Bond Case Briefs

Municipal Finance Law Since 1971

Articles posted by

Jamie Stewart

Toll Roads: 10 Years in Infrastructure - Fitch Teleconference

Please join senior Fitch analysts in a teleconference discussion on US Toll Roads **Thursday, July 19th at 11am EDT**.

This follows the publication of our recent report: Toll Roads – 10 Years in Infrastructure

Click here to register.

Fitch: Ongoing NAFTA Uncertainty Lifts Trade Risks for US States

Fitch Ratings-New York-11 July 2018: Protracted uncertainty around the North American Free Trade Agreement (NAFTA) renegotiations could elevate risks for some US states with the most to lose from a NAFTA termination, Fitch Ratings says. These states export heavily to Canada and Mexico, most have small populations, and export industries account for a sizable portion of their gross state products (GSPs).

Fitch's base case continues to be a favorable conclusion to the NAFTA talks that does not materially disrupt trade in the bloc. Talks are likely to resume, although full ratification of a revised agreement is unlikely before 2019. In the interim, risks of a termination or substantial rewriting of the NAFTA agreement that would affect trade and investment remain.

If NAFTA is terminated and World Trade Organization rules take their place, US states with greater trade exposure to Mexico will be more at risk of higher or new tariffs on exports. Some of the highest tariff rates could be imposed on farm, livestock, energy and automotive products.

Continue reading.

Agreement at Start of New Budget Year in Fitch's '5 U.S. States to Watch'

Fitch Ratings-New York-10 July 2018: The new fiscal year began smoothly last week with most states passing budgets on time and with limited contention, according to Fitch Ratings in a new report that provides brief budgetary overviews for all Fitch-rated states.

July 1 came and went with enacted budgets in place in all but two states, and lingering issues for the two outliers (Massachusetts and South Carolina) either have been or are likely soon to be resolved.

Among the states with agreements in place were the five “U.S. states to watch,” a designation Fitch came up with at the start of 2018 for states that were grappling with heightened budgetary issues.

“Connecticut benefited from substantial windfall revenues related to federal tax changes and now has a budget reserve funded at a post-recession high despite ongoing budget challenges,” said Managing Director Laura Porter. Elsewhere, “Illinois passed an on-time budget for the first time in four years, although significant structural problems persist.”

Illinois’ lingering structural issues include a lack of progress in addressing its sizable accounts payable backlog and questions around $400 million in unpaid step-pay increases. Nonetheless, “enacting an on-time budget with bipartisan support allows Illinois to enter the new year with a clear fiscal plan and clarity for the state’s key fiscal partners,” said Porter.

Other timely starts to the budget year include Louisiana, which addressed a budget gap resulting from temporary tax expiration with help from revenues related to federal tax changes. For the first time in over a decade, Kentucky’s budget includes full actuarial pension contributions for all of the state’s pension plans, but long-term budgetary challenges are not fully resolved.

Budget sessions were not without some fireworks. Passing its budget at the 11th hour and averting a government shutdown was New Jersey, which is now under one-party control for the first time in eight years. The governor and legislators compromised on a series of tax increases to support projected revenue growth of almost 6%. “New Jersey’s budget will grow by about 4% as the state addresses a wide swath of critical needs while gradually ramping up its pension contribution,” said Porter.

Fitch’s “U.S. State Budget Update” is available at ‘www.fitchratings.com’.

Contact:

Laura Porter
Head of U.S. State and Local Government Ratings
+1 212 908-0575
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Marcy Block
+1 212 908-0239

Michael D’Arcy
+1 212 908-0662

Alan Gibson
+1 415 732-7577

Eric Kim
+1 212 908-0241

Karen Krop
+1 212 908-0661

Douglas Offerman
+1 212 908-0889

Michael Rinaldi
+1 212 908-0833

Stephen Walsh
+1 415 732-7573

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

Additional information is available on www.fitchratings.com

Municipal Bonds Are in Firing Line When Economic Growth Run Ends.

- JPMorgan Asset Management sees U.S. recession as soon as 2019
- 'You'll start seeing warts show up,' portfolio manager says

States and municipalities are basking in accelerating tax revenue as the U.S. economy extends its second-longest expansion on record. But muni bonds from the weakest links look vulnerable when the cycle turns, according to David Sivinski, executive director and portfolio manager at JPMorgan Asset Management Inc.

Sivinski expects a U.S. recession as soon as next year, dragging the muni bond market into turmoil shortly after. When that happens, states already under fiscal pressure — such as New Jersey, Illinois, and Connecticut — may be in trouble, said Sivinski.

"Right now you're in sort of a sweet spot where taxes are coming in, and most municipalities are not having too much of a financial problem," Sivinski, who manages $1.2 billion in municipal bonds, said in a telephone interview on July 10.

"It'll only be once that downturn hits, six to nine months later you'll start seeing some of the warts show up as some may say," added Sivinski, whose firm had $1.68 trillion of assets under management at the end of the first quarter.

The Bloomberg Barclays Municipal Bond Index has returned 0.03 percent year to date. Since the start of the Great Recession, it's climbed about 55 percent.

"When [the recession] hits, what ends up happening is revenues start to come down," said Sivinski. "If some states or localities have financial problems that's when they start cropping up."

Every state would be hit hard by a recession, but some could fare better than others, Sivinski said.

"You obviously have states like New Jersey, Illinois, and Connecticut that are having issues now. This would not help them," said Sivinski. "There are some states that are AAA rated that will probably be able to withstand it better, and you're talking about the Virginias and the North Carolinas and those kinds of states. But they're still going to feel the pinch."

Sivinski also expects bonds with longer maturities to potentially benefit from recession because of the possibility of lower rates.

Bloomberg Markets

By Sophie Alexander

July 12, 2018, 10:30 AM PDT

[S&P Live Webcast and Q&A: US Public Finance: Transportation Sector Update]

Jul. 19, 2018 | New York

Please join S&P Global Ratings analysts from the US Public Finance Transportation Infrastructure team for a live interactive webcast on Thursday, July 19th at 1:30 p.m. Eastern Daylight Time. Topics of discussion include an update of the Sector Outlook, and an overview of how transportation ratings have fared under updated criteria released in March 2018.

View The Event Materials

New York Auctions $1.8 Billion Sales Tax Debt.

- **Second-biggest competitive sale of municipal debt in history**
- **Banks won't have problem clearing the deal, says Fiera's Laing**

New York State met eager demand for its debt as it auctioned $1.8 billion of sales-tax bonds Wednesday, the second-biggest competitive sale in municipal market history, according to data compiled by Bloomberg.

