the federal tax laws.

Georgia's annual GO infrastructure bond sale prices competitively Tuesday.

The deal consists of $840.6 million of tax exempt, fixed-rate bonds and $389.1 million of taxable bonds.

Georgia comes to market annually, but it hasn't used special marketing features, such as providing potential investors with an Internet road show presentation, until this year.

The Tax Cuts and Jobs Act signed into law days before Christmas prompted the state to re-evaluate.

"This was our first year posting a roadshow," said Diana Pope, director of the Georgia State Financing and Investment Commission. "We thought that with recent changes to federal tax laws, which affect both current owners and potential new purchasers of municipal bonds, such as lower corporate tax rates, it would be helpful to highlight the state's credit strengths and provide financial updates in a more of a summary format for potential purchasers that might not be as familiar with the credit."

Bond proceeds will be used to fund a variety of capital projects.

Although the deal is selling nearly a week after the Fed raised the target range for the federal funds rate by 25 basis points, Pope said she doesn't believe the interest rate hike should affect pricing much.

"We think the market most likely already had factored in the expectation of higher rates beginning with the announcement on June 13," Pope said. "Additional economic news and U.S. and world events, of course, could have an impact on rates going forward."

Alan Schankel, managing director at Janney Montgomery Scott, struck a similar tone in his Monday Daily Fix commentary.

"Last week's Fed announcement offered little surprise, and tax free bond markets took it in stride, finishing the week with the yield curve a bit steeper but otherwise little changed," he said. "Short end strength in munis persists."

Schankel said the two-year benchmark yield is 17 basis points lower since Memorial Day, while similar maturity Treasury bond yields are 7 basis points higher.

Georgia's bonds will be sold in four parts: $411.65 million of 2018A Tranche 1 tax-exempt GOs with

maturities between one and 10 years; $428.96 million of 2018A Tranche 2 tax-exempt GOs with maturities from 11 years to 20 years; $210.44 million of 2018B Tranche 1 taxable GOs with maturities of up to 10 years; and $178.65 million of 2018B Tranche 2 taxable GOs with 11- to 20-year maturities.

Bids for each tranche will be taken at different times Tuesday on Ipreo's BiDCOMP/PARITY System.

"It is our expectation that our issue will do well in relation to market conditions partly because of the heavy June/July reinvestment season, as well as the historically strong demand for the state's bonds, which continue to be rated triple-A by three major rating agencies," Pope said.

The bonds are rated triple-A by Fitch Ratings, Moody's Investors Service (MCO) and S&P Global Ratings. All have stable outlooks.

Analysts lauded Georgia for its conservative debt management and strong fiscal governance. They also cited its low long-term liability and pension burdens, full funding of the state's portion of pension contributions, and the creation of other post-employment benefit fund reserves.

As the eighth-most populous state in the U.S., according to the roadshow presentation, Georgia has been rated Aaa by Moody's since 1974. Fitch has rated the state's GOs AAA since 1993, while S&P gave its highest-rating to the Peach State in 1997.

The state's gross domestic product growth exceeded the U.S.'s for the past four years, while growth in personal income has exceeded the U.S.'s since 2013. As of April, Georgia's unemployment rate was 4.3%, down from 4.9% in April 2017.

The state has also adopted a phased approached to its own tax reforms because of tax code changes, with the objective of being revenue neutral, the presentation said. Enacting changes to deductions and income tax rates between 2018 and 2020 will allow the state to analyze the actual impact of the federal legislation and taxpayers' behavior, it said.

"Georgia's leadership has shown a commitment to making decisions that support a triple, triple-A credit rating, such as building the state's rainy day fund to $2.3 billion or 9.9% of revenues, and investing in needed infrastructure at the lowest possible cost," Pope said. "We are excited about the rewards of those decisions in building projects that will have a positive impact for years to come."

Another recent decision the state made was to use the Boston-based financial technology company BondLink's municipal bond platform, to provide prospective investors with additional outreach.

"After the sale we will be reviewing the BondLink metrics to see how this platform assists us in providing information to that particular buyer group," Pope said.

Public Resources Advisory Group and Terminus Municipal Advisors LLC are co-financial advisors to the state. Gray Pannell & Woodward LLP is bond counsel. Kutak Rock LLP is disclosure counsel.

BY SOURCEMEDIA | MUNICIPAL | 06/18/18 07:12 PM EDT

By Shelly Sigo

Preparing for the Consolidated FINRA Registration Rules and Restructured Examination Requirements.

In October 2017, the Financial Industry Regulatory Authority (FINRA) announced, through Regulatory Notice 17-30 (the "Notice"),[1] that the U.S. Securities and Exchange Commission (SEC) approved a proposed rule change, which, (i) consolidates FINRA's registration rules; (ii) makes a number of technical changes to permissible registration categories and related rules; and (iii) restructures the representative-level qualification examinations. Each of these is discussed in greater detail below. The Proposed Rules (as defined below) take effect on October 1, 2018.

Consolidated Registration Rules

Summary of the Proposed Rules

The proposed rules, FINRA Rules 1210-1240 (the "Proposed Rules"), will adopt and consolidate, with amendment, certain National Association of Securities Dealers (NASD) and New York Stock Exchange (NYSE) rules related to registration and qualification of individual persons associated with FINRA member firms. The Notice explains that while the legacy NASD rules generally apply to all FINRA members, the existing incorporated NYSE rules only apply to FINRA members that are also members of the NYSE. The proposed rules, however, will generally apply to all FINRA members. The Notice further posits that while there are certain key differences, as discussed below, the Proposed Rules are substantially similar to the NASD and NYSE rules that are being consolidated. The Proposed Rules are:

- *FINRA Rule 1210.* Requires that each person engaged in investment banking or securities business of a FINRA member firm be appropriately registered commensurate with the individual's job functions and responsibilities, unless exempt from registration. FINRA Rule 1210 also discusses: (1) the requirement to have a minimum number of registered principals at each member firm; (2) the ability to maintain permissive registrations for associated persons; (3) the requirement to pass an appropriate qualification examination and the process for obtaining a waiver of a qualification examination; (4) the requirements applicable to registered persons functioning as principals prior to passing an appropriate principal qualification examination; (5) rules of conduct for taking examinations and confidentiality of examinations; (6) waiting periods for retaking a failed examination; (7) the requirement that registered persons satisfy continuing education ("CE") requirements; (8) lapse of registration and expiration of the Securities Industry Essentials ("SIE") exam; (9) the waiver program for individuals working for a financial services industry affiliate of a member firm; (10) the status of persons serving in the Armed Forces of the United States; and (11) impermissible registrations.[2]
- *FINRA Rule 1220.* Defines "principal" and "representative" and sets forth the qualification and registration requirements for these categories. FINRA Rule 1220 also provides a number of additional registration-related rules and clarifications, including with respect to certain eliminated registration categories.
- *FINRA Rule 1230.* Sets forth the associated persons for whom FINRA registration is not required.
- *FINRA Rule 1240.* Sets forth the CE requirements for member firms, including the Firm and Regulatory Elements.

Accepting Orders from Customers

Once the Proposed Rules take effect, unregistered persons will not be allowed to accept an order from a customer under any circumstances.[3] In the event that a registered person is unavailable, an unregistered person will be permitted to transcribe order details if a customer contacts a firm to place an unsolicited order for the purchase or sale of securities. A registered person, however, will

be required to subsequently contact the customer to confirm the order details prior to the order being accepted.

Financial Services Affiliate Waiver Program

Under the Proposed Rules, FINRA will be establishing a waiver program, effective October 1, 2018, for individuals who terminate their representative or principal registrations with a member firm in order to work for a non-U.S. or U.S. financial services industry affiliate of a member firm (the "Waiver Program"). The term "financial services industry affiliate of a member" is defined as "a legal entity that controls, is controlled by or is under common control with a member firm and is regulated by the SEC, CFTC, state securities authorities, federal or state banking authorities, state insurance authorities, or substantially equivalent [non-U.S.] regulatory authorities."[4] Individuals who are eligible for the Waiver Program would be granted a single seven-year waiver period beginning on the date that they are initially designated as eligible for the Waiver Program. This waiver period is fixed and cannot be tolled or renewed. During this time period, individuals will be responsible for timely completion of Regulatory Element CE programs based upon their most recent registration category. Failure to complete the Regulatory Element within the prescribed 120-day window will result in an individual losing his or her eligibility for the Waiver Program.

The Waiver Program will allow for an individual to re-apply with FINRA for registration as a representative or principal, provided that the following conditions have been met:

- the individual must have been registered as a representative or principal for a total of five years within the most recent ten-year period prior to his or her initial designation under the Waiver Program;
- the individual must have been registered as a representative or principal for at least one year prior to his or her initial designation under the Waiver Program with the member firm that is designating him or her;
- all waiver requests under the program must be made within seven years of the individual's initial designation;
- the individual's initial designation and any subsequent designation must be made concurrently with the filing of the individual's related Form U5;
- the individual must have continuously worked for a financial services industry affiliate of a member firm since his or her last Form U5 filing;
- the individual must have complied with the Regulatory Element of CE; and
- the individual must not have any pending or adverse regulatory matters, or terminations, that are reportable on Form U4, and must not have been subject to a statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934 while eligible under the program.

The Waiver Program will not require that individuals return to the same member firm that designated them as eligible for a waiver, and during the seven-year window individuals may move between member firms, between a member firm and a financial services affiliate of the member firm or another member firm, and between financial services affiliates of member firms; provided that the individual continuously works for a financial services affiliate of a member firm since the filing of the individual's last Form U5. An individual participating in the Waiver Program cannot, however, be working for a member firm while also working for a financial services affiliate of a member firm.

Member firms will be required to designate individuals as eligible for the Waiver Program by notifying FINRA concurrently with the filing of an individual's Form U5. Member firms will also be responsible for requesting waivers when registering individuals who have been eligible participants in the Waiver Program. FINRA will rely on representations made by the member firm at the time a waiver is requested under the Waiver Program, and also may independently verify that the

conditions under the Waiver Program have been met. FINRA will review and determine whether to grant any waiver requests under the Waiver Program within 30 calendar days of receipt of the request.

Registration Changes

Principal Financial Officer and Principal Operations Officer Designations

Under the Proposed Rules, firms will be required to designate a:

- Principal Financial Officer with primary responsibility for financial filings and the related books and records; and
- Principal Operations Officer with primary responsibility for the day-to-day operations of the business, including overseeing the receipt and delivery of securities and funds, safeguarding customer and firm assets, calculation and collection of margin from customers and processing dividend receivables and payables and reorganization redemptions and those books and records related to such activities.

While the day-to-day duties of these positions may be delegated to other principals of the firm, the ultimate responsibility for the functions must remain with the Principal Financial Officer and the Principal Operations Officer.

These designations will replace the existing requirement that all member firms designate a Chief Financial Officer, and that FINRA and NYSE dual-member firms also designate a Chief Operations Officer, and will apply to all firms, regardless of whether the firm is exempt from the requirement to have a Financial and Operations Principal ("FinOp") or an Introducing Broker-Dealer FinOp. Principal Financial Officers and Principal Operations Officers will be required to be registered as either a FinOp or Introducing Broker-Dealer FinOp, as applicable, and must be registered in the CRD system as Operations Professionals. With respect to these requirements, because Principal Financial Officers and Principal Operations Officers must also be registered as either FinOps or Introducing Broker-Dealer FinOps, they will not be required to pass the Operations Professional (Series 99) examination in order to register as Operations Professionals, as they already hold a qualifying registration.

Firms that are not self-clearing or do not provide clearing services are not required to designate separate individuals to serve as the Principal Financial Officer, Principal Operations Officer, and FinOp or Introducing Broker-Dealer FinOp. Firms that self-clear or provide clearing services, unless granted a limited-size waiver from FINRA, must designate separate individuals to serve as Principal Financial Officer and Principal Operations Officer. Such individuals, however, may also carry out FinOp responsibilities. A firm may designate multiple Principal Operations Officers in accordance with the Proposed Rules, but may not designate multiple Principal Financial Officers.

Additional Principal Registration Categories

The Proposed Rules establish three new principal registration categories: (a) Compliance Officer; (b) Investment Banking Principal; and (c) Private Securities Offerings Principal.

- *Compliance Officer.* Under the Proposed Rules, individuals designated on Form BD as Chief Compliance Officer, with the exception of firms engaged in limited investment banking or securities business, must register as a Compliance Officer. Individuals who are currently registered as both General Securities Representatives and as General Securities Principals and maintain those registrations on or after October 1, 2018, will be able to register as a Compliance

Officers without having to pass any additional examinations. An individual who meets these requirements and is also designated on Form BD as Chief Compliance Officer as of October 1, 2018, will automatically be granted registration as a Compliance Officer. On or after October 1, 2018, individuals who do not meet an exemption from the examination requirements will be required to either pass the General Securities Representative examination (including passing the SIE) and pass the General Securities Principal examination, or pass the Compliance Official examination (Series 14).

- *Investment Banking Principal.* Under the Proposed Rules, principals who are responsible for supervising certain investment banking activities[5] are required to register as Investment Banking Principals. Individuals who are currently registered as both Investment Banking Representatives and as General Securities Principals and maintain those registrations on or after October 1, 2018, will automatically be granted registration as Investment Banking Principals on October 1, 2018. On or after October 1, 2018, individuals who do not meet an exemption from the examination requirements will be required to pass both the Investment Banking Representative examination (including passing the SIE) and pass the General Securities Principal examination.
- *Private Securities Offerings Principal.* Under the Proposed Rules, principals who are solely responsible for supervising specified activities relating to private securities offerings may register as Private Securities Offerings Principals, instead of registering as General Securities Principals. Individuals who are currently registered as both Private Securities Offerings Representatives and as General Securities Principals and maintain those registrations on or after October 1, 2018, will automatically be granted registration as Private Securities Offerings Principals on October 1, 2018. On or after October 1, 2018, individuals who do not meet an exemption from the examination requirements will be required to pass both the Private Securities Offerings Representative examination (including passing the SIE) and pass the General Securities Principal examination.

Under the Proposed Rules, an individual is not eligible to register as an Investment Banking Principal or Private Securities Offerings Principal solely by virtue of being registered as a General Securities Representative and General Securities Principal.

Permissive Registrations

FINRA member firms will be permitted under the Proposed Rules to permissively register or maintain the registration of any associated person or any individual engaged in the investment banking or securities business of a non-U.S. securities affiliate or subsidiary of the member.[6] This expands the current categories of permissive registrations, which include individuals performing legal, compliance, internal audit, back-office operations, or similar responsibilities for a firm; individuals engaged in the investment banking or securities business of a non-U.S. securities affiliate or subsidiary of a firm; and individuals performing administrative support functions for registered persons of a firm. Permissively registered individuals will be considered registered persons of the member firm and subject to all FINRA rules relevant to their activities.

Firms must have adequate supervisory systems and procedures in place to ensure that individuals who are permissively registered do not act outside of their registered function. A permissively registered individual does not need to be directly supervised by a registered person, although the member firm must assign a supervisor registered with the firm who is responsible for periodically verifying that the permissively registered individual is not acting outside the scope of his or her registered function. This registered supervisor must have at least the same level of registration as the permissively registered individual (i.e., if the individual is permissively registered as a principal, the registered supervisor must also be a principal), although the registered supervisor does not need to be registered in the same representative or principal registration category as the permissively registered individual.

Registered Persons Functioning as Principals

Under the Proposed Rules, registered representatives will now be permitted to function as principals of a firm for a period of 120 calendar days—an increase from the current 90-day period—before being required to pass the appropriate principal-level qualification examination. Firms will also be able to designate current principals to serve in another principal category (e.g., a current General Securities Principal can be designated to serve as a Municipal Securities Principal) for the same 120-day period. Registered representatives who are designated as principals in this manner, however, including with respect to principal categories that do not have pre-requisite representative-level registration requirements, must have at least 18 months of experience functioning as a registered representative within the immediately preceding 5 years.

Examination Changes

The Proposed Rules make a number of changes to the representative-level qualification examinations, which are designed primarily to eliminate redundancies in the testing of general securities knowledge across the representative-level examinations, and also retire a number of existing representative-level registration categories. These changes are described in further detail below, and summarized in chart-form in Appendix A.

Securities Industry Essentials Examination (SIE)

In connection with the Proposed Rules, FINRA will be restructuring its representative-level qualification examinations. Effective October 1, 2018, individuals seeking representative-level registration will be required to pass the SIE examination, as well as a revised function-specific qualification examination (e.g., General Securities Representative (Series 7)). Certain current and former registered representatives will be given credit for passing the SIE without having to sit for the exam. The SIE is designed to eliminate redundant testing of general securities knowledge across the representative-level examinations, including knowledge of basic products, the structure and function of the securities industry, the regulatory agencies and their functions, and regulated and prohibited practices. The revised function-specific examinations will focus on knowledge relevant to the day-to-day activities, responsibilities, and job functions of representatives. Individuals will be able to schedule the SIE and any function-specific examination(s) on the same day, subject to testing center availability. The SIE will be subject to a four-year expiration period, unlike the two-year registration lapse period that will continue to be applicable for representative- and principal-level registrations.

Individuals may continue to apply to become registered representatives prior to October 1, 2018. Such individuals will sit for the existing representative-level examinations, regardless of whether the examination takes place prior to October 1, 2018 (i.e., an individual who applies for registration on September 29, 2018, could sit for an existing representative-level examination in November of 2018). Individuals who attempt and fail an existing representative-level examination, and are precluded from sitting for the same exam until after October 1, 2018, will be required to take and pass the SIE and function-specific examination on his or her next attempt. If this occurs, however, the individual will not have to wait the typical 30-day period before sitting for the SIE and function-specific examination (e.g., an individual who fails the current Series 7 examination on September 29, 2018 could sit for the SIE and revised Series 7 examination on October 5, 2018).

All associated persons will be eligible to sit for the SIE. In addition, individuals not associated with a member firm, such as the general public, will be permitted to sit for the SIE, although passing the SIE alone will not qualify an individual for registration with FINRA. Associated persons who sit for the SIE will be subject to the SIE Rules of Conduct, which, among other things, requires individuals

to attest that mere passage of the SIE does not qualify an individual to engage in investment banking or securities business. Individuals not associated with a member firm will be required to agree to be subject to the SIE Rules of Conduct. Firms will be able to register associated persons for the SIE through CRD, and FINRA is developing a separate system to allow associated persons not seeking registration as a representative and individuals not associated with a firm to enroll and pay the SIE examination fee.

Eliminated Representative Level Registration Categories

In connection with the Proposed Rules, the following registration categories and examinations are being retired:

- Assistant Representative – Order Processing (Series 11);
- United Kingdom Securities Representative (Series 17);
- Canada Securities Representative – with options (Series 37);
- Canada Securities Representative – no options (Series 38);
- Registered Options Representative (Series 42);
- Corporate Securities Representative (Series 62); and
- Government Securities Limited Representative (Series 72).

An individual currently registered in one of these categories will be grandfathered by FINRA and may maintain his or her registrations until the individual is terminated and remains terminated for a period of two years.

Research Analyst and Principal and Supervisory Analyst Qualification Requirements

Under the proposed rules, individuals seeking registration as a Research Analyst will no longer be required to pass the General Securities Representative examination. Instead, individuals will be required to pass the SIE and revised Research Analyst qualification examinations (Series 86 and 87). In addition, individuals seeking registration as a Research Principal may now either pass the Research Analyst and General Supervisory Principal qualification examinations, or, alternatively, qualify and register as a Supervisory Analyst (Series 16) and pass the General Supervisory Principal qualification examination. In connection with these changes, FINRA is eliminating the experience prerequisite for individuals seeking registration as a Supervisory Analyst, which required that individuals seeking registration have at least three years of experience involving securities or financial analysis in the immediately preceding six years.

Conclusion

With the Proposed Rules, FINRA seeks to streamline the examination and registration process by establishing the SIE and revising many of the current qualification examinations. The Proposed Rules also introduce additional principal registration categories and requirements, while also retiring a number of existing representative-level registration categories and qualification examinations. Finally, through implementation of the Waiver Program, FINRA seeks to provide flexibility to allow individuals to move between member firms and their non-U.S. or U.S. financial services industry affiliates without having to re-take qualification examinations upon their return to a member firm, provided that certain conditions are met. While the Proposed Rules are substantially similar to the NASD and NYSE rules that are being consolidated, there are certain key differences, such as those outlined above, which should be considered and understood before the October 1, 2018 implementation date.

Appendix A

Examination and Registration Changes under the Proposed Rules

The below chart captures the principal- and representative-level examination and registration changes under the Proposed Rules, as well as the addition of the Principal Financial Officer and Principal Operations Officer designations.[7] For more information please see the discussion above.

To view all formatting for this article (eg, tables, footnotes), please access the original here.

Shearman & Sterling LLP

Russell D. Sacks, Jennifer D. Morton, Steven Blau, Jenny Ding Jordan and P. Sean Kelly

June 25, 2018

CDFA & ICSC Tax Increment Financing Resources.

Tax increment finance is a popular development finance tool generally used to address blight, promote neighborhood stability and inspire district-oriented development. The Council of Development Finance Agencies (CDFA) and the International Council of Shopping Centers (ICSC) have collaborated with teams of Tax Increment Finance Experts from across the country to develop a series of resources that highlight the use of this bedrock development finance tool. The resources found on this webpage address what TIF is, why it should be used, and how to best apply the TIF tool. The collaborative efforts of CDFA & ICSC has developed a six-part video series, along with two TIF reference guides that will help experienced and novice TIF users alike.

- **TIF Video Series**
- **TIF Reference Guides**
- **TIF Resource Center**
- **TIF Training Courses**

Click here to access the TIF Resources.

BDA Sends Letters of Support for PCAOB Audit Exemption Bill Senate Banking Committee to Hold Hearing on the Bill Next Week.

June 21, 2018, the BDA sent letters to the Senate Banking and House and Financial Services Committees requesting their support of *The Small Business Audit Correction Act*. The Senate letter can be viewed here and the House letter can viewed here.

S. 3004 & H.R. 6021 would exempt privately held, small non-custodial brokers and dealers in good standing from the requirements to hire a Public Company Accounting Oversight Board (PCAOB) registered audit firm to meet their annual SEA Rule 17a-5 reporting obligation and that the audit firm perform the audit in accordance with PCAOB standards.

Passage of the legislation would allow eligible firms to conduct their annual audits in a less costly and burdensome manner. Many BDA members listed this issue as one of their top legislative priorities for the year.

In related news, the Senate Banking Committee will consider *The Small Business Audit Correction Act* (S. 3004) next Tuesday at a hearing. S. 3004 will be part of a package of bills that is being reviewed by the Committee. BDA staff will attend the hearing. For more information, please click here.

Call to Action

Now is the time to reach out to your Members of Congress and urge them to support and co-sponsor onto The Small Business Audit Correction Act! Members and their staff need to hear from you.

All Members of Congress are important in this effort, however House Financial Services and Senate Banking Committees are particularly important! The *Small Business Audit Correction Act* is expected to be rolled into a package of capital markets bills considered by the House Financial Services Committee soon.

- Financial Services Comm. Members and contact information can be viewed here.
- Senate Banking Comm. Members and contact information can be viewed here.
- Suggested talking points can be viewed here.
- Draft letter can be viewed here.
- Summary of the bill can be viewed here.
- House bill can be viewed here. Senate bill can be viewed here.

Bond Dealers of America

June 21, 2018

Fitch Exposure Draft: Public Power Rating Criteria.

Thursday, June 28, 2018 | 11:00am EDT

Please join Fitch Ratings on a teleconference to discuss the planned changes to the rating criteria for Public Power bonds.

Speaker: Dennis Pidherny – *Managing Director, Group Head, Public Power*

Register Now

Fitch: Path to Impactful U.S. Public Pension Reforms Paved by Court Decisions.

Fitch Ratings-New York-21 June 2018: The legal backdrop for U.S. state and local pensions has played a key role in reforms adopted by some states in 2018, although pensions in general still face an uphill climb to improve their funding levels, according to Fitch Ratings.

Worries over the long-term sustainability of pension obligations and the rising budgetary burden of annual contributions remain front and center for states in 2018. Many states' legislatures passed, and governors signed, reforms in 2018 legislative action to date, with some of the most interesting emerging in Colorado, Minnesota and Illinois. For these states, past state court decisions validating

or rejecting earlier reform efforts, particularly on cost-of-living adjustments (COLAs), delineated how far their 2018 reform packages could go. However, as seen with other states like Ohio, the presence of legal flexibility and the identified need for further reform is not always enough to sway legislatures to act.

Colorado and Minnesota both adopted comprehensive reforms in 2018 covering their major statewide plans following long roads to building consensus. In Colorado, SB 18-200 temporarily freezes COLAs for current retirees, delays COLAs for new retirees, caps all future COLAs at 1.5% annually instead of the previous 2%, modifies age and salary requirements for future employees, and expands eligibility for its defined contribution plan, among other changes. It also raises employee and employer contributions and requires an annual lump sum, $225 million state contribution for 30 years.

Similarly, Minnesota H.F. 3053/S.F. 2620 adjusts COLAs downward for current and future retirees depending on the plan. For most, future COLAs are held between 1% and 1.5% annually, with COLAs for future retirees delayed until normal retirement age. The reform package also lowers the state plans' funding discount rates to 7.5% (from as high as 8.5% before the reform), modifies actuarial assumptions and raises age and salary requirements. The Minnesota bill also raises employee and employer contributions, with most of the higher contributions borne by employers.

The Colorado and Minnesota bills were not the first rounds of reform adopted by the two states since the great recession exposed their pensions' funding weaknesses. Insofar as both bills reduce COLA provisions for existing retirees, they capitalize on court rulings (Justus vs. State of Colorado, in 2014 and Swanson v. Minnesota, in 2011) that validated past statutory changes lowering promised benefits.

In both of those decisions, less generous COLA provisions in the states' reforms were challenged and ultimately upheld, with courts viewing COLAs as being outside the contractual (in Colorado) or contract-like (in Minnesota) protections afforded to their core pension benefits. Reducing or eliminating COLAs, including for retirees and current employees, is one of the few pension reforms that can materially lower the accrued liability immediately. The net effect for both Colorado (not rated by Fitch) and Minnesota (IDR AAA/Stable) was to give them more tools for managing their accrued pension burdens without having to rely solely on raising employer contributions, shifting more of the contribution burden to employees, or waiting for newer, lower benefit tiers to achieve savings. The benefit for both states is also likely to be felt by local governments, schools and other public entities participating as employers in the state-administered plans.

Illinois also adopted pension measures in 2018, although the context of these actions is different and the trade-off of savings vs. costs remains uncertain. As part of its fiscal 2019 budget, Illinois among other pension changes established two buyout programs that sunset in fiscal 2021, targeting budget savings by lowering accrued liabilities associated with employees hired before 2011. The first offers retiring state, university and teacher plan members an upfront payment equal to 70% of the difference between their promised 3% COLA and a reduced 1.5% COLA; the second provides a 60% lump sum to vested, inactive members of the same plans in exchange for all future benefits. Assuming that approximately 20%-25% of eligible members participate in the buyouts, lower accrued liabilities could lower state contributions approximately $400 million, a figure that will be partly offset by debt service on state GO bonds to be issued to fund the buyouts. Notably, the timing of rollout will be lengthy and the precise fiscal impact will only be known upon conclusion of the program and could vary significantly from the initial estimates.

Like Colorado and Minnesota, Illinois' more limited 2018 actions were informed by past court precedent. A 2015 state Supreme Court ruling (In re: Pension Reform Litigation) rejected a 2014

pension reform law (Public Act 98-599) that lowered benefits for employees hired before 2011 as violating the explicit contractual protection of retirement benefits embedded in Illinois' 1970 constitution. The high hurdle imposed by this constitutional provision has left Illinois with few and costly options for reducing accrued benefits.

Fitch notes that the contractual constraints faces by Illinois (IDR BBB/Negative) would have been less likely to emerge as a fiscal problem had the state not consistently avoided making full actuarial contributions for its pensions. The state has yet to rectify this longstanding problem, which Fitch considers a form of deficit financing.

Reform efforts stalled in some other states in 2018, regardless of the degree to which their legal environment supports changes to accrued benefits. This speaks to the political challenge of making changes to pensions.

In Ohio (IDR AA+/Stable), a bill (HB 413) that would lower COLAs in the Ohio Public Employees Retirement System (OPERS) from 3% to the annual change in CPI capped at 2.5%, among other adjustments, never received a vote in committee after several hearings and has been shelved, according to press reports. The bill would have improved the plan's funded status while making it likelier that the statutorily fixed contributions OPERS receives would be sufficient to support funding progress under more adverse future circumstances.

Ohio's pension plans have generally benefited from strong contribution practices and the willingness of both the legislature and pension boards to revisit decisions on benefits, assumptions and funding practices. Like a handful of other states, Ohio protects accrued benefits as property rights, rather than as contracts, and thus has greater discretion in theory to adopt reforms affecting accrued benefits of current members and retirees.

As examples of this leeway, 2012 reforms narrowed age and service requirements for OPERS benefits, including for some current employees, and COLA changes have been a part of reforms for several other Ohio statewide systems in recent years. However, even with a demonstrated record of trimming existing benefits, Fitch views more significant benefit rollbacks in Ohio beyond the recent examples as being politically unpalatable, leaving participating Ohio governments obligated to covering the unfunded liability over time.

Even with recent reform efforts like the aforementioned legislated changes, Fitch believes funding improvement for many major pensions may not materialize any time soon. Funding discount rates upon which accrued liabilities and actuarial contributions are based for virtually all major plans remain above the 6% level that Fitch views as reasonable. Although the average funding discount rate for major plans has fallen steadily since 2009, when it was 8%, Fitch calculates it at about 7.4% as of fiscal 2017. Demographic pressures likewise mean more retirees than ever are drawing benefits from funds, making improved funded ratios harder to achieve. Finally, the current economic expansion, even with recent gains, has been weaker than past expansions, and arguably is closer to its end than its beginning. This means pensions may soon be absorbing another round of recessionary weakness that further raises contribution pressure, without having fully recovered from the last downturn.

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Fitch: Recent Labor Board Ruling Highlights Implementation Risk in Illinois' Enacted Budget.

Fitch Ratings-New York-22 June 2018: A decision last week by the Illinois Labor Relations Board (ILRB) could open up a $400 million hole in Illinois' fiscal 2019 budget, highlighting the implementation risks in a budget reliant on one-time items and policy measures with uncertain fiscal benefits, according to Fitch Ratings. While the state avoided immediate political stalemate, the on-time budget fails to make material progress in addressing the state's sizable accounts payable backlog. Given the potential that budget performance will fall short of expectations, Fitch anticipates the governor and legislature may need to revisit the 2019 plan as soon as this fall.

For the first time in four years, Illinois enacted an on-time budget for the coming fiscal year when the governor signed the $38.5 billion (general funds) budget and accompanying legislation into law on June 4th. Despite the implementation risks, enacting an on-time budget with bipartisan support allowed the state to enter the new year with a clear fiscal plan, and provided clarity for the state's key fiscal partners, including municipal governments, school districts, and public higher education institutions.

Illinois' 'BBB' Issuer Default Rating (IDR) reflects many years of weak operating performance and fiscal decision making. The state continues to benefit from a solid economic base and still substantial independent legal ability to control its budget. The Negative Outlook reflects Fitch's assessment that fiscal pressures may accelerate in the near term. The state avoided a budget impasse, but the enacted budget entails significant implementation risk. Fitch's rating on the state will be lowered if the state returns to a pattern of deferring payments for near-term budget balancing and materially increases the accounts payable balance; while stabilization of the rating is contingent on the state's ability to maintain budgetary balance over multiple years, indicating more sustainable fiscal management. Upward rating momentum is unlikely until the state more comprehensively addresses its accumulated liabilities.

STEP PAY DECISION ADDS TO BUDGETARY UNCERTAINTY

The state could face an unbudgeted spending increase of roughly 1% in fiscal 2019 due to the recent litigation and ILRB's resulting actions. In 2015, the governor halted step pay increases under an expired labor contract. The AFSCME union challenged the suspension on the grounds that state law required current work conditions to continue in the event of contract expiration. Illinois' Supreme Court ruled in March 2018 in favour of AFSCME. Last week, the ILRB rejected the governor's request to send the issue to an administrative law judge for a hearing. Fitch anticipates a final

remedy to be determined as soon as early this fall by the ILRB. Based on the Supreme Court ruling, it will likely require the state to provide for unpaid step-pay increases going back to 2015. Based on estimates provided by the administration to the ILRB, the state could face an additional $412 million in expenses in fiscal 2019 if AFSCME's recommended 'make-whole' remedy is implemented immediately.

ONE-TIME MEASURES AND UNADDRESSED ISSUES

The fiscal 2019 budget relies on $800 million in interfund borrowings, which under current law must eventually be repaid. This is more than, and in addition to, the approximately $400 million in interfund borrowings included in the budget for the current fiscal year (ending June 30) that are still outstanding.

Illinois also did not make material progress in addressing its sizable accounts payable backlog with the enacted fiscal 2019 budget. As of April 30, the state comptroller reported a general funds bill backlog of $7.2 billion, or nearly 20% of the fiscal 2019 enacted general funds budget. With only a very narrow budgeted $14 million general funds surplus for fiscal 2019, Fitch anticipates no material progress in reducing the backlog, absent robust and unanticipated revenue growth. The recent favourable decision in Wayfair v. South Dakota provides some potential upside for state revenues in Illinois and elsewhere. But the state reports that its enacted budget already assumes benefits from a favorable Wayfair decision.

The bills backlog and interfund borrowings could total between $8 billion to $9 billion by the end of fiscal 2019. These liabilities are in addition to the state's approximately $200 billion long-term liability burden for debt and unfunded pension obligations as estimated by Fitch (roughly 30% of state personal income).

BUDGET ASSUMPTIONS CREATE RISK

Fitch remains concerned that several elements of the enacted fiscal 2019 budget may be delayed beyond the fiscal year or could fall short of estimates. For the second year in a row, the budget assumes approximately $300 million in one-time revenues from the sale of the Thompson Center office building in downtown Chicago – the governor also included the sale as part of his fiscal 2017 executive budget. The facility sits atop several lines of the Chicago Transit Authority's subway system and a final sale requires close negotiation and coordination with the city of Chicago. The administration notes that the timing of a sale is also somewhat contingent on legislative approval of a change in the state's procedures around surplus property sales; absent that approval the sale process would likely extend beyond the fiscal year.

Uncertain pension savings are also a key component of the enacted budget, accounting for approximately $400 million in expenditure reductions or 1% of the enacted general funds budget. The budget includes three pension proposals; two to buy out some portion of current members' future benefits at a reduced long-term cost, and one to shift a limited amount of costs to school districts and public universities. The buyout proposals account for the bulk of the savings.

The two buyout proposals will require significant administrative work by the pension systems. Based on initial reports from the state and the systems, the buyouts may not be fully implemented for several months and potentially well into the new fiscal year which could limit the savings the state is able to accrue. The savings estimates also rely on assumptions of the portion of eligible members that will opt into the buyouts which adds to the unpredictability of actual savings. While the state intends to use general obligation bonds to fund the buyouts, Fitch does not consider that a material concern as the new debt will essentially replace reduced net pension liabilities.

The third pension change will require employers in the state university retirement system and teachers retirement system (public universities and school districts, respectively) to assume a portion of the pension contribution for retiring employees if they grant salary increases in excess of 3% during the period used to determine the employee's final average salary in pension benefit calculations. This anti-spiking measure is expected to generate a modest $20 million in savings in fiscal 2019.

IMPROVEMENTS IN STATE AID

State aid for school districts will increase roughly 5% year-over-year, with a $350 million increase tied to the state's evidence-based funding formula that was first implemented last year. K-12 spending overall is up nearly 6% with a sizable $300 million increase in state pension payments to the Teachers Retirement System. For municipal governments, the enacted budget rolls back a portion of cuts to various shared tax revenues that were first implemented in fiscal 2018. The budget reduces the state's withholding of the local share of income and sales tax revenues to 5% from 10%, providing an additional $66 million and $31 million respectively for municipalities. The state also reduced its administrative fee for collections to 1.5% from 2% on various local taxes, providing an additional $15 million for local governments.

Higher education appropriations increase as well, by 2%, or roughly $60 million in fiscal 2019. The pension cost shift noted above will somewhat reduce the benefits of these aid increases for school districts and public universities. The estimated $20 million in savings are well short of the nearly $600 million in pension cost shifts that were proposed in the governor's executive budget.

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New Jersey Mega Mall Yields Big Win to Bondholders Chasing Risk.

- **Las Vegas-inspired amusement mall is about 60 percent complete**
- **High-yield muni bonds are outperforming investment grade**

A year ago, about $1.1 billion of tax-exempt bonds were sold to finish the American Dream complex in New Jersey's Meadowlands, a project that's a bet the so-called death of the shopping mall can be countered with attractions like an ice skating rink, roller coasters and a six-acre indoor waterpark.