Despite its size, the deal was easily digested because of a healthy demand for New York state sales tax bonds in a market starved for paper. Almost $5 billion in debt issued by New York state and local governments is set to be called or mature over the next 30 days, $1.4 billion more than the fixed-rated debt they plan to sell in that period, according to data compiled by Bloomberg.

"New York is picking a good time to bring this deal," said Guy Davidson, director of municipal investments at AllianceBernstein. "It's a sellers market."

Wednesday's sale was second in size only to a $1.84 billion offering by the New York State Urban Development Corporation last year.

League Tables

JPMorgan won $372.4 million of bonds maturing 2019 through 2023 issued through the Dormitory Authority of the State of New York. Bank of America won $854 million of debt maturing 2024 through 2036. Morgan Stanley won $492.4 million of debt maturing 2037 through 2048. New York also sold a $74 million tranche of taxable debt.

Bonds maturing in March 2028 were priced to yield 0.08 percentage points, or 8 basis points more than top-rated debt of the same maturity, according to data compiled by Bloomberg. A New York sales-tax bond with the same maturity traded at 11 basis points over AAA rated debt on June 14.

Banks, looking to get a strong start in the second-half of the year in rankings for competitive underwriting, bid aggressively, said Bryan Laing, vice president of credit research at Fiera Capital

Inc.

Banks “are looking forward to those league tables, particularly in a year when the supply outlook is less certain than other years,” Laing said. “They’re not going to have a problem clearing the deal with investors either, because the demand is there.”

Proceeds of the sales tax bond sale, rated Aa1 by Moody’s Investors Service, the second-highest investment grade, will finance capital projects for highways, bridges, rail and educational facilities.

Bond Backing

The bonds are backed by a dedication of 1 percent of New York’s 4 percent state sales tax, which is expected to yield $14.1 billion in fiscal 2019, according to Moody’s. The state budget office projects the tax dedication will provide coverage of 3.6 times debt service in fiscal 2018 based on $3.42 billion of dedicated receipts and maximum annual debt service, including parity debt, of about $942 million, Moody’s said.

Sales tax receipts have grown at a 4.0 percent compound annual growth rate since 2010 and the state budget office projects growth of 3.9 percent from fiscal 2019 to 2022. The projections will “likely prove optimistic,” because the estimate doesn’t provide for an economic downturn during the period, according to Moody’s.

Last month’s U.S. Supreme Court decision which expanded the ability of state and local governments to collect billions of dollars in sales taxes from online retailers, will boost revenue, Laing said.

Bloomberg Markets

By Martin Z Braun

July 11, 2018, 10:40 AM PDT

One Way to Make Money on Dorms: Wait for Investors to Fail

- **Harrison Street CEO says inexperienced buyers taking on risk**
- **Merrill anticipates wave of distressed properties up for grabs**

While investors increasingly look for a home in student housing, Harrison Street’s Chris Merrill has been around the block.

He anticipates newcomers to the unfamiliar market will take a lot of risk — and create a landslide of distressed properties that he can scoop up cheaply over the next 12 to 24 months.

“Investors need to dive deep into the micro market, understanding enrollment trends, demand/supply fundamentals, location and unit mix, for instance,” said Merrill, co-founder and chief executive officer of Chicago-based Harrison Street Real Estate Capital LLC, which has been buying student housing since its inception in 2005.

The investors streaming into student housing are taking advantage of an asset class that’s known to weather economic downturns because people tend to go back to school during tough times. Among recent deals was an agreement by Greystar Real Estate Partners to buy EdR, one of the largest developers, owners and managers of U.S. student housing, for about $3.2 billion. Separately, an affiliate of Blackstone Group LP formed a joint venture with Greystar to acquire a portion of EdR's properties.

While the Blackstones and Greystars of the investing world may have the clout to manage large dorm portfolios, smaller entrants have trouble accessing the the highly fragmented market, Merrill said. Since its inception, Harrison Street, with roughly $15 billion of assets under management, has amassed properties at more than 130 universities in the U.S. and Europe.

Cracks are already forming: The number of delinquent student-housing loans financed by municipal bonds has climbed 3.4 percent since the beginning of the year, according to data provider Trepp LLC.

For long-term investors in student housing, "opportunities will emerge as a result of those that are taking excess risk as a result of inexperience," Merrill said.

Bloomberg Markets

By Kristy Westgard

July 13, 2018, 7:19 AM PDT

Hands-Off Approach May Be Changing in Hub of Muni Bankruptcies.

- **California treasurer hopeful wants to help cities on the brink**
- **State has laissez-faire attitude to municipal bankruptcies**

California is notorious for its hands-off approach to distressed cities. Fiona Ma wants to fundamentally change that if she becomes state treasurer.

Ma, a Democrat who's running against Republican Greg Conlon in November, said she would establish a website that would list credit ratings and key financial metrics for local governments. As part of that effort, municipal officials seeing fiscal straits ahead could ask for assistance from the treasurer's office, she said in an interview in San Francisco.

"Local governments have to balance every year. They are very limited in what they can do," said Ma, a certified public accountant who currently serves on the state's board of equalization, which administers some taxes. "We should be looking out for them."

That would mark a shift for California, home to four of the six biggest bankruptcies filed by municipalities in the past quarter century. While the state, through legislation or voter initiatives, has foisted limits on local governments such as on their taxing power and mandated spending, it has no system for monitoring cities that fall in distress.

Providing a central portal for local financial information could spur more investment in lesser-known cities by making it easier for bond buyers to assess conditions and risk, said Ma, who has also served in the state Assembly and on the San Francisco board of supervisors.

Bondholders "don't want to invest in some of the smaller cities because they're not sure whether in the next recession, they're actually going to be paid back," she said.

Ma would also ensure that she knows the impact on municipal governments before making decisions at the California Public Employees' Retirement System and California State Teachers' Retirement System, she said. As treasurer, she would have seats on the boards of both systems, the two largest U.S. pensions.

If Calpers, for instance, is considering a cut to the assumed investment target, which would spur higher contributions from localities to make up the difference, she wants to know if that could leave some scrambling to pay their bills, she said.

"We need to be sensitive that whatever the state does that affects local governments, that you do not surprise them," Ma said. "Because that's where they're going to get in trouble."

Ma is vying to replace Democrat John Chiang, who is leaving his post after an unsuccessful primary run for governor. She's favored to win, as Democrats outnumber Republicans in California by almost 2 to 1.

Bloomberg Markets

By Romy Varghese

July 12, 2018, 7:27 AM PDT

Local Government Jobs Near Pre-Recession Level But States Lag.

- **Public school growth boosts employment: Wells Fargo's Cohen**
- **Conservative tax not spend policy seen limiting state jobs**

Local government employment has almost returned to pre-recession levels, while jobs at the state level have lagged, U.S. Bureau of Labor Statistics data show.