Most of the work won't be done until next March. But the development is already delivering big profits to investors.

As bond buyers pour money into riskier debt in pursuit of higher yields, some unrated securities sold for the Triple Five Group project have returned 18 percent over the past year, a gain rarely seen in the municipal market. It joins other speculative securities, including those issued by Chicago's school system, that rallied as defaults remain scarce and the economy continues its second-longest expansion in history.

"Nothing negative has happened so far, it's just benefited from market dynamics," said Daniel Solender, head of municipal investments at Lord Abbett & Co., which owns some of the bonds.

In the 12 months to June 21, municipal high-yield debt returned 6.6 percent, compared to 0.92 percent for investment grade state and local government bonds, according to Bloomberg Barclays Indexes. Investors have added $5.7 billion to high-yield municipal bond funds over the past year, more than half of all the money that's flowed into to state and local government debt funds, according to Lipper US Fund Flows data.

The American Dream sale, the largest offering of unrated municipal bonds last year, will help complete a project that has been in the works for nearly two decades. It was conceived in 2002, and initial work began in 2004 across the highway from what is now MetLife Stadium. Construction was abandoned after previous developers ran short of funding.

Triple Five, which took it over, sold $800 million in municipal bonds backed by payments in lieu of property taxes and about $270 million in sales-tax backed debt. If Edmonton, Alberta-based Triple Five doesn't pay property taxes, the trustee can foreclose on the property. The holders don't have any recourse if the project doesn't generate enough sales-tax money to cover the bonds backed by that revenue.

Investors don't seem worried. Bonds maturing in 2050 were issued at about 102.8 cents on the dollar and are now trading at 115 cents, pushing the yield down to about 5.05 percent from 6.63 percent. Much of the gain on the American Dream bonds came in the first few months after the debt was issued, according to Robert Amodeo, head of municipals at Western Asset Management.

"When it came to market it was such a speculative deal," Solender said. "To sell a whole deal at that size it took an attractive yield to get everyone interested."

Construction of the $2.8 billion Las Vegas-inspired mega complex, which will also include an indoor ski slope, Ferris wheel, aquarium, performing-arts theater and 500 stores is about 60 percent complete.

At the site, construction workers are laying steel for an indoor water park and pouring concrete at the ice skating rink. The Saks Fifth Avenue tenant space is ready to turn over to the department store and roller coaster sections are being put in place, according to project status reports.

More than three-quarters of American Dream's 2.3 million square feet was leased as of November 2017, according to a May 30 project status report. All of the retail anchor space and stores of more than 50,000 square feet are leased.

Triple Five is building an even bigger mall in Miami, also called American Dream. The 6.2-millio--square-foot retail and entertainment complex will cost an estimated $4 billion and will be built without public subsides, unlike the New Jersey project. Triple Five also owns the Mall of America in Bloomington, Minnesota.

Bloomberg Business

By Martin Z Braun

June 22, 2018, 7:05 AM PDT

A Glimpse Into the Future of P3s.

The real money isn't in roads and bridges. It's in people and services.

These are dark days for public-private partnerships. President Trump's P3-focused infrastructure finance plan was dismissed by Congress as a dead-on-arrival proposal. Earlier this year, more than 80 organizations and trade unions signed a letter imploring the World Bank to stop supporting infrastructure P3s. One of the biggest in recent history, the Indiana Toll Road, fell into bankruptcy last year after a long and difficult ride.

Does this mean P3s are a passing fad? Far from it. Most trends suggest the U.S. transportation P3 sector is just getting off the ground. As long as the private sector has ideas to help deliver infrastructure faster, safer and cheaper, state and local politicians will be happy to listen.

But all this focus on P3s for infrastructure misses a fundamental truth: The real money is not in roads and bridges. It's in people and services. Today the "Big 3" — education, Medicaid and corrections — account for more than two-thirds of total state spending, according to the National Association of State Budget Officers. By contrast, state spending on capital projects is barely 10 percent. The story is similar in cities and counties, where public safety and social services are crowding out all other spending.

This begs a natural question: Can P3s improve outcomes and drive cost savings in core state and local services? Fortunately, there are a few early examples where the answer is yes.

Consider Propel, a tech startup based in Brooklyn. It has developed a mobile app called Fresh EBT that serves food stamp recipients. The free app allows recipients to track their spending, develop a grocery budget and find sales at local participating grocery stores. In turn, Propel makes money by selling ad space on its app. Early results show Fresh EBT customers stretch their benefits further and eat healthier. Either way, it's an intriguing new form of P3 with big implications for local public health directors, among others.

The ultimate measure of success is scalability. Food stamps reach 45 million people and account for $70 billion in annual federal and state spending. That's why it is no surprise that some of Silicon Valley's top venture capitalists have lined up to invest millions in Propel.

Another example is Honor, an app that serves the $250 billion home care industry. Millions of elderly Americans need some combination of non-medical in-home services like preventive health care, transportation and nutrition monitoring. Honor offers a wide range of these types of services on demand. Home care providers pay Honor to make their services available on the app. Better access to home care can help keep millions of seniors out of expensive, residential assisted-living units. That's an enticing value proposition for state Medicaid directors.

To be clear, these Silicon Valley-style P3s raise several concerns. Smartphones are a great way to reach low-income Americans, but they can't reach everyone. Like any app, these innovations raise

questions about data privacy and security, especially around banking records and other sensitive information. And some worry these tools oversimplify the complex social safety net, and that could encourage damaging cuts in social workers and other wraparound services. If these P3s are to be successful, these are just a few of the challenges they'll need to work through.

This latest wave of P3s leverages private-sector innovation to change how underserved populations interact with the social safety net. Perhaps more important, small changes at the margins, such as making these programs work more efficiently and effectively, could mean billions in state and local savings. The possibilities are endless. Where is the app to improve on-demand access to paratransit services? Or to help recent parolees find a job? Or to help better manage government fleet vehicle maintenance? Those may not be the most exciting apps, but they're the P3s we need now more than ever.

GOVERNING.COM

By Justin Marlowe | Columnist

Endowed Professor of Public Finance and Civic Engagement at the Daniel J. Evans School of Public Policy & Governance at the University of Washington

JUNE 2018

TAX - MISSISSIPPI

City of Horn Lake v. Sass Muni-V, LLC

Supreme Court of Mississippi - June 7, 2018 - So.3d - 2018 WL 2731592

A year after the redemption period expired, tax sale purchaser of property sought to have the tax sale declared void and the purchase price refunded.

The Chancery Court dismissed with regard to all defendants. Purchaser appealed. The Supreme Court reversed and remanded. On remand the Chancery Court granted tax sale purchaser's motion for summary judgment. City and county appealed.

The Supreme Court of Mississippi held that tax sale of property was void ab initio, rather than just voidable.

Tax sale of property was void ab initio, rather than just voidable, where the chancery court clerk failed to comply fully with the statutory notice requirements, and statute indicated the failure to provide the requisite notice to the property owner rendered the sale void.

TAX - GEORGIA

Cotton Pickin' Fairs, Inc. v. Town of Gay

Court of Appeals of Georgia - June 15, 2018 - S.E.2d - 2018 WL 2997108

Town brought declaratory judgment action, alleging it was authorized by statute to levy an occupation tax on exhibitors participating in town fair, and fair sponsors sought an injunction barring town from attempting to collect taxes from exhibitors.

The trial court granted summary judgment in favor of town, and sponsors appealed.

The Court of Appeals held that:

- Sponsors of town fair had standing to argue that town should not levy occupation taxes on exhibitors, and
- Exhibitors fell under the temporary work site exception to occupation tax levied by town.

Sponsors of town fair had standing to argue that town should not levy occupation taxes on exhibitors participating in town fair on the basis exhibitors did not have a "location or office" in the town for purposes of the fair, and thus, were exempted from taxation; town chose to sue sponsors for monetary damages for the non-payment of the same occupation taxes supposedly owed by the exhibitors, seeking $100,000 from the sponsors for the four-year period sponsors refused to pay the exhibitor's taxes.

Fair exhibitors did not have locations or offices in town for purposes of town fair, and thus, fell under the temporary work site exception to occupation taxes levied by town; exhibitors occupied a temporary work site, each exhibitor vacated the fair grounds within two hours after the two-day fair ended, the fair was a transitory event, and because the fair was a planned undertaking, it constituted a single project for purposes of the exception.

The Week In Public Finance: Supreme Court Clears Way for States to Tax Online Sales.

The landmark decision could boost state governments' revenues by tens of billions of dollars a year. But first, they have to decide how to take advantage of it. Some hope the ruling will spur Congress to pass national rules.

In a landmark ruling that could provide a big boost to state and local revenues, the U.S. Supreme Court overturned a two-decade-old ruling on Thursday that barred states from collecting sales taxes for online purchases.

The decision is one of the most significant state and local finance rulings in the modern era and comes at a time when sales tax revenues have been steadily shrinking thanks in part to more purchases being made online.

Calling the old precedent "flawed" and a "tax shelter for businesses," the 5-4 decision does away with the notion that governments can only collect sales taxes on purchases made from retailers with a physical presence in the state. In doing so, the court overturns two previous rulings that predated the world of e-commerce: the 1992 case, Quill Corp. v. North Dakota, that dealt with out-of-state taxes collected on catalog purchases, and the 1967 case, National Bellas Hess Inc. v. Department of Revenue of Illinois.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | JUNE 21, 2018

Internet Sales Tax Ruling Helps States Avoid Revenue Erosion In The New Economy.

NEW YORK (S&P Global Ratings) June 21, 2018—S&P Global Ratings believes the U.S. Supreme Court's decision allowing states to require out-of-state online retailers to collect sales tax will have a beneficial effect on long-term state credit quality. However, the immediate credit effect may be muted.

Continue Reading

Jun. 21, 2018

State Sales Tax Collections Finally Move Into the Internet Age.

The Supreme Court's ruling in South Dakota v. Wayfair scraps a precedent that dates back to the heyday of mail order catalogs.

States entered into a new era Thursday when it comes to collecting taxes on internet sales.

The U.S. Supreme Court issued a 5-4 decision in the case of *South Dakota v. Wayfair, Inc.* that overturned two of its own previous rulings, which have blocked states from requiring out-of-state online vendors to pay sales taxes—even as internet commerce has ballooned.

States governments will now have greater authority to capture these taxes from the merchants.

"I think you've got 50 states chomping at the bit to enact collection obligations on out-of-state retailers," said Steve Rosenthal, a senior fellow in the Urban-Brookings Tax Policy Center at the Urban Institute.

"And that will happen," he added. "That will be new."

Justice Anthony Kennedy delivered the majority opinion, which appears to give a nod of approval to elements in the South Dakota statute that triggered the case. But it also leaves questions about how much latitude states have in coming up with new tax laws.

The court decision promises to help raise state and local revenues in the years ahead, particularly in states that depend heavily on sales tax.

Although sales tax collections are already flowing from many sales made by some of the nation's largest online vendors, like Amazon. And online commerce, while growing, is still a fraction of the total retail market. So the near-term effects on government budgets could be relatively limited.

Even so, those involved in state and local budgeting and finance described the high court's decision as a major development. "This is an incredibly big deal," Emily S. Brock, director of the federal liaison center at the Government Finance Officers Association, said by phone.

U.S. Government Accountability Office estimates released last year show that state and local governments could have gained $8 billion to $13 billion in 2017, if states could have required sales tax collections from all out-of-state "remote sellers," like online vendors.

Those gains would be equal to about 2 percent to 4 percent of total 2016 state and local revenues.

E-commerce made up about 9 percent of the nation's overall retail sales last year. But it is expanding rapidly. Internet sales jumped 16 percent last year in the U.S, while total retail sales edged upwards by just 4.4 percent.

"The amount of online sales is only going to grow," said John Hicks, executive director of the National Association of State Budget Officers.

Thursday's court decision, he added: "Stems the tide of sales tax losses."

Hicks said that based on figures for the last fiscal year, South Dakota, Florida, Tennessee, Texas and Washington all depend on sales taxes for more than half of their general fund revenues. Sales taxes supported at least 40 percent of general fund spending in 15 states, he said.

"If you are a state that is heavily reliant on sales taxes to begin with, you'll see a bigger boost," Chandra Ghosal, vice president and senior analyst at Moody's Investors Service, said by phone.

S&P Global Ratings issued a bulletin that said the court decision "will have a beneficial effect on long-term state credit quality. However, the immediate credit effect may be muted."

"We do not anticipate any immediate rating changes because of the court's decision. It will take time to pass implementing legislation, and the additional revenue will represent a relatively small portion of overall state and local revenues," the ratings agency added.

Kennedy's opinion was a clear death knell for the so-called "physical presence rule," a legal precedent that prevented states from collecting sales tax from companies that don't have an in-state "physical presence"—like offices, warehouses or employees.

The rule was grounded in two previous Supreme Court cases. The more recent was the 1992 case *Quill Corp. v. North Dakota*. The other was a 1967 case known as *National Bellas Hess, Inc. v. Department of Revenue of Illinois*. Both involved mail order catalog sales.

Kennedy wrote that the physical presence mandate was "unsound and incorrect" and said that both cases are overruled.

"The physical presence rule has long been criticized as giving out-of-state sellers an advantage," the court's majority opinion says. "Each year, it becomes further removed from economic reality and results in significant revenue losses to the States."

It goes on to call *Quill* "a judicially created tax shelter for businesses that limit their physical presence in a State but sell their goods and services to the State's consumers, something that has become easier and more prevalent as technology has advanced."

"The Internet revolution has made *Quill's* original error all the more egregious and harmful," the opinion adds.

Forty-one states and the District of Columbia had urged the court to reject the physical presence test cemented by *Quill*.

"The court very, very, very rarely overturns cases," said Lisa Soronen, executive director of the State and Local Legal Center, a group that files amicus briefs in support of state and local governments in the U.S. Supreme Court. "This is a big step."

Kennedy was joined in the majority by Justices Clarence Thomas, Ruth Bader Ginsburg, Samuel Alito and Neil Gorsuch. Chief Justice John Roberts, along with Justices Stephen Breyer, Sonia Sotomayor and Elena Kagan, issued the dissenting opinion.

“We’ve waited 26 years,” state Sen. Deb Peters, the Republican lawmaker who authored South Dakota’s tax legislation, and who is the current president of the National Conference of State Legislatures, said in a statement, reacting to the court tossing out the *Quill* standard.

“State officials look forward to working with all stakeholders in the coming months as we move forward to level the playing field for all of our nation’s retailers,” Peters added.

The court case pitted South Dakota against Wayfair, Inc, Overstock.com, Inc. and Newegg, Inc., three online merchants who have no employees or real estate in the state. The companies challenged a 2016 South Dakota law that required out-of-state retailers to pay sales taxes if they had over $100,000 of sales, or 200 separate transactions, in the state annually.

The Supreme Court decision is not the final step in the case. It actually sends the case back to the South Dakota Supreme Court. But the state court will no longer be able to factor the physical presence rule into its decision, as it did previously in siding against the state.

“The case isn’t necessarily over,” Soronen said. “It’s probably over.”

Soronen said that some in the state and local government arena were hoping or expecting the court to say more about South Dakota’s law and that the guidance it did include in the decision was minimal.

“It’s probably too brief to call it a road map, but there’s some suggestions in here,” she said.

Soronen said policy makers would be wise to look at three elements of the South Dakota law that Kennedy’s opinion suggests do not run afoul of the Constitution’s Commerce Clause.

These include the dollar-amount and transaction thresholds that keep companies that conduct limited business in South Dakota from falling under the law, the fact that the law does not apply retroactively to sales that have happened in the past, and that South Dakota is one of over 20 states that has adopted what’s known as the Streamlined Sales and Use Tax Agreement.

That agreement provides a framework that is designed to reduce the administrative and compliance costs companies face under state sales and use tax laws. It also offers sellers access to sales tax software that is paid for by states.

Hayes Holderness, an assistant professor at the University of Richmond School of Law, explained that he does not think that the court’s decision provided a good “floor” as far as what qualifies as a “substantial nexus” under the Commerce Clause. (Substantial nexus here refers to the connection between the activity being taxed and the state that is taxing it.)

“It’s definitely not physical presence,” Holderness said, referring to what amounts to a “substantial nexus” now that the Quill decision is overturned.

“But I’m not sure that we have a great idea of what it is going forward,” he added.

Holderness said if he were a state policy maker seeking to tax online sales, he’d look to mimic what South Dakota has done with its law. “I think if you’re reading Wayfair, and trying to figure out what to do going forward, you have a safe harbor with the South Dakota model,” he said. “After that,

you're sort of out at sea."

Hicks, with NASBO, said he was aware of at least 13 states that have already passed legislation like South Dakota's law, adopting dollar amount or transaction thresholds.

Rosenthal said that, in his view, a key consideration going forward for states crafting tax policy aimed at internet retailers is that it aligns with certain bedrock principles of the Commerce Clause, namely that the policy is not a burden on interstate commerce and that it is not discriminatory. Even if a law differs from the one South Dakota passed, if it is in sync with those principles, he believes it would be likely to pass legal muster.

He also said he was happy to see the physical presence standard finally scrapped.

"The question really was, 'What do you do when the Supreme Court makes a mistake? Does it slavishly follow precedent or does it re-articulate the right standard and then apply that going forward,'" Rosenthal said as he discussed the *Wayfair* case.

"They actually went out of their way to say that the physical presence test was just wacky and wrong," he added, "and we're going to shift to the right standard."

Route Fifty

By Bill Lucia,
Senior Reporter

June 21, 2018

Supreme Court Gives OK to Collecting Tax on Internet Sales.

Counties, states can require collection of internet sales tax after U.S. Supreme Court decision

In a 5-4 decision, the Supreme Court ruled Thursday that states and local governments can require internet retailers to collect sales taxes, even if the online company has no physical presence like a factory or store, in the state.

Removing the "physical presence" standard is a significant change in the sales tax collection landscape. Sales taxes are the second greatest portion of revenue for counties nationwide, and uniform enforcement and collection is a top priority for county governments. The South Dakota v. Wayfair decision ending the physical presence standard is a significant win for local governments, though it does not provide a national, standardized solution.

Learn More: Supreme Court opinion

State and local governments are losing between $8 billion to $13.4 billion a year in uncollected taxes for online sales, the Government Accounting Office estimated last year. Some studies put that figure as high as $26 billion a year, according to the International Council of Shopping Centers. Local sales taxes are collected in 38 states.

In its decision in the case, South Dakota vs. Wayfair, the high court overturned a 1992 ruling that had let taxes go unpaid for many online purchases. It upheld a South Dakota law that required

retailers in the state to collect a 4.5 percent tax on purchases.

Ultimately the court overturned previous cases and sent the case back to the South Dakota Supreme Court. This means the court is leaving the decision up to each state over whether to enforce sales tax collection on remote purchases. Under this framework, each state may have to pass legislation requiring remote sellers to collect these taxes, and if the law is challenged in court, each state supreme court will be responsible for determining what an appropriate standard for "substantial nexus" is in the state, whether it meets standards outlined in the Commerce Clause, and generally if it is appropriate or overburdensome.

The National Retail Federation said Thursday that federal legislation is necessary to spell out details on how sales tax collection will take place, rather than leaving it to each state to interpret.

To require a vendor to collect sales tax the vendor must still have a "substantial nexus" with the state. The Court found a "substantial nexus" in this case based on the "economic and virtual contacts" Wayfair has with the state.

The National Association of Counties (NACo) and other leading organizations that represent state and local governments applauded the decision — a big win for their members:

"Today's ruling will ensure parity for Main Street retailers and will help close an ever-growing sales tax collection loophole that results in billions of dollars in revenue going uncollected each year," NACo said in a statement. "For 26 years, the court has waited for Congress to fix this problem, but Congress demurred. Therefore, the court revisited the issue and recognized that the nature of contemporary commerce necessitates that all sellers, regardless of their location, follow the same laws. No more, no less."

In the Supreme Court's decision, Justice Anthony Kennedy wrote the majority opinion, stating that brick-and-mortar stores were being put at a disadvantage by having to charge a sales tax while online retailers did not. That rule "prevented market participants from competing on an even playing field," he wrote.

"It is unfair and unjust to those competitors, both local and out of state, who must remit the tax; to the consumers who must pay the tax; and to the states that seek fair enforcement of the sales tax — a tax many states for many years have considered an indispensable source for raising revenue." he wrote.

In a dissenting opinion, Chief Justice John Roberts said that the decision could detract from online sales "significant and vibrant part of our national economy."

The justices who voted in the majority were: Justices Anthony Kennedy, Clarence Thomas, Ruth Bader Ginsburg, Samuel A. Alito Jr. and Neil M. Gorsuch. Those who voted in the minority were: Justices John Roberts, Stephen Breyer, Sonia Sotomayor and Elena Kagan.

National Association of Counties

Jun. 21, 2018

Mary Ann Barton, Jack Peterson and Lisa Soronen contributed to this report.

Supreme Court Widens Reach of Sales Tax for Online Retailers.

WASHINGTON — Americans have done more and more of their shopping online in recent years, drawn by the promise of low prices, wide selection and buy-from-home convenience. But e-commerce has also had another edge: Many of those sales were, in effect, tax-free.

The Supreme Court on Thursday moved to close that loophole, ruling that internet retailers can be required to collect sales taxes even in states where they have no physical presence.

The decision, in South Dakota v. Wayfair Inc., was a victory for brick-and-mortar businesses that have long complained they are put at a disadvantage by having to charge sales taxes while many online competitors do not. And it was also a victory for states that have said that they are missing out on tens of billions of dollars in annual revenue.

“State and local governments have really been dealing with a nightmare scenario for several years now,” said Carl Davis, research director at the Institute on Taxation and Economic Policy, a Washington think tank. “This is going to allow state and local governments to improve their tax enforcement and to put local business on a more level playing field.”

In Thursday’s ruling, the court effectively overturned a system that it created. In 1992, the court ruled in Quill Corporation v. North Dakota that the Constitution bars states from requiring businesses to collect sales tax unless they have a substantial connection to the state. The Quill decision helped pave the way for the growth of online retail by letting companies sell nationwide without navigating the complex patchwork of state and local tax codes.

But as online retailing has grown, the dynamics have shifted. Online sellers are no longer scrappy upstarts competing with more established businesses. Amazon had $119 billion in revenue from product sales last year, making it bigger than all but the largest traditional retailers.

And state budgets are increasingly feeling the pinch. Writing for the majority in the 5-to-4 ruling, Justice Anthony M. Kennedy said the Quill decision caused states to lose annual tax revenues of up to $33 billion.

“Quill puts both local businesses and many interstate businesses with physical presence at a competitive disadvantage relative to remote sellers,” he wrote. “Remote sellers can avoid the regulatory burdens of tax collection and can offer de facto lower prices caused by the widespread failure of consumers to pay the tax on their own.”

Justices Clarence Thomas, Ruth Bader Ginsburg, Samuel A. Alito Jr. and Neil M. Gorsuch joined the majority opinion.

In dissent, Chief Justice John G. Roberts Jr. agreed that the court’s rulings in this area had been “wrongly decided,” but said there were insufficient reasons to overrule the precedents. “Any alteration to those rules with the potential to disrupt the development of such a critical segment of the economy should be undertaken by Congress,” he wrote.

Justices Stephen G. Breyer, Sonia Sotomayor and Elena Kagan joined the dissent.

In the years since 1992, three members of the court had indicated that they might be ready to reconsider the Quill decision. In a 2015 concurring opinion, for instance, Justice Kennedy seemed to call for a fresh challenge.

South Dakota responded by enacting a law that required all merchants to collect a 4.5 percent sales

tax if they had more than $100,000 in annual sales or more than 200 transactions in the state. State officials sued three large online retailers — Wayfair, Overstock.com and Newegg — for violating the law. Lower courts ruled for the online retailers, citing the Quill decision.

Marty Jackley, South Dakota's attorney general, called Thursday's ruling "a big win for South Dakota and Main Streets across America." He said the decision could be particularly significant for rural areas where local businesses have been hit hard by competition from online retailers.

Mr. Jackley is a Republican. But South Dakota's appeal drew bipartisan support, including from attorneys general in 35 states and the District of Columbia.

Mr. Jackley estimated that South Dakota would be able to begin collecting sales tax on online purchases in 30 to 90 days. Other states may be close behind: Anticipating Thursday's ruling, several states, including North Dakota, have passed laws modeled on South Dakota's.

Other states will have to change their laws if they want to take advantage of the decision, said Hayes Holderness, a law professor at the University of Richmond. He predicted a flurry of activity in legislatures.

Many of those laws could face their own legal challenges. Justice Kennedy's decision left open the possibility that some transactions were so small and scattered that no taxes should be collected. The court also did not decide whether states may seek sales taxes retroactively, which South Dakota's law does not.

Thursday's ruling should benefit local coffers as well, at least where local sales taxes are collected at the state level. But it won't help municipal governments in states such as Pennsylvania and New Mexico where quirks in tax codes prevent local jurisdictions from taxing remote sellers.

For consumers, the reversal of Quill could mean paying more for products bought online. In theory, most states already require consumers to pay a "use tax" equivalent to the state sales tax when buying online. But in practice, few consumers do so.

Owners of brick-and-mortar stores welcomed the ruling.

"I firmly believe that it's a huge stride in leveling the playing field," said Jason Patton, owner of Oz Music in Tuscaloosa, Ala. "In my record store, the average price point is around $20. I'm not going to say I continually lost customers because of the sales tax, but on higher-ticket items, that tax absolutely matters."

Shares in Amazon fell 1.1 percent on Thursday, and other online retailers took a bigger hit. Overstock.com shares were down more than 7 percent.

"Today, the U.S. Supreme Court has reshaped the interstate commerce landscape in a move that could impact small business innovation on the internet, which has been a driving force behind our nation's economy for the last 15 years," said Jonathan E. Johnson III, a member of Overstock.com's board.

Overstock said the decision would have little impact on its business but argued that with more than 12,000 different state and local taxing districts, the ruling would present a "compliance challenge" for internet start-ups. Chief Justice Roberts made a similar argument in his dissent.

Many experts, however, played down that problem. When the Supreme Court decided the Quill case in 1992, complying with various state and local tax laws would have been a major hurdle for small

businesses. But today, many companies offer software that helps small businesses navigate local laws.

“The digital and internet revolution contributed to the problem, but those same factors contributed to the solution, which is easy-to-use tax-automation software,” said Daniel Hemel, a University of Chicago law professor.

Wayfair, in a statement, said it already collected sales tax on approximately 80 percent of its orders in the United States. “As a result, we do not expect today’s decision to have any noticeable impact on our business,” the company said.

The impact on Amazon could be even smaller: As of last year, the company collected sales tax in the 45 states that have one.

But about half of Amazon’s total online sales come from independent merchants who simply post their inventory on the online store. In most states, those merchants are responsible for calculating and paying the various state taxes if they are owed. In the past year, Washington State and Pennsylvania have enacted laws requiring internet retailers to collect taxes on third-party sales. More states are expected to follow suit.

Amazon declined to comment on the ruling.

In his ruling on Thursday, Justice Kennedy wrote that world had changed since 1992, when mail-order sales totaled $180 million. Last year, remote sellers racked up sales exceeding half a trillion dollars, he noted.

That growth seems unlikely to slow. Stacy Mitchell, co-director of the Institute for Local Self-Reliance, a group that supports independent businesses, said the tax-free nature of online retail had given Amazon and other internet sellers a big advantage when they needed it most.

“It’s hard to overstate how much not having to collect sales tax mattered in the first 15 years of Amazon’s growth,” Ms. Mitchell said.

The New York Times

By Adam Liptak, Ben Casselman and Julie Creswell

June 21, 2018

Adam Liptak reported from Washington, and Ben Casselman and Julie Creswell from New York. Michael J. de la Merced contributed reporting from London.

Online Sellers Consider How to Comply With Sales Tax Ruling.

NEW YORK — While a Supreme Court ruling on sales taxes will create more obligations and expenses for many small online retailers, owners are already thinking about how they’ll comply.

The decision allows states to require out-of-state businesses to collect sales tax from customers in other states — for example, a retailer in Utah who sells goods to a customer in New York would have to calculate and collect the New York sales tax. The ruling potentially means thousands of small businesses that never collected sales tax except in their home states will be responsible for tax in

some 10,000 state and local jurisdictions nationwide.

The ruling has angered many small online retailers and advocates for small companies because it will increase their expenses, mostly from the cost of software and services to help sellers collect the taxes and send the money to state authorities. But brick-and-mortar retailers who have had to collect tax simply because they have a store, office or warehouse in a state say the court has leveled the playing field, as online retailers will no longer have an advantage created by tax-free shopping.

The decision overturned two decades-old Supreme Court decisions that allowed companies without a physical presence in a state to avoid collecting sales tax. The internet has changed retailing, and Justice Anthony Kennedy, who wrote the new decision, said, “each year, the physical presence rule becomes further removed from economic reality.” Kennedy also noted the existence of software that “may make it easier for small businesses to cope” with compliance.

Some internet retailers are shrugging and making plans to adhere to the new rules.

“I’ll do what needs to be done and get it taken care of,” said Dave “Lando” Landis, owner of Rocker Rags, a New Mexico-based online seller of clothing with photos and logos of rock musicians. “It’s not something that needs to be a panic situation.”

Adrienne Kosewicz who pays $3,300 a year for tax compliance software for sales in her home state, Washington, expects that collecting taxes in other states will raise costs by a manageable 10 percent at her Seattle-based online business, Play It Safe World Toys.

The cost can be reduced for retailers who sell to customers in the 24 states that participate in the Streamlined Sales Tax Agreement, a plan aimed at simplifying tax collection. Under the agreement, retailers can use a sales tax compliance service of their choice without charge for transactions in the participating states, according to Craig Johnson, executive director of the Streamlined Sales Tax Governing Board.

There are still many unknowns. The ruling upheld a South Dakota law that exempts sellers with $100,000 or less in sales in the state. Other states are free to set their own thresholds, and it’s not known what they might be or how long it would take for all the states to weigh in, says David Campbell, CEO of TaxCloud, a provider of tax compliance software. It’s also not known if Congress might set a uniform ceiling that all states would have to adhere to.

Kosewicz says for her, sales may not reach the threshold in each state.

States also still must announce dates by which retailers must be in compliance, says Scott Peterson, a vice president at Avalara, a manufacturer of tax collection software. He suggests retailers consult with their accountants to determine the states where they should be in compliance.

The tax compliance software and services are designed to work with the programs retailers use to process their sales transactions. They are linked to databases that track tax rates in the 45 states that charge sales tax, and in the thousands of counties and municipalities that have their own taxes.

But using the compliance services won’t be without complications, says Jamie Yesnowitz, an accountant specializing in state and local taxes with the firm Grant Thornton.

“It’s not as easy as pushing a button,” because businesses will need to make decisions about where they’re going to collect tax, Yesnowitz says. If a company doesn’t expect to reach the threshold in a state, it may decide not to collect tax.

Owners will also have to absorb the costs of complying, or pass it along to customers — something they want to avoid.

“There must be another piece of overhead someplace else to reduce,” says Bob Cuddihy, owner of True Citrus, a Baltimore-based online seller of drink mixes, water bottles and apparel. He’s concerned about consumers cutting back their purchases when they see they have to pay sales tax, but he also believes in time they’ll get used to the added cost.

Owners who have never collected out-of-state sales tax will need to get up to speed. Betty Lou Kranz initially worried about being able to stay in business if she had to track tax rates in hundreds of jurisdictions where her Port Jervis, New York-based company, The Pretzel Princess, sells candy and snacks.

“I will be learning a lot in the next couple of months,” Kranz says.

The ruling also concerns some small business advocates, who see it as government interference in business. “It’s taxes and regulation all combined in one unfortunate tax,” says Raymond Keating, chief economist with the Small Business & Entrepreneurship Council.

But to brick-and-mortar stores, the ruling righted a decades-old imbalance that favored internet retailers and led to the demise of thousands of merchants.

“They’ve been getting an unfair advantage for 20 years. As much as I like the internet, real harm has been done,” says Mike Brey, owner of two Hobby Works stores in Maryland. Brey, who also has an online business, has closed three stores. He plans keep building his internet business, and expects his company will eventually pass whatever thresholds are set in all the states.

Businesses that aren’t traditional retailers hope they’ll get back lost sales. Among them: veterinarians who write prescriptions for medicine and special food that clients have been able to buy tax-free online.

“Vets all over the country have lost a lot of income for a long time,” says Dr. John de Jong, owner of Newton Animal Hospital in Massachusetts and president-elect of the American Veterinary Medical Association. He estimates his practice loses more than $75,000 in sales annually to online stores.

By The Associated Press

June 23, 2018

Follow Joyce Rosenberg at www.twitter.com/JoyceMRosenberg. Her work can be found here: https://apnews.com/search/joyce%20rosenberg

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GFOA: U.S. Supreme Court Issues Favorable Decision in Remote Sales Tax Case.

Today, the U.S. Supreme Court issued a decision in South Dakota v. Wayfair, Inc., overturning the outdated physical presence standard. This long-anticipated decision clears the way for state and local governments to enforce existing sales and use tax laws on remote sales. For well over two decades, GFOA and other state and local government organizations have pursued a simplified framework of sales and use tax administration to address the ever evolving and growing online retail

marketplace. Until this year, the focus has primarily been on Congress where organizations like GFOA have advocated for legislation such as the Marketplace Fairness Act. Without the authority to impose current sales and use tax laws on many remote and online purchases, states and local governments have lost billions of vital revenue for public services every year.

Upon release of the decision, GFOA joined others in the state and local government community and issued a statement. “State and local organizations applaud the U.S. Supreme Court’s decision recognizing that the 1992 Quill ruling put Main Street retailers at a competitive disadvantage to remote sellers and the efforts by states to simplify the sales tax collection process and giving those states remote sales tax collection authority. For 26 years Congress has failed to act and through the efforts of Justice Anthony Kennedy, the federal government has finally recognized the changing nature of commerce and state efforts to simplify the collection process.”

View the Press Release

GFOA remains committed to finding a solution that simplifies and streamlines the collection of sales taxes that makes sense for all stakeholders involved and finally provides a level playing field that treats all businesses alike, whether selling from a brick-and-mortar store or completely online.

IRS Designates Remaining Qualified Opportunity Zones: Ballard Spahr

The IRS has now certified and designated Qualified Opportunity Zones (QOZs) in every state, five possessions, and the District of Columbia.1 A map and list of all designated QOZs can be found here. For more information on the QOZ program’s tax incentives, see our e-alerts, “Permanent or Temporary Deferral of Tax on Gains: Opportunity Zones” and “IRS Allows Self-Certification of Qualified Opportunity Funds,” as well as our more comprehensive “Primer on Qualified Opportunity Zones,” originally published in *Tax Notes* and *State Tax Notes* on May 14.

Taxpayers may elect to defer some or all of the tax on gain rolled over to a Qualified Opportunity Zone Fund by including a completed IRS Form 8949 with a timely filed (or, for 2017, an amended) federal income tax return. You can find the IRS FAQs on Opportunity Zones here.

Ballard Spahr will continue to monitor guidance from the IRS on Opportunity Zones. For additional advice about QOZ tax incentives and investments, please contact Wendi L. Kotzen, Linda B. Schakel, or Adam S. Wallwork.

Sen. Booker Urges Treasury to "Safeguard" Opportunity Zones.

Read the letter.

Office of Sen. Cory Booker | Jun. 22

Opportunity Zones: The Map Comes Into Focus

Key takeaways:

- **The first phase of Opportunity Zones implementation is now complete:** The U.S. Treasury Secretary has now certified the census tracts nominated by the governor of every U.S. state and territory and the mayor of Washington, D.C. For the next ten years, private investors will be eligible for certain tax benefits in return for investing in these low-income communities.
- **Governors tailored their selections to the needs and potential of their communities.** They relied heavily on public and local government engagement, rigorous analytics, peer-learning, and interagency collaboration to determine their zones.
- **Governors prioritized higher-need places.** Zones have an average poverty rate of nearly 31 percent, well above the 20 percent eligibility threshold, and an average median family income of only 59 percent of its area median, compared to the 80 percent eligibility threshold.
- **Selected tracts have high need as well as proven growth potential.** The country's Opportunity Zones already contain 24 million jobs and 1.6 million places of business. Many can harness some positive momentum as well: Three-quarters of zones are located in zip codes that experienced at least some level of post-recession employment growth from 2011 to 2015.
- **Less than 4 percent of zones have recently experienced high levels of socioeconomic change, a proxy for gentrification and displacement risk.** The average Opportunity Zone's housing stock has a median age of 50 years, more than ten years older than the U.S. median—a sign that many of these neighborhoods urgently need reinvestment.

Continue reading.

Economic Innovation Group

6.15.2018

Bond Market `Very Forgiving' of Alabama County's Record Collapse.