Since the start of the recession, local government employment is down 0.01 percent and state government employment has declined by 0.72 percent.

The slowdown in state government employment is a result of more conservative policy, said Natalie Cohen, head of municipal research at Wells Fargo.

"States have tightened their belt consistently and they continue to do that. We have a lot more conservative 'no tax, don't spend' governors," Cohen said in a telephone interview.

Cohen attributes the uptick in local government employment to the increase in hiring at public schools.

"As the economy improves districts hire back teachers and school administrators," she said.

There are a total of 5.1 million state employees and 14.5 million local employees in the public sector, according to BLS data. That is down 114,000 and 158,000 employees respectively since the peak in summer 2008. Private sector employment has risen 9.1 percent, from 116 million at the start of the recession to 127 million today, the data show.

Looking forward, Cohen expects state hiring to increase because of potential new sources of revenue for states, including sports betting, marijuana, and online sales taxes.

The recent divergence in local and state government employment is not statistically significant, said Angie Clinton, a BLS economist.

"State is down slightly and local is up a bit, but we'd say this is little change," she said in a telephone interview.

Month over month, local government employment is up 0.1 percent and state government employment is unchanged, BLS data show.

Bloomberg Markets

By Sophie Alexander

July 9, 2018, 8:53 AM PDT

The Week in Public Finance: It's Natural Disaster Season. Can Your Government Afford It?

Most states don't know how much they spend on extreme weather events.

The Atlantic Coast caught a break this week when Hurricane Chris was downgraded to an offshore tropical storm.

California, meanwhile, hasn't been as lucky. The National Guard has already activated troops to begin wildland fire training after several major fires this month in the northern part of the state and near the Oregon border consumed tens of thousands of acres. It's the earliest activation in five years in what's expected to be a treacherous fire season.

But after last year, which was the most expensive year on record for natural disasters, how much more can states really afford?

The answer: Most don't know.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | JULY 13, 2018

Kresge and Rockefeller Webinar on Opportunity Zones-Related Request for LOIs.

Watch the webinar.

The Kresge Foundation | Jul. 11

[New Hampshire BFA Issues RFP for National Bond Administration Services.]

[Read the RFP.]

New Hampshire Business Finance Authority | Jul. 9

[Municipal Bonds Are Scarce. That's Good News for Borrowers.]

U.S. states and cities are issuing fewer bonds, partly in response to changes to tax exemptions on refinancings.

The prices for municipal bonds have recovered from their worst first-quarter slump of the last 15 years. The reason: U.S. states and cities continue to cut back on their borrowing.

Municipalities borrowed $156 billion in the first two quarters of this year, down 17% from last year. Citigroup researchers are projecting that year-over-year decline will reach 25% by the end of the year.

The low supply is pushing up the value of existing bonds and reducing borrowing costs for some governments, particularly on riskier bond deals. Twelve-year bonds backed by settlement payments from tobacco companies to the state of California sold with yields of 3.07% in June, compared with yields of 3.25% in March of last year.

"It's a seller's market," said Howard Cure, director of municipal-bond research at Evercore Wealth Management, which invests in public debt. "We're trying to be careful about that aspect of it and not go down that path of sacrificing for a little extra yield and having a big decline in credit quality."

The Bloomberg Barclays Municipal Bond Total Return Index edged up 0.87% in the second quarter, after falling by 1.11% in the first quarter. The first-quarter drop was the biggest decline of any first quarter in the past 15 years.

About half of the drop in supply resulted from Congress's decision last year to end tax exemption for early refinancings of outstanding municipal bonds, according to an estimate by Vikram Rai, head of municipal strategy at Citigroup. Borrowers also rushed to sell municipal bonds amid talk of other legislative proposals—such as a ban on tax-exempt issuance by hospitals and universities—that weren't ultimately enacted.

"The rush to market toward the end of 2017 emptied out a lot of the forward pipeline," Mr. Rai said.

Aftershocks from the 2008 recession are also contributing to the drop-off. Municipal bonds typically become eligible for refinancing a decade after they are issued. Issuance of new money bonds fell 24% in 2008 as the recession destabilized city and state finances, leading to a smaller-than-usual crop of bonds eligible for refinancing in 2018.

Those factors combined to push the total amount of refinancing deals in the first half of this year down to $44 billion, the lowest since 2000.

All that scarcity has driven up prices despite rising interest rates, which typically erode the value of outstanding bonds. Central-bank officials last month raised the benchmark federal-funds rate by a quarter-percentage point, their second rate rise this year. They projected a total of four increases for 2018, up from three at their March meeting.

Exchange-traded funds are one relatively new beneficiary of the stronger demand for municipal bonds. Their municipal-debt holdings have grown from zero in 2007 to about $30 billion this year, according to federal data. The iShares National Muni Bond ETF received inflows of $630 million last month, the highest since December 2016, according to FactSet. The inflows followed a decision on June 1 to cut fees for that ETF by more than 70%.

Demand is expected to remain high in July and August, as outstanding bonds mature and investors look for new municipal debt investments, analysts said.

Some government borrowers could get an additional market boost from a recent Supreme Court decision banning public-employee contracts that require workers to pay union dues. The decision is expected to empower governments seeking to curtail pension benefits.

“You’re talking about the states retaining some negotiating leverage and being able to improve their fixed cost structure long-term,” said John Miller, co-head of Global Fixed Income at Nuveen Asset Management.

The Wall Street Journal

By Heather Gillers

July 8, 2018 2:59 p.m. ET

Write to Heather Gillers at heather.gillers@wsj.com

Alaska's Tax-Credit Bond Plan Raises 'Subject-to-Appropriation' Questions.

As Alaska seeks to improve its financial standing it is turning to bonds to pay off $1 billion of tax credits it owes to oil and gas producers.

But the state – which faced controversy for using the subject-to-appropriation clause to walk away from a lease obligation for a state office building – faces a constitutional challenge before it can go to the market.

State officials are seeking dismissal of a lawsuit claiming that the plan violates the Alaska constitution’s limits on new debt.

Gov. Bill Walker, who signed a bill approving the program last month, says it will reduce the state’s deficit while encouraging oil producers to invest in the state.

“The policy change will save state government money in the long run, immediately provides small, independent oil and gas companies cash to invest, and keeps good on the state’s past promise to incentivize industry investment in Alaska and exploration for new oil,” according to a press release from his office.

Under the plan, producers who hold state tax credits for oil and gas exploration will get paid early in exchange for a 10% discount that the Walker administration says will pay for the bonding costs.

The bonds will be sold through a newly created Alaska Tax Credit Certificate Bond Corp. The bonds are subject to appropriation – relying on the legislature budgeting money every year to pay the debt service.

This isn't Alaska's first use of subject-to-appropriation bonds.

The state currently has $237 million in outstanding subject-to-appropriation bonds that are paying off a state prison in Goose Creek and a residential housing facility for Alaskan native tribes, according to an April memo to the legislature.

Alaska has used such bonds for almost 70 years for projects such as acquiring public buildings for lease to the state government, Deven Mitchell, the state's debt manager, stated in the memo.

He said such bonds are typically rated a notch below the state's bond rating but said any concern about their marketability is "misplaced."

"In short, Subject to Appropriation bonds carry specific ratings in the Municipal bond market, are a well understood and commonly used financing tool, and will be highly rated based on the state of Alaska's credit," Mitchell said.

The state would face the same negative impacts for failing to appropriate funds to pay off the bonds as it would for not paying off general budget obligations for public safety, pensions and other programs, he said.

Two years ago, the Alaska legislature cited the subject-to-appropriation clause when it broke its lease for a Legislative Information Office in downtown Anchorage.

The six-story building was renovated to meet the specifications of the state agency, which occupied it in 2014. Amid finger-pointing over the cost of the 10-year, $33 million lease, state officials walked away from the lease and the building two years later, leaving the developers empty-handed after remodeling the building.

The building developers sued the state but a court found that the legislature acted within its rights not to appropriate funds for the rent.

The state's decision to break its contract worried the Alaska Bankers Association at the time; it wrote to the legislature that doing so could impact the state's creditworthiness and cost of borrowing.

"Using the subject-to-appropriation clause, given the circumstances the state was in at the time, for us it had negative implications," said Mike Martin, secretary-treasurer of the association and chief operating officer of Northrim Bank.

The association's view was that "once the state makes a promise it has an obligation it should honor," Martin said.

Martin sees the issue of the legislative building, which he described as a "political football," as a unique situation and doesn't believe the state would do the same with bonds issued for the oil and gas tax credit program.

The group supports the oil and gas tax credit program as one of two major steps taken by the legislature this year to create a sustainable budget going forward. The other was a bill in which the state will annually draw 5.25% from the Permanent Fund – a pool of oil and gas tax revenues invested over the years – to reduce its deficit.

“I think it just creates a whole lot more stable environment,” Martin said.

Opponents of the plan question whether it will result in savings and say it violates the Alaska constitution, which only allows for state debt to be incurred for capital improvement project or housing loans for veterans programs following voter approval.

Eric Forrer, a former University of Alaska regent and a retired contractor, filed the lawsuit on those grounds.

“We’re now converting a very soft obligation into a hard-edged debt,” said his attorney, Joe Geldhof.

An April legal opinion by the legislature’s attorneys found a “substantial risk” that the plan to bond could be unconstitutional.

“They’re converting it from something that’s purely discretionary to something if we don’t pay it impacts our credit rating,” said Alaska state Sen. Bill Wielechowski, D-Anchorage, who asked for the legal review. “I would argue it puts the state into a much more detrimental position and could limit our ability to bond for future things.”

Attorney General Jahna Lindemuth wrote a May 2 legal opinion stating that “financing tools like those proposed in this bill are not prohibited by the Alaska Constitution.”

The proposed bonds would not be considered debt because they would be “subject entirely to the legislature’s discretion to appropriate funds for that purpose, and the bonds give bondholders no recourse against the state,” the opinion states.

Wielechowski said there’s no question – even among those who oppose the plan like himself – that if the state issues bonds the legislature will appropriate money to pay them off.

“We have to pay our debt,” he said.

According to the state Department of Revenue, a bond issue of between $683 million to $738 million would be sold in August followed by an deal from $130 million to $180 million sometime between August 2019 and August 2021.

Under that plan, the state will only pay interest on the debt for the first two years followed by increased debt service that would eventually decline to flat payments in the final five years of the 10-year schedule.

That plan reduces the cost of oil and gas tax credits from 8.1% of the general fund budget to 1.1% and results in more predictable and level annual payments, the agency stated.

Timothy Little, an analyst with S&P Global Ratings, said the rating agency doesn’t see the oil and tax credit bond as a significant credit factor although “it does provide certainty going forward of how those liabilities would be funded.”

In June, the rating agency moved Alaska’s outlook to stable from negative and raised its ratings for general obligation bonds from the Alaska Energy Authority from A to A-plus following the passage of the state budget. S&P rates Alaska GOs AA.

Most appropriation bonds are ranked a notch below the agency’s general obligation ratings, Little said.

“In general, when there is a requirement for the legislative body to make an appropriation we do factor into our assessment the willingness” to fund it, Little said.

But that willingness is “not always easy to quantify up front,” he said.

The Bond Buyer

By Imran Ghori

July 05 2018, 3:16pm EDT

How WIFIA is Surviving the EPA Firestorm.

A federal loan program for water projects appears to be flowing freely despite an ethics scandal at the Environmental Protection Agency, which administers it, and the Trump Administration’s efforts to scale back EPA regulations.

Two of the applicants for the Water Infrastructure and Finance Act’s low interest loan program in Kings County, Washington, and Omaha, Nebraska, have closed on loans and the Orange County, California, Water District expects to close on its loan by the end of the month.

EPA director Scott Pruitt resigned last week amid an ethics scandal at the agency, which has come under fire from environmental groups for perceived attempts to weaken air and water pollution regulations.

WIFIA – which Joseph Kane, a senior research associate at the Brookings Institute, said is in its nascent stage – appears to have bipartisan support.

Though the loan program was created in 2014 under the Obama Administration, it fits the current administration’s model of setting up infrastructure programs that encourage private investment, Kane said.

“It transcends the partisanship – or left vs. right perspectives on how each would pay for infrastructure,” Kane said. “I think there is bipartisanship interest in trying to explore all potential avenues. Particularly on a pilot process.”

The WIFIA program provides low-cost loans and loan guarantees to eligible borrowers for water and wastewater projects. It is designed to work in conjunction with tax exempt debt and other financial resources. WIFIA can provide up to 45% of funding for a project.

The inaugural WIFIA round will provide about $1 billion in credit assistance to finance $2.3 billion in water infrastructure investment from $20 million of budget authority, according to the EPA.

The WIFIA program received $25 million in funding, including an additional $8 million in the Consolidated Appropriations Act of 2017 that President Donald Trump signed into law on May 5, 2017. That funding enabled EPA to structure the program and move ahead in April 2017 with requests that state and local water agencies send letters of interest.

In a July 2017 statement announcing the federal funding, Pruitt said that “rebuilding America’s infrastructure is a critical pillar of the President’s agenda.”

Acting EPA Administrator Andrew Wheeler also told the Washington Post in a July 6 article that he “doesn’t think the agency is going to change that much, because we are implementing what the president has laid out for the agency. He made several campaign promises that we are working to fulfill here.”