- **Despite the fading stigma, no city bankruptcies since 2015**
- **'We were told our children would be destined to poverty'**

For localities worried about facing big bond-market penalties if they go bankrupt, consider Jefferson County, Alabama.

The county of 659,000 people — once the largest municipality to ever seek bankruptcy protection — has sold debt several times since emerging from court protection in 2013. Carrying an investment-grade rating of AA- in May, the county completed a refinancing of its general-obligation debt by

paying yields of 2.86 percent on bonds due in 2026, just about half a percentage point above top-rated debt.

“We were told our children would be destined to poverty, you were going to be the hole in the donut, you will never recuperate,” County Commissioner David Carrington said in an interview. He said the county’s bond deals have even seen strong demand from investors. “The markets are very forgiving if you have results.”

Municipal-bond market analysts — and even investor Warren Buffett — have long worried that the fading stigma of bankruptcy could embolden more local governments to petition the court to cut their debts.

But despite a few municipal bankruptcies in the wake of the last recession, there’s been little sign that more will follow suit. No city or town has filed for bankruptcy protection since Hillview, Kentucky, did in 2015 as a result of an adverse ruling in a contract dispute that it couldn’t afford to pay. Rather than let its capital go bankrupt, debt-strapped Connecticut agreed to pay off some of Hartford’s debts instead.

While Jefferson County has gotten market access and its investment-grade rating back, the process was far from painless. Contending at the same time with revenue lost when a court struck down a key tax, it fired 1,300 employees, put off roadwork and shuttered inpatient services at its hospital that cared for the poor. To exit bankruptcy, officials agreed to raise sewer rates 8 percent annually through October 2018, followed by yearly jumps of 3.5 percent until 2053. Creditors including JPMorgan Chase & Co. forgave $1.4 billion of debt.

“You have to get to that point where there is no other alternative,” Carrington said.

He said he’s been called by other elected officials who are considering bankruptcy and has told them there is a “huge” financial burden. He said it cost the county about $1 million per month during the approximately two years it took to get through the bankruptcy process. “Do you have the political will as a governing body to make the decisions you’re going to have to make?” he said.

Detroit, which followed Jefferson County with a bankruptcy filing in 2013, exited state financial oversight this year but still hasn’t returned to the bond market on its own. Mammoth Lakes, California, which sought bankruptcy protection in 2012 after a fight with a real estate developer, sold $24 million in investment-grade bonds in October that priced at a top yield of 4.47 percent in 2035, more than 1.8 percentage points above top-rated debt. In the years since the bankruptcy, the town has cut expenses and grown its revenues, S&P Global Ratings said.

Local bankruptcy have been deterred because of the barriers to filing and the improving economy, said Henry Kevane, managing partner at law firm Pachulski Stang Ziehl & Jones LLP who specializes in such cases. Some states, including Illinois, don’t allow municipalities to file for Chapter 9 and others require permission from the governor.

Still, municipalities face financial pressure points, he said. State and local governments’ unfunded pension liabilities stand at around $1.8 trillion, according to Federal Reserve data, which will require them to boost their payments into the retirement funds.

“Municipalities still have colossal post-employment obligations that aren’t going anywhere,” Kevane said. “I still see that becoming a real problem.”

Bloomberg Business

By Amanda Albright

June 20, 2018, 10:30 AM PDT

— With assistance by Martin Z Braun

Puerto Rico Signs Law to Overhaul Storm-Battered Energy Utility.

- **Governor says it makes island a 'more competitive destination'**
- **Public power company followed government into bankruptcy**

Puerto Rico Governor Ricardo Rossello signed into law Wednesday a bill that clears the way for the partial privatization of the island's bankrupt electric company, which has been plagued by aging infrastructure and mismanagement that left millions in the dark after Hurricane Maria.

In addition to heralding a more storm-resistant energy grid, Rossello promised that the move would also lower above-mainland electricity prices for homes and business. It allows the government to move forward with a plan that could sell off power generation assets and put the transmission and distribution business under a private concessionaire.

"Today, we begin to see Puerto Rico as a more competitive destination, where quality of life will improve because the cost of energy will drop and the environmental impact will be reduced," Rossello said Wednesday at the signing ceremony in the northwest municipality of Isabela.

Puerto Rico has defaulted on its debt, and is drastically restructuring its government portfolio. The partial privatization of the eight-decade-old monopoly, known as Prepa, has long been advocated by the fiscal oversight board installed by federal lawmakers. But it may have a political cost on the island, where many are wary of mainland profiteers and question whether electricity prices will actually come down.

Prices on Puerto Rico bonds have rebounded this year from the record lows they hit after Maria. Prepa bonds maturing in 2042 traded Wednesday at an average price of 42.5 cents on the dollar, up from nearly 30 cents at the start of 2018, data compiled by Bloomberg show.

Bloomberg Business

By Yalixa Rivera

June 20, 2018, 10:22 AM PDT

— With assistance by Michelle Kaske

Taxpayers in the Hamptons Among the Most Exposed to Rising Seas.

- **Southampton, New York has high property tax value at risk**
- **New Jersey and Florida are the most susceptible states**

Almost no city stands to lose as much money from climate change as Southampton, New York.

The affluent Long Island suburb — where the median price of a home for sale is almost $2 million — has the second highest level of its property-tax revenue at risk among municipalities with a high likelihood of chronic flooding in the next twelve years, according to data gathered by the Union of Concerned Scientists. Only Central Coast, California had more.

The group 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.

Continue reading.

Bloomberg

By Danielle Moran

June 19, 2018, 9:37 AM PDT

S&P Extra Credit: Hot Topic Publication Review.

In this week's Extra Credit Lisa Schroeer covers some of the issues that could impact ratings down the line. Sarah Sullivant updates us on Priority Lien criteria, Randy Layman discusses Georgia's local government de-annexation issues and Tim Little talks sports betting revenues and states.

Listen to Audio

Jun. 18, 2018

S&P Medians And Credit Factors: Maryland Counties And Municipalities

Maryland local governments' credit quality remains strong, in S&P Global Ratings' view, supported by continued economic momentum, low unemployment, and above-average wealth and income metrics. Furthermore, the management teams in Maryland generally adhere to formalized policies and procedures leading to strong budgetary performance.

Continue Reading

Jun. 20, 2018

The Markup Rule for Municipal Bonds.

In bond transactions, investors are often curious to know the price that they pay for their securities and the markup that their brokers charge them. It becomes especially important for muni bond transactions wherein, because of the large number of issues and liquidity concerns, retail investors

rely on their brokers to a large extent on pricing their securities.

In this regard, on September 2, 2016, the Municipal Securities Regulatory Board (MSRB) filed a proposed amendment to the Securities and Exchange Commission (SEC) regarding rules G-15, G-30 and FINRA Rule 2232. This change was to increase the transparency of the municipal bond market and to help further clarify the distinction between a bond's actual price and the markup the broker receives.

The amendment was finally approved and became effective on May 14, 2018, and is expected to raise a lot of discussions in the industry.

Let us go over some of the broader implications of these recently implemented rules.

Continue reading.

municipalbonds.com

Brian Mathews

Jun 21, 2018

What Takes Priority – a TIF Exemption or Another Exemption?

Read the Vorys Client Alert.

Vorys | Jun. 22

Municipal Bonds Weekly Market Report: Fed Raised Rates by 0.25%

MunicipalBonds.com provides information regarding the performance of muni bonds for the past week in comparison with Treasury yields and net fund flows, as well as the impact of monetary policies and relevant economic news.

- Treasury yields mostly drop while municipal yields mostly see increases this week.
- Muni bond funds see inflows for second week in a row.
- Be sure to review our previous week's report to track the changing market conditions.

Continue reading.

municipalbonds.com

by Brian Mathews

Jun 19, 2018

Why Boring Municipal Bonds are Exciting for Investors.

As interest rates have risen in recent months and bond prices have fallen, fixed income investors have found few safe places to hide.

But there is one corner of the bond market that can provide at least relative safety, and yet – strangely – many bond investors appear to be avoiding it. I'm referring to municipal bonds, debt issued by a governmental unit other than Uncle Sam.

I can almost see your eyes glaze over. Please, not another boring discussion of "munis," as these bonds are known. Why can't we focus on exciting investment topics such as the next iPhone or Amazon takeover target?

But sometimes you can be handsomely rewarded for focusing on the boring. You very well may be leaving money on the table if you are skipping munis in favor of taxable bonds. If not leaving money on the table is boring, I'll take boring any day.

How much you're leaving on the table is not immediately obvious, however, and that's one reason why munis don't receive the attention they deserve. You must go through several tax-rate calculations that, though quite straightforward, keep munis off the radar screens of investors who focus only on munis' stated – rather than implicit – yields.

Indeed, many investors are not even sure which tax bracket they're in, Jack Bowers told me. Bowers is editor of the "Fidelity Monitor & Insight" advisory newsletter, which is one of the few newsletters that my performance monitoring has shown to have beaten a simple stock index fund over the last 30 years.

You definitely should go to the trouble of finding out your tax bracket, however, since muni bonds' interest is exempt from federal income tax. Their interest is also exempt from state taxes if you live in the state where the munis were issued. On an after-tax basis, therefore, a municipal bond's yield can be much higher than that of comparable taxable bonds, even when the munis' yields are lower on a pretax basis.

Now is just such a time. Currently, for example, AAA-rated municipal bonds with 10 years left until maturity yield 2.49 percent, significantly lower than the 2.88 percent yield on the 10-year Treasury. But that muni yield becomes superior after you take taxes into account. An individual in the highest federal tax bracket – 37 percent – would keep only 1.81 percent of that Treasury's before-tax yield of 2.88 percent. The muni's yield is more than a half-percentage point higher, which can add up to a sizeable chunk of change over time.

Even if you're not in the highest tax bracket, munis still come out well ahead on an after-tax basis. If your federal tax rate is 24 percent – which kicks in for individuals with adjusted gross income above $82,501 – the 10-year Treasury's after-tax yield is 2.19 percent, still well below that of the 10-year muni.

To be sure, Bowers added, munis are somewhat riskier than U.S. Treasuries. So it's to be expected that they should yield more on an after-tax basis. Still, even after taking their higher risk into account, Bowers believes munis are a better deal than taxable bonds for income-oriented investors.

One of the easiest ways to invest in munis is via an exchange-traded fund that owns a number of such bonds. The diversification across many different munis reduces your risk, and muni ETFs can be sold a lot more quickly and with less headache than an individual muni bond.

Two of the largest muni ETFs that own bonds with an average maturity in the five- to 10-year range are the iShares National AMT-Free Muni Bond ETF, with an expense ratio of just 0.07 percent, and the Vanguard Tax-Exempt Bond Index ETF, with a 0.09 percent expense ratio. Their current yields are 2.39 percent and 2.52 percent, respectively.

MSN Money

by Mark Hulbert

Mark Hulbert, founder of the Hulbert Financial Digest, has been tracking investment advisers' performances for four decades. For more information, email him at mark@hulbertratings.com or go to www.hulbertratings.com.

Atlanta's Ransomware Isn't an 'Isolated Incident'

COMMENTARY | Symantec's Tim Hankins outlines the continued prevalence of ransomware attacks, and what it means for governments as they consider their level of cybersecurity.

For nearly a week, a ransomware attack crippled the City of Atlanta, sending government operations back 30 years in the process. Residents could no longer pay bills online, police officers filled out reports by hand, and all unscheduled court cases were postponed until further notice.

That, of course, was just the technology side of the equation.

"I just want to make the point that this is much bigger than a ransomware attack," Atlanta Mayor Keisha Bottoms said six days after the attack as the city began to get back online. "This is really an attack on our government, which means it's an attack on all of us."

Sadly, this is not an isolated incident.

In this year's Symantec Internet Security Threat Report (ISTR) the number of ransomware attacks remained near the all-time high set in 2016. While the number of attacks is important, the more notable revelation was how ransomware attacks continue to evolve. There were 28 new ransomware families detected last year, and the number of overall ransomware variants increased by 46 percent. The ISTR showed that while ransomware, overall, has slowed its growth, it still remains a dangerous threat that can cause tremendous damage.

The number of ransomware attacks has grown at a considerable rate in recent years. We've seen a significant uptick of ransomware attacks impacting healthcare organizations, and state and local government is trending right along. In April 2018, the Riverside, Ohio police and fire departments became victims of ransomware. City manager, Mark Carpenter, implied that a third-party held, or is holding, the city's data hostage in exchange for a ransom, often paid in bitcoin or another cryptocurrency.

Local agencies, especially the police and fire departments, can't accept downtime. After all, lives hang in the balance. With mission critical functions being impacted during a ransomware attack, it's easy to understand the temptation to comply with demands for ransom. However, the FBI and cybersecurity professionals generally agree paying ransoms is a bad idea. First, there is no guarantee that the hackers will release the data once paid. There is no honor amongst thieves, after

all. Second, this quick payday incentivizes these hackers to continue what they are doing. Some organizations have even budgeted funds in order to pay off ransomware attacks.

In some ways it is surprising that state and local governments, not to mention healthcare organizations, academic organizations and non-profits, do not find themselves subject to more ransomware attacks. These governments hold a tremendous amount of personal information about citizens and often have significantly higher financial benefits to hackers than individuals or small businesses, and many operate without a robust cybersecurity posture.

For example, the Roseburg Public Schools System in Roseburg, Oregon, suffered an attack this May of its computer system. The FBI, which was brought in to investigate the case, believes the attack occurred through a complex method using remote desktop protocols, rather than through malware attached to an email sent to someone within the district. According to the FBI, these types of attacks are occurring at increasingly frequent rates, targeting schools, businesses and government entities.

Unfortunately, no jurisdiction is out of harm's way. In fact, many states are finding themselves victims of multiple attacks. On March 9, 114 servers within Connecticut's judicial system were impacted by a ransomware attack, the second ransomware attack aimed at the state government. Two weeks earlier, the Connecticut Department of Administrative Services reported that a virus resembling the Wannacry ransomware infected about 160 computers in a dozen state agencies.

Fortunately, in both Connecticut attacks, the virus was detected and mitigated early. And, if state and local organizations follow good cybersecurity practices, they too can find themselves avoiding the often costly effects of a ransomware attack.

So, what should an organization do to prevent ransomware attacks? For many it simply starts with good cybersecurity practices. Some of these are simple steps like ensuring systems are patched and backed up regularly, that "endpoints" are protected, and appropriate email security is in place.

However, more advanced techniques may be necessary in many public sector environments. Being able to combine basic cyber hygiene and advanced capabilities into an integrated cyber defense platform will allow agencies to uncover, prioritize, investigate and remediate ransomware attacks across their endpoints, networks and email platforms.

Having a good cybersecurity architecture in place not only blocks ransomware, but it blocks all accounts. Ransomware has become a popular form of attack because it works. If organizations take the steps to protect their systems, governments can greatly reduce their risk of ransomware and other malicious cyber attacks.

Route Fifty

By Tim Hankins

Tim Hankins is vice president of government, health and education at Symantec, a Fortune 500 company specializing in cybersecurity.

JUNE 22, 2018

Still Rebuilding After Hurricane Maria, Puerto Rico Hopes to Spur Critical

Infrastructure Investment.

Officials have outlined an ambitious set of P3 projects supporting electrical and water resilience, as well as economic development.

OXON HILL, Md. — With power almost completely restored along Puerto Rico's still-fragile electrical grid nine months after Hurricane Maria, island officials have turned their attention toward securing investment in resilient infrastructure.

The fiscal plan recently certified by the Puerto Rico Financial Oversight and Management Board forecasts about $60 billion in federal funds flowing through the U.S. territory over the next eight to 10 years.

Funding like that hasn't been seen on the island since the 1990s, and Puerto Rican officials at the 2018 SelectUSA Investment Summit just outside Washington, D.C. said Thursday they hoped it would entice other investors.

"I think that Puerto Rico can be a great case study for the Trump administration in how you can use investment in infrastructure to support economic development and also rebuild and modernize aging infrastructure," Omar Marrero, Puerto Rico Public-Private Partnerships Authority executive director, told Route Fifty.

Gov. Ricardo Roselló on Wednesday announced $1.5 billion in projected investments across six public-private partnership, or P3, projects that officials hope will help the government transfer finance, production and maintenance risks. For comparison, the U.S. P3 market was valued at $2.6 billion in 2016.

Roselló's administration has moved to overhaul its highly subsidized maritime transportation system—providing ferry service between metro areas and outlying islands—by making it part of the Federal Transit Administration's pilot program for private investment. The territory is also eying a $50 million to $150 million procurement for on-campus student housing at the University of Puerto Rico Mayagüez Campus.

A third P3 project, costing between $150 million and $400 million, would see the Puerto Rico Aqueduct and Sewer Authority, or PRASA, replace all water metering and externalize non-revenue water—the water lost before reaching the customer. Residents currently pay PRASA's non-revenue water operational loss, close to 60 percent, but smart metering is expected to help residents identify leaks.

The three other P3 projects have been proposed by the private sector, after Puerto Rico amended its laws to allow for that.

Tesla pitched a high-capacity energy storage system at critical substations, an environmentally friendly alternative to the diesel-fired "peaker" units currently in use. Should another hurricane cause an electrical collapse, the energy stored in giant batteries could be used for power.

Route Fifty

By Dave Nyczepir,
News Editor

JUNE 21, 2018

Void Means Void - Municipal Contract That Did Not Conform to Statute Is Void and No Claim for Breach or Quasi-Contract or Unjust Enrichment Is Permitted.

Aquatic Renovations Sys. v. Vill. of Walbridge, 2018 Ohio App. Lexis 1581 (April 13, 2018)

On May 2, 2012, Aquatic Renovations Systems, Inc. ("Aquatic") entered into a contract with the Village of Walbridge ("the Village") for the installation of a new pool liner ("Contract 1"). Prior thereto, the Village council adopted an ordinance which authorized the mayor to enter into Contract 1 ("Ordinance"). On April 12, 2013, the mayor signed a new contract for the balance of the work ("Contract 2"). A few days after Aquatic completed its work, the pool liner began to lift. The Village then refused to pay Aquatic for the completed and approved work.

Aquatic sued the Village for non-payment, alleging the Village breached Contract 2. Aquatic also alleged that the Village was liable under a theory of quantum meruit and unjust enrichment. The trial court granted the Village's motion for summary judgment, holding that Contract 2 was not valid because it did not comply with the Ohio Revised Statute which required the mayor, the clerk, and the Village administrator to authorize all Village Contracts. Thus, because Contract 2 was unenforceable, Aquatic could not recover under a breach of contract, quantum meruit or unjust enrichment theory.

On appeal, Aquatic argued that Contract 2 was a binding contract. The Village argued that Contract 2 was invalid because under the Ohio Revised Code section 731.14, Village contracts must be signed by the mayor and the clerk, and under Ohio Revised Code 731.141, if the Village has an administrator, Village contracts must be signed by the Village administrator and the clerk. In response, Aquatic argued that the Village failed to raise the "legislative authority" argument in its Answer and therefore it was waived. Additionally, Aquatic argued that even if the Village administrator did not sign the Contract 2, it was ratified by the Village and it was made in good faith under which Aquatic incurred considerable expenses.

The Court of Appeals rejected Aquatic's arguments. First, the Court found that because the Village denied that the existence of Contract 2, the "legislative authority" argument need not be raised in the Village's Answer. Because it was undisputed that at all relevant times the Village had an administrator and that Contract 2 was not signed by the administrator or the clerk, Contract 2 did not comply with the Statute. The Court also found that the Ordinance, allowing the mayor to enter into the Contract 1, did not conflict with the Statute and that both the Ordinance and the Statute operated concurrently. Second, the Court found that the Aquatic's ratification argument failed because Aquatic cited to no legal authority to support it. Third, the Court found that Aquatic's good faith argument also failed because Aquatic did not establish that the Contract 2 was awarded by the appropriate agents of the Village, as mandated by the Statute. Thus, the Court of Appeals affirmed the trial court's holding that Contract 2 was invalid and unenforceable. Additionally, because, under Ohio law, a municipality may not be liable on the basis of a quasi-contract, the Court affirmed the trial court's ruling that Aquatic's quantum meruit and unjust enrichment claims also failed.

To view the full text of the court's decision, courtesy of Lexis®, click here.

Pepper Hamilton LLP

USA June 21 2018

Court Allows Certain City of Oakland Claims to Proceed Against National Bank.

On June 15, the U.S. District Court for the Northern District of California granted in part and denied in part a national bank's motion to dismiss an action brought by the City of Oakland, alleging violations of the Fair Housing Act (FHA) and California Fair Employment and Housing Act. In its September 2015 complaint, Oakland alleged that the bank violated the FHA and the California Fair Employment and Housing Act by providing minority borrowers mortgage loans with less favorable terms than similarly situated non-minority borrowers, leading to disproportionate defaults and foreclosures causing reduced property tax revenue for the city. After the 2017 Supreme Court decision in *Bank of America v. City of Miami* (previously covered by a Buckley Sandler Special Alert), which held that municipal plaintiffs may be "aggrieved persons" authorized to bring suit under the FHA against lenders for injuries allegedly flowing from discriminatory lending practices, Oakland filed an amended complaint. The amended complaint expanded Oakland's alleged injuries to include (i) decreased property tax revenue; (ii) increases in the city's expenditures; and (iii) neutralized spending in Oakland's fair-housing programs. The bank moved to dismiss all of Oakland's claims on the basis that the city had failed to sufficiently allege proximate cause. The court granted the bank's motion without prejudice as to claims based on the second alleged injury to the extent it sought monetary relief and claims based on the third alleged injury entirely. The court allowed the matter to proceed with respect to claims based on the first injury and, to the extent it seeks injunctive and declaratory relief, the second injury.

Buckley Sandler LLP

USA June 20 2018

Kentucky Supreme Court Limits Charitable Tax Exemption to Property Taxes Only.

Delving deeply into the history of the charitable exemption from taxes under Section 170 of the Kentucky Constitution as well as the use tax, the Kentucky Supreme Court recently held that the exemption applies only to property taxes. Dep't of Revenue v. Interstate Gas Supply, Inc., 2016-SC000281-DG (March 22, 2018). Section 170 exempts from taxation all institutions of "purely public charity."

Interstate Gas Supply, Inc. ("IGS") applied for a refund of certain use taxes it collected and remitted on behalf of Tri-State Healthcare Laundry, Inc. ("Tri-State"), an entity which serves the laundry needs of three charitable hospitals. Tri-State is not a 501(c)(3) tax exempt organization, so it does not qualify for the charitable exemption from sales and use taxes afforded to those entities under KRS 139.495. Tri-State is, however, recognized by the Kentucky Department of Revenue ("Department") as an institution of purely public charity, entitled to the Section 170 exemption.

Tri-State purchased natural gas from IGS during the relevant periods. IGS requested a refund of Kentucky use tax, arguing that Tri-State's status as a purely public charity exempted it from all revenue-raising taxes pursuant to Section 170 and that as stated in Commonwealth ex. rel. Luckett v. City of Elizabethtown, 435 S.W.2d 78 (Ky. 1968) the use tax was in effect a property tax, thus bringing it within the scope of Section 170, even if that section was deemed to apply only to property

tax. The Kentucky Board of Tax Appeals and the Franklin Circuit Court both found that Section 170 applied only to property taxes, but the Court of Appeals agreed with IGS and the City of Elizabethtown decision and held that the use tax operated like a property tax so that Section 170 applied to its imposition as well. The Department appealed to the Kentucky Supreme Court, which granted discretionary review.

The Kentucky Supreme Court first analyzed the scope of Section 170 and held that the exemption was intended only to apply to Kentucky property tax. Undertaking a review of both the plain language of Section 170 and its many references to property as well as a number of cases that had taken up the issue, the Court held that the Section 170 exemption for institutions of purely public charity applied only to ad valorem taxation.

As to IGS's argument that the use tax operated so similarly to a property tax that it should fall within the scope of Section 170, the Court analyzed City of Elizabethtown as well as a number of other cases, and also undertook a review of the sales and use tax regime in Kentucky. While noting some similarities between the use tax's imposition of tax on the storage and use of items within Kentucky, the Court ultimately held that the use tax was intended as a complement to the sales tax and arose out of a transaction, not the ownership or valuation of such property. The Court also noted the criticism City of Elizabethtown had drawn over the years. The Court stated that nowhere else in the country had a use tax been treated as akin to a property tax, and in the Court's words, such a conclusion "is simply wrong." Accordingly, the Court overturned City of Elizabethtown and declined to extend the scope of Section 170 beyond property taxes.

This decision, combined with House Bill 487, which implanted a number of new tax policies in Kentucky, has resulted in a perfect storm of uncertainty in the nonprofit world as to whether these organizations must register for and/or collect and remit certain taxes. Without the assurances in City of Elizabethtown and the new policies found in H.B. 487, many nonprofits may be responsible for collecting and remitting sales tax on items such as admissions to special fundraising events, silent auction items, and certain types of memberships or programs (for example, summer camps or little league memberships). The Department has promised to issue more guidance and is working with organizations such as the Kentucky Nonprofit Network to disseminate information in an efficient and effective manner given the number of nonprofits that may not be aware of the changes. So, it's often best to consult with a tax professional who can provide your organization with advice tailored to your specific circumstances.

Bingham Greenebaum Doll LLP

USA June 25 2018

IRS Consolidates Guidance on Deductibility, Reliance Issues for Grantors and Contributors.

The US Internal Revenue Service recently consolidated its guidance on deductibility and reliance issues for grantors and contributors. Rev. Proc. 2018-32 combines the safe harbors previously provided in Rev. Procs. 81-6, 81-7, and 89-23 with the reliance guidance of Rev. Proc. 2011-33, updates the guidance to reflect the new IRS Tax Exempt Organization Search, and replaces the prior Rev. Procs. with one revenue procedure setting forth the extent to which grantors and contributors can rely on an IRS database that lists an organization as eligible to receive tax-deductible contributions under Section 170 of the

Internal Revenue Code or as a public charity under Section 509.

Pursuant to Treasury Regulations promulgated under Section 170, a grantor or contributor may rely on the continued validity of an Internal Revenue Service (IRS) determination letter concluding that an organization can receive tax deductible donations under Section 170—even if the organization has lost its status—until the IRS makes a public announcement that the organization's status has changed unless the grantor or contributor was responsible for, or aware of, the act or failure to act that resulted in the organization's loss of status. Similarly, pursuant to Treasury Regulations promulgated under Section 509, once an organization has received a determination letter classifying it as a public charity, the treatment of contributions and grants, and the status of grantors and contributors to such organization, will not be affected by a subsequent revocation of the organization's public charity status until the IRS publicly announces that the organization has lost its status as a public charity, unless the grantor or contributor knew that the organization's public charity status was revoked or was in part responsible for, or aware of, the act or failure to act which gave rise to the revocation of the organization's status as a public charity.

Prior to Rev. Proc. 2018-32, Rev. Proc. 2011-33 provided guidance for the extent to which grantors and contributors could rely on IRS publications for deducting contributions under Section 170 and making grants under Sections 4942, 4945, and 4966. Rev. Procs. 81-6, 81-7, and 89-23 provided safe harbors for determining when a grantor or contributor would be deemed not to have knowledge of, or be responsible for, an organization's loss of status as a public charity, including when a grant or contribution would be considered an "unusual grant." An "unusual grant" is excluded entirely from an organization's public support calculation and will therefore not cause an organization to lose its public charity status.

Rev. Proc. 2018-32

In order to simplify compliance for grantors and contributors, Rev. Proc. 2018-32 combines the prior revenue procedures and replaces them with one revenue procedure on deductibility and reliance issues for grantors and contributors. Rev. Proc. 2018-32 also incorporates the recent modifications the IRS made to its searchable online database, Select Check, which has been renamed "Tax Exempt Organization Search."

Rev. Proc. 2018-32 provides that, for purposes of deducting contributions under Section 170 or making grants under Sections 4942, 4945, and 4966, grantors and contributors can rely on the status of an organization reflected in two IRS databases searchable by the public on the IRS website—the Tax Exempt Organization Search and the EO BMF Extract—after the date the IRS has revoked the organization's status until the IRS makes a public announcement that the organization's status has changed. The public announcement may be made via the Internal Revenue Bulletin, on the portion of the IRS website (at www.irs.gov) that relates to exempt organizations, or by any means designed to put the public on notice of the change in the organization's status.

This guidance applies to individual donors as well as to private foundations and sponsoring organizations of donor advised funds. Grantors and contributors may rely on the information provided in the Tax Exempt Organization Search and the EO BMF Extract for an organization's qualification to receive tax deductible contributions, its classification as a public charity, and its qualification as a Type I, Type II, or Type III functionally or non-functionally integrated supporting organization.

If an organization's tax-exempt status is automatically revoked for failing to file three consecutive annual returns or required notices, grants and contributions to the organization generally will be considered deductible under Section 170 if made on or before the date the organization's name is

posted on the Auto-Revocation List maintained by the IRS. The Auto-Revocation List is also searchable on the IRS website through the Tax Exempt Organization Search.

Under certain circumstances, the IRS may allow a donor to deduct a contribution to an organization that lost its ability to receive tax deductible contributions after the IRS's public announcement. For example, the IRS may allow a deduction if the donor made a legally enforceable pledge before the public announcement but does not satisfy the pledge until after.

Rev. Proc. 2018-32 reiterates the exceptions to the general reliance rules for deductibility and for public charity status, consistent with the prior guidance, as well as the safe harbors. It also provides limitations on the extent to which the reliance provisions in the revenue procedure apply and requirements for relying on information from the EO BMF Extract from third parties. Finally, Rev. Proc. 2018-32 provides guidance on the validity of contributions to an organization during a proceeding under Section 7428 for a declaratory judgement involving the revocation of a determination that the organization is described in Section 170, which is also consistent with the prior guidance.

Although it doesn't provide any substantive changes to the guidance on donor reliance, Rev. Proc. 2018-32 reminds grantors and contributors to check an organization's status before making a grant or a donation.

Morgan Lewis & Bockius LLP

by Shira M. Helstrom

USA June 21 2018

CEQ Requests Comments on Changes to NEPA Review Process Governing Infrastructure Projects.

The Council on Environmental Quality (CEQ)—the US federal agency responsible for coordinating and overseeing federal agency implementation of the National Environmental Policy Act (NEPA)—moved one step closer on June 20 towards revising its longstanding NEPA-implementing regulations. Those regulations, which last underwent a major revision in 1986, govern the environmental review process for all "major federal actions," including Federal Energy Regulatory Commission (FERC) license reviews for hydroelectric projects and certificates for natural gas facilities.

Now, in an Advance Notice of Proposed Rulemaking (ANPR), the CEQ signaled that it is ready to receive public comments on potential revisions that it hopes will "ensure a more efficient, timely, and effective NEPA process consistent with the national environmental policy stated in NEPA." Comments are due July 20, 2018.

The ANPR seeks comments on specific issues and further invites commenters to provide "specific recommendations on additions, deletions, and modifications to the text of CEQ's NEPA regulations," including their justifications, to update and clarify the regulations. Among other things, CEQ seeks public feedback on whether:

- the regulations should be revised to ensure optimal interagency coordination of environmental reviews and authorization decisions, including more "concurrent, synchronized, timely, and

efficient" decisions when multiple agencies are involved;
- any rule changes could better facilitate agency use of environmental studies, analysis, and decision conducted in earlier reviews;
- provisions relating to agency responsibility and preparation of NEPA documents by contractors and/or project applicants should be modified;
- the regulations relating to programmatic NEPA documents and tiering should be revised;
- the scope of agency NEPA reviews, including whether rules for formats and page lengths of NEPA documents, should be revised;
- the CEQ should include time limits for completion of agency NEPA reviews;
- the rules for public involvement should be revised to be more inclusive and efficient;
- the definitions of key terms, such as "major federal actions," "effects," "cumulative impacts," "significantly," "scope" and others, should be revised;
- new definitions, such as for the terms "alternatives," "purpose and need," "reasonably foreseeable," and "trivial violation," should be added to the regulations;
- provisions relating to certain types of NEPA documents (e.g., categorical exclusions documentation, environmental assessments, environmental impact statements, records of decision, supplements) should be altered;
- any of the regulations' current provisions are "obsolete" and can be updated to reduce "unnecessary burdens and delays;"
- the rules can be changed to better reflect or incorporate new, efficiency-boosting technologies; and
  mitigation requirements should be revised.

The questions posed by CEQ follow efforts by other federal agencies to streamline or reevaluate the NEPA process for major infrastructure projects. Earlier this year FERC initiated a Notice of Inquiry seeking information and stakeholder input on FERC's policies regarding its review and authorization of interstate natural gas transportation facilities under Section 7 of the Natural Gas Act. Among other things, the Notice of Inquiry seeks comment on the scope of FERC's environmental analysis of proposed natural gas projects (e.g., whether downstream GHG emission impacts should be considered), as well as the efficiency of the certificate application review process. Efforts by other agencies have similarly focused on streamlining the environmental review process: the One Federal Decision Memorandum of Understanding signed by 12 federal agencies committed to a coordinated NEPA process that allows all permitting decisions to be completed within two years. Those efforts, as well as the CEQ's ANPR and FERC's Notice of Inquiry, have been driven largely by Executive Order 13807, which President Donald Trump issued August 15, 2017, to "enhance and modernize" the environmental review and permitting process for infrastructure.

Given the highly visible and pervasive nature of the NEPA-implementing regulations, it will be important for FERC-regulated entities that depend on federal agency action when advancing projects and securing permits to participate in the rulemaking. Such comments will be critical to CEQ having a sufficient agency record to defend against any later litigation challenges to new regulations.

Morgan Lewis & Bockius LLP

Kirstin E. Gibbs, Camarin E.B. Madigan, J. Daniel Skees, Ronald J. Tenpas and Arjun Prasad Ramadevanahalli

USA June 20 2018

Oakland Raiders Las Vegas NFL Stadium Hotel Tax Revenue Still Less Than Needed For Bond.

In the past months, and going back to April 2017, this blogger has asserted that the Clark County Stadium Tax Rate of .088 of 1 or 88 percent of one percent is not adequate to finance the bond issue of $645 million for the Oakland Raiders Las Vegas NFL / UNLV Stadium.

The general consensus of Clark County's financial management team has been that because of reserves, there was no real problem. But that masks the real truth, which has been communicated to me by many municipal finance professionals: as long as the Raiders bond issue is a general obligation bond issue, where Clark County's entire General Fund monies can be used to help pay for the bond debt service, there's no financing problem. In other words, the Clark County taxpayers will help.

Others have told me I was just plain wrong, without any explanation. But now, we have the actual bond debt service that will be due, and for the first year 2019, that number, compared to what's already being collected on a monthly basis, adds up to a shortfall.

To see the problem, lets' start with the June 30th 2019 debt service requirement of $36,003,763. That's from the actual bond issue that was sold this April 2018. It's the first year of debt service requirement, but it's without something called the "debt coverage ratio" and that's the level above the debt service requirement, that you as Clark County have to have money in your stadium tax revenue stream to pay the debt service requirement and have money left over that then goes into a reserve.

Ok, so since it's per month, $36,003,763 divided by 12 months is $3,000,313.58. Now, we're not done, because we have to take that and multiply it by 1.5, or $3,000,313.58 x 1.5 – that gets us to $4,500,470.37. That's the actual average monthly revenue the stadium tax should have.

So let's compare that with what revenue actually has come in. Over the first 12 months of the stadium tax, from March 2017 to March 2018, is 52,721,713.00 or a monthly average of $4,393,476.08. That first year monthly average is less than the actual average – or $4,500,470.37 – $4,393,476.08 which equals a negative $106,994.29 per month.

So you say the next year's going to be better for the stadium tax revenue flow? Ok, let's check that. The revenue from April 2018 and May 2018 was $4,300,000 and $4,015,362 respectively. Take the average of those two figures, and we get $4,157,681 average monthly revenue for the next year of collection of the tax. Given our required average monthly revenue need of $4,500,470.37, and we have a monthly average shortfall of $342,789.37.

As a note, this is not referring to the budget for the Stadium Authority itself, which takes in revenue from several sources, not just the stadium hotel tax. Many get confused when the discussion of the bond issue comes up. What this refers to is strictly the bond issue itself versus what's supposed to be its dedicated revenue stream, the stadium hotel tax.

The bigger problem is three fold:

1) The bond debt service requirement is only going to get bigger. For example, the 2019 total of $36,003,763 will first give way to a smaller bond debt (without the debt coverage ratio included) of $33,978,750. But hat just reduces the monthly revenue need to $4,247,343.75. Note that the months of April and May of 2018 were less than that amount. Then, the bond debt service requirement

increases again to where it is greater than the 2019 total in 2023 – 36,059,500.
2) During that time, there's no sign the stadium tax revenue will go up, and all signs that it has gone down. Las Vegas has experienced 10 of 11 months of visitor declines, month to month. And while 2017 was a record year, the reason these small changes are important overall with respect to the Raiders Stadium, is because is stadium hotel tax rate is too small.
3) The stadium tax revenue collected for April 2018 was less than that for April of 2017 by -$192,689. Moreover, the projection for the second year of stadium tax collection (with March 2017 marking year one because that was the first month the tax was collected) is less than that of the first year by $2,829,541 or $52,721,713 from year one minus $49,892,172 estimated for year two.
4) So, we have a situation where the bond debt does decrease from 2019 to 2022, but guess what? The revenue collected it projected to go down by -.0567 percent. Between year one of the stadium hotel tax revenue and year two.