EPA announced in April that it was seeking letters of interest for state and local water projects on an additional $5.5 billion in funding. And in May, it extended the deadline for those letters of interest on this second round of funding from July 18 to July 31.

EPA received 43 letters of interest across 19 different states for projects in April 2017 for the initial $2.3 billion allocated for the program created in 2014. Once the finalists were selected by EPA they had to undergo financial and engineering reviews to make sure the project was viable and the agencies had the financial ability to repay the loans.

The agency selected 12 entities across nine different states to apply for funding in the program’s first round.

The projects selected represented large and small communities across the country seeking funding for wastewater, drinking water, stormwater and water recycling projects.

King County, Washington and City of Omaha, Nebraska water agencies closed on their WIFIA loans. King County received $134.5 million for its $275 million rain and wastewater treatment project on the loan that closed April 20. Omaha received on June 21 a $69.7 million WIFIA loan to build a $142.2 million partially underground structure to store and treat sewage.

King County will save up to $32 million from financing with a WIFIA loan compared to a bond issuance, according to EPA’s online description of the financing.

Though the Omaha description doesn’t specifically mention bonds, it says the city will save $20 million in interest costs.

“Omaha has worked closely with the EPA at all levels to execute the Clean Solutions for Omaha Program in a way that will be sustainable for the future and save our ratepayers about $20 million dollars in interest on this project,” Omaha Jean Stothert said in a statement.

Orange County, Calif. Water District expects to close on its $124 million TIFIA loan that will help fund a $253 million expansion of its groundwater replenishment project by July 26.

Three states – California, Maryland and Indiana – are receiving the most funding.

California submitted 19 of the 43 applications in the initial round. The Golden State’s efforts were rewarded as it received $1.3 billion, more than half of the WIFIA loan total, Kane wrote in a blog post on the Brooking’s website. Indiana received $436 million and Maryland received $200 million, he wrote.

Kane partly attributed the size of California’s programs – Pure San Diego’s project costs $1.2 billion and it requested $492 million – for the state’s share of WIFIA loans.

“It is not random or a mistake that some of the biggest water needs are in California given the drought concerns,” he said. “Some of the more progressive utilities are in California, so they have the capacity to understand what WIFIA is about and to apply in time.”

It is a new program and other places might not understand its parameters or have California's technical capacity, he said.

Fitch Ratings gave OCWD's $135 million WIFIA loan a AAA rating and affirmed a top rating for the water district's outstanding debt.

"The WIFIA loan is a very low cost loan," Fitch analyst Shannon Groff said. "They had already planned on doing the final expansion, so we had already baked that into our rating."

The program makes the water district less dependent on more expensive water from wholesaler Metropolitan Water District of Southern California, Groff said. If needed, OCWD could stop the purchase of Met water for year, she said.

"They get a great interest rate through the WIFIA loan, just as they would with bonds," Groff said, "but they are able to delay payment for five years past project completion."

The water district expects to begin construction in November 2019 and finish by second or third quarter 2002, but doesn't have to begin loan repayment until 2028, Groff said.

"We are estimating a 3% interest rate for our WIFIA loan – and even though we are AAA-rated, that is still better than we could get in the open market based on our projections," said Randy Fick, the water district's chief financial officer.

Orange County's project probably made the cut for WIFIA's first round, "because it's a proven project that has been in place for quite a while," Groff said.

When the initial ground replenishment project was completed in 2008, it added 70,000 acre feet of water to the water district's system. The second expansion added another 30,000 acre feet and the latest iteration will bring output to 133,000 acre feet, Fick said.

The WIFIA funding helps pay for the second expansion, said Fick said.

The project takes highly-treated sewage designed for the Pacific Ocean through several more steps of treatment involving reverse osmosis and microfiltration before injecting it into the county's groundwater storage system.

Water districts around California are now trying to imitate Orange County's ground water replenishment system, which was controversial when it was first proposed in the early 2000s and residents were referring to it as a toilet-to-tap plan.

To date, an EPA spokeswoman said the agency has received applications from seven of the 10 remaining entities that were selected. EPA expects to close two of those loans in the next month and the remaining five by the end of the year. Two agencies are in the process of submitting their applications. The Maine Water Company has decided not to submit an application for its Saco River Water Treatment Facility project.

The latest surveys from EPA suggest that states and localities nationally will need $700 billion over the next two decades to meet their water needs, Kane said.

"Given the scale of the demand we are seeing from the entities applying, it reveals there is a need for an alternative channel for low cost financing," Kane said. "Traditional finance channels of borrowing through municipal bonds and state revolving funds is clearly not adequate to drive or accelerate the investment needed."

By Keeley Webster

BY SOURCEMEDIA | MUNICIPAL | 07/12/18 07:04 PM EDT

CDFA California Conference.

September 18, 2018 | Los Angeles, CA

Join the CDFA California Financing Roundtable for a special one-day conference. This event will feature a number of economic development finance experts from around the state discussing development finance tools, authorities, resources and approaches, and how these can affect the California economy going forward.

Click here to learn more and to register.

CDFA Ohio Conference.

September 25, 2018 | Columbus, OH

Join the CDFA Ohio Financing Roundtable for a special one-day conference that will cover bonds, TIF, tax credits and energy, redevelopment and small business finance. This event will feature a number of economic development finance experts from around the state discussing development finance tools, authorities, resources and approaches, and how these can affect the Ohio economy going forward.

Click here to learn more and to register.

Climate Change AG Investigations and Municipal Litigation.

Several state attorneys general ("state AGs") recently have undertaken high-profile investigations into energy producers' research and public statements about the potential effects of climate change. Thus far, energy companies like ExxonMobil ("Exxon") have encountered limited success challenging these investigations. In addition, a number of cities and municipalities have filed lawsuits against major energy producers, alleging that these companies knowingly contributed to the harmful effects of climate change.

This article surveys recent developments in these state AG investigations and municipal lawsuits against energy companies. Although these investigative and litigation trends remain in their early stages, it appears that energy producers may continue to face increasing climate-change government investigations and related litigation.

Download pdf.

King & Spalding

July 11, 2018

[SEC Revokes Firm Registration and Bars Municipal Advisor Following Court Sanctions.]

On June 29, 2018 Judge Halil Suleyman Ozerden of the Southern District of Mississippi entered judgments against Malachi Financial Products, Inc., and its president and sole shareholder, Porter B. Bingham, for alleged violations of the Securities Exchange Act of 1934 ("Exchange Act") and Municipal Securities Rulemaking Board ("MSRB") Rule G-17. The judgments were entered in accordance with a consent agreement signed by the Securities and Exchange Commission ("SEC"), Bingham, and Malachi. Without confirming or denying the allegations, Bingham and Malachi agreed to: (1) being permanently enjoined from further violations of Sections 15B(a)(5) and 15B(c)(1) of the Exchange Act and MSRB Rule G-17, (2) pay a joint and several disgorgement of $33,000 plus $2,858 of prejudgment interest, and (3) pay civil penalties of $50,000 for Malachi and $25,000 for Bingham.