This shows there is a problem with the stadium tax hotel rate for the Oakland Raiders / UNLV Stadium. Moreover, that problem, given the Las Vegas and Clark County picture where there are signs of downturns in visitors as the stadium hotel tax monthly revenue demand increases, will only get worse. The queston is at what point will Clark County have to start digging into its General Fund? Depending on the budget of the Stadium Authority (and we should get a review of that at the next meeting) that time could be as close as December of 2019.

Stay tuned.

OAKLAND NEWS NOW

BY: ZENNIE ABRAHAM JUNE 20, 2018

The Wealthy Atlanta Suburb Fighting to Secede From Its City.

The metro area has been divided into ever smaller pieces segregated by race and class. If Stockbridge splits up, the poorer parts will be left with $15.5 million of debt.

As Vikki Consiglio tells it, a new Georgia law that has alarmed Wall Street had its genesis two years ago, with a birthday dinner for her husband in Atlanta's Buckhead neighborhood, at a steakhouse in a graceful, brick-paved complex of high-end furniture stores and designer boutiques. "A light just went off," she says.

Her own neighborhood in the suburbs—a cluster of gated communities surrounding a country club—lacked the same exclusive feel along its main drag. "I want those things, those amenities," Consiglio says. "I wanted to be part of a gated community in a high-end area. Instead, when I come out of the gate, I see a Waffle House and dollar stores."

Consiglio's home is part of Stockbridge, a predominantly black city in Henry County, some 20 miles south of Atlanta. She says her section can't attract businesses like Buckhead's because of the lower income of the rest of Stockbridge. Her idea: The whole neighborhood could break away. Consiglio is the spokeswoman for the movement that pushed for and won a state law to allow a "de-annexation."

Continue reading.

Bloomberg Businessweek

By Margaret Newkirk

June 21, 2018

Researcher: Harvey's Pension Problems the First, But 'Certainly Won't Be Last,' to run afoul of state law

The city of Harvey remained locked in a court fight with state officials and its own public worker pension funds over its ability to use sales tax dollars to pay its bills. But it likely is just one of dozens of cities and other governments across Illinois poised to land on the wrong side of a state law mandating pension fund payments.

“Harvey may be somewhat of an extreme case given all the factors, among which is its history of corruption,” Kass, assistant director for the Center for Municipal Finance at the University of Chicago Harris School of Public Policy, told the Cook County Record. “But I wouldn’t be surprised to see more pension funds across the state file similar paperwork with the comptroller’s office the same way Harvey has. There might not be a ton of Harveys, but many other places have the same issue of pension system underfunding.”

After the Harvey pension fund for retired police officers moved to intercept and lay claim to millions earmarked for the city, ultimately setting off a legal quagmire, Illinois Comptroller Susana Mendoza justified diverting the funds as requested by pointing to a 2011 enacted state law that requires her office to do just that when municipalities are accused of failing to make their obligated pension payments.

The case in Harvey is being closely monitored across the state and other parts of the country given the gravity and widespread nature of the problem. In addition, bondholders have also taken note of the proceedings, as such claims by pension funds could also leave them cut out of the municipal revenue they would otherwise be owed, as the Cook County Record previously reported.

However, in a related opinion letter, Mendoza allowed the city to pay a group of investors holding city bonds, as those particular bonds were funded from a special Harvey city sales tax, and that tax should not be considered state funds. Thus, those funds cannot be withheld and diverted to pensions.

Harvey city officials say the legal entanglement has deepened the city’s problems, recently forcing city officials to lay off dozens of government workers, among them as many as 40 police and fire department officials.

“A big part of this is so many of these pension funds have been so grossly underfunded for so long and that’s why you’re seeing so many of them experiencing the same troubles,” Kass added. “Look at North Chicago; they’re one of the other places pretty much in the same predicament. While the initial law may have required pension contributions, it lacked an enforcement mechanism.”

In all, Kass estimates that there are at least 53 other municipalities that have seen police and fire pension funds underfunded on par with the figures that have caused much of the destruction in Harvey. Across the state, police and fire pensions are reported to have only been funded on an average of just 60-67 percent over the last decade.

“Harvey may be the first, but it certainly won’t be the last where you see something like this

happen," Kass said. "And as far as the law goes, it's clearly written about what can be intercepted by the comptroller's office whenever the situation occurs."

Kass said it remains to be seen what the controversy could truly come to mean for Harvey's already frustrated taxpayers.

"In theory, you can raise taxes as high as you want, but that doesn't mean the people can afford to pay them," she said. "Harvey already has a high tax rate that's only matched by its high delinquency rate. There's a real need to evaluate the dynamics and demographics of these places and the question of whether or not they can handle much more of the same thing. Some places may already have a cap of their own, while for places like Harvey the solution may have to come from a higher level of government involvement."

Kass said she's heard some potentially good ideas offered concerning possible long-term solutions, but she she thinks what's happening in Harvey is the wrong way to go in terms of handling things.

"Right now, Harvey is laying off police and firemen and I know that can never be a good idea," she said. "Just firing people, especially essential people to making a society work, is not the answer anyone needs."

Cook County Record

By Glenn Minnis | Jun 21, 2018

- MSRB Compliance Corner – Summer, 2018
- Wells Fargo Struggles to Get Off the Municipal-Bond Blacklist.
- Rise in Single-Rated Municipal Bonds Spurs Investor Concerns.
- Fitch U.S. Public Power Criteria Revision. ***and*** Fitch: U.S. Public Power Peer Review Highlights Capex, Coverage Trends.
- Understanding the De Minimis Tax Rule.
- A Richer Understanding of What's Already Understood – Treasury Issues Proposed Regulations to Clarify the Meaning of "Investment-Type Property" in an Already Obvious Way.
- Webinar: Emerging Metrics for Physical Climate Risks Disclosures.
- BLX/Orrick 6th Annual Post-Issuance Compliance Workshop.
- Webinar: Emerging Metrics for Physical Climate Risks Disclosures.
- *Assured Guaranty Corporation v. Madison County, Mississippi* – Court of Appeals holds that contribution agreement between county and special purpose government entity, which required county to advance payments on bonds issued in order to fund entity if entity was unable to make payments on its own through special assessments, required entity to reimburse county within two years as a condition precedent to county's obligation to advance payments.
- And finally, Thanks So Much for the Clarification is brought to us this week by *Acevedo v. Musterfield Place, LLC*, in which the Supreme *Judicial* Court of Massachusetts yada, yada, yada. As far as we can tell, Mass is the only state supreme court that insists on pointing out that the ruling in question has not been handed down by The Supreme Courtyard by Marriott. The Supreme Tennis Court of Massachusetts. We'll let you run with it from here.

MARKETING DISTRICT ASSESSMENT - CALIFORNIA

Reid v. City of San Diego

Court of Appeal, Fourth District, Division 1, California - May 25, 2018 - 2018 WL 2381980 - 18 Cal. Daily Op. Serv. 5064 - 2018 Daily Journal D.A.R. 4961

Hotel guests brought putative class action against city, seeking declaratory judgment and writ of mandate and alleging that tourism marketing district assessment imposed on hotel stays was a disguised tax that violated Proposition 26 because it was never submitted to electorate for vote.

The Superior Court sustained city's demurrer. Guests appealed.

The Court of Appeal held that:

- Ordinance's 30-day limitations period for commencing an action to challenge validity of a levied assessment did not violate due process;
- Limitations period was not equitably tolled by previous action challenging assessment;
- Continuous accrual doctrine did not apply to extend limitations period;
- Equal protection claim was not subject to strict scrutiny; and
- Reasonable argument could be made that action was not subject to 30-day limitations period, supporting finding that appellate arguments were not frivolous and thus not subject to sanctions.

ZONING & PLANNING - DELAWARE

Town of Cheswold v. Central Delaware Business Park

Supreme Court of Delaware - June 8, 2018 - A.3d - 2018 WL 2748372

Town brought declaratory judgment action, seeking clarification of whether prior stipulated orders in litigation between landowner and town prohibited town from rezoning property.

The Superior Court entered judgment in favor of landowner. Town appealed.

The Supreme Court of Delaware held that:

- Action was ripe for review;
- Stipulated orders did not incorporate by reference the substance of proposed zoning amendment; and
- Stipulated orders were not ambiguous and thus extrinsic evidence could not be used to interpret them.

Stipulated orders entered by court, in litigation between town and landowner in which landowner sought to compel town to adopt proposed zoning amendment which recognized certain vested property development rights, did not incorporate by reference the substance of such amendment, supporting finding that town could adopt new ordinance affecting landowner's vested development rights; stipulated orders referred to amendment only as part of town's obligation to republish ordinance with amendment.

ZONING & LAND USE - GEORGIA

Hoechstetter v. Pickens County

Supreme Court of Georgia - June 4, 2018 - S.E.2d - 2018 WL 2465513

Neighbors filed petition for judicial review of decision of county board of commissioners granting conditional use permit.

The Superior Court denied neighbors' motion for summary judgment. Neighbors appealed. The Court of Appeals affirmed. Writ of certiorari was issued.

The Supreme Court of Georgia held that hearing before county planning commission did not afford interested citizens meaningful opportunity to be heard by the county board of commissioners on application for conditional use permit, and thus, the hearing did not satisfy the notice-and-hearing requirements of the Zoning Procedures Law (ZPL).

Hearing before county planning commission did not afford interested citizens meaningful opportunity to be heard by the county board of commissioners on application for conditional use permit, and thus, the hearing did not satisfy the notice-and-hearing requirements of the Zoning Procedures Law (ZPL), where planning commission could only make recommendations to the board, only record of the hearing was one-page memorandum to the board, and memorandum failed to disclose the general nature of neighbors' objections to the application.

IMMUNITY - MASSACHUSETTS

Acevedo v. Musterfield Place, LLC

Supreme Judicial Court of Massachusetts, Middlesex - June 8, 2018 - N.E.3d - 2018 WL 2749724

Resident who allegedly slipped and fell in public housing development, suffering serious injuries, brought action against city housing authority, a controlled affiliate of the authority which owned the property, and the managing agent.

The Superior Court Department denied affiliate and manager's motion for summary judgment, and they appealed.

The Supreme Judicial Court of Massachusetts held that controlled affiliate of housing authority, and the sole member of the controlled affiliate's manager, were not "public employers" for purposes of the Tort Claims Act, but rather, were private limited liability companies (LLC) that were not entitled to sovereign immunity from personal injury claims brought by resident of public housing development who allegedly suffered serious injuries in a slip and fall.

BOND INSURANCE - MISSISSIPPI

Assured Guaranty Corporation v. Madison County, Mississippi

United States Court of Appeals, Fifth Circuit - May 31, 2017 - 693 Fed.Appx. 287

Insurer of bonds issued by special purpose government entity brought action against county, which had entered into a contribution agreement with entity, seeking declaratory judgment that contribution agreement was valid and required county to continue advancing funds to entity for

bond payments, even though entity failed to reimburse county within two years.

The United States District Court for the Southern District of Mississippi granted insurer's motion for partial summary judgment, concluding county was obligated to advance payments as long as bonds were outstanding. County appealed.

The Court of Appeals held that:

- Entity's obligation to reimburse county within two years was a condition precedent to county's obligation to advance bond payments;
- Amortization approval certificate, when read together with contribution agreement, conditioned county's obligation to make advance payments on entity's performance of covenants; and
- County was not estopped from arguing that entity's performance was unsatisfactory.

Under Mississippi law, contribution agreement between county and special purpose government entity, which required county to advance payments on bonds issued in order to fund entity if entity was unable to make payments on its own through special assessments, required entity to reimburse county within two years as a condition precedent to county's obligation to advance payments; agreement explicitly required entity to reimburse county within two years, and there was no tension between a requirement that county advance bond payments when entity was unable to make them if entity satisfied its obligations under agreement, and that entity was required to reimburse county for advances within two years of when they were made.

Under Mississippi law, amortization approval certificate, signed by county at closing on issuance of bonds to fund special purpose government entity, when read together with contribution agreement requiring county to advance bond payments to entity if entity was unable to make payments, conditioned county's obligation on entity's performance of covenants under contribution agreement, including its promise to reimburse county; while certificate referred to conditions that had to be performed to county's satisfaction prior to closing, contribution agreement also referred to conditions that were to be completed after closing, including condition precedent requiring entity to pay reimbursement within two years.

County was not estopped under Mississippi law from arguing that special purpose government entity's performance under amortization approval certificate, which was signed upon issuance of bonds to fund entity, was unsatisfactory, in bond insurer's declaratory judgment action against county; while quasi-estoppel theory precluded a litigant from asserting rights inconsistent with a position it had previously taken, this theory would only have applied if county signed certificate intending to agree that it was satisfied with entity's performance of all of its obligations under agreement, including those that could not possibly have been performed before closing at which certificate was signed.

TOWNS - PENNSYLVANIA

Varner v. Swatara Township Board of Commissioners

Supreme Court of Pennsylvania - June 1, 2018 - A.3d - 2018 WL 2449178

Township residents and commissioner filed declaratory petition challenging validity of ordinance by

which township board of commissioners purported to alter the one-ward five-commissioner at-large system back to a nine-commissioner by-ward system without judicial approval.

The Court of Common Pleas granted petition. Board appealed. The Commonwealth Court affirmed. Board petitioned for discretionary review.

The Supreme Court of Pennsylvania held that:

- Judicial approval was needed pursuant to First Class Township Code section governing wards, and
- Constitutional and statutory provisions providing authority to reapportion into districts a governing body that was not entirely elected at large did not apply.

Township board of commissioners' passage of ordinance purporting to alter its one-ward five-commissioner at-large system back to a nine-commissioner by-ward system was not a reapportionment governed by State Constitution and the Municipal Reapportionment Act, but rather was governed by the First Class Township Code governing wards, and thus judicial approval was needed pursuant to Code; board did not act to rebalance the population within the districts but instead restructured the form of government by completely eliminating the wards.

CONTRACTS - RHODE ISLAND

Coccoli v. Town of Scituate Town Council

Supreme Court of Rhode Island - June 8, 2018 - A.3d - 2018 WL 2760303

Purchaser of property brought pro se action against town council for promissory estoppel and breach of oral contract, breach of confidentiality pertaining to proprietary information, tortious interference with a contract, and fraudulent misrepresentation.

The Superior Court granted council's motion for summary judgment, and subsequently denied purchaser's motion to vacate entry of summary judgment. Purchaser appealed.

The Supreme Court of Rhode Island held that:

- Memorandum of understanding between town council and purchaser regarding sewer connection was binding contract; but
- Town council did not tortiously interfere with purchaser's alleged contract to purchase property from bankruptcy receiver; and
- Purchaser failed to present scintilla of evidence of any representation from town that induced him to engage in environmental cleanup on property, or of his detrimental reliance upon such representation, as required for purchaser to state claim for fraudulent misrepresentation.

Memorandum of understanding between town council and property owner regarding sewer connection was binding contract, where council voted to approve sewer connection by consent agreement, contingent upon receiving memorandum, town and property owner's legal counsel thereafter prepared detailed memorandum that was drafted on letterhead of town's solicitor, signed by town council's president and property owner, notarized, adorned with official town seal, and recorded in land evidence records, and after memorandum was executed, property owner spent approximately $2 million to begin infrastructure and engineering on redevelopment project, in furtherance of memorandum.

PUBLIC PENSIONS - TEXAS

City of Houston v. Houston Municipal Employees Pension System

Supreme Court of Texas - June 8, 2018 - S.W.3d - 2018 WL 2749728

Municipal employees pension system brought action against city, seeking writ of mandamus to compel city to provide information regarding employees of city-controlled nonprofit corporations, which employees were city employees until they were transferred to corporations, and to compel city to allocate funding in city budgets for retirement contributions and pick up payments owed for employees of corporations.

City filed, inter alia, plea to the jurisdiction, arguing that governmental immunity barred pension system's claims. The District Court denied city's plea to the jurisdiction. City appealed. The Houston Court of Appeals affirmed in part, reversed in part, rendered judgment in part, and remanded.

On petition for review, the Supreme Court of Texas held that:

- Pension system had standing under pension-system statute to bring mandamus action against city;
- Employees of nonprofit corporations were "employees" under pension-system statute, and thus were "members" of pension system;
- A statute authorizing a governmental entity to enter into contracts and providing that such a contract will be binding does not require the contract to be performed in a particular way such that an ultra vires claim can be brought to enforce it;
- Pension system did not have adequate remedy by law, as would bar pension system's claim for mandamus relief;
- Pension-system statute created ministerial duty and defined it with sufficient clarity to support pension system's ultra vires and mandamus claims against city;
- Pension system sought to have pension-system statute enforced going forward and thus was seeking prospective relief, as required for pension system to bring claim for mandamus relief against city; and
- Pension system's action was not rendered moot by amendment to pension-system statute.

ANNEXATION - WISCONSIN

Town of Lincoln v. City of Whitehall

Court of Appeals of Wisconsin - April 17, 2018 - N.W.2d - 2018 WL 1842075 - 2018 WI App 33

Town, which had received favorable findings from Department of Administration, brought action against city seeking declaratory judgment that city's annexation ordinances, which had been adopted pursuant to grassroots process of direct annexation by unanimous approval, that detached territory from town were invalid.

The Circuit Court granted city's motion to dismiss all but contiguousness claim, and thereafter granted summary judgment for city on contiguousness claim. Town appealed.

The Court of Appeals held that:

- Town, when commencing a court action to protest a direct annexation by unanimous approval following review by the Department of Administration, is limited to challenging contiguity and

county parallelism;
- Annexed territory was sufficiently contiguous to city;
- City was not the real controlling influence behind design and configuration of annexation; and
- Annexed territory was not of an exceptional shape and thus was not invalid as arbitrary.

SIFMA: Select Enhancements to Protect Retail Investors in Municipal and Corporate Bonds.

SIFMA provided comments to the SEC on recommendations of the Market Structure Subcommittee of the SEC Investor Advisory Committee on Municipal and Corporate Bonds.

Read Comments.

A Richer Understanding of What's Already Understood – Treasury Issues Proposed Regulations to Clarify the Meaning of "Investment-Type Property" in an Already Obvious Way.

The Minutemen's seminal album *Double Nickels on the Dime* includes the song "The Big Foist," which opens with the lyrics, "A richer understanding of what's already understood." These lyrics are called to mind (my mind, at least) on occasions such as the Treasury Department's publication today of proposed regulations ("Proposed Regulations") that clarify the definition of "investment-type property" for purposes of complying with the arbitrage yield restriction and rebate requirements set forth in Section 148 of the Internal Revenue Code.

As a general matter, if proceeds of a bond issue are reasonably expected to be used (or are intentionally used) to acquire "investment property" that has a materially higher yield than the yield of the bond issue, then the bond issue is comprised of taxable arbitrage bonds, rather than tax-exempt bonds. Investment property includes, among other things, "investment-type property." The current regulations define investment-type property as any property "that is held principally as a passive vehicle for the production of income" and that is not a specifically defined type of investment property (i.e., securities, obligations, annuity contracts, and certain residential rental property for family units). The Proposed Regulations make clear that investment-type property:

> does not include real property or tangible personal property (for example, land, buildings, and equipment) that is used in furtherance of the public purposes for which the tax-exempt bonds are issued. For example, investment-type property does not include a courthouse financed with governmental bonds or an eligible exempt facility under [Internal Revenue Code] section 142, such as a public road, financed with private activity bonds.

This conclusion is obvious from the legislative history of Section 148, which Treasury cites in the preamble to the Proposed Regulations. It's also obvious from the canon of statutory and regulatory construction that a general item in a list must be read in light of the specific items that precede it. Although an obvious conclusion, Treasury is to be commended both for allowing issuers of tax-exempt bonds to rely on the Proposed Regulations before they become final and for using an Oxford

comma in the above-quoted parenthetical.[1]

If Treasury is inclined to publish proposed regulations to clarify that which is already clear, perhaps Treasury can provide guidance on whether tax-exempt bonds can be issued to advance refund taxable (but not tax-advantaged) bonds.

[1] Not using an Oxford comma? You should. You'd join the good company of my colleagues, Rob Lowe, and Neil deGrasse Tyson. Had I not used an Oxford comma, you could be left with the impression that I work with Messrs. Lowe and deGrasse Tyson; the Oxford comma makes clear that I do not. You're welcome.

By Michael Cullers on June 12, 2018

The Public Finance Tax Blog

Squire Patton Boggs

MSRB Compliance Corner - Summer, 2018

Read about charitable donations and MSRB Rule G-37, among other tips and info in the latest Compliance Corner.

Wells Fargo Struggles to Get Off the Municipal-Bond Blacklist.

The bank's sales scandal continues to weigh on underwriting gigs for cities, states

Some states and cities that do business with Wells Fargo & Co. continue to steer clear of the bank when selling municipal bonds to the public, the latest sign larger customers haven't forgiven its sales-practices scandal.

New York City's leaders have a prohibition on bond deals with Wells Fargo. California and Ohio both recently extended their own limitations on doing business with the bank. Chicago shunned Wells Fargo for a year and hasn't done a deal even after its ban expired.

Wells Fargo's ranking among underwriters by volume fell to eighth in this year's first quarter from third two years earlier, before the scandal, according to Thomson Reuters data.

"There's no question that the business bans that came up two years ago had an impact on our growth," said Phil Smith, head of Wells Fargo's government and institutional banking group, which includes municipal banking. But Mr. Smith said many clients are giving the bank the "go ahead to compete for business."

Underwriting municipal bonds is a small part of Wells Fargo's business, sitting within the bank's wholesale banking group. Wholesale banking makes up around half of Wells Fargo's profits. But the municipal-banking issues show the widespread impact of the sales-practices scandal, which centered on its business with retail customers.

Relationships with treasurers' offices around the country may be hard to repair.

“The court of public opinion still weighs heavily on elected officials,” said Richard Ciccarone, president and chief executive of Merritt Research Services LLC, a municipal-bond research firm. When an underwriter’s image is tarnished, he said “they can go into the penalty box for a period of time.”

The governments steering clear of Wells Fargo once produced a stream of fees for the bank, documents show. New York City and California issue billions of dollars in bonds annually, and fees can run to as much as $2 million per deal, documents show. The lead underwriter typically receives between 35% and 65% of the fee amount, according to industry practices.

States first pulled their business soon after the bank’s sales-practices scandal erupted in September 2016. The bank later said it opened as many as 3.5 million customer accounts without their knowledge or authorization. That fall, Chicago and at least four states approved temporary bans on certain business with the bank, such as underwriting and investing, according to officials and public records.

Mr. Smith said Wells Fargo has been meeting with officials in Chicago and that he hopes to win business there soon.

In March 2017, Wells Fargo received a downgrade on its Community Reinvestment Act rating. Several governments limit business with banks deemed less than “satisfactory.” New York City put its ban in place in May 2017. This past February, Wells Fargo was hit with a Federal Reserve asset cap for “widespread consumer abuses.”

The state and local government bans typically prohibited Wells Fargo from serving as lead underwriter and sometimes applied only to negotiated deals. Some extended to schools like the University of California and to airports including Midway and O’Hare in Chicago, public officials said.

“We still have some pockets where bans are being renewed or the worst part is, it’s just hard to hire us,” Mr. Smith said. “We keep competing where we can and continue to provide them with ideas.” He added that the new tax law has reduced overall bond issuance.

Saving money has at times trumped public officials’ qualms about Wells Fargo. The bank underwrote three bond deals in California, where laws require the use of the lowest bidder on competitive sales. Seattle continued to bank with Wells Fargo after no other firm showed interest in providing the city with depository services. Florida welcomed Wells Fargo, which repeatedly underbid competitors.

“My position on that has always been you ought to be making business decisions on economics not politics,” said Florida’s state bond director, Ben Watkins.

But Las Cruces, N.M., recently terminated Wells Fargo as the bank handling the city’s day-to-day banking needs, ending a roughly 15-year relationship. Ken Miyagishima, the mayor of Las Cruces, said the decision to switch to U.S. Bank came after residents at two council meetings expressed concerns about the bank’s practices.

“Never have I seen residents so inclined to come to a council meeting to discuss who we bank with,” Mr. Miyagishima said. “This obviously was something they felt very passionate about.”

The Wall Street Journal

By Heather Gillers and Emily Glazer

June 17, 2018 8:00 a.m. ET

— Gretchen Morgenson contributed to this article.

Rise in Single-Rated Municipal Bonds Spurs Investor Concerns.

A trend toward single-rated municipal bonds has accelerated this year, raising concern among investors who were accustomed to two or three rating agency opinions to support their purchasing decisions.

Single-rating transactions represent about a quarter of new sales by par value so far this year, a 17.5% increase from the rate in all of 2017, according to a report this month from independent research firm Municipal Market Analytics.

The trend, driven by the need for cost savings as underwriting spreads narrow, has been underway since the financial crisis. That in turn has heightened the competition to provide ratings, as a fourth agency — Kroll Bond Rating Agency — made inroads in serving muni issuers along with Moody's Investors Service (MCO), S&P Global Ratings, and Fitch Ratings.

"If rating agencies lower their standards to appeal to issuer 'rating shoppers,' they essentially risk diluting their reputation and relevance," Richard Ciccarone, chief executive officer and president of Merritt Research Services, said this week.

Perhaps the most concerning aspect of the trend, buyside experts said, is that issuers have an incentive to opt for the highest single rating, which cuts down on transaction costs, but can deny investors comprehensive credit research, disclosure, transparency, and surveillance that was the norm for decades. The trend toward single opinions also reduces issuers' accountability, the experts said.

"Since rating criteria are more transparent that ever, it is easier to pick a rating that might favor a borrower based on how it stacks up with agency criteria, pre-screening and existing ratings," Ciccarone said. "Having one rather than two or more ratings becomes a risk especially to less sophisticated investors if issuers are shopping for only the ratings that cast them in the best light."

According to MMA analysts Matt Fabian and Lisa Washburn, the single-rated market has increased to 25% — up from only 13.4% of the par issued that carried one rating back in 2007.

Dual and triple-rated transactions — those rated by Moody's, S&P, and Fitch — dropped by 4% year to date to 36.1% and 32.3%, respectively, the report showed.

Triple-rated, dual-rated, and non-rated transactions also shrank during the first five months of 2018 from 2017 levels, the report showed.

"We see little evidence that this trend will abate — at least in the near to medium term," the analysts wrote.

In aggregate, there were 1.94 ratings per dollar of par issued year to date in 2018, compared with 1.97 in 2017 and 2.29 in 2007, according to the MMA data.

Due to a changing market, issuers have to worry about keeping their fiscal houses in order, and

controlling costs is part of that equation, Ciccarone said. “Lower margins on underwriting and a greater urgency to hold down issuance costs puts more pressure on issuers considering whether two or more same grade ratings is worth the price.”

The trend toward single-rated deals raises the possibility of rating shopping, said David Litvack, head of tax-exempt research of U.S. Trust.

“Whenever I see a bond rated by only one agency, I have to ask myself, ‘Did the issuer do this to save on rating fees, or would the other agencies have rated this bond lower?’ ”

Other analysts said the impact will vary for different investors.

Mark Tenenhaus, director of research at RSW Investments, said while most buyers prefer two ratings, most retail investors do not distinguish about the number of ratings on a transaction, and don’t look askance at issues just because they are single-rated.

“It is no longer a stigma for quality credits,” he said.

In addition, seasoned issuers with one rating do not present an issue, as buy side firms rely on their own analytics, according to Tenenhaus.

“Buy side analysts can typically tell if an agency was dropped because of a lower historic rating or threat of one,” he said, adding that the larger investors are the best prepared for a continuation of the trend.

“While the rating agencies provide value with their reports, institutional buyers rely on their own assessments,” he said.

Ciccarone said there are probably fewer institutional investors that require two or more major agency ratings than there were years ago.

The need is diminished, he said, since “they exercise and tout the strength of their own research teams.

“Over the past 10 years, institutional investors have been building stronger research efforts on their own, including quantitative screen and credit scoring capabilities that reinforce and enhance their own ability to distinguish credit quality and defend those positions with clients — and even regulators,” Ciccarone said.

While institutional investors do have their own credit teams, that doesn’t alleviate all concerns, especially in the secondary market.

“If an issuer is an infrequent borrower and only rated by one agency, we are concerned that no one has looked at the credit in detail for several years,” said John Donaldson of Haverford Trust.

He said the firm passed on a recent offering for a municipality that had not issued bonds since 2012.

“The lack of transparency was compounded as the sole rating agency has a policy that the issuer was too small for them to assign an outlook,” Donaldson said. “That is when only one rating is a real issue for us.”

Some experts said the competition among rating agencies has intensified as Kroll made inroads.

“While some time ago Fitch was the new kid on the block, now there is a fourth agency at a time

when one-rating-only gains traction," Donaldson said.

Ciccarone agreed that not only Fitch, but KBRA has made more "inroads" in the rating sector lately and that has helped the trend of shopping for ratings "gain traction."

Other factors that can drive the market share of single-rated deals are sector and state issuance trends, MMA said.

S&P remained the lead rating agency in terms of market share, rating 74.1% of the year to date par issued, compared with 71.1% and 48.8% for Moody's and Fitch, respectively, based on Bloomberg data included in the firm's report.

While S&P also dominated single ratings with 55% of the par year-to-date, it was the only one of the three agencies that saw a decline in overall market share, from 77.1% in 2017.

The analysts said that was thanks to a surge in issuance of gas prepayment bonds, a sector primarily rated by Moody's and Fitch.

At the same time, however, S&P was the sole rater on New Jersey's $3.1 billion refunding of its tobacco securitization bonds earlier this year.

In addition, the other agencies got exposure to large deals where Moody's didn't provide a rating.

For instance, Chicago-related issuers and the state of Connecticut didn't seek a Moody's rating on several large 2018 sales, the MMA report noted.

"Moody's loss was Kroll's gain as the newest agency rated the majority of par associated with these transactions," the MMA analysts said.

Overall the analysts revealed both an upside and downside in the trend of single-rated transactions.

"Curtailing costs related to borrowing is even more important in the current environment in which expense growth is generally outpacing revenue growth for state and local governments," they wrote.

Institutions may see less impact, the analyst predicted.

"Fewer ratings means a reduced risk that rating methodology and opinion changes will crop up and undermine pricing," according to Fabian and Washburn. When this does occur, they said the changes "could be more impactful since there are fewer alternate public opinions."

"In theory, this reduced rating agency penetration could mean greater investor influence on pricing, although we suspect that this will not be the case in the current market where demand outstrips supply," they added.

On the downside, the analysts believe there are pitfalls as well.

"Fewer constraints on borrowing reduces fiscal discipline and may encourage ill-advised borrowings for deficits, pensions, OPEBs, and riskier economic development projects versus budget balancing by raising revenues or reducing expenditures."

For the buyside, MMA said the non-professional investor is the most disadvantaged by the trend toward fewer, higher ratings.

"This group is generally more inclined to place greater weight on ratings and are less likely to

handicap the positive effect of issuer-selected opinions," the analysts wrote.

Rating agencies' participation in new transactions, whether through single or multiple ratings, is still seen as a vital part of the municipal market, Ciccarone said.

"Independent and credible rating agencies still remain critical players in an active, efficient, and transparent municipal trading market, as well as essential to proper bond pricing." Ciccarone said. "It's a challenging environment for rating agencies."

By Christine Albano

BY SOURCEMEDIA | MUNICIPAL | 06/12/18 07:05 PM EDT

These States Spend the Most Public Funds Per Person.

If there's one thing every taxpayer wants to know, it's how their money is being spent. In the case of the Trump Cabinet, the answer is fairly simple: luxury travel, golf, and (in Scott Pruitt's case) a soundproof privacy booth with pretty fountain pens.

However, not every state official can live quite so lavishly on the taxpayer's dime. In high-tax states like Maine and Ohio, residents have a right to see how much is going to education, health care, and other essentials.

The U.S. Census Bureau can help here. With the most recent data (published May 2018) at our disposal, we can see which states spend the most on their residents — and how. Here are the 15 state governments that spend the most per capita.

Continue reading.

Culture Cheat Sheet

Eric Schaal

June 14, 2018

Know This Fact Before You Buy A Muni Bond.

When looking for municipal bonds to buy, there are numerous details to study before pointing and clicking to buy or telling one of the few live brokers still around to pull the trigger. Let's go through the steps with a recent example.

Pulaski Community School District in Wisconsin came to market with a new issue. The bonds offered were 3% due March 1, 2022, CUSIP: 745763KU5, rated Aa3 by Moody's with an extended settlement date of July 2, 2018.

That Pulaski is in Wisconsin is a good thing. Also the district is just 18 miles from Green Bay—also good. Its tax base is growing, there's low unemployment, the area's economy is stable, there's a surplus in the general fund, more reserves will be added in 2018 and 2019, there's modest debt, the

main source of revenues is property taxes and state aid. All are good signs.

What isn't so good is that there are just 3,740 students in the Village of Pulaski and the issue size is just a meager $2.3 million with a maturity size of just $100,000. That's the killer.

You can have all the fundamentals, all the statistics and ratings align with the municipal universe. But if you don't have the liquidity, then nothing else matters.

Just think if you had purchased $25,000 of this $100,000 maturity—and if you ever needed to sell it, who would buy it? Probably another unsuspecting retail investor who was unaware that this was a tiny issue with a microscopic maturity size.

I'm not saying that there wouldn't be any bids for this bond. I am saying that if the bid is from someone knowledgeable, then they will want to get paid significantly more yield for the lack of liquidity.

Here's another example: Dallas-Fort Worth Texas International Airport Revenue, 4% due November 11, 2027, CUSIP: 235036XG0, rated A1, A+, A+. The issue size is $274.9 million, maturity size is $4.51 million.

The fundamentals are all good as follows: This is the primary airport for the Dallas-Fort Worth area, it is the fourth busiest airport in the world by aircraft movements and twelfth busiest by passenger traffic. Debt service coverage in 2017 was 1.46 times with 714 days of cash on hand.

The size of your bond maturity is important. It potentially provides liquidity. But so does demand for quality bonds such as this. If we—as money managers—or you ever decide to sell these bonds, they'd be snapped up in a minute. Dealers can easily attach a bid, confident that this is a large issuer. The Dallas-Fort Worth Airport is a matcher for most institutional portfolios. Matchers are matching names portfolio managers already own. They don't necessarily need the same coupon or maturity but they want the same issuer.

Institutional holders in the various series (maturities) include Teachers Insurance, Sun life, T. Rowe Price, Hartford Financial, Horace Mann…you get the idea. In the case of muni issuance—bigger is better.

Forbes

by Marilyn Cohen

June 12, 2018

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

A Prescription for P3s: Cities Can Drive an Infrastructure Reboot.

Local leadership and P3s will transform crumbling infrastructure and build the cities of the future, according to mayors and capital investors.

"We need an infrastructure reboot," said Steven Demetriou, chairman and chief executive officer of Jacobs Engineering Group, as he opened an afternoon plenary about infrastructure and public

private partnerships (P3s) at the U.S. Conference of Mayors (USCM) 86th annual meeting.

Los Angeles Eric Garcetti and chair of the USCM Infrastructure Task Force, who was joined by Dallas Mayor Mike Rawlings, Emmitt Smith, chairman of E Smith Advisors and E Smith Legcy Holdings, and Joe Aiello, chair of the board of the Massachusetts Bay Transportation Authority (MBTA), said Washington, D.C. has stalled on infrastructure since January 2017. But cities have passed $230 billion since that time.

Garcetti addressed how the city's Office of Extraordinary Innovation at Metro has pushed the private sector to develop solutions instead of the city putting out an RFP for a dictated solution. Being entrepreneurial, and not prescriptive, about solving problems creates P3s that propel projects forward, he said.

Continue reading.

efficientgov.com

by Andrea Fox

June 15, 2018

Webinar: Emerging Metrics for Physical Climate Risks Disclosures.

This Four Twenty Seven webinar on emerging metrics and best practices for physical climate risks and opportunities disclosures covers recent developments in TCFD and Article 173 reporting, challenges to assessing climate risk exposure, strategies for investors to incorporate this information into decision-making and approaches to build corporate resilience.