Subsequently, and citing to these final judgments, the SEC acted on July 9, 2018 to revoke Malachi's registration as a municipal advisor and to bar Bingham from association with any "broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization." This agency action effectively prohibits Malachi from engaging in municipal advisory activities and bars Bingham from engaging in activities that are regulated by the SEC. The combination of penalties sought and ultimately enforced by the SEC highlights its continuing focus on enforcing federal securities laws as they relate to municipal advisors.

According to the complaint filed by the SEC on January 2, 2018, these violations arise out of actions relating to Rolling Fork, Mississippi's (the "City") municipal bond offering in 2015 to fund certain improvement projects, such as paving streets and constructing a municipal swimming pool. In January 2015, the City hired Malachi as the municipal advisor for the proposed bond offering under an "Agreement for Professional Financial Advisory Services" ("MA Agreement"). Bingham, as Malachi's president and sole principal, signed the MA Agreement on behalf of Malachi.

The complaint alleges that in May 2015, Bingham accepted two payments totaling $2,500 from a registered representative who was associated with a broker-dealer and municipal securities dealer. Approximately two weeks after receiving those payments, a Malachi employee recommended that the City hire the registered representative and his firm to underwrite the bond offering. Neither Bingham nor the registered representative disclosed the payments or the resulting conflicts of interest to the City. Under the terms of the MA Agreement, Malachi was to be paid an amount not to exceed 2% of the debt issuance. While the City's Offering was originally contemplated to be for $2 million, statutory offering limits required reduction of the offering to $1.1 million and, pursuant to the 2% cap, Malachi's compensation was reduced from $40,000 to $22,000.

As alleged, Malachi and Bingham attempted to recoup this lost revenue by fraudulently charging the City for purported "additional services" that they did not actually provide. The day after the Offering closed, Bingham directed Malachi's employee to prepare and send two invoices totaling $55,000 to the bond trustee for payment. One invoice was for $22,000, which was Malachi's contractual fee for the municipal advisory services provided to Rolling Fork (2% of the $1.1 million issuance). The other invoice was for $33,000 and, according to the invoice, was purportedly for services related to the "investment of bond proceeds." This invoice, the complaint states, was false and fraudulent and was not authorized or agreed to by the City. Although addressed to the City's Mayor, Malachi only transmitted them to the bond trustee and never sent them to the Mayor or the City. As a result, the bond trustee paid the full $55,000 to Malachi before the City became aware of the invoices.

Malachi allegedly provided no services relating to the investment of bond proceeds to the City and the bond proceeds had not, in fact, been invested by the time of the second invoice. Neither Bingham nor Malachi had any documentation reflecting any investment services they purportedly provided the City in connection with the proceeds from the Offering. Although Malachi and Bingham may have also created some post-bond issuance compliance policies for the City and examined the City tax rolls to determine the City's legal lending limit, the complaint asserts neither of those services, even if provided, justified the $33,000 invoice. Rather, the post-issuance compliance policies purportedly created for the City contained nothing but standard boilerplate language, much of which can be found by doing a cursory internet search. As such, it would have been unreasonable to bill the City $33,000 for preparing these policies. More importantly, as the complaint notes, Malachi and Bingham never provided those written policies to the City.

The SEC orders barring Bingham and revoking Malachi's registration as a municipal advisor can be found here and here.

July 12, 2018

Bracewell LLP

Municipal Bonds Weekly Market Report: Unemployment Remains Low at 4.0%

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 reversed inflow trend with outflows this week.
- Be sure to review our previous week's report to track the changing market conditions.

Continue reading.

municipalbonds.com

by Brian Mathews

Jul 10, 2018

Understanding the Benefits/Risks of High-Yield Municipal Bonds.

One of the main principles of investing that every investor should understand is the idea of risk versus reward.

Every investment has some degree of risk and, in exchange, the owner of the investment should be rewarded with a higher potential for gain. A Certificate of Deposit, for example, has a very low level of risk but offers very minimal gain in the form of a fixed interest rate. A technology stock, on the other hand, has much more risk but considerably more upside.

Typically, investors see municipal bonds as a relatively conservative investment with the purpose of distributing tax-free income until the bond matures. However, not all municipal bonds are created equal and there are various risks versus rewards for each bond.

Continue reading.

municipalbonds.com

by Brian Mathews

Jul 12, 2018

State Tax Law Updates.

A number of states have recently proposed or passed new laws related to state-level taxation, some of which are taxpayer-friendly and some of which are expected to impose additional tax burdens on taxpayers. They vary in subject from efforts by states to mitigate the new federal limitation on the deductibility of state and local taxes to proposed changes to state income taxation of "carried interest." This update reflects some of those recent proposals and laws.

Mitigation of Federal Limitation on Deductibility of State and Local Taxes

Recently, some states have reacted to the 2017 Tax Cuts and Jobs Act's (TCJAs) limitation on the deduction of state and local tax (SALT) for US federal income tax purposes. Some of the proposed legislation, and new laws passed in Connecticut and New York, may benefit taxpayers by helping to mitigate the impact of $10,000 limit placed on the federal deductibility of SALT.

In response to some of these proposals, the federal government has already announced, via Notice 2018-54, that it intends to propose regulations to disallow the use of such state-level workarounds for the SALT deduction limitation. The Notice specifically addresses proposals that allow taxpayers to receive SALT credits for certain transfers to funds controlled by state or local governments; however, it is likely that, with time, the federal government will work to disallow additional workarounds for the SALT deduction limitation.

Connecticut

On May 31, 2018 Connecticut Governor Dannel Malloy signed into law Connecticut Public Act No. 18-49 which imposes an income tax on pass-through entities (PTEs) effective retroactively as of January 1, 2018. The tax is imposed at a rate of 6.99% on the PTEs taxable income but is able to be offset by a personal income tax credit of 93.01% on the pro rata share of taxes paid by PTEs shareholders, partners, or members. Entity level taxes imposed on PTEs are generally not subject to the new SALT deductibility rules such that the PTE tax provides a PTE's owners with an effective deduction against federal income tax without resulting in additional state level income taxes. The law applies to S corporations, partnerships, and limited liability companies (LLCs) treated as partnerships for federal income tax purposes. Furthermore, the law permits Connecticut municipalities to provide property tax credits to residents for amounts contributed to "community supporting organizations."