Speakers

1. Emilie Mazzacurati, Founder and CEO, presents key findings from the EBRD-GCECA report: *Advancing TCFD guidance on physical climate risks* and opportunities and emerging best practices in physical risk reporting.
2. Nik Steinberg, Director of Analytics, shares challenges and approaches for using climate data for business decisions.
3. Frank Freitas, Chief Development Officer, discusses corporate engagement opportunities for investors and approaches to integrating climate change into investment strategies.
4. Yoon Kim, Director of Advisory Services, shares examples of innovation in corporate resilience-building.

Click here to watch the webinar.

Seattle Officials Repeal Tax That Upset Amazon.

Seattle officials scuttled a corporate tax on Tuesday that they had wholeheartedly endorsed just a month ago, delivering a win for the measure's biggest opponent — Amazon — and offering a warning to cities bidding for the retailer's second headquarters that the company would go to the limit to get its way.

The tax would have raised about $50 million a year to help the homeless and fund affordable housing projects. As Seattle has boomed over the last decade, in large part because of Amazon, which is based there, rents have soared and some residents have suffered. The city's homeless population is the third largest in the country, after New York and Los Angeles.

Taxing successful companies to help alleviate some of the problems that their success caused was such a compelling idea that it was quickly taken up in Silicon Valley itself. California cities like Cupertino, East Palo Alto, Mountain View and San Francisco have recently explored various forms of a head tax, under which large employers in each town would be charged a fee per employee.

But in Seattle, the notion has proved extraordinarily contentious, culminating in the abrupt reversal on Tuesday.

The Seattle City Council repealed the tax in a 7-to-2 vote that was accompanied by large doses of acrimony and despair. The crowd was standing room only, with some carrying posters that said "Tax Amazon Not Working People" while others supported repeal. The comment period was extended by the council members in a fruitless attempt to try to accommodate everyone. At least one Amazon employee spoke in favor of the tax, saying, "I want all kinds of people in this city, not just rich people."

Less than a month ago, the tax had passed unanimously. It was signed into law on May 16 by Jenny A. Durkan, Seattle's mayor, who said the money would "move people off the street and into safer places" and "clean up the garbage and needles that are in our parks and in our communities," as well as provide resources including job training and health services.

"I know we can be a city that continues to invent the future and come together to build a more affordable, inclusive and just future," she said.

Within days, that vision was in tatters. Amazon, which had already succeeded in watering down the original tax after halting expansion plans in protest, joined other Seattle-based corporate interests such as Starbucks, the Microsoft co-founder Paul Allen's investment firm Vulcan and local food and grocery firms. All showed they would fight the law, and at least some residents took their side.

The opponents funded No Tax on Jobs, an effort aimed at getting enough signatures to put a repeal on the November ballot. It became obvious over the weekend that the measure would succeed in coming before voters, leading Ms. Durkan and seven council members to issue a statement saying, "We heard you."

The politicians had no stomach for a protracted battle over jobs, even at a moment when the area's unemployment rate is only 3.1 percent. "It is clear that the ordinance will lead to a prolonged, expensive political fight over the next five months that will do nothing to tackle our urgent housing and homelessness crisis," they said.

An Amazon spokesman called the vote "the right decision." A Starbucks spokesman said, "We welcome this move."

Mike O'Brien, a council member, said in an interview before the vote, "I have a couple of bad choices and I'm picking the less bad," meaning a vote to repeal.

He was puzzled by the intensity and the virulence of the opposition. "This tax is not a perfect tool, but I think it's a good one," he said. "When I'm out there talking to the community, I hear they've been convinced by Amazon and other business leaders that this would be bad."

Teresa Mosqueda, one of the two council members opposing the repeal, said there was no backup plan for dealing with the homeless situation.

“We don’t have a path forward,” she said. “I share the frustration with all the City Council that we have been out-messaged.”

Kshama Sawant, the other opponent of repeal on the council, called the vote “both capitulation and betrayal.”

“They are choosing to base themselves on making Amazon executives happy,” she said. That “is the biggest lesson that should reverberate to other cities as well.”

The city’s initial plan was for the tax to collect about $500 per employee a year. Amazon responded in early May by stopping its expansion in the city “pending the outcome of the head tax vote.” That was sufficient to get the tax knocked down to about $275 per employee and scaled back in other ways. The tax was limited to companies with at least $20 million in revenue a year.

As the largest private employer in the city, with more than 45,000 local workers, Amazon would have had to pay initially about $12 million a year — a relative pittance for a company with revenue last year of $178 billion and whose chief executive, Jeff Bezos, the richest man in the world, said recently that the only thing he could think of to spend his fortune on was space travel.

Amazon officials have said the company is not against helping the homeless. But it thinks Seattle would just waste the money it raised. The city, the company believes, “has a spending efficiency problem.”

The retailer selected 20 finalists in January as possible sites for its new second headquarters, a process that has generated an enormous amount of attention and interest, even by Amazon’s standards. It has indicated that the community that won the right to as many as 50,000 new jobs would have to be an accommodating partner. Some of the finalists have offered extraordinary tax breaks.

In recent months, however, there has been the beginning of a resistance to the notion that what is good for Amazon is inevitably good for its host.

“From coast to coast, people lose their homes and get displaced from their communities even as the biggest corporations earn record profits and development booms,” said Sarah Johnson, director of Local Progress, a national association of progressive elected municipal officials. “Elected officials across the country are paying close attention to how Amazon and other corporations have responded to Seattle’s efforts to confront their affordable housing and homelessness crisis.”

Especially, it seems, in Silicon Valley itself, where both problems run deep.

Last week, the Mountain View City Council voted unanimously to proceed with plans to put a head-count tax on the ballot in November. Mountain View is home to Google, among other tech companies. The tax would raise about $6 million, half of it from Google, and be used for transit projects.

“We have needs we need to meet,” said Lenny Siegel, the city’s mayor. “And we look to see where there’s the most money. Most of our companies have money. We’re trying to find a way for them to invest it that helps them and the community.”

The New York Times

By David Streitfeld and Claire Ballentine

June 12, 2018

Connecticut Wants to Borrow $500 Million. In Return, It Promises Thrift.

In rare move in municipal debt world, state pledges to curb spending, cap future borrowing and funnel excess revenues into reserve fund

Connecticut is making a new promise to bondholders in exchange for $500 million: self-discipline.

The cash-strapped U.S. state is preparing to issue new debt that requires Connecticut to limit its spending, cap future borrowing and funnel excess revenues into a reserve fund. The $500 million bond issue priced Tuesday and will be delivered to investors June 20.

It is a rare step in the world of municipal debt. No other state has attached such fiscal austerity measures to an outstanding bond issue, according to analysts at S&P Global Ratings. The restrictions will stay in place for the next five years.

The unusual offer has the potential to lower borrowing costs for Connecticut in the near term and enforce fiscal discipline following a bitter state budget battle in 2017. The covenants helped win enough support to end the stalemate.

But the restrictions could also hamstring the state in the event of a future crisis. The only way to suspend certain covenants is with a three-fifths vote of the legislature and a declaration of fiscal emergency from the governor. The current governor, Dannel Malloy, is scheduled to leave office in January.

“If it goes badly the cost might be really high,” said Kim Rueben, senior fellow at the Urban Institute

Connecticut’s idea reinforces the predicament facing many U.S. states as they struggle to pay for core services like education and infrastructure at a time of soaring costs for debt, retirements and health care.

Pensions, retiree health insurance and Medicaid together consume about one out of every five tax dollars collected by state and local governments. Estimates of how much money they still need to pay for all future pension obligations vary from $1.6 trillion to $4 trillion. In Connecticut that shortfall is $34.8 billion, according to S&P.

A legislative standoff over how to balance pensions, debt and other liabilities with day-to-day operating costs delayed Connecticut’s budget last summer and froze aid to municipalities. The mayor of Hartford, the state’s capital, warned that he would seek bankruptcy protection if the city didn’t receive additional aid from the state.

Lawmakers and Mr. Malloy reached a deal in October that helped Hartford avoid bankruptcy. It included the new series of commitments attached to any bond offering over the next two years.

Spending has to be limited to 98% to 100% of revenues depending on the year and it can’t grow faster than inflation. The state also has to limit new borrowing to no more than $2 billion a year and put excess revenues into a reserve fund. More reserves could improve the state’s bond rating,

ratings firm S&P Global said in a statement.

Connecticut has repeatedly overshot revenue predictions, leading to several contentious budget fights. But in April, state budget officials projected a $1.34 billion income-tax revenue surge above what was originally expected. About half of the windfall came from one-time payments from hedge-fund managers racing to beat a federal tax deadline on some past offshore earnings, according to the state budget office. The numbers also could have been boosted by residents cashing in stock in late 2017 to pay taxes on capital gains to take full advantage of the state and local tax deduction, which the new federal tax law capped.

The state used that excess revenue to fill a $717.5 million budget hole and add $556.4 million to its reserve fund.

The limits on borrowing and spending helped win support for the budget compromise at the final hour, said Connecticut House Speaker Joe Aresimowicz.

“We have faced now six or some could argue eight consecutive years of a very difficult budget,” Mr. Aresimowicz said. “We want to take bold steps forward to ensure that if it’s all of us back in the same room next year or whoever it may be, they’re not facing the same situation that has allowed legislators to punt year after year on the difficult decisions.”

Enshrining the rule in bond documents was quicker and easier than a constitutional amendment that requires a popular vote, said Democratic Sen. John Fonfara. Mr. Fonfara championed a provision of the covenant limiting the budget’s reliance on certain income-tax collections.

“How do you bind future legislatures? The covenant was the means by which we intend to do this,” Mr. Fonfara said.

But violating any of these covenants would amount to a default on the bonds and could prompt investor lawsuits. The new restrictions could also make it more difficult to act quickly if a new emergency arises. Lawmakers later reduced the length of the fiscal austerity covenants to five years from 10 years as a way of adding more flexibility.

Other states are watching Connecticut to see how its experiment fares and whether borrowing costs drop, analysts and government finance officers said. Price data late Tuesday showed the state paying less to borrow, relative to market rates, than it had in March, according to the Connecticut State Treasurer’s Office.

“It’s sort of putting your money where your mouth is by embedding it in the bond documents,” said Florida bond director Ben Watkins. “It’s a firmer commitment than just talk.”

The Wall Street Journal

By Heather Gillers

Updated June 5, 2018 6:32 p.m. ET

—Joseph De Avila contributed to this article.

Fitch: U.S. Public Power Peer Review Highlights Capex, Coverage Trends.

Fitch Ratings-New York-15 June 2018: U.S. public power utilities are generally seeing a continuation of strong financial trends, with the exception of weaker debt service coverage, according to Fitch Ratings' 2018 U.S. Public Power Peer Review.

"While the latest peer review shows that lower ratios of capital investment to depreciation, as well as the retention and redeployment of excess cash flow, are improving utility balance sheets, coverage medians broadly weakened in 2017," says Dennis Pidherny, Managing Director, U.S. Public Finance. The weaker coverage metrics were reported against a backdrop of rising fuel costs and interest rates.

Trends highlighted in the 2018 peer review include:

–Debt service coverage weakened for wholesale and retail systems across nearly all rating categories, reversing an earlier trend.

–The capex-to-depreciation trend continued downward for wholesale systems, with the median for 'A' rated systems falling below 100% for the second year in a row. Median's for retail systems were mixed, but remained at levels lower than observed earlier this decade.

–Cash on hand medians for 'A' rated retail and wholesale systems continued to improve and are at the highest levels observed this decade. Although medians for 'AA' rated retail systems declined again, the level is well above historical medians. This trend and the lower capital investment rates likely reflect slower demand growth and the continued deferral of certain capex.

–Leverage metrics remained remarkably stable for both retail and wholesale systems across rating categories.

Fitch's U.S. Public Power Peer Review is a point-in-time assessment of Fitch-rated public power utilities. It assists market participants in making their own comparisons among the recent financial performance of wholesale and retail public power systems, and rural electric cooperatives. It is accompanied by the 2018 Fitch Analytical Comparative Tool (FACT) for Public Power, an interactive tool that provides enhanced trend analysis and peer comparison tables.

The full report, "2018 U.S. Public Power Peer Review," is available at www.fitchratings.com.

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Fitch U.S. Public Power Criteria Revision.

Fitch Ratings finalized its new criteria for U.S. public power systems, the changes of which are detailed in a new report and companion piece. These revisions will facilitate a more forward-looking, predictable approach to ratings and better highlight differences among credits in the same category.

Anticipated Rating Impact Limited
Fitch expects criteria-driven rating changes to affect less than 10% of the portfolio, with a roughly equal mix of upgrades and downgrades. Rating changes will most likely reflect the criteria's heightened emphasis on leverage through the cycle, with upgrades reflecting relatively low leverage, and downgrades resulting from the recognition of higher leverage and elevated operating risk

Rating Changes More Predictable
In a sector characterized by low default risk, insight into an issuer's vulnerability to adverse conditions and credit deterioration is of paramount importance. The revised criteria more clearly define and communicate Fitch's expectations of the range of performance within which a rating is expected to be stable, versus conditions which could prompt a rating change.

New Through-the-Cycle Tools
Fitch is incorporating forward-looking tools into the rating process. Revenue sensitivity and scenario analysis tools work together to consider both the expected 'base case' financial performance within a typical business cycle and the 'rating case' potential financial performance given a moderate downturn. Known as FAST, this tool highlights how cycles affect issuers differently, and will be publicly available during the criteria comment period.

Experienced Analytical Judgment
Fitch's ratings will continue to be based on the judgment of a team of experienced analysts rather than model-based outcomes. Given the diverse characteristics and wide range of U.S. public power credits, Fitch believes there are clear limits to the degree to which data points and formulas can define them.

Clearer Communication of Credit Opinions
The goal of the revised criteria is to communicate Fitch's credit analysis more clearly, presenting well-defined opinions about both rating conclusions and the underlying fundamentals. This will provide greater differentiation among credits, increased insight into what could trigger a rating change, and facilitate comparison of Fitch's credit opinions with others in the marketplace.

Focused Key Rating Factors
Three focused key rating factors replace the traditional inventory of credit considerations to highlight the role that each plays in determining credit quality. The information that Fitch reviews is largely unchanged; however, the way this information is incorporated into integrated and transparent analysis is much improved.

Tailored Versus Generic Expectations
As part of an integrated analytical approach, expectations are linked to issuer-specific risk factors. For example, rather than having a blanket level of liquidity or leverage judged to be consistent with a given rating category, Fitch considers the issuer's fundamental financial flexibility and sensitivity to downturns against an issuer-specific assessment of revenue defensibility and operating cost flexibility.

Fitch: U.S. State Spending Pressure Will Rise on Higher Healthcare.

Fitch Ratings-New York-13 June 2018: Rising healthcare costs and retirement rates will increase budgetary pressure on US state and local governments, Fitch Ratings says. Our scenario analysis would see the share of state and local budgets that are allocated to healthcare and pensions rise by 800bps by 2025. Lower-rated states and local governments have lower financial flexibilities, making their budgets more sensitive to these pressures.

Fitch developed a simplified, 10-year scenario analysis of aggregate state and local budget allocations. This scenario analysis assumes healthcare and pension expenses grow rapidly and no offsetting policy is implemented. By 2025 the increased share of state and local budgets spent on healthcare and pensions would be met with a decline in pro-rate spending on education, transportation, public safety, housing and environmental programs.

These trends could affect the credits of lower-rated states and local issuers over the long term, as they begin the 10-year scenario time frame with lower fiscal flexibility and above average spending pressures. A few state and local issuers also have high tax rates. These factors mean state and local governments may cut education and transportation spending, as healthcare and pension expenses rise. Higher tax rates may also make raising revenue more politically challenging.

Over the long run these trends could amplify state and local exposure to demographic and market shifts. Marginal declines in population, personal income and investment returns could have a more substantial effect amid lower budgetary flexibility. Local governments are most vulnerable to declines in property values.

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Fitch: China Slowdown Would Pressure Some U.S. States.

Fitch Ratings-New York-15 June 2018: If a slowdown in China's economy led to a decline in US exports, several states with substantial agriculture exports and one with aircraft exports would likely see localized declines in economic activity and, thus, tax revenues, says Fitch Ratings. However, we would expect states with a high volume of imports from China would not be affected.

Fitch's economics team recently conducted an analysis, China: Deleveraging Would Mean Slower Growth, assessing the macroeconomic effects on China from a corporate develeraging scenario. While not our base case, the scenario suggests business investment growth would need to fall by 5% per year, relative to the baseline, to stabilize the corporate debt/GDP ratio by 2022. This would reduce GDP growth by just over 1% per year, taking China's real GDP growth rate to around 4.5%.

Such a slowdown would have a limited effect on overall US GDP but would likely affect US export growth to China, with certain parts of the agricultural sector particularly exposed. Iowa's agricultural industry is a case in point. Approximately two thirds of the state's soybean exports, worth $3.1 billion in 2016, were sold to China. The soybean total is approximately 1% of gross state product (GSP) and approximately 11.9% of the state's agriculture GSP.

Several other US states are also major exporters of soybeans. Illinois' soybean exports accounted for approximately $2 billion of Illinois' $5.2 billion in 2016 exports to China, while Minnesota's soybean exports are about half this dollar amount. However, Illinois' and Minnesota's state economies are large and diverse and agricultural exports account for a smaller portion of their GSP than is true for Iowa.

A wide range of exported vehicles and vehicle parts could also be reduced by a slowdown in China and Washington state would be the most exposed. The state's exports to China were 2.2% of state GDP in 2016, or $11.7 billion, and heavily concentrated with aerospace products and parts accounting for $8.8 billion of this amount.

Conversely, imports from China to the US might not be as severely affected by a Chinese slowdown as purchases of US export goods by Chinese businesses and consumers. As such, states with large Chinese imports should not be directly affected by a Chinese deleveraging scenario.

If a decline in exports was to persist into the medium term, we believe such a decline could also lower business activity and sales and income taxes derived from both business activity and employment in some US states.

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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.

We Forgot to Mail the Check and Other Municipal-Bond Excuses.

- **Bond issuers forgot to pay 119 times since January 2017**
- **In most cases, payment was made to holders within a week**

It's a promise almost as old as debt itself: The check's in the mail.

People forget to pay a bill now and then. But it happens with surprising regularity by states and cities that owe money to investors in the municipal-bond market, one of the world's safest havens.

A small Wisconsin school district was late because it didn't know where to send a check. New York's capital city cited an accounting error when it shortchanged its monthly debt payment. Even Pennsylvania was delinquent. They had plenty of company. Municipalities inadvertently missed or were late to make payments to investors at least 119 times since the beginning of last year, according to public records.

These aren't monetary defaults – where an issuer is unable to pay — they're mistakes, quickly rectified and often accompanied by intense embarrassment. It's usually because of a clerical error, staffing changes or a typo in an email or trustee address. In most cases payments were made within a week without penalty, but the steady rate of lapses raises false alarms and creates headaches for analysts on Wall Street paid to gauge real — not phantom — risks in bondholder portfolios.

"There is typically one or two a week. It's extremely common," said Matt Fabian, partner at Municipal Market Analytics. "It happens constantly. When you're dealing with small, unsophisticated governments that's what happens."

No Paperwork

When a school district of Augusta, Wisconsin, missed a payment in September, red-bolded letters on the bottom of the disclosure document said that the previous financial manager retired and, according to the new manager, there "was no paperwork to show me who to make the check out to or where to send the payment."

The one-square mile Village of Oxford, Michigan, had personnel turnover last summer "and the ship was without a captain for a while," said Joseph Madore, village manager, causing the town to make its payment 10-days late. "They let the manager go in March and the clerk retired in June, and that was everyone who knew anything about it. They were scrambling."

The forgetfulness isn't limited to small one-man shops in rural America. Mississippi missed interest and principal payments on a call option due to a "clerical error" last June. Albany, New York paid $30,000 less than what the debt service required when officials accidentally sent $565,106.25 to the Depository Trust Company instead of $595,106.25.

Boston officials “inadvertently neglected” to transfer $6,940.63 to their paying agent although it was prepared in advance. Due to an “oversight” the funds were distributed six days late, according to the delinquency notice. Pennsylvania had a late payment on its Build America Bonds in 2017, a misstep Fabian said was noteworthy because mistakes by large, state-level issuers are unusual.

Such bureaucratic blunders aren’t limited to simply forgetting to pay the bills. A clerk in Detroit once lost a $1 million check until it was found in a city hall desk drawer a month later. There was, of course, the worker in Hawaii who accidentally panicked the island-state by sending out a false alert of an incoming ballistic missile.

Debt Collector

When Joe Citizen fails to pay his credit card bill, he racks up steep penalties, can see his credit score plummet and may find himself in the sights of a debt collector. That’s not the case with local governments.

Usually it doesn’t cost the town anything, as long as the late bill gets paid quickly. There isn’t any overarching rule or regulation that gives issuers a grace-period if they are late making a payment. It’s a case-by-case basis described in the contract between the issuer and trustee.

One small town learned the hard way not to make the same mistake twice. Maine, New York, missed two payments in the last year. S&P Global Ratings on Thursday put the town of 5,200 on a negative outlook, saying that if it happens again it could face a multi-notch downgrade to its credit score.

These missed and late payments usually are not concerning if there was a reasonable reason, such as a technical glitch or bad weather, said John Bonnell, a portfolio manager at USAA who oversees $4.2 billion in municipals from San Antonio, Texas. “What it does raise is what kind of procedures and controls are in place?” he said.

Some towns take that notion to heart and turn the misstep into a learning experience. Jamesville Fire District in New York revised its payment procedures to include additional district trustees in the payment process as an safeguard. Back in the village of Oxford, officials sat down and drafted a schedule of all outstanding bond issues and their payment dates after it paid ten days late in July.

“It’s not going to happen here anymore, not while I’m here,” said Oxford’s Madore. “That’s for sure.”

Bloomberg

By Danielle Moran

June 15, 2018

— With assistance by Amanda Albright

Skittish Muni-Bond Investors Are the Worst at Timing the Market.

- **Individual returns on funds lag more than any other sector**
- **Morningstar study reinforces susceptibility to ‘headline risk’**

The municipal-bond market is dominated by individual investors, and it turns out they’re not nearly as good as the pros.

Over the past decade, individuals earned an average of about 1.26 percentage point less annually on their investments in open-end state and local government bond funds than the funds themselves, according to a study released by Morningstar Inc., which took account of what investors make after shifting their money in and out of the market. That gap was the biggest among the eight asset classes the research company examined.

Even though state and local government debt is one of the world's safest investments, buyers are still prone to so-called headline risk, or bad news stories that undermine the market's perception as a haven and cause investors to sell when they should stay put.

That happened in 2010, when banking analyst Meredith Whitney triggered a selloff by predicting that recession-battered governments would default on "hundreds of billions of dollars" of bonds. That forecast proved widely off the mark, and in 2011 municipals returned 11 percent. They haven't had a better year since.

Puerto Rico's debt crisis — which was unique to the Caribbean territory — also drove investors away from municipal securities at the wrong time, according to Russel Kinnel, Morningstar's director of manager research.

"You had the Meredith Whitney '60 Minutes' interview, predicting mass bankruptcies in Muniland or mass defaults, and that scared the hell out of people even though it was a ridiculous prediction," said Kinnel. "Then you had Puerto Rico, which was real. It's just that in the case of Puerto Rico, from a fund perspective, it was not a big deal because most of the good funds had very little or nothing in it to begin with."

The study estimates what individuals earned after shifting money in and out of their funds and then compares it with the performance of the funds overall. It found that the asset weighted return for individuals in open-ended funds was 2.23 percent annually for the 10-year period ending March 31, compared with a 3.49 percent average return for muni bond funds.

Since municipal bonds don't trade heavily, spikes in inflows or outflows can have a larger impact on prices than in other markets and trigger a self-reinforcing cycle: A wave of selling driven by bad news can cause a second exodus when investors see their subsequent returns, Kinnel said.

"For skittish investors, it doesn't take much," he said, adding that fund companies and planners need to a do a better job reassuring investors.

Municipal bonds are heavily weighted toward longer maturities, making them more sensitive to changes in interest rates. While investors have been putting money into the funds recently despite the Federal Reserve's rate increases, they yanked $65 billion from the vehicles between June 2013 and January 2014 after then-Fed Chair Ben Bernanke jarred bond buyers with plans to scale back asset purchases, an event known as the "Taper Tantrum."

In addition, municipal-bond funds are typically sold based on their yields. Higher-yielding funds that buy riskier bonds may get hit harder in an economic downturn, Kinnel said.

Morningstar's annual study, titled "Mind the Gap," measures the performance of the average dollar invested in a fund and estimates the impact investor behavior had on investment outcomes.

To calculate fund investor returns, Morningstar adjusts official returns by using monthly flows in and out of a fund and asset-weights the returns to get an average for an asset group. In all asset classes overall, the average open-end investor lagged behind the average fund by 0.26 percent.

“The basic idea is we know people aren’t necessarily there for the whole five or 10 year period,” Kinnel said. “They move in and out and want to take a look at how that timing works.”

To be sure, the goal for investors is to get a good return in absolute terms. They likely don’t look at the gap between their own returns and those of the funds in which they invest.

“I could have a small gap on a really bad fund,” Kinnel said.

Bloomberg Markets

By Martin Z Braun

June 15, 2018, 6:18 AM PDT

Breaking Up California Would Throw the Muni-Market Into Turmoil.

- **California has $74 billion of long-term debt outstanding**
- **California’s debt would be distributed among the three states**

If California voters decide to split the state in three — as billionaire Tim Draper has proposed — it would roil the $3.8 trillion municipal-bond market.

The venture capitalist’s initiative to break California into three states qualified for the November ballot, election officials announced late Tuesday. Such a crack-up has long been a fantasy for some wealthy coastal Democrats politically out of sync with inland Republicans.

If approved by the voters and the U.S. Congress, the arrangement would hit the municipal market hard. That’s because California, which has $74 billion of long-term debt outstanding, is the largest U.S. seller of bonds financing state and local government operations.

Under Draper’s measure, California’s debt would be distributed among the three states based on the population. But investors won’t get a say in that.

Bloomberg Markets

By Romy Varghese

June 13, 2018, 10:46 AM PDT

Puerto Rico Asks Buyers of Rickety Power System to Rewrite Rules.

- **After Maria, investors get blank slate to rebuild and profit**
- **Almost 10,000 customers still lack electricity months later**

Now that Puerto Rico’s massive and moribund public power utility is almost back from the dead, Wall Street is weighing what its parts might be worth.

The bankrupt U.S. commonwealth’s investment bankers last week started sounding out suitors for the eight-decade-old monopoly known as Prepa, whose rickety infrastructure was almost erased by

Hurricane Maria in 2017. The halting efforts to repair the damage and improve the antiquated grid have been the central obstacle in recovery. Now, the government is so eager to find a solution that it is even asking companies that might privatize the system how they would prefer it to be regulated.

But it wasn't immediately clear who would want a utility business on a broke island whose population has been increasingly fleeing to the mainland. Meanwhile, residents — some still in the dark — worried that a deal would enrich mainland profiteers at their expense.

"We are tired of people coming here to get rich and take advantage of us," said Melissa Diaz, 48, a homemaker and mother of one who lives in San Juan.

Nowhere But Up

Proponents, including Governor Ricardo Rossello, say service and pricing can only improve if a company takes the utility off its hands. The authority for decades has been a honey pot for politicians of all parties and a font of patronage. Its dated infrastructure relies on shipped-in oil, a notoriously expensive fuel. But the commonwealth, which owes creditors and pensioners around $120 billion, is in no position to shoulder upgrades on its own. Just Friday, the parties in the painful bankruptcy appeared to have a tentative deal on the central question of who can claim sales-tax revenue. But dozens of other matters remain pending, and no one knows how much Puerto Rico will owe, much less when it will be able to raise money again in the bond market.

So while the power system's status quo appears untenable, even with hurricane aid pouring in, nobody knows what the energy future will look like in private hands — or exactly what oversight new owners would face. Indeed, the government is portraying the market as a blank slate. It has said that its base scenario would include selling generation assets and retaining transmission and distribution holdings, while transferring those operations to a private concessionaire.

Divide and Profit

AES Corp. Chief Executive Andres Gluski said in an interview last week in San Juan that he's considering a proposal. He declined to give details, but said he's already floated ideas to the government. He said the commonwealth should divide its system into eight microgrids that are more resistant to a whole-island collapse like the one after Maria.

"We want to continue contributing to the future of Puerto Rico," said Gluski, whose company already runs a coal-fired plant and a solar plant on the island.

The commonwealth is also open to alternatives it hasn't yet considered. In a June 4 letter, its bankers from Citigroup Inc. and Rothschild & Co. asked interested parties to submit in writing a description of the circumstances in which they would be most willing to bid.

Your Call

One section of the questionnaire asked about companies' preferred regulatory environment and the role they envisioned for the power authority, the Puerto Rico Energy Commission, a four-year-old oversight body whose role is likely to evolve as private capital arrives. For instance:

"Please present your views regarding the structure and authority of the Puerto Rico Energy Commission ('PREC'). Please be as specific as possible including naming the features you consider important."

And later:

“What, in addition to standard items … should the regulator have authority to approve? Please provide an explanation for your answer.”

While the elected government and its partners will have the ultimate say, the documentation suggests a rare opportunity for companies to influence every aspect of their work environment — for better or for worse.

“I don’t know that asking the firms how they’d like to be regulated is the recipe for good regulation,” said Manuel Teodoro, a professor of political science at Texas A&M University who has studied water-utility privatization in the U.S. He said there’s nothing inherently wrong with seeking out different points of view, as long as the private sector isn’t the only one that gets heard.

Solid Partner
Of course, the answers to the questionnaire might vary with the assumptions about the eventual structure of the deal. Under the base scenario — in which Puerto Rico would retain ownership of the transmission and distribution business — the question would really be about how to regulate the government entity.

Under such arrangements, privately run generation companies would have contracts with the commonwealth, as would the operator of the state-owned transmission division.

“You’d want to make sure that, if I’m going to have a contract to operate this utility, that the utility can live up to its obligations,” said Paul Patterson, who covers utilities, not including Prepa, as an analyst for Glenrock Associates.

Pricey Power

Teodoro said privatization is typically associated with improvements in service, while public utilities generally have the edge on lower prices. But because Puerto Rico’s infrastructure is so inefficient and its bureaucracy so unwieldy, its electricity prices are already well above private mainland rates — a burden on the 44 percent of island residents who can’t afford basic necessities. (Puerto Rico’s residents are U.S. citizens, but their poverty rate is twice as a high as Mississippi, the poorest state.)

“The important thing is to create a strong regulatory commission to ensure the energy rates will not increase, further aggravating Puerto Ricans’ economic situation,” said Jose Caraballo Cueto, a professor at the University of Puerto Rico and president of the island’s economists’ association.

The Prepa workers’ union known as Utier opposes privatization. Angel Figueroa, its president, said the island’s consumption rates are relatively low and its needs massive, so he’s suspicious of why anyone would invest. He said the only explanation is that buyers see a benefit in the billions of federal dollars allocated to mend the grid after Maria.

Prepa employees fix power lines following Hurricane Maria.Photographer: Xavier Garcia/Bloomberg
But for all the apprehension, many Puerto Ricans wonder what other alternatives they have. A full week into the 2018 Atlantic hurricane season, close to 10,000 power customers are still without electricity.

“After living more than four months without electricity after Maria, for me they can sell everything,” said Carlos Vega, a 32-year waiter who lives in the Bayamon municipality outside San Juan. “Surely, whoever comes will do a better job than all the governments that have passed through.”

Bloomberg

By Yalixa Rivera and Jonathan Levin

June 11, 2018, 4:00 AM PDT

The Week in Public Finance: For State Budgets, What a Difference 6 Months Make.

Thanks in large part to a steady economy, states are finishing 2018 better than they expected.

After two straight years of lackluster revenue growth, state finances are on the upswing thanks in large part to a stable economy and a one-time boost from December's federal tax overhaul.

As fiscal 2018 comes to a close on June 30 in most states, total revenue growth for the year is estimated at 4.9 percent. That's the best year since 2015, according to the latest state fiscal survey from the National Association of State Budget Officers (NASBO).

The numbers bear that out: Only nine states have been forced to make mid-year budget cuts compared with a whopping 22 last year. Cuts totaled just $830 million in fiscal 2018; a year ago, states had to cut $3.5 billion to balance budgets. And 19 states have increased spending this year to the tune of $1.6 billion, which boosted total spending growth by 3.4 percent or to $835 billion.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | JUNE 15, 2018

Will New Federal Rules Slow PACE Financing?

Read the report.

Florida Realtors | Jun. 15

Kresge, Rockefeller Partner to Support New U.S. Community Development Initiatives Through Open Call.

The Kresge Foundation and The Rockefeller Foundation today announced a request for letters of inquiry (LOIs) for fund managers establishing new Opportunity Funds.

Through the federal Investing in Opportunity Act (IIOA) – part of the Tax Cuts and Jobs Act of 2017 – investors can receive capital gains relief by investing in newly designated "Opportunity Zones" in the United States. States and territories have identified up to a quarter of low-income census tracts as investible zones with the aim of attracting investment to those distressed communities.

Unlike other tax incentives designed to incentivize investment in low-income communities, the IIOA currently does not include a provision for long-term impact reporting – an element both foundations see as necessary and important. The foundations, therefore, seek partnerships with mission-aligned fund managers who intend to make investments that will benefit the lives and communities of people with low incomes, will deliver promised returns to investors and will evaluate the impact of investments over time.

"In the early days of any new market there is an opportunity to define what products will come forward and who they will benefit. Philanthropy is in a unique position to define this new market for the Opportunity Zone tax incentive as one that not only delivers returns to investors but also creates, and does not extract, value from low-income communities," said Rip Rapson, CEO and president of The Kresge Foundation. "Philanthropy can help catalyze the kinds of investments that will truly be a benefit to communities."

"Our work to help develop the field of impact investing started modestly, but more than a decade later, billions of dollars have been invested in opportunities that deliver returns for investors while making a significant difference in communities around the world," said Dr. Rajiv J. Shah, president of The Rockefeller Foundation. "More than ever before, investors are looking to put their resources where their values are. Opportunity Zones makes this connection most directly. We look forward to seeing ideas that put our foundation's history and resources to work for investors and communities focused on creating opportunity together."

This is a call for LOIs only; the foundations have made no formal financial commitment at this time. The LOI period opens today and **closes at 5 p.m. PST on July 16.**

The foundations will evaluate submissions based on the following criteria:

1. Investments designed to benefit low-income people and communities.
2. Investment proposals that align with the Foundations' respective areas of programmatic interest.
3. Fund-manager experience and readiness. Prospective partners should include experienced fund managers who propose investment strategies that align with the foundations' programmatic goals, work in or have experience with target key cities and incorporate measurement, evaluation and equity into their work.

Upon review of the submissions, some may be selected for further exploration. The foundations are prepared to commit grants and unfunded guarantees of up to $25 million to support this program. Unfunded guarantees are a form of impact investment in which the foundations take responsibility for a portion of future losses if an investment fails.

The full request for LOIs can be found here, and a qualification questionnaire can be found here.

June 11, 2018

Renewable Energy Tax Credit News Briefs – June 2018

The Colorado Department of Revenue issued Colorado Private Letter Ruling No. PLR-18-002 April 12. The PLR provides guidance on the state renewable energy investment tax credit (ITC). The PLR concluded that the taxpayer, an entity included in a combined report, can claim refundable enterprise zone renewable energy ITC refunds up to the refundable cap of $750,000 per year for as many years as needed to use the refundable amount. In addition, for investing in renewable energy

sources in an enterprise zone, the taxpayer owns and operates all renewable energy investment assets of the project. Instead of claiming the ITC as a credit against income tax, the taxpayer may receive a cash refund equal to 80 percent of the tax credit. The balance of the refundable ITC may be carried forward each year, up to the yearly cap, until fully used.

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The U.S. Energy Information Administration (EIA) issued mid-April its report, "Direct Federal Financial Interventions and Subsidies in Energy in Fiscal Year 2016." The study showed that federal energy subsidies fell between 2013 and 2016. Wind and solar subsidies fell from $15.5 billion to $6.7 billion from 2013 to 2016, with the production tax credit (PTC) dropping from $1.7 billion to $1.4 billion, and the ITC dropping from $2 billion to $1.2 billion. The report is an update based on fiscal year 2016 data and continues a series of EIA reports on federal direct financial interventions and subsidies into energy markets. The report is available at www.energytaxcredits.com.

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Xcel Energy's $1.6 billion plan for a 1.2 gigawatt (GW) expansion was approved by Texas regulators April 27, a month after approval from New Mexico regulators. Xcel's Hale project in Texas and its Sagamore facility in New Mexico will provide a combined 1 GW and are expected online in 2019 and 2020, respectively. Xcel expects to begin construction in June on the 478 megawatt (MW) Hale wind project, and construction on the 522 MW Sagamore wind project will begin next year. Xcel anticipates the two projects will create approximately 600 construction jobs and 40 to 50 full-time positions. The two facilities will qualify for 100 percent of the PTC.