New York

New York recently enacted an optional employer level payroll tax. If employers elect into this new payroll tax, based on wages in excess of $40,000 paid to employees, then employees can take a credit for such payroll tax against their New York personal income tax liability. The election applies annually on a calendar basis and is limited solely to “employees” (rather than independent contractors, consultants, etc.). However, the administrative costs to implement the new tax, concerns regarding possible adjustments to employee compensation, and complex issues with non-resident employees might negatively impact how many employers actually make this election. If elected the payroll tax has a three-year phase-in starting in 2019 with the following rate structure:

- 2019 rate – 1.5% of payroll expense
- 2020 rate – 3% of payroll expense
- 2021 (and subsequent years) rate – 5% of payroll expense

California

California has proposed three bills in order to help relieve state tax burdens of taxpayers:

- S.B. 227 would allow taxpayers to make charitable contributions to county-level education offices. These offices would issue certifications to taxpayers, distribute funds, and notify the California Franchise Tax Board (CFTB) of the contributions. For donations made under this bill, taxpayers receive a dollar-for-dollar state tax credit equal to 85% of the donated amount. On June 25, 2018 the bill passed the Assembly Revenue and Taxation Committee and is awaiting consideration at the Assembly Education Committee.
- S.B. 539 would expand an existing College Access Tax Credit to allow taxpayers to contribute to the California Educational Facilities Authority. Taxpayers can currently credit 50% of amounts contributed against state taxes owed. The proposed bill would increase that credit to 75% of amounts contributed. As of July 6, 2018, the Assembly Revenue and Taxation Committee has yet to hold a hearing on this bill.
- A.B. 2217 proposes that California nonprofits, public school districts, community colleges, and colleges and universities that participate in the Cal Grant program (qualified entities) can buy Golden State Credits from the California treasury for $0.90. Taxpayers would then be able to purchase Golden State Credits from the qualified entities for $1. In turn, taxpayers would receive a state tax credit equal to 80% of their purchase amount, which would be treated as a charitable donation. As of the end of June, this bill is awaiting a hearing in the Senate Governance and Finance Committee.

Treatment of Carried Interest

Under current federal law, a portion of income earned by investment managers called carried interest receives favorable tax treatment by being taxed at capital gains rates as opposed to the higher rates imposed on ordinary income. Certain states have enacted or proposed legislation to close this perceived loophole.

- New York: New York state bill A03554 intends to close the carried interest “loophole” through a “Fairness Fix” by imposing an additional 17% tax on such income, which is meant to bridge the gap between the highest federal individual rate of 37% and a capital gains rate of 20%. The proposal would also tax carried interest income of managers of hedge funds and other private investment funds as ordinary income at the state level rather than retaining capital gains treatment. However, even if the proposal becomes law, this re-characterization of capital gains income to ordinary income and carried interest fee will not take effect in New York unless

Connecticut, New Jersey, Massachusetts, and Pennsylvania enact similar legislation.

- New Jersey: New Jersey Senate Bill 64 (S64) imposes a 19% additional tax on income from "investment management services." Similar to the bill in New York, the New Jersey bill only becomes effective if New York, Connecticut, and Massachusetts enact similar legislation. S64 also contains a provision terminating the tax if Congress amends the Internal Revenue Code to repeal the present loophole at a federal level. On June 21, 2018 S64 was substituted by A3088, which passed on July 1, 2018, largely in the same form as S64, but substituting the 19% additional tax with a 17% additional tax. (P.L. 2018, ch. 45).
- Connecticut and Massachusetts: Each state, in 2017, proposed a 19% surcharge on carried interest (referred to in the Connecticut bill as an "investment management fee surcharge." Neither bill progressed to a vote, although similar legislation may be considered in the future.
- Pennsylvania: Pennsylvania has yet to propose legislation to address the taxation of carried interest.
- California: California has also proposed legislation to close the carried interest loophole by applying a state level tax to carried interest. The bill, Assembly Bill 2731, proposes California Revenue and Taxation Code section 17044 which would impose a 17% tax on income derived from an "investment management services interest" effective for taxable years beginning on or after January 1, 2018. California's law is not contingent on any neighboring states. The bill has received initial approval, and has been re-referred to Committee on Rules as of May 29, 2018 for further consideration. In order to take effect two-thirds of the legislature needs to vote in favor of the bill.

Proskauer Rose LLP – Jeremy Naylor and Kimberly Ann Condoulis

July 12, 2018

TAX - OHIO

Board of Education of Loveland City School District v. Board of Trustees of Symmes Township

Court of Appeals of Ohio, First District, Hamilton County - May 4, 2018 - N.E.3d - 2018 WL 2085097 - 2018 -Ohio- 1731

School board filed complaint against township, seeking to recover money from tax-increment financing (TIF) project.

The Court of Common Pleas granted summary judgment in favor of township. Board appealed.

The Court of Appeals held that:

- Action was untimely;
- Continuous-violation doctrine did not toll statute of limitations;
- Delayed-damage rule did not toll statute of limitations; and
- Discovery rule did not toll statute of limitations.

Essence of school board's complaint against township was equitable relief rather than money damages, and thus two-year statute of limitations for actions against political subdivisions did not apply, where school board was seeking to recover money to which it contended that it was entitled under tax-increment financing (TIF) statutes but for township's allegedly improper actions.

Six-year statute of limitations for a liability created by statute other than a forfeiture or penalty, rather than ten-year catch-all statute of limitations, applied to school board's action against township contending that it was entitled to money under tax-increment financing (TIF) statutes; without statutes authorizing townships to create TIFs, township could not have enacted resolutions amending TIF project.

TAX - NEW JERSEY

Metz Family Ltd. Partnership v. Township of Freehold

Tax Court of New Jersey - June 28, 2018 - N.J.Tax - 2018 WL 3186772

Taxpayer filed direct appeal from township's assessment on income-producing property located within county that participated in Assessment Demonstration Program (ADP). Township filed motion to dismiss.

The Tax Court of New Jersey held that:

- Township had to send taxpayer request for income and expense information at least 45 days prior to November 1 of pretax year, i.e., date that township had to submit preliminary assessment list to county board;
- Statutory requirements for assessors of taxing district in non-ADP counties was not relevant to determination of date by which assessor of taxing district in ADP counties participating to mail request for income and expense information;
- Taxpayer's filing of direct appeal from assessment three months after pretax year date that township had to file preliminary assessment list had no bearing on whether township's request for income and expense information was timely.

Fitch: Recent Healthcare Outlier Downgrades Not Reflective of Wider Trend.