Novogradac Journal of Tax Credits Volume 9 Issue 6

Friday, June 8, 2018

S&P Global Ratings Green Evaluation.

Green Bond issuance skyrocketed in 2017 for a 5th year running to $155 billion, up from a mere $13 billion in 2013. 2018 is likely to continue on a similar trajectory as long-term investors are recognizing the threat from greenhouse gases and are diversifying portfolios away from carbon-based investment.

Continue Reading

Jun. 14, 2018

S&P: Pension Pressures For Illinois Municipalities Could Become An Imminent Budgetary Challenge Under The State's Revenue Intercept Law.

Invoking a statute designed to compel Illinois municipalities to fund their public safety pension plans according to statutory minimum levels, pension boards in the cities of Harvey (not rated) and North Chicago (A/Stable) recently petitioned the state comptroller to intercept state revenues due to the municipalities.

Continue Reading

May 14, 2018

How Public Finance Can Make Universal Internet Access a Reality.

From education to accessible public spaces, fire departments and mass transit networks, many of the essential public services we rely on daily are provided by our local governments. A reliable and affordable Internet connection has become another essential public "good" as individuals and cities fight to keep pace with a harsh, fast-moving economy. The Internet is the 21st century equivalent of the transcontinental railroad, interstate highway system, Panama canal and public school and library systems all rolled into one. So why have we settled for a few private companies controlling how and where we get access and how much we pay? Local governments should build publicly-owned local broadband networks and issue bonds to borrow the money they need. This is the solution we've been looking for to provide affordable and equitable Internet access.

Why build your own network?
The Internet is the essential conduit for commerce, information and ideas, as well as a driver of economic growth and a shaper of culture. But in a system where corporate earnings guide decisions about where to run cables and build towers, not all Americans have equal access to the Internet. Ten percent of Americans—roughly 32 million people—have no broadband access (25 Mbps/3 Mbps service). But for rural populations, it's about 39 percent.

For much of the 20th century, policies and regulations ensured broad access to the essential public services of the time. Interstate highways were intended to be toll-free, railroads were barred from using monopoly power to take advantage of the farmers who relied on them to transport their crops, and public schools and libraries were open to all who lived in the community whose tax dollars supported them.

Continue reading.

Neighborly

Posted 06/12/2018 by Eva Arevuo

Muni Market Recap: It Was All About G-7 and Central Bank Governance Meetings.

G-7 and Central Bank Governance meetings dominated the headlines this week.

Here's what the Central Banks did:

- US Federal Reserve raised rates by 25 basis points from 1.75 to 2 percent and had a Hawkish tone
- Bank of China did not raise rates and the recent economic data is pointing towards slower growth
- European Central Bank did not change rates but laid out further steps to reduce Quantitative Easing (QE) measures in December of this year
- Bank of Japan did not raise rates and given their low inflation plans to continue with their

quantitative easing policy

Elsewhere, the Trump Administration tariffs aimed at Chinese high tech industries — such as robotics, aerospace, industrial machinery, and automobiles — are driving continuing fears of a trade war between the United States and China.

Municipal bonds were just along for the ride and activity was light as the potential shifts for global interest rates continues to be digested.

Neighborly was focused and stayed the course towards giving communities the ability to borrow money they need, when they need it. Neighborly Securities brought to market $19.8MM of tax-exempt Municipal bonds for the City of Salinas, CA for the new El Gabilan Library Project. The Library complex will be a center of a community based in Agriculture and Government services. The bonds are supported by the Measure E Sales Tax initiative.

The new library is designed with a community focus that features an outdoor children's zone, a teen area, a homework help area and an outdoor patio and amphitheater.

The project was unanimously approved by the Salinas City Council in May of 2018. Construction on the project is expected to take 16 months and will begin in July 2018.

Posted 06/15/2018 by Homero Radway

Neighborly Insights

Public Service Over Debt Service: The Implicit Lien Senior To Municipal Bondholder Rights.

The primary role of municipalities is to provide essential public services; this responsibility does not change, even in the advent of a bankruptcy. Recent bankruptcy court rulings in Detroit, Stockton and now Puerto Rico have made municipality priorities clear: when governments are in distress, bondholders can hope for post-default recoveries pennies and cents on the dollar that was originally promised. Bondholders must be reminded that the core of successful municipal bond investing is thorough, deep and objective credit research. Covenants and legal provisions only offer credit protection if the borrower is economically and financially solvent; in the advent of a bankruptcy, public services will always come before debt service obligations.

Investors in Detroit, Stockton, and now Puerto Rico looking to the legal covenants as their ultimate safety net are missing two critical points: First, fundamental economics and good governance are primary credit drivers; covenants and security provisions are not. Second, municipalities will always need to provide essential public services over anything else.

These three bankruptcies are prime examples of where economics and governance failed, ultimately diminishing bondholders' secured rights. In each place, weakness in these credit drivers foreshadowed problems years in advance.

Take Detroit. Poor governance practices (just one example: envelopes with tax payments were found in a closet—in a fire station), the realignment in the auto industry resulted in manufacturing job losses and a massive population exodus. Evidence of the city's demise were visible well before the situation became dire, but we continued to lend.

Stockton's reliance on overly optimistic projections of tax revenues based on ever-rising home values—leading to overspending and over-borrowing—also foreshadowed the final result. And we continued to lend.

Puerto Rico's loss of manufacturing jobs, rising deficits papered over by borrowing and opaque financial reporting all started a full decade before the 2008 Recession finally stripped away all pretense of a functioning economy or government. And we lent a total of $75 billion to the island's government and its public corporations.

In each case—Stockton, Detroit and Puerto Rico—there were perceived-and-assumed-strong legal provisions to preserve and protect bondholders. In each case, the bondholders fought vociferously but to no avail. They received significantly lower recoveries than the strongly worded documents suggested.

Covenants and legal provisions only offer credit protection if the borrower is economically and financially solvent. This is why the core of municipal bond investing has been and remains thorough, deep, and objective credit research with a laser focus on the key drivers of financial performance. Despite investor optimism, none of these borrowers passed key credit screens.

Not that the bondholders didn't try mightily to persuade the Court to enforce those covenants and legal provisions. After all, bankruptcy is about contract impairment and lien prioritization. The Court is legally bound to draw conclusions from the facts and apply appropriate legal criterion in its judgment. But there is another, higher criterion that it also weighs.

When a municipality files for bankruptcy, it doesn't just roll up the streets and shut down town hall. Before, during, and after bankruptcy, a municipality has to keep providing public services. The trash is picked up, police and firemen still respond to emergencies, street lights stay on, commuters travel to work and children go to school.

Paying bondholders doesn't do any of those things. In a municipal bankruptcy, the final feasibility test for the Court's approval is: Can the municipality provide these critical public services once the plan is approved? Therein lies the implicit lien senior to all other liens and claims.

When it comes down to public service versus debt service, public service will prevail.

Barnet Sherman is the Director of Municipal Impact Credit Research at Neighborly Investments, a first-of-its-kind Impact Asset Manager.

Posted 06/13/2018 by Barnet Sherman

Neighborly Insights

Understanding the De Minimis Tax Rule.

Municipal debt securities have always been attractive investment vehicles for those looking to benefit from tax-exemption while still generating good returns. In addition to their federal and, often, state tax-free statuses, these securities are typically backed by strong revenue streams and reserves, creating higher credit qualities and making them even more desirable than their taxable counterparts.

Even though corporate debt may produce higher yields, the overall tax benefit with municipal debt is often enough to outweigh the higher yields offered on taxable debt, and this tax benefit increases as an investor's tax bracket increases. However, there are certain situations with tax-free securities that can create a tax liability and cut into the overall return of the security. While coupon income from municipal debt can be tax-free, price appreciation on a bond purchased at a discount in the secondary market can still be taxable.

In this article, we will take a closer look at the De Minimis Tax Rule to try to understand its implication on municipal debt transactions for investors.

Continue reading.

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Jayden Sangha

Jun 14, 2018

BLX/Orrick 6th Annual Post-Issuance Compliance Workshop.

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Seven Thoughts When Considering Troubled Hospital Deals.

Those who follow hospital and health system M&A activity know that the market has been "frothy." We all see the high profile, "sexy" deals that appear in the news headlines but, for every large deal, there are myriad smaller deals that involve rural hospitals, county hospitals and, sole community hospitals, many of which are struggling, often both operationally and financially. These deals, despite their size, often are strategically important for the involved parties and, due to the financial issues many are facing, extremely complex.

Below are seven thoughts relevant to the acquisition of, or affiliation with, troubled hospitals:

Cash is Often King: Often, one of the biggest hurdles to acquiring a troubled facility is the drain on cash it is experiencing. Generally, credit lines are maxed out and the hospital's bond rating is poor, making it difficult to borrow, especially if cash flow is anemic. This often puts deals in jeopardy because there is always the risk that the target will run out of money prior to closing. This situation may require the acquirer to agree to provide financing to the target hospital; doing so often requires negotiation with bond trustees or with senior lenders who will likely insist on strict subordination agreements, with no guarantee that the loans will ever be recouped or repaid. Care should be taken to carefully prescribe the use of the financing proceeds so that they are applied in the most effective fashion (as noted below, however, the antitrust laws still apply during the period between signing and closing, which limits the control the acquirer can exercise over the target's operations). The acquirer should be prepared to walk away from its loans should the transaction, ultimately, fail

either because the target will not have the wherewithal to repay the loans and/or the loans will be deeply subordinated to senior indebtedness.

Diligence is Incredibly Important: It goes without saying that diligence in hospital deals is important, but it is even more so in the context of the acquisition of a troubled hospital. In our experience, struggling hospitals lack the resources to carefully monitor compliance or hire appropriate legal counsel; worse yet, some take aggressive approaches to their relationships with referral sources and reimbursement. The acquirer will generally inherit many of the liabilities of the target (including its Medicare and Medicaid reimbursement liabilities), and because (as described below) indemnification is financially impracticable or unlikely, most of these deals are, what we like to call "diligence deals;" the decision to acquire a troubled hospital is, and should be, premised upon the strength of, and results of, the acquirer's diligence efforts.

The Law Still Applies: Despite the fact that a hospital is troubled and its survival depends upon some sort of successful acquisition or affiliation, the parties must bear in mind that the various laws surrounding their existence, operations, and acquisition still apply. For example, the acquisition could be subject to state certificate of need laws, and will most certainly be subject to state licensure and registration laws, all of which are subject to statutory timing and waiting periods and can slow down the acquisition process. Depending upon the state involved, and how critical the hospital is to care in its community, it may be possible to seek local or state government intervention to accelerate these time periods, or expedite review. Moreover, and more importantly, the parties should keep in mind that federal and state antitrust laws apply, especially during the executory period (e., the period between signing of a definitive purchase agreement and closing). Often, in light of the precarious financial position in which a target hospital might find itself, there is a desire for the two parties to work together to start fixing problems even before the deal closes. While laudable, and something that would seem to make perfect sense from a business perspective, the parties are well advised to seek legal counsel to ensure that they don't engage in so-called "gun jumping," which can lead to per se violations of federal and state antitrust laws.

Peculiarities Relative to Government Health Care Entities: We've seen a number of transactions involving government health care entities, such as county hospitals or health care district facilities. The acquisition of, or affiliation with, these entities will carry its own set of issues. First, and foremost, many of these entities are subject to state open records, or "sunshine," laws such that certain meetings, or documents, relative to the proposed transaction may be subject to public disclosure and scrutiny. Moreover, approval of many of these transactions may require public notice and a public meeting. In addition, acquirers need to be sensitive to the fact that decision makers may include community members who sit on country or district boards, many of whom, while civic minded, may not possess strong health care business acumen and may be motivated by the "politics" or optics of the transaction. Finally, care must be taken to review state law to ensure that there are not specific statutes or rules relative to acquisition of governmental health care entities; for example, some states require that all employees of the target be granted the opportunity to stay or, or that the acquirer agree to satisfy all outstanding liabilities of the acquired entity, etc.In addition to the above, county/district hospitals often have loyal constituencies. The fate of these hospitals is often of great importance to the communities they serve. Thus, and this probably goes without saying, it is often vital that the acquiring entity have a good story to tell as to why the combination makes sense, and this story should revolve around maintaining or increasing the quality and continuity of care to the patients, along with helping the employees retain their jobs. It is important to remember that these facilities often hold a prominent place in the communities they serve and, often, are one of the largest employers. Thus, the story to be told should be compelling, Even more important is the story that will be, or should be, told in the event the transaction fails. Consistent, realistic communication is appropriate in these circumstances.

Deal Planning: Almost as important as the economic and regulatory aspects of trouble hospital transactions is the deal planning. We say this because, often, time is of the essence for some the reasons described above. Thus, we believe that in conjunction with diligence efforts, smart acquirers plan ahead to deal, on a timely basis, with issues such as union contracts, physician compensation that may need to be adjusted, leases and the like. Failure to adequately plan for the issues that may arise related to the above sorts of matters can significantly slow down a transaction, thus putting further strain on the target.

Bankruptcy as an Option: Depending, of course, on the circumstances, there may be some wisdom in considering the use of a bankruptcy proceeding as a means of facilitating a transaction. Depending upon the nature of the target hospital—non-governmental versus a a governmental entity—the bankruptcy proceeding may be subject to either Chapter 11 or Chapter 9 of the Federal Bankruptcy Code. The determination about which type of bankruptcy proceeding (Chapter 9 or 11) a particular hospital entity qualifies for can be fact intensive and complicated, so it should be conducted by experienced counsel at the earliest opportunity. The distinction can be significant because, as a general rule, Chapter 11 proceedings (non-governmental entity proceedings) are somewhat more predictable and provide more established mechanisms to protect a potential buyer of assets. For example, the common method of selling assets through the bankruptcy process involves the use Section 363 of Chapter 11 of the Code to sell assets free and clear of liens and encumbrances. Chapter 9 does not have an analogous provision, though the few courts to have considered the matter have allowed sales to proceed in Chapter 9 under applicable state law. Under Section 363, the proposed buyer can become a “stalking horse” bidder, whose proposed purchase must be made subject to higher or better bids at a court sponsored auction, though subject to certain types of court approved bid protections. Thus, the stalking horse bidder risks losing the bid despite its work and efforts. Moreover, while a Section 363 sale can allow certain liens, executory contracts and other liabilities to be avoided and/or renegotiated, the Centers for Medicare and Medicaid Services take the position that if the acquirer assumes the Medicare provider agreement of the target (which is a common approach in many of these transactions) the bankruptcy proceedings will not extinguish pre-closing Medicare liabilities or obligations, such as overpayment obligations. Another significant difference between Chapter 11 and Chapter 9 proceedings is the ability of a debtor under Section 363 to sell assets free and clear of most pension liabilities. Again, no analogous power is found in Chapter 9, though in the Detroit Chapter 9 case, the court did allow some modification of pension benefits, as part of a final plan of reorganization, not as part of an asset sale.

Alternative Strategies: Sophisticated acquirers are well counseled to consider strategies that may be alternatives to acquisitions. For example, depending upon the market, it may be smarter simply to compete against the struggling entity rather than trying to acquire it. The idiom “be careful what you wish for” might be apt in certain situations. There is often a mission-driven desire, on the part of the acquirer, to save a struggling system, which is understandable. However, if an acquisition puts the acquirer at risk, it is necessary to re-examine the thesis of the deal and whether or not it is simply smarter to help the population of patients and employees of the target by them with an alternative.

Although sometimes smaller and involving fewer dollars than hospital deals that make headlines, troubled deals are a fact of life in health care and carry with them their own sets of complexities. The above list of considerations is but a few that will arise.

Foley & Lardner

by William McKenna & Roger Strode

Wholesale Water Contract: Arkansas Court of Appeals Addresses Municipality/Water Authority Rate Calculation Dispute.

The Arkansas Court of Appeals addressed in a May 23rd opinion a dispute between an Arkansas municipality and public water authority in regards to the sale and purchase of water. See Northeast Public Water Authority of the State of Arkansas v. City of Mountain Home, Arkansas, 2018 Ark. App. 323.

Mountain Home, Arkansas ("Mountain Home") and Northeast Public Water Authority of the State of Arkansas ("Northeast") disagreed as to the meaning of certain terms in a wholesale water purchase contract ("Contract").

Mountain Home and Northeast entered into the Contract in 2012. The Contract replaced one that had been in place since 1982.

Continue reading.

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

June 14, 2018

Short Term Rental, Long Term Impact: Municipal Regulation of AirBnb and Homesharing.

Travelers across the world have embraced short term rentals from platforms such as AirBnb, VRBO, and HomeAway as a unique option for accommodations. These homesharing websites offer travelers an opportunity to stay in a place with all the comforts of home, often for a much cheaper price than a few nights at a chain hotel. Hundreds of short term rental listings are currently posted online for stays in neighborhoods around Pittsburgh and Allegheny County.

While homesharing provides a valuable benefit to short-stay travelers, it poses numerous concerns for local municipalities. For example, parking and noise complaints from the neighbors of short term rental properties have poured into municipal meetings. Borough councils and township boards of commissioners, with assistance from their municipal solicitor, are challenged to come up with a system to regulate short term rentals within their communities.

Attempts to regulate short term rentals most often begin through enforcement of a local zoning ordinance. A typical municipal zoning ordinance might establish where a hotel or bed and breakfast may be operated as a principal permitted use or by special exception within certain zoning districts. The Pennsylvania Commonwealth Court, however, has held that a short term rental use for a residence is distinguishable from a hotel or bed and breakfast. The Court has recently reversed four trial court decisions and held in favor of property owners' operation of short term rentals, where the local zoning ordinance did not specifically address a short term rental use.

In one of these cases, *Slice of Life, LLC v. Hamilton Twp. Zoning Hearing Board*, an appeal was granted in February 2018 by the Pennsylvania Supreme Court. 180 A.3d 687. In *Slice of Life*, the property owner did not live at the property and used it solely as an income-producing short term rental. The township zoning officer issued an enforcement notice, citing the owner for violating the

zoning ordinance by operating the single family dwelling as “transient lodging.”

The trial court upheld the zoning hearing board’s denial of appeal of the enforcement notice. The Commonwealth Court reversed, and held that the owner’s use of the property was consistent with its existence as a single family dwelling. 164 A.3d 633 (Pa. Cmwth. Jun. 21, 2017). Because the township zoning ordinance did not define the terms “single family,” “transient tenancy,” or “transient lodging,” the Court held that the ordinance was ambiguous and should be interpreted in favor of the owner and against any restriction on his use of the property.

The Pennsylvania Supreme Court’s forthcoming opinion in this case will be instructive to municipalities in confirming whether zoning ordinances should be amended to address short term rental uses. In the meantime, many municipalities are heeding the advice of the Commonwealth Court, which stated in *Slice of Life* that “[e]nterprises such as AirBnB have expanded the possible uses of single-family dwellings and a township can address such uses in the zoning ordinance.” Id. at 642. In other words, if a municipality is concerned about the existence of short term rentals within its borders, it should proactively regulate their existence through amendments to the zoning ordinance.

Outside of its zoning ordinance, a municipality can regulate problem short term rental properties through enforcement of its parking or noise control ordinances. Standalone ordinances can also be enacted to regulate permitting and inspection of homes that are marketed as short term rentals.

Before listing a property for rent on homesharing websites, homeowners should check with their local municipality to ensure compliance with any recently enacted requirements for short term rentals. Furthermore, the Allegheny County Treasurer requires that all owners operating a short term rental register for the collection of the County’s Hotel Room Rental Tax. In 2016, Allegheny County amended its Hotel Room Rental Tax ordinance to allow for booking agents such as AirBnb to collect and remit the required Hotel Room Rental Tax directly on behalf of the homeowner.

As homesharing grows in popularity, municipalities and their solicitors will continue to work on finding the best means to regulate the long term community impact of short term rentals.

Tucker Arensberg, P.C.

Municipal Bonds Weekly Market Report: Fed Expected to Raise Rates Again

MunicipalBonds.com provides information regarding the performance of muni bonds for the past week in comparison with Treasury yields and net fund flows, as well as the impact of monetary policies and relevant economic news.

- Treasury and municipal yields mostly saw increases this week.
- Muni bond funds are back to inflows this week.
- Be sure to review our previous week’s report to track the changing market conditions.

Continue reading.

municipalbonds.com

Brian Mathews

Jun 12, 2018

TAX - WYOMING

Brock v. State ex rel. Wyoming Workforce Services, Unemployment Insurance Division

Supreme Court of Wyoming - May 3, 2017 - 394 P.3d 460 - 2017 WY 47

Lien holders, who had a lien on property created by a certificate of purchase for delinquent taxes, filed an action against the Department of Workforce Services and the Internal Revenue Service (IRS) that sought to foreclose on their lien and a declaration that their lien was superior to all other encumbrances against the property.

The IRS removed the case to federal district court.

The United States District Court certified a question to the state Supreme Court.

The Supreme Court of Wyoming held that lien held by lien holders, who had a lien on property created by a certificate of purchase for delinquent taxes, was superior to lien held by the Department of Workforce Services for unpaid contributions to the unemployment compensation fund.

Lien held by lien holders, who had a lien on property created by a certificate of purchase for delinquent taxes, was superior to lien held by the Department of Workforce Services for unpaid contributions to the unemployment compensation fund; lien holders obtained a certificate of purchase on the property by purchasing the property for the delinquent taxes assessed against the property, after passage of the required time, "Holders of certificates of purchase of real property sold for delinquent taxes" may apply for a tax deed, and thus lien holders' lien was a claim for taxes, which would give it priority over a claim for contributions to the unemployment compensation fund pursuant to statute.

A Quick, Bipartisan Fix for America's Slow Infrastructure Permitting.

Fixing America's aging infrastructure is one of the most reliably popular policy ideas out there, so why do we seem to make so little progress on it? In short, we've made the process of planning and carrying out infrastructure projects extremely difficult. Building new roads, levees, and rail lines requires conformity to layers of permitting requirements and regulations. While much of the burden comes from local and state approvals, the federal permits needed for large projects can take years to procure and often lead to further delay. To give a sense of the magnitude of the problem, a set of reform proposals released by the group Common Good in 2017 was titled "Two Years, Not Ten Years." Beyond permitting, other factors, lack of financing, high construction costs, and failed coordination between states and municipalities can all mean concrete never gets poured.

Fortunately, federal permitting reform is among the few issues that Congress has been able to address in a bipartisan manner in recent years. Most importantly, in December 2015 Congress passed (and President Obama signed into law) the Fixing America's Surface Transportation Act (FAST Act), which reauthorized and funded federal highway programs for five years. Title 41 of the Act, which incorporated a Senate bill sponsored by Senators Rob Portman (R-OH) and Claire

McCaskill (D-MO), established a Federal Permitting Improvement Steering Council (FPISC). FPISC is meant to provide a "one-stop-shop" capable of coordinating permits across different federal agencies, thereby streamlining and shortening the overall process for some large projects.

Continue reading.

The Brookings Institute

Philip A. Wallach and Nick Zaiac

Friday, June 8, 2018

State Strategies for Maintaining a Balanced Budget.

Case studies offer lessons on identifying and managing nonrecurring revenue

Many states ended 2017 flush with unexpected cash. Federal legislation that caps some tax deductions beginning in 2018 prompted many Americans to prepay their state and local taxes. While this surprise revenue was positive news for state budgets, several policymakers struck a cautious tone.

"This is not a windfall, "Robert Mujica, director of the New York State Division of the Budget, said in January 2018. He predicted that the bump in tax collections would be offset by a corresponding drop in receipts in the year ahead.

In fact, states have seen one-time revenue spikes like this before. In 2013, several of them recorded unexpected revenue boosts when many investors—anticipating an increase in federal capital gains taxes—took stock market profits before the change went into effect. Many states grappled with how to treat this influx of cash. While most of the spike in revenue came from annually collected sources like personal and corporate taxes, the nature of the increase meant some of the gains might be temporary.

Utah, for example, initially projected that individual income tax revenue in 2013 would grow by 7.8 percent. (The final numbers showed that growth was actually 16 percent.) State economists believed the higher tax revenue was temporary and suggested that policymakers treat 90 percent of it as a nonrecurring, or onetime, event. Taking the cue, lawmakers spent the unexpected revenue on short-term priorities such as the construction of a courthouse for juvenile hearings. And the next fiscal year, the state planned conservatively, accurately anticipating a substantial decline in tax collections.

Not all states planned—or fared—as well. Despite cautious forecasts, seven states missed their April 2014 individual income tax revenue estimates by more than 10 percent. In Kansas, revenue from this source had beaten projections in 2013 after the state cut its taxes, causing lawmakers to be optimistic about future revenue. However, revenue came in 28 percent under the forecast, leading the state to draw down reserves that it has yet to rebuild.

Common Sources of Nonrecurring State Revenue

Examples of revenue that may be one-time in nature

- Extraordinary growth in tax collections (especially from volatile sources)
- General fund ending balance
- Cash shift from other state accountants (such as rainy day funds)
- Large legal settlements
- Temporary state tax increases
- One-time transfers from the federal government

These events underscore the importance of identifying and managing nonrecurring revenue. Failure to do so does not affect only one year's budget; it can often create or perpetuate a fiscal imbalance that lasts several years. Conversely, when states regularly allocate nonrecurring revenue to one-time priorities, they can mitigate potential budget problems before they form.

While budget challenges from nonrecurring revenue exist in every state, there is no universal practice for how to manage or define this revenue. Economists, budget officers, and policymakers in some states formally distinguish it from revenue that is expected to be collected in future years, while others rely on informal and ad hoc ways to track the revenue.

To identify and evaluate state approaches to detecting and managing nonrecurring revenue, The Pew Charitable Trusts examined practices in all 50 states—focusing on policies codified in state statutes and constitutions.

This report includes case studies that highlight the range of strategies that states use, with the goal of informing policymakers of promising practices. The featured strategies include:

Techniques states use to identify nonrecurring revenue:

- Case study 1. Alabama: Defining certain revenue sources as recurring or nonrecurring.
- Case study 2. Tennessee: Separating a volatile tax source into recurring and nonrecurring parts.
- Case study 3. Utah: Separating all major tax sources into recurring and nonrecurring parts.

Techniques states use to manage nonrecurring revenue:

- Case study 4. Louisiana: Limiting nonrecurring revenue to specific appropriations.
- Case study 5. Florida: Limiting the amount of nonrecurring revenue that pays for ongoing costs.
- Case study 6. Washington: Analyzing whether expected future spending is balanced by recurring revenue.

Based on this research, Pew recommends that states consider the following when deciding how to identify and manage nonrecurring revenue:

- Develop definitions for this revenue and regularly report on its ability to cover ongoing costs.
- Treat abnormal growth in annually collected taxes as nonrecurring revenue.
- Create guidance to ensure that nonrecurring revenue is used on one-time spending commitments.

Download State Strategies for Maintaining a Balanced Budget.

The Pew Charitable Trusts

June 14, 2018

How a Florida Utility Became the Global King of Green Power.

NextEra became a renewable-energy Goliath using tax subsidies to help finance projects around the country and avoiding debt—staying quiet about it all

Who is the world's largest operator of wind and solar farms? It's also America's most valuable power company. Still stumped? It's by design.

"That is a marketing problem…that we foster intentionally," Michael O'Sullivan, NextEra Energy Inc.'s head of renewable development, told University of Notre Dame students in 2015.

The Florida company has grown into a green Goliath, almost entirely under the radar, not through taking on heavy debt to expand or by touting its greenness, but by relentlessly capitalizing on government support for renewable energy, in particular the tax subsidies that help finance wind and solar projects around the country. It then sells the output to utilities, many of which must procure power from green sources to meet state mandates.

Continue reading.

The Wall Street Journal

By Russell Gold

June 18, 2018

Is The Muni Bond Market Positioned For Its Moment In The Sun?

As we kick off the historically positive summer months for the muni market, investors could see higher returns – but may have a hard time finding bonds.

The passage of Memorial Day has officially ushered in summer: the season of backyard barbecues, pool parties and municipal bond redemptions. The three months beginning in June are often characterized as a heavy reinvestment period – the municipal market finds itself awash with cash as bonds mature, pay coupons or get called (meaning, the bond is redeemed by the issuer prior to its maturity). This year seems to be no exception, and a dearth of new bond issuance could drive negative net supply lower than what we saw in recent years. While this technical backdrop should support municipal bond prices, it could also introduce new challenges for investors trying to put money to work.

After its worst start in over two decades, the municipal bond market could be poised for a turnaround. The historically favorable summer months are upon us, along with the expectation for higher volumes of coupons and principal payments that investors will want to reinvest. Such heavy seasonal redemptions are certainly not a new trend, and they provide the market with a strong and reliable source of demand. However, that money may be chasing a shrinking pool of bonds if recent supply trends persist. Municipal bond issuance dropped 23% year-over-year and was at a four-year low through April 30. Market observers expect supply to remain light through the summer as Wall Street bankers head out on vacation and few issuers bring new financings to market. JPMorgan (NYSE:JPM) suggests that the combination of robust reinvestment capital and anemic new issuance

could result in a negative net supply of -$76 billion between June and August: a change of 44% over last year and 91% over the trailing five-year average.

Such favorable technical conditions – more money potentially coming into the market than new bonds being sold – should also set the stage for stronger investment returns. The Bloomberg Barclays Municipal Bond Index returned a disappointing -0.33%1 this year, but prices have historically bounced back as June's cash flows get reinvested amid scarce supply in July and August.

If negative net supply estimates materialize and exceed that of past years, returns could be even better. But the supply shortage could also make sourcing bonds far more difficult. Lack of issuance in the primary market should drive buyers to the secondary market where dealer inventories have shrunk considerably since before the financial crisis. As a result, individual bond buyers will likely find themselves paying more for a dwindling pool of available bonds.

Bottom line

We believe the recent underperformance of the municipal market offers an attractive entry point for investors ahead of what could be a strong performance period, and more dollars chasing fewer bonds should drive prices up and support total returns. However, this same dynamic will likely cause frustration among individual bond buyers who struggle to put their investment dollars to work. Professional management can provide broader access to investment opportunities with more efficient execution.

Municipal securities will be affected by tax, legislative, regulatory, demographic or political changes, as well as changes impacting a state's financial, economic or other conditions. A relatively small number of tax-exempt issuers may necessitate investing more heavily in a single issuer and, therefore, be more exposed to the risk of loss than investing more broadly. Income from tax-exempt municipal bonds or municipal bond funds may be subject to state and local taxes, and a portion of income may be subject to the federal and/or state alternative minimum tax for certain investors. Federal income tax rules will apply to any capital gains.

Seeking Alpha

By Catherine Stienstra

June 12, 2018

The Governors' Encouraging Embrace of Sensible Tax Policies.

More of them are calling for the lower rates and prudent spending that fuel economic vitality.

As is usually the case, the State of the State addresses delivered this year by 47 governors responded to a number of trends and outlined a range of policy priorities. And as always, fiscal policies were mostly front and center. Refreshingly, more governors called for broad-based tax relief than tax increases, recognizing the reality that economic policy directly impacts quality of life and opportunity.

Proposals aren't policy, of course. But they signal the directions in which governors want to take their states. Some of the governors' proposals have been enacted in one form or another, some haven't, and others are still being debated. But for many states the most pressing tax issue is one stemming from last year's federal tax reforms.

As a result of the first federal tax reform in more than 30 years, many states are looking forward to higher tax revenues and surpluses. The net federal income tax cut centered on applying lowered tax rates to a broader tax base. Because many states in some way link their definition of taxable income to the federal definition, failure to lower state income tax rates would result in an increase in the state burden.

Republicans predominated among governors outlining plans to give this unexpected tax revenue back to taxpayers. Leading the way was South Carolina's Henry McMaster, who proposed nearly $2.2 billion in cumulative tax relief over the next five years by lowering each of the state's five income-tax brackets by 1 percentage point per year. Iowa Gov. Kim Reynolds called for "a tax reform package that significantly reduces rates" and "provides real tax relief for middle-class families, farmers, and small businesses." And West Virginia Gov. Jim Justice boldly departed from his past tax-hike proposals, proposing to lowering taxes on manufacturing machinery, inventory and equipment.

Georgia, Idaho and Missouri have already approved substantive tax-relief packages this year, but perhaps the most important pro-taxpayer proposal was Florida Gov. Rick Scott's plea for a constitutional amendment to require a two-thirds legislative supermajority to raise taxes. He said he hopes to "force leaders to contemplate living within their means rather than taking the easy way out and just sticking it to the public by raising taxes on families and job creators." Such an amendment would safeguard Florida's pro-growth reforms of the past seven years.

Not all governors expressed a desire to lower taxes or protect taxpayers. Alaska Gov. Bill Walker, an independent, earned the dubious distinction of being the only governor to propose a tax hike on personal income of any variety. The state repealed its personal income tax in 1980. To circumvent this, Walker called for "broad-based direct participation by individuals" in the form of an economically damaging payroll tax. Oklahoma Gov. Mary Fallin, a Republican, continued her push for a variety of tax hikes on cigarettes, fuel and energy production, and the legislature ultimately enacted approximately $450 million in tax hikes. Meanwhile, Louisiana's Democratic governor, John Bel Edwards, demanded that lawmakers renew a slew of expiring tax hikes worth nearly $700 million.

Two other Democratic governors championed significant tax-hike proposals. Pennsylvania's Tom Wolf once again embraced a severance tax on oil and natural gas, to be imposed on top of both an existing impact fee and the state's high corporate income tax. Meanwhile, Washington Gov. Jay Inslee once again called for enactment of a carbon tax that would generate an estimated $1.5 billion in revenue in just the first two years — an additional tax burden of more than $800 for a family of four.

Unfortunately, many governors continued to advocate for tax favoritism and subsidies in the name of economic development. These special deals for a select few companies result in higher tax rates overall along with economic distortions. New Mexico Gov. Susana Martinez, a Republican, applauded local-government deal closing funds, paid for with gross receipts taxes, that she claimed have "helped create thousands of jobs." Georgia's Republican governor, Nathan Deal, touted hundreds of special favors doled out by the state's Department of Economic Development to the tune of more than $6.3 billion. But the reality is that lowering business taxes across the board sparks far more sustainable growth than funding a few politically favored enterprises with taxpayer capital.

A stronger appetite for prudent fiscal policy evidenced itself in the arena of public pensions. A combination of underfunding and overpromising threatens to bust state budgets and is already pushing tax rates up. Several governors were eager to follow the recent reforms enacted in Arizona, Michigan and Pennsylvania.

In South Carolina, for example, Gov. McMaster called on lawmakers to close the state's defined-benefit pension system to new hires and move to a sustainable defined-contribution plan. Reform is certainly needed: According to the latest edition of the American Legislative Exchange Council's annual "Unaccountable and Unaffordable" public pension plan report, South Carolina's pensions are the nation's ninth worst funded. In Kentucky, Republican Gov. Matt Bevin acknowledged that the state has historically failed to pay the full annual required contribution for its public pension plans, leaving it the second worst funded. He promised, "This year they will be funded in their entirety for the first time in the history of the Commonwealth of Kentucky." Months later, the governor signed a pension-reform package into law.

That kind of fiscal discipline is as important than ever. Generally, states with responsible spending habits, lower tax rates and fewer regulations outperform others in economic growth. It's encouraging to see so many governors endorsing market-oriented tax and fiscal policies. With the midterm elections fast approaching, a window still exists to translate bold ideas into law.

GOVERNING.COM

By Joel Griffith | Contributor
Director of the American Legislative Exchange Council's Center for State and Local Fiscal Reform

By Jonathan Williams | Contributor
Vice president of the American Legislative Exchange Council's Center for State Fiscal Reform

JUNE 14, 2018

Think Your State Is Ready for the Next Recession? Better Check This Fund First.

State unemployment insurance trust funds were decimated during the last recession. A decade later, many still don't have the funds to weather the next downturn.

States have done a lot over the past decade to be better financially prepared for the next recession. But one area many have ignored is — ironically — their unemployment insurance programs for laid-off workers.

More than half of states' unemployment insurance trust funds don't have enough money in them to weather the next economic downturn, according to the most recent federal report on the funds. Of the 28 that don't meet the minimum solvency level recommended by the U.S. Department of Labor, a whopping 11 have less than half of the funds needed to meet a downturn.

The lack of recovery in many funds more than a decade after the last recession began is alarming given that many think time is running out on the current economic expansion. "If there's another bad recession like the last one," says Christopher O'Leary, a senior economist at the W.E. Upjohn Institute, "states, on average, are not prepared."

Continue reading.

GOVERNING.COM

BY LIZ FARMER | JUNE 14, 2018

Treasury, IRS Announce Final Round of Opportunity Zone Designations.

Washington – The U.S. Department of the Treasury and the Internal Revenue Service (IRS) today announced the final round of Opportunity Zone designations for four additional states. In total, the program designated areas in all 50 states, the District of Columbia and five U.S. possessions.

The Tax Cuts and Jobs Act created Opportunity Zones to spur investment in distressed communities throughout the country. New investments in Opportunity Zones can receive preferential tax treatment.

Under the Tax Cuts and Jobs Act, States, D.C., and U.S. possessions nominate low-income communities to be designated as Qualified Opportunity Zones, which are eligible for the tax benefit.

Nearly 35 million Americans live in the communities designated as Opportunity Zones. Based on data from the 2011-2015 American Community Survey, the designated census tracts had an average poverty rate of over 32 percent, compared with a rate of 17 percent for the average U.S. census tract.

Additionally, the median family income of the designated tracts were on average 37 percent below the area or state median, and had an unemployment rate of nearly 1.6 times higher than the average U.S. census tract. Qualified Opportunity Zones were also twice as likely as other U.S. communities to be located within a persistent poverty county, meaning the county had experienced a poverty rate of at least 20 percent for 30 years.

“The creation of Opportunity Zones is one of the most significant provisions of the Tax Cut and Jobs Act. Incentivizing private investment into these low-income communities can be transformational, stimulating economic growth and job creation across the country,” said Secretary Steven T. Mnuchin. “This Administration will work diligently with states and the private sector to encourage investment and development in Opportunity Zones and other distressed communities so that they may enjoy the benefits of robust economic growth.”

The final round of submissions were approved for: Florida; Nevada; Pennsylvania; and Utah.

Qualified Opportunity Zones retain this designation for 10 years. Investors can defer tax on any prior gains until no later than December 31, 2026, so long as the gain is reinvested in a Qualified Opportunity Fund, an investment vehicle organized to make investments in Qualified Opportunity Zones. In addition, if the investor holds the investment in the Opportunity Fund for at least ten years, the investor would be eligible for an increase in its basis equal to the fair market value of the investment on the date that it is sold.

Treasury and the IRS recently released Opportunity Zones Frequently Asked Questions to provide additional information on this new tax incentive.

View designated Opportunity Zones.

June 14, 2018

New Opportunities with Opportunity Zone Tax Incentives.

The 2017 tax reform legislation includes a new tax incentive to spur investments in distressed areas throughout the United States and its possessions. The Opportunity Zone Tax Incentive, set forth in Internal Revenue Code Sections 1400Z-1 and 1400Z-2, allows taxpayers to defer gain from the sale of property, in some cases permanently where certain requirements are met. Even if a taxpayer does not have gain on which it seeks to defer tax, the Opportunity Zone Tax Incentive provides a permanent deferral opportunity for any appreciation in a relevant investment, provided that investment is held for at least ten years. To qualify for these incentives, taxpayers must invest in a "qualified opportunity fund," which means an investment vehicle organized as a corporation or a partnership that invests in a business in a low-income area that has been specifically designated as a "qualified opportunity zone." A list of currently designated areas is available here.

Under the Opportunity Zone Tax Incentive program, taxpayers with gain from the sale or exchange of property (any type of property) can elect to exclude that gain from gross income to the extent of the amount of cash invested by such taxpayer in a qualified opportunity fund within 180 days of the sale or exchange. This deferral opportunity applies to sales or exchanges occurring before December 31, 2026, and unlike Internal Revenue Code Section 1031 exchanges, is not limited to gain from specific types of property. In addition, the IRS has clarified that gain arising in 2017 may be eligible for the Opportunity Zone Tax Incentive, even if the taxpayer has already filed its tax returns for the 2017 taxable year, so long as the 180 day requirement (among the other relevant requirements) is met and the taxpayer amends its 2017 tax returns to reflect this election.

The incentive permits gain deferral until December 31, 2026, or, if earlier, the date the qualified opportunity fund investment is sold or exchanged. The taxpayer's basis in the qualified opportunity fund investment is initially zero, but is increased over time depending on the taxpayer's holding period for such investment. If the qualified opportunity fund investment is held for at least five years, the taxpayer will be entitled to permanent deferral on 10 percent of its deferred gain and can increase its basis by such amount. If the investment is held for at least 7 years, the taxpayer is entitled to permanent deferral on an additional 5 percent of its deferred gain and can increase its basis by this amount.

Permanent deferral potential is available for post-investment appreciation if the taxpayer holds its qualified opportunity fund investment for at least 10 years and makes an election under Section 1400Z-2 to step up its basis to fair market value on the date it is sold or exchanged.

Qualified opportunity funds must hold at least 90 percent of their assets in qualified opportunity zone property, which includes qualified opportunity zone business property, stock or partnership interests. "Qualified opportunity zone business property" means tangible property used in a trade or business of the qualified opportunity fund and located in a qualified opportunity zone if: (i) the original use of such property in the qualified opportunity zone commences with the qualified opportunity fund or, (ii) if the property is used, the qualified opportunity fund, during any 30 month period beginning after the date of the acquisition of such property, incurs costs with respect to such property that exceed the fund's basis at the start of the 30 month period. As an example, if used property is acquired by the qualified opportunity fund for $1 million and such fund incurs, within the 30 month period, $1.1 million in costs to improve this property, the fund should be deemed to have met the above requirement for used property. Qualified opportunity zone stock or partnerships

interest include interests in corporations or partnerships with respect to which substantially all of the tangible property owned or leased by such entity is qualified opportunity zone business property.

The Internal Revenue Service has indicated that, to become a qualified opportunity fund, a fund can self-certify its status as such. Certification will be performed by attaching a form to the fund's tax return. The form is expected to be available this summer.

While there are still many unanswered questions as taxpayers await further guidance, the Opportunity Zone Tax Incentive presents an attractive opportunity for deferral of gain, including potential permanent deferral on portions of the gain. In addition, it appears that there could be opportunities to pair this deferral with tax credits, such as the new market tax credit, low-income housing credit, rehabilitation credit and investment tax credit. The Opportunity Zone Tax Incentive seems to be an interesting tax incentive for a wide array of investors, and we will provide updates as guidance on this program is issued.

McDermott Will & Emery

June 15, 2018

Zones for New Federal Tax Breaks Approved in All 50 States.

Guidance for the "Opportunity Zones" program, which will provide tax breaks for investments in low-income areas, is still forthcoming.

The selection process is now complete for the newly created Opportunity Zones program, which will offer federal tax incentives for investments in low-income communities.

On Thursday, the U.S. Treasury Department and the Internal Revenue Service announced that they'd approved a final round of zone designations, and that areas have been tapped for the program in all 50 states and the District of Columbia.

The IRS is still working on guidance for the certification of investment funds that will be qualified to participate in the program and for the investments that will be eligible, according to the Treasury Department. In late April, the IRS released a frequently asked questions document that provided some new specifics.

Governors were responsible for nominating zones in their states and Treasury and the IRS signed off on the designations.

This week's zone approvals were in Florida, Nevada, Pennsylvania and Utah.

Treasury says that nearly 35 million people live in the designated zones and that census tracts in the zones have an average poverty rate of about 32 percent based on figures from 2011 to 2015, compared to a rate of 17 percent for the average U.S. census tract.

Proponents say Opportunity Zones hold great promise for drawing new money into communities that have previously failed to attract investment. But there are skeptics, as well, including some who point to the limited effectiveness of similar programs in the past.

There have also been worries that governors would skew their zone selections toward gentrifying

areas.

Research the Urban Institute released last month found that only 3.2 percent of the census tracts selected had experienced high degrees of "socioeconomic change," a proxy for gentrification, from 2000 to 2016. But this metric varied from state to state. For instance, it was zero in West Virginia, but 13 percent in New York.

It's possible that investments through the program could go toward a lot of different ventures, including real estate, infrastructure and start-up businesses.

The Opportunity Zones program was created as part of the sweeping federal tax overhaul that Republicans pushed through late last year. A list and map of the zone designations can be found here.

Route Fifty

By Bill Lucia,
Senior Reporter

June 15, 2018

Twenty Years of STAR Bond Investment in Kansas Reaps Big Rewards, a Few Flops.

More than half a billion dollars has been wagered by local and state government officials in Kansas on taxpayer-financed economic development projects under a program that relies upon adherence to the state's motto — to the stars through difficulties.

The sale of State Tax Revenue bonds — also known as STAR bonds — grant municipal governments an opportunity to finance major commercial, entertainment and tourism areas and repay the debt with state and local sales tax revenue generated by the developments. There have been failures and successes since implemented two decades ago.

For scope of achievement on the STAR bond landscape, look no further than the Kansas Speedway and the Village West shopping complex outside Kansas City, Kan. It's a flashy show-me example of the inducement as a platform for business growth and job development.

Bonds used to finance Village West were paid off in 2016 — five years early. The retail and entertainment hub created 5,700 jobs at more than 100 businesses.

"It was a very successful tool," said Pat Pettey, who has watched evolution of the state's No. 1 tourist attraction as a member of state and municipal government. "For us, at the beginning, given where we were at that time, it was great for attracting businesses."

Just as easily, the promise of a STAR bond development can burn out prematurely. In Overland Park, the Museum at Prairiefire, part of a retail development, gobbled up one-third of $65 million in STAR bond investment capital. The museum, which has a dinosaur as the star attraction, operated at a $2 million loss in 2015 and 2016 — and floundered in red ink during 2017.

Another bump on the STAR bond highway was the Heartland Park Topeka motorsports complex that

was foreclosed in 2015, unsuccessfully sought new STAR bond financing and has reopened under new management.

The tragic death in 2016 of a 10-year-old boy on a giant water slide at the Schlitterbahn park in Kansas City, Kan., cast doubt about future of that STAR bond investment. Closure of the slide generated uncertainty as to whether Schlitterbahn could survive. STAR bond tax revenue was expected to repay bond debt.

Mike Taylor, spokesman for the Unified Government of Wyandotte County, said it was possible STAR bonds could be issued to support new attractions at the Schlitterbahn.

Undeterred, communities across the state are optimistically plowing ahead with plans for developments crafted to revitalize downtown areas and create destination-scale projects that attract one-third of visitors from more than 100 miles away.

“STAR bonds are proven to be an effective economic development tool beneficial to the state of Kansas,” said state Rep. J.R. Claeys, a Salina Republican.

Salina officials are digging into the STAR bond portfolio to bring about a hotel, car museum and rehabilitation of an historic theater in the downtown.

Knocking on the door is the $165 million complex in Wyandotte County for the American Royal agricultural events center. It will be transferred from Kansas City, Mo., with about $80 million from STAR bonds.

“This is about creating a bright future for the American Royal … and hanging a sign in the state of Kansas that Kansas is open to agriculture,” said Korb Maxwell, an attorney with the American Royal.

In Derby, state and local officials applied STAR bond financing to an $18 million dinosaur park. Garden City is developing the Sports of the World Complex for soccer, skating, rugby and hockey on the east side of the city. It will pull down $24 million in STAR bonds.

“This is a great project for our region and will go a long way toward meeting some of our community enhancement goals,” said Lona DuVall, president of the Finney County economic development corporation.

A STAR bond development in Dodge City will invest $13 million in Boot Hill Museum and Heritage Center and the Long Branch Lagoon Water Park.

Atchison set out to work with STAR bonds for an aviation museum and to update the city’s farmers market.

“These aren’t projects that the private market is going to do,” said Trey Cocking, deputy director of the Kansas League of Municipalities.

Looking back, the Kansas Department of Commerce authorized $165 million in STAR bonds for the Kansas City Wizards stadium, $150 million for a Cerner Corp. office campus and $65 million for a U.S. soccer training facility.

In 2006 to 2009, the city of Manhattan received $50 million in STAR bonds to develop the Flint Hills Discovery Center, which brings to life the culture, heritage and natural surroundings of the tall grass prairie in Kansas. Other projects tied to the incentive were the Salt Mine Museum in Hutchinson and the Waterwalk in Wichita.

In 2017, the Legislature and Gov. Sam Brownback agreed to extend availability of the bond mechanism through 2022.

The Topeka Capital-Journal

By Tim Carpenter

Jun 17, 2018

Judge OKs Steel Valley Bond Issue to Finance Pay Inequities for Teachers.

An Allegheny County Common Pleas Court judge approved the Steel Valley School District's request to use a bond issue debt to finance gender-related pay gaps related to a recent court settlement.

During a brief court hearing Wednesday morning, the school district's attorney, Jerri Ryan, told Common Pleas Judge Michael Della Vecchia that the money from the bond issue would fund salary adjustments across the district to avoid more litigation in the future.

Steel Valley asked the court to allow it to issue $1.75 million in bonds, rather than raise property taxes in the short term, according to a May 21 petition.

Municipal finance experts contacted recently by the Pittsburgh Post-Gazette said that debt issuances are typically used for big capital projects, not costs related to legal settlements.

Naomi Richman, senior vice president at Moody's Public Finance Group, said last week the ratings agency is "not aware at this time of any cases involving Pennsylvania municipalities, including school districts."

Steel Valley in April reached a settlement with five female teachers who claimed in a lawsuit in U.S. District Court that they had been unfairly hired at lower salaries than male coworkers.

The teachers, who were hired between 1997 and 2008, began at the lowest step on the pay scale despite prior work experience. The district cited "policy" while paying some male teachers with similar experience more, according to the lawsuit.

As a result of the federal court settlement — for an undisclosed amount — Steel Valley reviewed three years of records to address pay gaps throughout the district and it will make a lump sum payment to the affected teachers, according to the petition. It is unclear how many employees are affected.

Steel Valley, a 1,400-student district that serves Munhall, Homestead and West Homestead, employs about 200 people, including nearly 130 teachers.

In his ruling, Judge Della Vecchia said he was not taking a stance on the substance of the case, only that the district followed proper procedure in requesting the bond issue.

Pittsburgh Post-Gazette

by Matt McKinney

June 13, 2018

Matt McKinney: mmckinney@post-gazette.com, 412-263-1944, or on Twitter @mmckinne17

Atlanta Locks in Savings on Sewer Debt Even as Market Shrinks for Municipal Bonds.

Atlanta expects to save about $500,000 by refinancing a loan taken out in 2008 to help pay for upgrading the city's water and wastewater system, a city finance official said Wednesday. The transaction is of note because the city secured a beneficial rate as municipal bonds face a swirl of headwinds.

Atlanta awarded $51.2 million in bonds in transactions dated Wednesday. The closing is set for June 21.

The Atlanta City Council approved the issuance Wednesday in a special call meeting. The council immediately sent the paper to Mayor Keisha Lance Bottoms for her signature, which enables the transaction to move forward quickly.

Atlanta did not extend the pay-off date of the debt in order to receive a lower interest rate. The $51.2 million is structured as three separate entities, each with a different retirement date and still set to terminate in 2041, according to terms outlined by EMMA/MSRB. The dates for final payoff of the amount of bonds issued include:

Nov. 1, 2039 – $8.5 million;
Nov. 1, 2040 – $16.9 million;
Nov. 1, 2041 – $25.8 million.

There's nothing new or novel about governments issuing new debt to pay off older debt that carried a higher interest rate.

The 2008 bonds carried a variable rate that was changing every week, according to Jerraé Williams, Atlanta's treasurer/chief of debt and investment. The all-in, true fixed rate of the $51.2 million bond issue is 4.15, according to John Gaffney, Atlanta's deputy chief financial officer.

"In lieu of interest rates that are going to continue to increase, we need to fix out the cost," Williams said. "We converted the variable rate to fixed rate. We are saving money, about $500,000."

However, these sorts of transactions that once were routine are entering a new era. The tax overhaul bill President Trump signed into law in December 2017 made debt issued by state and local governments less attractive to one of their major buyers – banks.

During the first quarter of 2018, more than six of the nation's largest banks reduced by $7.8 billion their holding of debt issued by state and local governments, according to a May 31 report by bloomberg.com. The report was based on a review of the banks' first-quarter filings with the U.S. Securities and Exchange Commission.

The report observed:

"The figures show a significant pullback from buyers that had been steadily expanding their ownership of state and local government securities since the end of the recession, helping bolster demand. If the large banks are a guide, the quarter will mark the first time the industry has

retreated from the $3.9 trillion market since 2009."

In addition, the Fed indicated Wednesday it may approve two more rate hikes this year, according to a report by businessinsider.com.

Against this backdrop, Atlanta's incoming chief financial officer, Roosevelt Council, observed that the timing of the transaction was ideal.

"Our timing couldn't have been better, because the [Federal Reserve] board chairman talked about increasing rates, basically today," Council said. "We were able to lock in a pretty good price as it pertains to that."

The mayor has nominated Council as CFO and his appointment is pending the council's approval.

Saporta Report

By David Pendered

June 13, 2018,

Hounded by Woes, Chicago Sees Musk's Train as Win for Its Economy.

- **Boring Co. lands bid to build multibillion high-speed train**
- **Musk's investment shows "faith" in city economy, analyst says**

Chicago, slammed by rating agencies for its fiscal woes, President Donald Trump for its violence and even its own governor for the school system's debts, is getting a boost from visionary Elon Musk.

Mayor Rahm Emanuel and Musk, the billionaire chief executive officer of electric carmaker Tesla Inc., Thursday officially unveiled the plans for a high-speed train service that will make the approximately 15-mile (24-kilometer) trip from downtown Chicago to O'Hare International Airport in 12 minutes, a fraction of the current commute.

That Musk's Boring Co. emerged as the winning bidder is a coup for the 18-month-old company, whose futuristic ideas have yet to be proven. But Chicago bondholders are also voicing cautious optimism that the project — which will use electric vehicles to transport passengers through new underground tunnels — is an economic win for the nation's third-largest city. Chicago said it won't require any public funds.

"It's very good news that a company like the Boring Co. would be considering a major investment in Chicago-area infrastructure," said Paul Mansour, head of municipal research at Conning, which oversees about $9 billion of state and local debt, including Chicago bonds. "It shows faith in the future of the Chicago-area economy."

Chicago's public transit has long been a talking point for Emanuel when touting the city's virtues. Musk's investment also coincides with Emanuel's courtship of Amazon.com Inc., which placed Chicago on the list of 20 cities that may be home to its second headquarters. Chicago is also embarking on the largest terminal expansion plan in O'Hare's history, a long overdue revamp of what once was the world's busiest airport.

"Bringing Chicago's economic engines closer together will keep the city on the cutting edge of

progress, create thousands of good-paying jobs and strengthen our great city for future generations," Emanuel said in an emailed statement. "This transformative project will help Chicago write the next chapter in our legacy of innovation and invention."

More than 50 companies have relocated their headquarters to Chicago under Emanuel's tenure, according to World Business Chicago. Emanuel took office in 2011 and is up for re-election next year.

"Chicago's competitive edge is unbelievable,'' Emanuel said during a press conference on Thursday with Musk, touting the city's transportation system, universities, and workforce. "This will add to it and give us a cutting edge and helps us maintain and build the commanding world-class economy we have.''

The investment is also significant given the fiscal strains facing Chicago and Illinois. The city had $35.8 billion of unfunded pension liabilities by the end of 2016, and the state's retirement systems were short $137 billion, as of June 30, raising the risk of tax increases down the road. Those pension liabilities caused Moody's Investors Service to cut Chicago's rating to junk in 2015, making it the only major city outside of Detroit without an investment-grade rating.

Speaking to reporters, Emanuel praised the tremendous opportunity the investment will bring to the city, emphasizing that Boring is bearing all of the cost.

"He's bearing the cost," Emanuel told reporters. "We get the upside with no financial risk at all."

Even if it wanted to, Chicago couldn't afford to be too big of a contributor to the kind of project envisioned by Musk, according to Richard Ciccarone, president of Merritt Research Services LLC, which analyzes municipal finance. Emanuel has already hiked property, sewer and water taxes to cover rising pension payments.

"We've used up so much of our taxing and debt capabilities," Ciccarone said in a telephone interview. "For us, we've got to do whatever we can to extract help from the private sector."

Chicago will start one-on-one contract negotiations with Boring, according to the city. Once an agreement is reached, the city council would need to approve it.

"it's very preliminary," said Dennis Derby, a portfolio manager at Wells Fargo Asset Management, which holds $39 billion of municipal debt, including Chicago bonds, "but it should help the economic and transportation infrastructure of the city."

Bloomberg

By Elizabeth Campbell

June 14, 2018, 10:24 AM PDT Updated on June 14, 2018, 2:32 PM PDT

— With assistance by Sarah McBride

- S&P: The Transition To Secured Overnight Financing Rate From LIBOR Could Add Credit Risk For U.S. Public Finance Issuers.
- MSRB Initiates Retrospective Review of Underwriter Disclosures to Issuers.

- Rule 4210 Update: BDA Submits Capital Charge Letter to FINRA.
- For an Increasing Number of Governments, One Credit Rating Is Plenty.
- S&P Credit FAQ: Not-For-Profit Health Care Organizations and the Impact From A Revenue Recognition Accounting Rule Change.
- *Indian River County v. Rogoff* – District Court holds that Department of Transportation's (DOT) withdrawal of authorization for tax-exempt private activity bonds (PAB) to help finance railroad project rendered moot counties' actions alleging that DOT failed to comply with NEPA and other federal environmental statutes before allocating PABs, even though project's sponsor subsequently obtained new allocation of PABs to finance portion of project that did not affect counties.
- And finally, Do I At Least Get A Slingshot? is brought to us this week by *United States v. Jim*, a case title that we find just delightful beyond belief. What on earth could Jim have possibly done to incur the wrath of the entire federal government? That poor, poor bastard. (Alright, alright, the case was actually brought against a Sally Jim. You happy now? Are you? This is why we can't have nice jokes!)

MUNICIPAL ORDINANCE - CALIFORNIA

Diaz v. Grill Concepts Services, Inc.

Court of Appeal, Second District, Division 2, California - May 24, 2018 - Cal.Rptr.3d - 2018 WL 2355295 - 18 Cal. Daily Op. Serv. 4992

Restaurant employees brought class action against employer, alleging failure to pay living wage as required by ordinance and unfair competition.

On cross-motions for summary judgment, the Superior Court partially granted and partially denied the motions, and, following trial, entered judgment in favor of employees as to prejudgment interest and penalties. Employer appealed.

The Court of Appeal held that:

- Ordinance mandating payment of living wage to certain employees was not unconstitutionally vague under due process clause, and
- Trial courts lack discretion to waive statutory waiting time penalties for failure to pay wages of employees who are discharged or who quit.

PABS - DISTRICT OF COLUMBIA

Indian River County v. Rogoff

United States District Court, District of Columbia - May 10, 2017 - 254 F.Supp.3d 15

Two counties brought actions alleging that Department of Transportation's (DOT) authorization of tax-exempt private activity bonds (PAB) supporting construction and operation of railway violated National Environmental Policy Act (NEPA) and other federal statutes.

Project sponsor intervened. After DOT withdrew allocation, defendants moved to dismiss.

The District Court held that DOT's withdrawal of authorization for PABs rendered counties' actions moot.

Department of Transportation's (DOT) withdrawal of authorization for tax-exempt private activity

bonds (PAB) to help finance railroad project rendered moot counties' actions alleging that DOT failed to comply with NEPA and other federal environmental statutes before allocating PABs, even though project's sponsor subsequently obtained new allocation of PABs to finance portion of project that did not affect counties, and it appeared sponsor would follow up with second application for remainder of project, where new PAB allocation for remainder of project without complying with NEPA would not necessarily be unlawful, it was not clear that DOT would authorize new allocation without complying with NEPA, it was possible that new presidential administration would not fund second allocation, and there was no longer any meaningful relief that court could provide counties.

ZONING & LAND USE - NEBRASKA

Lindner v. Kindig

Supreme Court of Nebraska - May 27, 2016 - 293 Neb. 661 - 881 N.W.2d 579

Resident brought action against city and its mayor seeking declaration that ordinance creating off-street parking district adjoining store was unconstitutional.

The District Court dismissed action on limitations grounds. Resident appealed. The Supreme Court reversed and remanded. On remand, the District Court granted summary judgment for city and mayor. Resident appealed.

The Supreme Court of Nebraska held that:

- A constitutional claim can become time-barred just as any other claim, and
- Four-year catchall limitations period applied to action.

ZONING & LAND USE - PENNSYLVANIA

Gorsline v. Board of Supervisors of Fairfield Township

Supreme Court of Pennsylvania - June 1, 2018 - A.3d - 2018 WL 2448803

Objecting residents sought review of decision of township board of supervisors to grant energy company's application for a conditional-use permit to locate gas wells on tract of land that was located in an area zoned residential–agricultural.

The Court of Common Pleas reversed. Energy company and tract's owners appealed. The Commonwealth Court reversed. Objecting residents petitioned for allowance of appeal.

The Supreme Court of Pennsylvania held that company's proposed use was not, in any material respect, of the same general character as, or similar to, public-service-facility or essential-services uses, which were uses that zoning ordinance allowed in residential–agricultural districts.

EMINENT DOMAIN - SOUTH CAROLINA

Jowers v. South Carolina Department of Health and Environmental Control

Supreme Court of South Carolina - May 30, 2018 - S.E.2d - 2018 WL 2449220

Owners of property along rivers and streams brought action against the Department of Health and

Environmental Control (DHEC), claiming that the Surface Water Withdrawal, Permitting, Use, and Reporting Act's registration provisions were an unconstitutional taking of private property for private use, that the Act violated their due-process rights by depriving them of their property without notice or an opportunity to be heard, and that the Act violated the public-trust doctrine by disposing of assets that the state held in trust.

The Circuit Court granted summary judgment for DHEC on standing and ripeness grounds and also denied property owners' claims on the merits. Property owners appealed.

On rehearing, the Supreme Court of South Carolina held that:

- Act did not deprive property owners of their common-law riparian rights, and thus owners did not have standing;
- Public-importance exception to the requirement of standing did not apply;
- Claim that registration provisions of Act violated the public-trust doctrine was not justiciable; and
- Public-importance exception to the requirement for standing did not apply to claim that registration provisions of Act violated the public-trust doctrine.

Surface Water Withdrawal, Permitting, Use, and Reporting Act did not deprive owners of property along rivers and streams their common-law riparian rights, and thus owners did not suffer an injury-in-fact required to establish standing in their action against Department of Health and Environmental Control (DHEC) that challenged Act's registration provisions regarding use of surface water by registered agricultural users as an unconstitutional taking under the state constitution and as a deprivation of owners' due-process rights; Act did not prevent owners from seeking an injunction against another riparian owner, including a registered agricultural user, for unreasonable use, Act did not prevent owners from filing a declaratory judgment against registered agricultural users and requesting the court declare their use unreasonable, and Act contemplated a private cause of action for damages against registered agricultural users.

IMMUNITY - TEXAS

Wasson Interests, Ltd. v. City of Jacksonville

Supreme Court of Texas - June 1, 2018 - S.W.3d - 2018 WL 2449184 - 61 Tex. Sup. Ct. J. 1280

Tenant of property on city's water reservoir brought action against city for breach of leases after city terminated leases and evicted tenant.

The Second Judicial District Court granted city's motion for summary judgment. Tenant appealed. The Court of Appeals affirmed. On review, the Supreme Court reversed and remanded. The Court of Appeals affirmed. Tenant petitioned for review.

The Supreme Court of Texas held that:

- City's decision to lease its lakefront property to tenant was discretionary;
- City was acting primarily for the benefit of its own residents when it leased lake lots to private tenant;
- City was acting on its own behalf, and not that of the state, when it leased lake lots to private tenant;
- City's leasing of lakefront property was not essential to city's operation or maintenance of lake, and thus, was not governmental; and

- Governmental immunity did not operate to protect city from tenant's suit for breach of the lease agreements.

ZONING & LAND USE - UTAH

Potter v. South Salt Lake City

Supreme Court of Utah - June 5, 2018 - P.3d - 2018 WL 2710974 - 2018 UT 21

Objectors sought judicial review of city council's decision to close a portion of two city streets.

The District Court dismissed objectors' claim, and they appealed.

The Supreme Court of Utah held that:

- Automobile dealership's petition to vacate portions of two public streets was not defective on the basis it failed to include the names and addresses of all property owners whose land was adjacent to the public streets being vacated;
- There was no reasonable likelihood that alleged defects in petition to vacate had any effect on city's decision to vacate portions of two public streets, and thus, objectors failed to demonstrate prejudice, as required to overturn city's land use decision; and
- A party challenging a land use decision is not required to prove that the city's decision "would have been different" absent the violation of city law, but instead, it is enough for the challenging party to show that there is a reasonable likelihood that the legal defect in the city's process changed the outcome of the proceeding, modifying *Springville Citizens*, 979 P.2d 332.

SPECIAL ASSESSMENT LIENS - VIRGINIA

Cygnus Newport-Phase 1B, LLC v. City of Portsmouth

Supreme Court of Virginia - September 22, 2016 - 292 Va. 573790 S.E.2d 623

Property owner brought action against city and community development authority, alleging that a special assessment lien, recorded after a deed of trust, was extinguished by the foreclosure sale and that the special assessments were void.

The Circuit Court granted the pleas in bar and dismissed the complaint. Owner appealed.

The Supreme Court of Virginia held that:

- Special assessment liens have priority over previously recorded deeds of trust;
- Special assessment lien was enforceable against property owner; and
- Owner's belated challenge to special assessments was foreclosed.

Special assessment lien was enforceable against property owner after foreclosure sale on deed of trust, even though deed of trust was recorded before lien, where city filed in deed book of circuit court clerk's office an abstract of ordinance authorizing improvements, which made lien enforceable against any person deemed to have had notice of assessment, and owner had notice of assessment and lien when it acquired deed of trust and property at foreclosure.

State constitution and code foreclosed property owner's belated challenge to special assessments on property that owner acquired following foreclosure sale on deed of trust; owner acquired its interest

long after assessment agreement with former owner had been finalized and recorded, assessments approved and recorded, and bonds issued, owner filed suit approximately nine years after special assessments were imposed and bonds issued, and state constitution and code did not contemplate endless challenges from subsequent purchasers who bought property with notice of existence of assessment, notice of agreement with former owner, and notice of what infrastructure had been constructed.

ZONING & LAND USE - WISCONSIN

Golden Sands Dairy LLC v. Town of Saratoga

Supreme Court of Wisconsin - June 5, 2018 - N.W.2d - 2018 WL 2710392 - 2018 WI 61

Following mandamus action to compel town to issue building permit for farm structures landowner filed action for declaratory judgment that it had vested right to use land specifically identified in building permit application for agricultural purposes, despite zoning change which sought to prohibit such agricultural uses.

The Circuit Court entered judgment for landowner. Town appealed, and the Court of Appeals entered judgment for landowner. Town appealed, and the Court of Appeals reversed. Landowner petitioned for review, which was granted.

The Supreme Court of Wisconsin held that:

- As a matter of first impression, building permit rule applies to all land specifically identified in the building permit application, not merely to structures, and
- Application specifically identified property landowner sought to use for farm such that landowner had vested right to use property for farm.

MSRB Initiates Retrospective Review of Underwriter Disclosures to Issuers.

Washington, DC – As part of its commitment to ongoing review of its rules and published interpretations, the Municipal Securities Rulemaking Board (MSRB) is seeking comment 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.

"The MSRB has received informal feedback from market participants that the disclosure requirements adopted in 2012 could more effectively and efficiently achieve their intended purpose of assisting issuers in making informed decisions when engaging the services of an underwriter," said MSRB President and CEO Lynnette Kelly.

For example, Kelly said, some market participants have indicated that underwriters' disclosures are duplicative, often boilerplate and burdensome for issuers to review. In addition, dealers have observed that in some cases the burdens on them of requiring certain disclosures may not be fully justified by the informational value to issuers.

"Soliciting formal public comment will help us consider whether and how to amend the guidance to

improve its effectiveness and efficiency," Kelly said.

Read the request for comment. Comments should be submitted no later than August 6, 2018.

Date: June 5, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500
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Rule 4210 Update: BDA Submits Capital Charge Letter to FINRA.

On June 7, 2018, the BDA continued leading the advocacy push opposing FINRA Rule 4210 by submitting a letter in support of a "Capital Charge" provision in lieu of the proposed margin requirements. The letter, which comes on the heels of a 9 month delay of implementation of the rule by the SEC last month, showcases BDA firms and how the requested change would positively impact these firms.

Highlighted points include:

- These firms do not believe that the Capital Charge Proposal will have any anti-competitive impact on their businesses.
- These firms expect that the existing covered agency transaction rules will cause some erosion in their businesses.
- These firms strongly support the Capital Charge Proposal.

BDA Continues Advocacy on Capitol Hill

The BDA continues to work with partners on the House Financial Services Committee and Senate Banking Committee to pressure the SEC and FINRA to rethink the rule. **This includes both advocating for the "Capital Charge" proposal as well for outright termination of the amendment due to its anti-competative nature before implementation on March 25, 2019.**

In the coming weeks, it is expected that multiple Members of Congress will reach out to both FINRA and the SEC. We will provide an update once this occurs

Bond Dealers of America

June 8, 2018

For an Increasing Number of Governments, One Credit Rating Is Plenty.

A decade ago, most sought two or three ratings before selling their bonds. Not anymore.

For years, governments paid for the extra cost of getting multiple credit ratings when they sold bonds, mainly to appease the investors who bought them. But now, more and more governments are forgoing multiple ratings in favor of just one — and 2018 is shaping up to be the biggest year yet for the trend.

Through the first five months of this year, 25 percent of bond sales have involved just one credit rating, according to data analyzed by the research firm Municipal Market Analytics. That's far higher than the 13 percent rate a decade ago and the 20 percent average over the past few years.

Lisa Washburn, a managing partner at Municipal Market Analytics, says she expects the trend to continue, especially since issuances with just one rating don't appear to be penalized with higher interest rates.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | JUNE 8, 2018

S&P: The Transition To Secured Overnight Financing Rate From LIBOR Could Add Credit Risk For U.S. Public Finance Issuers.

The London InterBank Offered Rate (LIBOR) has been a global index rate in many financial structures for decades. An estimated $350 trillion in derivatives, loans, mortgages collateralized loan obligations, swaps, commercial paper, and other debt types are tied to the rate.

Continue Reading

Jun. 7, 2018

Interactive Brokers Welcomes New Bond Disclosure Rules.

Company Known for Low Fees Supports Amendments Requiring Brokers to Increase Transparency

GREENWICH, Conn.–(BUSINESS WIRE)–Interactive Brokers Group, Inc. (NASDAQ GS: IBKR) an automated global electronic broker, today announced its support for a new rule implemented by the Securities and Exchange Commission (SEC) on May 14th requiring brokers to disclose the fees they make on corporate, municipal, and agency bond transactions.

The amendments to FINRA Rule 2232 and MSRB Rule G-15 regarding Customer Confirmations requires SEC member firms to disclose the amount of mark-up or mark-downs applied to trades made for retail clients if the firm executes an offsetting trade in the same security on the same trading day. The amendments also require firms to provide clients with trading data for the security traded and the exact execution time of the transaction.

"Interactive Brokers welcomes the new rule requiring brokers to be transparent about their fees. In the past, many brokers claimed they did not charge commission, but hid fees in their spreads. Unlike most other brokers, our firm offers low, transparent pricing and does not charge spread mark-ups," said Thomas Peterffy, CEO of Interactive Brokers.

The company, which was ranked Number One in Barron's 2018 Best Online Brokers Ranking and the "Lowest Cost Online Broker" by Barron's five years on a row*, is known for its advanced technology,

breadth of offerings, and low costs.

The company's bond commissions are:

US Treasuries .002% on the first $1,000,000 of face value and .0001% of the face value after the initial $1,000,000.

Municipal Bonds .05% on the first $10,000 of the face value and .0125% of the face value after the initial $10,000.

Corporate Bonds 0.1% on the first $10,000 of face value and 0.025% of the face value after the initial $10,000.

More details on IBKR's bond pricing can be viewed here.

"IBKR is committed to lowering clients' costs to help them maximize their returns. We provide online access to a broad range of bonds and sophisticated cash management tools for everyone from corporate treasurers to individual investors. We encourage our clients to enter their own bids and offers and negotiate instead of acting on the quotes of others," Mr. Peterffy noted.

In May, IBKR added mobile trading for both Municipal and Corporate bonds. Its Trader Workstation (TWS) trading platform provides Corporate Bond and Muni Bond Market Scanners that let clients quickly and easily scan global markets for the top performing bonds across instrument types and metrics.

About Interactive Brokers Group, Inc.:

Interactive Brokers Group affiliates provide automated trade execution and custody of securities, commodities and foreign exchange around the clock on over 120 markets in numerous countries and currencies, from a single IB Universal Account® to clients worldwide. We service individual investors, hedge funds, proprietary trading groups, financial advisors and introducing brokers. Focusing on technology and automation for over 41 years has enabled us to equip our clients with a uniquely sophisticated platform to manage their investment portfolios at the lowest cost. Due to our range of services, low costs and technology, IBKR is ranked the "Top Online Broker", according to Barron's Best Online Brokers review, March 24, 2018. We strive to provide our clients with advantageous execution prices and trading, risk and portfolio management tools, research facilities and investment products, all at low prices, positioning them to achieve superior returns on investments.

* Lowest Cost Rated by Barron's 5 Years Straight – Lowest cost broker 2014 through 2018 according to Barron's online broker review. Interactive Brokers earned a 4.6 star ranking in the March 26, 2018 Barron's Annual Best Online Brokers – "All Together Now". Criteria included Trade Experience and Technology, Usability, Mobile, Range of Offerings, Research Amenities, Portfolio Analysis & Reports, Customer Service, Education and Security, and Costs. Barron's is a registered trademark of Dow Jones & Co. Inc.

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June 05, 2018

U.S. Muni Bond Market Slips to $3.843 trln in First Quarter - Fed

NEW YORK, June 7 (Reuters) – The U.S. municipal bond market dipped to $3.843 trillion in the first quarter of 2018 from $3.863 trillion the previous quarter, according to a report from the Federal Reserve released on Thursday.

Households, or retail investors, held $1.640 trillion of debt sold by states, cities, schools and other muni issuers in the latest quarter, falling slightly from $1.641 trillion in the fourth quarter of 2017, the Fed report said.

U.S. banks' muni bond buying dropped. Financial institutions shed $56.7 billion in the first quarter, compared with adding $37.5 billion in the fourth quarter.

Property and casualty insurance companies took on $13.6 billion of munis in the first quarter after relinquishing $2.0 billion in the fourth quarter. Life insurance companies picked up $7.5 billion of the bonds compared to $6.4 billion the last quarter.

U.S. mutual funds bought $53.8 billion of munis in the first quarter, a sharp increase from $29.5 the previous quarter, while exchange traded funds were down $2.8 billion from $7.5 billion.

(Reporting by Laila Kearney Editing by Bill Berkrot)

SIFMA Research Quarterly, First Quarter 2018

Long-term securities issuance totaled $1.80 trillion in 1Q'18, a 4.6 percent decrease from $1.88 trillion in 4Q'17 and an 11.5 percent decrease year-over-year (y-o-y) from $2.03 trillion. Issuance decreased quarter-over-quarter (q-o-q) across all asset classes except Treasury, corporate, and equity while y-o-y, issuance decreased across all asset classes except federal agency.

Long-term public municipal issuance volume including private placements for 1Q'18 was $67.6 billion, down 53.8 percent from $146.4 billion in 4Q'17 and down 27.4 percent from $93.1 billion in 1Q'17.

The U.S. Treasury issued $580.0 billion in coupons, Floating Rate Notes and Treasury Inflation Protected Securities in 1Q'18, up 8.3 percent from $535.5 billion in the prior quarter but 11.3 percent below $654.1 billion issued in 1Q'17.

Issuance of mortgage-related securities, including agency and non-agency passthroughs and collateralized mortgage obligations, totaled $444.3 billion in the first quarter, an 8.1 percent decrease from 4Q'17 ($483.2 billion) and a 2.6 percent decrease y-o-y ($456.1 billion).

Corporate bond issuance totaled $380.7 billion in 1Q'18, up 19.3 percent from $319.2 billion issued in 4Q'17 but down 21.0 percent from 1Q'17's issuance of $481.9 billion. Of 1Q'18 corporate bond issuance, investment grade issuance was $319.1 billion (83.8 percent of total) while high yield issuance was $61.6 billion (16.2 percent of total).

Long-term federal agency debt issuance was $177.7 billion in the first quarter, slightly down from $207.9 billion in 4Q'17 but up 7.6 percent from $165.1 billion issued in 1Q'17.

Asset-backed securities issuance totaled $77.8 billion in the first quarter, a decrease of 49.6 percent q-o-q ($154.5 billion) and a 34.4 percent decrease y-o-y ($118.5 billion).

Equity underwriting increased by 8.2 percent to $59.5 billion in the first quarter from $55.0 billion in 4Q'17 but down 1.3 percent from $60.3 billion issued in 1Q'17. Of the total, "true" initial public accounted for $16.1 billion, up 36.6 percent from $11.8 billion in 4Q'17 and up 44.8 percent from $11.1 billion in 1Q'17.

Download the Report.

About the Report

A quarterly report containing brief commentary and statistics on the U.S. capital markets, including but not limited to: municipal debt, U.S. Treasury and agency debt, short-term funding and money market debt, mortgage-related, asset-backed and CDO debt; corporate bonds, equity and other, derivatives, and the primary loan market.

U.S. House Overwhelmingly Approves 2018 Water Resources Development Act; Senate On Tap Next for WRDA.

KEY TAKEAWAYS

- U.S. House overwhelmingly approves WRDA bill in a 408 to 2 vote.
- Popular WRDA bill does not include use of Harbor Maintenance Trust Fund.
- All eyes turn to Senate action on WRDA where a vote could take place in the coming weeks.

On June 6, the U.S. House of Representatives overwhelmingly passed the Water Resources Development Act (WRDA) of 2018 (H.R. 8) on a 408 to 2 vote.

The water infrastructure bill authorizes the WRDA, which controls federal navigation, flood-control, storm damage projects and feasibility studies across the United States. Once enacted into law, WRDA provisions must be funded through the federal government's annual appropriations process.

The final legislation, the bill did not include a provision on the Harbor Maintenance Trust Fund (HMTF) that was initially included in the bill. It would have allowed the full use of the HMTF for harbor maintenance purposes without further congressional appropriations by FY 2029. The HMTF provision was removed from the bill after the Congressional Budget Office reported it would increase annual deficits by more than $5 billion over 10-years following its 2029 enactment date. The HMTF is a tax levied against importers and domestic shippers using ports and harbors in coastal and Great Lakes areas. Even though the HMTF is currently operating a large surplus, only a portion is appropriated by Congress annually for operations and maintenance in the nation's harbors.

Additionally, the bill directs the National Academy of Sciences (NAS) to consult with the Army Corps and other federal agencies to study the potential impacts of moving the Army Corps' Civil Works division out of the Department of Defense and "to a new or existing agency or sub-agency of the federal government" to carry out authorized WRDA projects and studies.

Across the Capitol, the Senate has been working on its own WRDA bill titled, America's Water Infrastructure Act of 2018 (S. 2800). Similar to the House bill, the Senate version does not include HMTF. Additionally, S. 2800 contains several Clean Water Act provisions on the U.S Environmental Protection Agency's (EPA) Integrated Planning policy and Water Infrastructure Finance and Innovation Act. The Senate Environment and Public Works Committee approved the bill on May 22. Senate leaders indicated that the chamber will likely bring up the bill within the next several weeks.

WRDA is historically passed every two years. However, in the past decade, it has only been enacted three times, in 2007, 2014 and 2016.WRDA currently has a backlog of nearly $100 billion worth of projects that have been authorized but have not received appropriations. If passed by Congress, the current WRDA legislation would be added to the list of projects awaiting congressional appropriations.

NACo supports congressional efforts to move WRDA back to a two-year authorization cycle. As major owners, users and regulators of water resources and infrastructure, counties are directly impacted by the policies and funding authorized by WRDA. The legislation addresses county interests related to ports, inland waterways, levees, dams, wetlands, watersheds and coastal restoration.

NACo resources:

NACo letter in support of H.R. 8, click here.

National Association of Counties

By Zach George

Jun. 7, 2018

BDA Submits Comments to the House Ways and Means Tax Policy Subcommittee.

The BDA has submitted written comments to the House House Ways and Means Tax Policy Subcommittee in support of fully reinstating tax-exempt advance refundings and expanding the use of private activity bonds (PABs). The comments can be viewed here.

The comments were submitted in response to a recent hearing titled, "Tax Reform and Small Businesses: Growing Our Economy and Creating Jobs". Specifically, BDA's comments focused on three tax policy goals that Congress must pursue if it is to ensure capital is readily available for priority projects:

- Continue the tax-exemption for interest paid on bonds issued by state and local governmental entities.
- Restore the ability of state and local governments to save taxpayer dollars and generate additional funds for infrastructure and other key initiatives by restoring tax-exempt Advanced Refundings (ARs).
- Expand the use of tax-exempt Private Activity Bonds (PABs).

Bond Dealers of America

June 4, 2018

Banks Reduce Municipal-Bond Holdings for First Time Since 2009.

- **Lenders cut their stakes by $15.8 billion during first quarter**
- **Lower tax rates have lessened the appeal of state, local debt**

U.S. banks reduced their holdings of state and local government bonds for the first time since 2009 after the federal government slashed corporate tax rates, making the securities less valuable to one of the market's key buyers.

Figures released by the Federal Reserve Thursday show that the lenders' holdings of municipal debt dropped by $15.8 billion during the first three months of the year to $554.4 billion. The reduction marks a pullback from buyers that had been steadily expanding their ownership of state and local government securities since the end of the recession, helping bolster demand.

The data confirm the widespread view among Wall Street analysts that tax-exempt debt would be less alluring to banks after the corporate tax rate was dropped this year to 21 percent from 35 percent. Bank of America Corp., Citigroup Inc., JPMorgan Chase & Co. and Wells Fargo & Co. were among those who pared their holdings, according to quarterly filings with the U.S. Securities and Exchange Commission.

The lower tax rate appears to have had less of an impact on insurance companies. The Fed reported that property and casualty insurers' holdings held steady at $327 billion, despite cutbacks that were previously disclosed by some of the biggest companies.

Bloomberg

By William Selway

June 7, 2018

Investors May See Losses of 17% on Otherwise Safe Hospital Deal.

- **Mission Health System is in talks for sale to HCA Healthcare**
- **Provision allows at-par redemption if tax status is changed**

Mission Health System was likely viewed as a relatively safe bet for municipal-bond investors. The not-for-profit hospital system in Asheville, North Carolina, is rated investment-grade and its revenue has climbed in each of the last five years.

But if the system's proposed sale to for-profit HCA Healthcare goes through, investors could suffer losses under borrowing provisions that allow Mission to redeem certain debt at par in the event of a sale that changes the tax-exempt status of its bonds. And that's likely to raise questions about whether investors will continue to accept such provisions in bond deals.

Bonds sold in 2016 by Mission maturing in 2029, one of its most actively-traded securities, were priced at a premium of about 121 cents on the dollar. If the bonds are called at par, that would equate to a 17 percent loss for bondholders. The debt last traded at an average of 110.7 cents on the dollar on June 1.

'Deeply Unhappy'

While the call provision isn't very unusual, the Mission deal is unique because the bonds are trading above par, said Michael Johnson, a research analyst at broker-dealer firm First Ballantyne LLC in Charlotte, North Carolina. Typically, the provision is used to protect investors so they can get their money back if a deal turns taxable, he said.

"In this case, it looks as if it's going to protect the actual company," Johnson said.

Bondholders are "deeply unhappy," said Joseph Rosenblum, director of municipal credit for AllianceBernstein, which according to Bloomberg data is a top holder of Mission's debt.

Questions about the value of such provisions are sure to continue given that mergers and acquisitions are common in the health-care industry, Rosenblum added. "We will likely see more of these," he said. "How much are we willing to accept going forward?"

Numerous Inquiries
No decision has been made by Mission regarding how it will pay, redeem or defease its outstanding debt if the proposed deal goes through, Rowena Buffett Timms, a senior vice president for government and community relations at Mission, said in an emailed statement.

Mission has gotten "numerous" inquiries from investors on the call provisions, which were "clearly" disclosed in bond offering documents, the company said in an April 13 filing. "Mission assumes that (1) investors who purchased any of these bonds were aware of such call provisions and (2) the purchase price or yield at which such investors purchased these bonds (either at the initial offering or in the secondary market) reflected the redemption risks relating to such call provisions," the filing said.

Even if a sale to HCA doesn't go through, Johnson said Mission's bond prices are unlikely to improve given that the call provision will remain an issue, Johnson said.

"It's already proven it's up for sale," he said.

Bloomberg

By Amanda Albright

June 7, 2018, 6:46 AM PDT

Luxury Dorms Are Struggling to Fill Beds.

- **Non-profits financed the projects with municipal bonds**
- **Some projects are seeing 'a little bit of stress,' S&P says**

Park West, a 3,400-bed student housing complex near the Texas A&M University campus in College Station has a resort-style rooftop pool, three gyms and lounges with billiard tables, ping pong and flat screen televisions.

What it doesn't have are students — or rather their parents — willing or able to pay as much as $1,000 a month to live there. Just over half the beds at the complex, financed largely by tax-exempt municipal bonds, were filled during the last academic year.

About 360 miles (580 kilometers) north in Norman, Oklahoma, a 1,230-bed residence hall at the University of Oklahoma featuring a “blow dry bar and salon,” a market with grass-fed local meats, and a cycling studio is just 26 percent leased, according to a securities filing. It opens in August.

“We have seen some projects go through a little bit of stress,” said Jessica Matsumori, an analyst at S&P Global Ratings. S&P has rated about 60 privatized municipal student-housing deals, most of them BBB-, the lowest investment grade.

As universities tap outsiders to finance a dormitory arms race while keeping debt off the books, the Texas and Oklahoma projects underscore the risks to investors of overbuilding luxury accommodations as students and parents become more cost-conscious.

More Bonds

Municipal-bond sales for new student housing projects backed only by rents grew to about $930 million last year, a 45 percent increase from a decade before, according to data compiled by Bloomberg.

Unable to pay operating costs and service $360 million of bonds with project revenue, the non-profit owner of the Texas A&M complex, National Campus and Community Development Corporation, agreed May 17 to give bondholders more control over the project. Texas A&M also agreed to advertise the complex on its campus housing website.

Last week, S&P downgraded $250 million municipal bonds that financed the University of Oklahoma project to BB. Baton Rouge, Louisiana-based Provident Resources Group, the non-profit that financed the dorm, attributed weak demand to a “lack of creative marketing strategies” and higher rents than other housing, the ratings company said.

Greg Eden, a former public finance-lawyer at Kutak Rock and president and sole employee of Austin, Texas-based National Campus, didn’t return calls seeking comment. Steve Hicks, also a former public-finance attorney and the chief executive officer of Provident, said his group will address the the issues related to the S&P downgrade in the coming weeks and that bondholders will get timely updates.

National Campus has financed housing at Florida International University and Drake University it Iowa. It has also issued debt for a hotel and conference center at Texas A&M. Provident owns student housing at Kean University and Montclair State University in New Jersey, Towson University in Maryland, and North Carolina State University.

The projects are developed and managed by private companies.

Few Restrictions

Few restrictions apply to tax-exempt financings by non-profit entities, said Mark Scott, a former head of the U.S. Internal Revenue Service’s Tax-Exempt Bond Office. “The real question is why an entity that builds luxury apartments is entitled to non-profit status,” he said.

Park West, which is closer to Texas A&M’s 102,733-seat football stadium than to academic buildings, opened at the flagship school in fall 2017. The 5,200 acre campus, about 90 miles northwest of Houston, has more than 55,000 students and enrollment has grown at an average annual 2.7 percent per year, between 2005 and 2015.

A market study that accompanied the 2015 bond offering for Park West said there was ample

demand for the project. But Park West only rented 54 percent of beds in the fall semester and 52 percent in the spring, according to S&P.

Management told S&P the market study didn't capture all the new housing supply coming on line in the area surrounding the campus. S&P downgraded the bonds eight levels to CCC in December.

Park West competes in a Class-A off-campus student housing market of 25,000 beds that grew an average of nine percent a year between 2014 and 2017, triple the annual enrollment growth at Texas A&M, according a market assessment commissioned by National Campus. More than 2,400 beds are slated for delivery in fall 2018.

"The top end of the market remains extremely competitive," according to an evaluation by Meyers Research. Rents declined 3.2 percent in 2017, the firm said.

Rents Down

To fill beds, Park West cut rents on many units below $600 a month, according to Meyers. Almost 90 percent of beds are pre-leased for the fall semester, but the revenue shortfall means that the project will need to draw on reserves through 2021 to pay debt service while gradually raising rents.

The forbearance agreement gives bondholders, led by Nuveen Asset Management, the right to review and approve budgets and get weekly leasing reports. Bondholders agreed to allow revenue to pay operating costs first and then debt service.

John Miller, Nuveen's co-head of fixed income, declined to comment. Nuveen owns 43 percent of the bonds, according to data compiled by Bloomberg. The Vanguard Group is the second-biggest holder with about 17 percent.

Vanguard spokesman Freddy Martino also declined to comment.

Bloomberg Business

By Martin Z Braun

June 7, 2018, 5:58 AM PDT Updated on June 7, 2018, 7:27 AM PDT

— *With assistance by Sowjana Sivaloganathan*

A Template for Fixing America's Public Pensions.

One city deep in the heart of horse racing country may have some lessons for the rest of the U.S.'s underfunded retirement systems.

Kentucky, home to arguably the most famous annual horse race on the planet, has produced a lot of remarkable turnaround stories over the years. In May 2009, when the world was mired in a recession, a little-known contender called Mine That Bird had 50-1 odds to win the Kentucky Derby. In a competition that's earned its reputation as "the greatest two minutes in sports," the horse weaved past 18 other thoroughbreds to cross the finish line first.

A lesser-known dark-horse tale happened a couple of years later about 80 miles east of the derby grounds, still in Kentucky's equine country. Instead of a race, however, the odds were on whether

Lexington's newly elected mayor would be able to bring the city's mismanaged pension system back from the brink of a crisis.

There was no such thing as a sure bet in this case. And yet the pension reforms that Mayor Jim Gray, a former construction company chief executive officer elected in 2010, has been able to achieve might serve as an example to other U.S. municipalities whose retirement systems are in deep debt. The Federal Reserve estimates that public pensions in the U.S. are underfunded by about $1.6 trillion. Over the past several years, pensions have been battered by a stock market crash, a recession, and a wave of workers reaching retirement age.

Continue reading.

Bloomberg Markets

By Amanda Albright

June 5, 2018, 2:00 AM PDT

California Cities Keep Declaring Fiscal 'Emergencies,' and Investors Are in on It.

Communities in the Golden State are using a loophole and citing financial distress so they can put new taxes on the ballot. Pasadena is exploiting it to tax pot.

The phrase may trigger images of desolate streetscapes and fiscal pain, or evoke a new risk for investors who buy municipal bond funds in search of tax-exempt income. But for many Golden State cities, the words signal opportunity. Because of rules designed to limit tax increases, cities can get proposed tax hikes on Tuesday's primary ballot only by declaring a crisis. At least two have done so this year, following at least 50 since 2008. Muni bond investors and analysts are in on the ruse—in many cases giving it the equivalent of a shrug. To get a tax question before voters this week, Santa Cruz has issued such a declaration for the third time in 13 years. Over that time, the Monterey Bay beach town's bond rating has improved.

Unlike other states, which lay out a process for a town to be deemed in distress, California leaves it to municipalities themselves to determine. There's no checklist or external agency deciding whether a situation meets the layman's understanding of the words "fiscal" and "emergency." And there are few consequences. Pasadena, the triple-A-rated home of the Rose Bowl, declared a fiscal emergency so it can ask voters on Tuesday to approve a cannabis tax. Otherwise the palmy town north of Los Angeles, where tourists stroll past Victorian estates and historic landmarks, would have to wait for the 2020 election.

"They're nowhere close to being insolvent or threatening to file for bankruptcy," says Eric Friedland, director of municipal research for Lord Abbett, which manages about $20 billion in municipal bonds, including for a mutual fund that specializes in California debt. "This is more of brinkmanship."

In California, government needs often run up against strong anti-tax rules that began with Proposition 13, a landmark decision by voters in 1978 to limit property tax hikes. Then, as cities turned to fees and other levies, voters 18 years later passed Proposition 218 to ensure those were subject to their approval as well. Now a town that wants a new general tax or a targeted increase can ask voters only during an election in which the members of the governing body are running. The

exception: when there's a unanimous vote by a governing body declaring an emergency.

No agency tracks the declarations, but after the last recession there was a spate from Colusa County to Los Angeles, according to Moody's Investors Service. Eric Hoffmann, senior vice president at Moody's, calls such moves a "pinkish flag." A fiscal emergency may actually show that a city is heading off a crisis, he says.

That's partly the case for Santa Cruz officials, who anticipate a gap of as much as 11 percent of the general fund in fiscal 2022 as revenue slows and costs such as pensions rise. They're asking voters to approve a sales tax increase to 9.25 percent from 9 percent. The referendum normally would have gone before voters in November, says Marcus Pimentel, the city's finance director. But because the county may float a tax to address housing at that time, the City Council declared an emergency to get its ask considered in June. "They didn't want to put anything that risked voter fatigue on tax measures for November," says Pimentel. Even though it's the third time the city has pulled the maneuver, its bond rating remains a strong AA. "It really doesn't impact our rating like somebody defaulting on their home on a credit report," he says.

A consultant eased Pasadena's concerns that its first emergency would hurt its AAA rating from S&P, says Finance Director Matt Hawkesworth. With recreational marijuana legal in California as of January, the city has to pay to regulate the industry. "We don't have the financial resources to support the work that we're required to do," he says.

Cities are abusing the system, says Jon Coupal, president of the Howard Jarvis Taxpayers Association, which pushed for the restrictions on tax increases. "Patently inappropriate," he says of Pasadena's move in particular. "Very rarely is there a true emergency."

In other states, a municipal fiscal emergency is a grave event. Michigan can install emergency managers with sweeping power to overhaul finances and services. Their decisions can be momentous, for better or worse. The state-appointed viceroy in Detroit pushed a plan to leave a once-record bankruptcy that cut pensions and payments to bondholders. But cost-cutting decisions by an emergency manager in Flint led to the city's drinking-water crisis in 2014. New Jersey took over the finances of the seaside resort town of Atlantic City in 2016, yet it remains at risk of bankruptcy.

In California, an emergency declaration can also allow a municipality to skip an outside evaluation of its finances and file immediately for court protection. San Bernardino did just that in 2012. But cities that aren't intent on filing for bankruptcy with their declarations must contend with reputational risk and local ire. At a recent meeting in Moraga, a quiet San Francisco suburb where the typical home sells for $1.3 million according to Zillow, council members discussed fury from their residents. Last year they declared a fiscal emergency when the costs of a sinkhole and a bridge failure drew down their savings. Even as they rescinded the action, most of the members continued to insist it was the right move.

"We had everything but the locusts attacking us at that moment," said Vice Mayor Teresa Onoda during the meeting.

Bloomberg Businessweek

By Romy Varghese

June 4, 2018

— With assistance by Steven Church

How Long Can a State Go Without Repairing Roads and Bridges?

Mississippi's increasingly unreliable infrastructure — its crumbling roads and hundreds of deteriorating bridges that have been closed or weight-limited — is straining the state's businesses and local governments. It's no wonder, then, that they, along with transportation advocates and their allies, have pressed the legislature to do something about it. Yet year after year, lawmakers in Jackson have come up empty-handed.

This year was no different, even though lawmakers came tantalizingly close to a road improvement package. A week or so after they failed to pass a fix-up plan, Gov. Phil Bryant announced that the state Transportation Department would immediately shut down 83 locally owned bridges. Federal inspectors had found that the bridges — most of which were built with timber parts and located in rural areas — were deficient and unsafe for vehicular traffic. Since then, more bridges have been added to the list. All told, some 500 across the state are out of service.

"It is probably the No. 1 problem the citizens are talking about today," says state Sen. Willie Simmons, a Democrat who chairs the chamber's Highways and Transportation Committee. Two of the counties in Simmons' Mississippi Delta district shut down more than 30 bridges each. Those closures can reroute residents on 40- to 50-mile detours, and they can prevent firefighters and paramedics from getting to residents quickly. "Everybody agrees that we have a crisis, and it needs to be addressed," Simmons says. "The problem is, we need to find the ways and means to pay for it."

Continue reading.

GOVERNING.COM

BY DANIEL C. VOCK | JUNE 2018

S&P: Too Soon To Determine How Nuclear And Coal Subsidies Will Affect Public Power And Electric Cooperative Utility Ratings.

On June 5, 2018, S&P Global Ratings said that imposing possible subsidies for some coal and nuclear power units could affect ratings on U.S. public power and electric cooperative utilities, but without a formal proposal to analyze, we cannot determine the credit impact at this time.

Continue Reading

Jun. 5, 2018

With Initial Support from NCPPP, FTA Issues Final Rule to Encourage Development of Transit P3s.

The Federal Transit Administration (FTA) recently announced the issuance of a final rule that describes new, experimental procedures to encourage increased project management flexibility, and new project revenue streams for public transportation capital projects. The rule, titled "Private Investment Project Procedures," is also designed to spur innovation in project funding, efficiency

and timely project implementation.

Notably, FTA's primary goal behind in issuing this final rule, which takes effect June 29, is to address impediments to the increased use of public-private partnerships and private investment in public transportation capital projects. Particularly, FTA said, that it anticipates using the lessons learned from these experimental procedures to develop more effective approaches to including private participation and investment in project planning, project development, finance, design, construction, maintenance, and operations.

The new rule, allows public project sponsors to petition for modifications to some federal, non-statutory requirements that pose impediments to P3 development. NCPPP Executive Board Member John Smolen, partner at Nossaman LLP wrote in Nossaman's Infra Insight Blog that "FTA wants to encourage modifications to these federal requirements that will 'accelerate the project development process, attract private investment and lead to increased project management flexibility, more innovation, improved efficiency, and/or new revenue streams.'

"FTA is not trying to change the rules themselves," Smolen explained. "Rather, it is using a flexibility strategy that lends itself to project-specific sensitivity."

When FTA issued the proposed rule in July 31, 2017, the agency noted that it had sought to encourage the development of transit P3s by co-sponsoring with NCPPP to conduct "eight public workshops on P3s in transit and a one-day workshop for FTA employees. Each workshop attracted almost 100 participants and provided technical assistance to transit agencies, local officials, and consultants on legal and regulatory issues, financing, and contract matters related to P3s," FTA reported.

These workshops are just one example of the conferences, workshops, and other educational events NCPPP conducts each year to promote P3s as an efficient, cost effective procurement approach for many public projects. For more information about NCPPP's educational offerings, visit our website.

Illinois Governor Signs 'Balanced but Imperfect' FY 2019 Budget.

CHICAGO, June 4 (Reuters) – Illinois Governor Bruce Rauner signed into law on Monday a $38.5 billion, fiscal 2019 budget that he called balanced but not perfect.

The spending plan for the fiscal year that begins July 1 breezed through the state legislature last week with strong bipartisan support in marked contrast to previous years. It was the first full-year budget approved by Rauner since he took office in 2015.

An impasse between the Republican governor and Democrats who control the legislature left Illinois without complete budgets for an unprecedented two straight fiscal years. The stalemate finally ended when lawmakers enacted a fiscal 2018 budget and hiked income tax rates over Rauner's vetoes last July.

Revenue from the tax increase is incorporated in the new budget. Rauner, who is running for reelection in November, has vowed to roll back the tax increase.

"This budget is a compromise. It's not perfect," Rauner told reporters. He complained that the spending plan does not go as far as he would like to cut unfunded pension liablities, and does little to address the state's unpaid bill backlog that stood at $7 billion on Monday.

The budget adds $350 million to a new K-12 school funding formula enacted last year, increases higher education spending by 2 percent, reduces cuts in state aid to local governments, and appropriates $1.3 billion to pay previously incurred expenses. About $270 million from the sale of the state's main office building in Chicago is once again counted on in the budget even though a transaction remains unrealized.

The spending plan relies on a voluntary, bond-financed buyout of certain pension benefits that could save the state about $423 million.

Illinois, which is struggling with a $129 billion unfunded liability, has been unable to reduce retirement benefits for workers in its five pension funds due to a constitutional prohibition enforced by state courts.

The on-time budget was welcome news for the U.S. municipal bond market, where Illinois general obligation bonds fetch higher yields than any state.

Illinois' credit spread over Municipal Market Data's benchmark triple-A yield scale for 10-year bonds dropped 24 basis points to 165 basis points late last week.

The enacted budget faces scrutiny by credit rating agencies, which rate Illinois a notch or two above the junk level.

"Our focus is on the state's ability to maintain budgetary balance over multiple years, and whether this budget makes progress in the state's long-term fiscal sustainability," Fitch Ratings analyst Eric Kim said on Friday.

(Reporting By Karen Pierog; Editing by David Gregorio)

S&P: Despite An On-Time Budget For Fiscal 2019, It's More Of The Same In Illinois.

Timely enactment of a fiscal 2019 budget in Illinois is consistent with the stable outlook S&P Global Ratings currently maintains on the state's credit rating. At 'BBB-', however, the general obligation rating incorporates our view of the state's longer-term vulnerabilities and remains the lowest possible rating within the investment grade categories.

Continue Reading

Jun. 5, 2018

S&P: U.S. Charter School Sector Continued To Stabilize In Fiscal 2017, As Median Financial Ratios Show Minimal Change.

S&P Global Ratings maintains 286 public ratings in the charter school sector. The key financial medians for U.S. charter schools were consistent with those from the prior year, reflecting both a slowdown of rated new issuances and the sector's stabilization within our rated universe.

Continue Reading

Jun. 7, 2018

Movement to Get Public Money Out of Wall Street Comes to Wall Street.

Winsome Pindergrass wants a better chance at securing financing to buy a home. At a June 5 rally in front of the New York Stock Exchange, the 59-year-old Brooklyn resident talked about how three-quarters of her monthly income goes to her $2,200-a-month rent, which has nearly doubled since 2010. She's watched her neighbors get pushed out by rising rents.

"We don't even recognize our neighborhoods anymore," she said. "The affordable apartments are all gone, or they are disappearing fast."

Pindergrass was one of dozens of residents and community organizers who were gathered in front of the stock exchange, on Wall Street, to launch the Public Bank NYC Coalition. Made up of more than two-dozen groups, the coalition is calling for the creation of a city-owned bank that would serve as the repository of all local taxes, fees, fines and other municipal revenue — in contrast with the current system in which around 20 banks are currently authorized to provide bank accounts for New York City government as well as its various agencies and affiliated entities.

Continue reading.

NEXT CITY

BY ALINE REYNOLDS | JUNE 11, 2018

U.S. Trade Policy Fears and the Specter of Stalled Growth Drive Market Volatility.

Interest Rate Volatility

Once again bond traders participated in a volatile interest rate environment week. U.S. 10 year interest rates bounced from 2.92 to approach 3.00% by mid week and then returned back to 2.92% by the close of trading today. The volatility this week was driven by policy fears, specifically that trade tension with US trading partners could stall the pace of economic growth.

Strong Demand for California Debt

Municipal New Issue Supply was twice the YTD weekly average ($4.9bn) with approximately $10 billion coming to market this week.

California debt continues to have the strongest demand and California Municipal bonds continue to perform well, exemplified by the reception for $1.1 billion California Municipal Finance Authority AMT deal. The purpose of the deal is to design, construct, finance and maintain a 2.25 mile elevated people mover system at LAX.

In addition, the borrowing rate in California is decreasing. AAA rated City of San Francisco bonds

came to market in the 5 year part of the curve at 26 basis points through AAA National Benchmark. Just a month later, AA+ Southern California Metro Water came to market with a new issue on Tuesday June 5th at 28 basis points through benchmark rates.

Election Results

On the policy front, the California voters approved a $4.1 billion state bond measure in Tuesday's primary election. Neighborly is most excited about Prop 68 authorizing $4 billion in general obligation bonds for state and local parks, environmental protection and restoration projects, water infrastructure projects, and flood protection projects. The measure requires that between 15% and 20% of the bond funds be dedicated to projects in communities with median household incomes less than 60% of the statewide average. The largest amount of bond revenue, $725 million, was earmarked for neighborhood parks in park-poor neighborhoods.

Posted 06/08/2018 by Homero Radway

Neighborly Insights

States Finalizing Fiscal 2019 Budgets.

As of June 8, 38 states have enacted a new or revised budget for fiscal 2019. 46 states begin fiscal 2019 on July 1 (New York began on April 1, while Texas begins on September 1 and Alabama and Michigan on October 1). 12 states have yet to enact a budget for fiscal 2019. In addition, another 2 states that previously enacted a two-year budget for fiscal 2018 and fiscal 2019 are currently considering a revised or supplemental budget proposal. Last year, 17 states enacted budgets covering both fiscal 2018 and fiscal 2019.

For the most current information on states' budget status, please visit NASBO's state-by-state listing of proposed and enacted budgets.

Additionally, for summaries of governors' budget proposals for fiscal 2019 please click here.

National Association of State Budget Officers

By Brian Sigritz posted 05-09-2018

Municipal Bonds Weekly Market Report: Unemployment Hits 18-Year Low at 3.8%

MunicipalBonds.com provides information regarding the performance of muni bonds for the past week in comparison with Treasury yields and net fund flows, as well as the impact of monetary policies and relevant economic news.

- Treasury and municipal yields all decreased again this week.
- Muni bond funds break the inflow trend with an outflow this week.
- Be sure to review our previous week's report to track the changing market conditions.

Continue reading.

municipalbonds.com

by Brian Mathews

Jun 05, 2018

Taxpayers Lose in the Bond Market When Local Newspapers Close.

- **Academics find interest costs rise when newspapers close**
- **With less local oversight, investors may foresee more risk**

On March 14, employees at the Denver Post were ushered into a meeting and told that the paper's owner, hedge fund Alden Global Capital, was implementing a fresh round of cost cuts at the Pulitzer Prize-winning daily that would eliminate nearly a third of the newsroom staff.

That retrenchment isn't just costing employees their jobs. It may also cost Denver taxpayers the next time the city raises money in the bond market.

A study by economists from the University of Notre Dame and the University of Illinois at Chicago found that investors demand higher yields to buy the bonds of governments in metropolitan areas where newspapers have shut down. They argue that's likely because reducing the number of reporters rooting out mismanagement and corruption allows governments to run less efficiently, which is reflected in bond-market prices.

Pengjie Gao, a professor at Notre Dame's business college, and Dermot Murphy and Chang Lee of the University of Illinois analyzed the results from 204 counties where the number of newspapers dropped to two or less between 1996 and 2015. They then compared the yields on bonds from governments in those locales with those from counties that didn't see such closures.

They concluded that the shutdowns caused bond yields to rise between 0.05 and 0.11 of a percentage point. While that appears small, it can add up to a lot in a market where state and local governments borrow hundreds of billions of dollars a year. For a $65 million debt issue, that amounts to about $71,500 annually — enough to cover a teacher's salary — or about $2 million over the life of a 30-year bond.

"That increase can really represent a higher cost to be paid to raise the same amount of money," Lee said.

The local newspaper industry has been decimated by the rise of the Internet. The industry lost more than half its jobs from 2001 through September 2016, cutting employment to about 174,000 from 412,000, according to the U.S. Labor Department.

That's left a major gap. It was the Los Angeles Times, not local law enforcement, that revealed that officials in Bell, an impoverished suburb, were rewarding themselves with massive pay packages — resulting in criminal charges. The Securities and Exchange Commission also came down on Harvey, Illinois after the Chicago Tribune ran a series of articles documenting mismanagement in the crime-ridden suburb.

JT Thompson, a portfolio manager at Aquila Group of Funds who oversees about $400 million in Utah bonds, said he relies on local newspapers when judging whether there's support for a project

being financed by municipal bonds — something that would diminish the risk of the project failing.

“There has been some really good finds that you can pick up because there’s support in the community for a redevelopment area, and knowing that you know the tax base will be behind it – there’s the value in the local papers,” he said.

The cuts at the Denver Post comes less than a decade after its major rival, the Rocky Mountain News, shut its doors.

When newspapers can’t bring their resources to local communities issues go uncovered, said Jesse Paul, politics reporter at the Denver Post. He called the business of journalism a food chain, in which a local paper reports on a topic, then it’s expanded upon by a statewide paper such as the Denver Post and nationalized by a paper with multi state reach.

“If that food chain gets disrupted – whether it’s on the small weekly newspaper level, up to the Denver Post, these towns become black holes.”

Bloomberg Markets

By Danielle Moran

June 5, 2018, 5:52 AM PDT

Why Newspaper Closures Lead to Higher Government Costs and Inefficiency.

You know how democracy dies in darkness? A new study says bureaucratic effectiveness might, too.

Local newspaper closures can lead to higher borrowing costs and more government inefficiency, according to a working paper made public last month—and the authors say it’s bad news for cities and their taxpayers.

“[The findings] mean the taxpayers are paying higher expenses to finance the same projects,” Chang Lee, an assistant professor of finance at the University of Illinois at Chicago and one of the study’s authors, told Chicago. And when it becomes more expensive to borrow money, public works projects, like the construction of schools, hospitals, and roadways, might never even get off the ground, adds Dermot Murphy, also an assistant professor of finance at University of Illinois-Chicago and an author of the paper.

The idea for the study came from a 2016 Last Week Tonight with John Oliver segment on the implications of the decline of newspaper journalism, in which Oliver likens not having reporters at government meetings to “a teacher leaving her room of seventh graders to supervise themselves.” Oliver’s point was this: When a newspaper closes, the community loses an important watchdog.

Continue reading.

CHICAGO MAGAZINE

BY TERESA MANRING

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