Fitch Ratings-New York-09 July 2018: Fitch Ratings does not consider two recent multi-notch downgrades affecting healthcare issuers in South Carolina, driven by extraordinarily large net pension liabilities, harbingers of wide-ranging rating actions in the healthcare sector or other sectors, including higher education. Rather, these outliers highlight outsized pension liabilities under any measure compounded by constraints in the healthcare business model given its more limited revenue defensibility when compared to other sectors in U.S. public finance.

ISSUER-SPECIFIC ACTIONS CONSIDERED IN BROADER PORTFOLIO CONTEXT

On Jan. 9, 2018, Fitch released its updated "U.S. Not-For-Profit Hospitals and Health Systems Rating Criteria". The updated criteria place a heightened emphasis on maintenance of leverage ratios and liquidity consistent with an issuer's operating profile through the cycle in a forward-looking rating case stress. These leverage ratios explicitly incorporate lease and net pension liabilities as direct debt equivalents. Since the release of the criteria, Fitch completed a review of 138 separate health care providers, with reviews focused predominantly on issuers where the potential for change due to the application of new elements of the criteria might lead to changes in ratings.

As noted when Fitch released the new criteria, the agency's expectation was for affirmation to be the predominant outcome of application of the new criteria. The review group of 138 credits reflects approximately 50% of Fitch's total hospital and health system portfolio. There were a total of 35 upgrades (13% of the total portfolio) and 25 (9%) downgrades as a result of these reviews. The majority of rating changes were one notch. Of the upgrades, three credits were upgraded 3+ notches and of the downgrades, a total of five moved 3+ notches. To place these changes in a broader context, Fitch does not expect further rating changes solely based on criteria revisions for the remainder of the 270+ portfolio.

GASB PENSION LIABILITY ALLOCATED WHERE FUNDING BURDEN RESIDES

Rating actions included reviews of government-sponsored healthcare providers, a relatively small subset of Fitch's overall healthcare portfolio. These reviews incorporated the first application of Fitch's approach to evaluating public, defined benefit pension liabilities in revenue-supported entities. For many of these issuers, which participate in state-administered, cost-sharing multi-employer plans, Fitch looks to GASB 68 when considering where the proportionate share of a net pension liability should be placed among governmental units participating in such plans. GASB 68 generally assigns the liability where the primary funding obligation resides absent a clear legal and financial assumption of the liability by the state government.

Fitch applies this approach to both local government participants and to government enterprises participating in a state-administered cost-sharing plan, such as health care, utility and higher education enterprises. There is no basis to treat the government issuers and the government enterprises differently when considering where the burden rests in a common plan. Just as direct employers are responsible for the current salaries of their own employees, Fitch views them as being responsible for deferred compensation/future pension benefits, including when insufficient resources have been set aside and an unfunded liability exists.

CAPACITY TO RESPOND VARIES ACROSS SECTORS; HEALTHCARE RELATIVELY CONSTRAINED

Fitch notes however, that the capacity to respond to and absorb an increased pension burden, regardless of plan type, through either revenue tools or operating cost flexibility varies very dramatically among issuers. Fitch explicitly considers this by assessing an issuer's revenue defensibility and operating risk flexibility to set a context for review of an issuer's financial leverage. The ability of a government with general taxing capacity is at the high end of revenue flexibility, as would be a public university that has flexibility both to raise tuition and fees and to shape the cost and extent of its offerings.

Absent general taxing powers, health care providers have among the lowest revenue and operating flexibility of participants with pension obligations. Under Fitch's rating approach, issuers with stronger revenue defensibility and operating risk flexibility assessments can have higher ratings at every level of leverage compared to issuers with more limited revenue and operating flexibility. Leverage tolerance at each rating level for health care providers is significantly lower given the nature of the business model. As a result, different types of participants having a large unfunded liability will be affected very differently, including when they carry proportionate shares of the liability of a cost-sharing, multi-employer plan.

SOUTH CAROLINA DOWNGRADES – LARGE PARTICIPANTS IN UNDERFUNDED PLAN

Fitch recently downgraded Spartanburg Regional Health Services District (Spartanburg Health) and Lexington County Health Services District (Lexington Health), both participants in the state-administered South Carolina Retirement System (SCRS), a cost-sharing multi-employer plan. Each is a statutory public hospital and a political subdivision of the state. Neither has direct authority to levy a tax in support of its operations. Each issuer reported its proportionate share of the system's large net pension liability in its financial statements in accordance with GASB 68. The state, as another participating employer in SCRS and several other state-administered plans, also reports its proportionate share of the net pension liability. As of fiscal 2017, the state reported carrying 12.9% of the SCRS net pension liability, with additional amounts from four other plans. Altogether, Fitch measures the state's aggregate net pension liability, adjusted by Fitch to a 6% discount rate at 2.6% of personal income. Combined with tax-supported debt brings the total to only 4% of personal income, a level which Fitch views as being a low burden on the state's resource base despite the weakening trajectory of SCRS in recent years.

Under Fitch's healthcare criteria, Fitch assesses leverage on an adjusted basis, including leases and Fitch-adjusted net pension liabilities. Spartanburg Health reported a net pension liability of $656 million and Lexington Health reported a net pension liability of $739 million, based on the 7.25% discount rate used by SCRS to calculate the liability. Just as when assessing state and local issuers, Fitch adjusts the reported net pension liability using a standard discount rate (6%) to provide consistency among issuers and better reflect the magnitude of the commitment posed by pensions. For Spartanburg Health, the Fitch-adjusted pension liability is $904 million. For Lexington Health the Fitch-adjusted pension liability is $1.1 billion. Even without the Fitch adjustment, the size of the net pension liability as reported would have driven a rating action.

Fitch assigned a 'BBB' rating to Spartanburg Health based on its cash to adjusted debt of 57% and net adjusted EBITDA to adjusted debt of 2.7x over a five-year horizon. (Downgrade from A). Fitch assigned a 'BB+' rating to Lexington Health based on its cash to adjusted debt of 40% and net adjusted EBITDA to debt of 5.1x over a five-year horizon. (Downgrade from A+) .

SOUTH CAROLINA STATE LAW OUTLINES PARTICIPANT OBLIGATIONS

In determining the level of net pension liability to include in Spartanburg Health's and Lexington Health's leverage profile, Fitch considered state law that applies to funding the statewide multi-employer plan and past state practices to assess whether either issuer's burden was likely to be relieved or reduced through direct state funding.

State law provisions relevant to this analysis are found in the South Carolina constitution and the act governing the statewide plan. Read together it is clear from these provisions that the state is obligated to assure actions are taken to maintain long-term solvency of the plan. . Fitch believes the most likely scenario to closing the unfunded liability is that the state will increase both employer and employee contributions, with the bulk of the burden falling to employers, consistent with the state's historical practice. While recent statewide reforms should positively affect the trajectory of the plan's unfunded liability over time if plan assumptions are met, a significant gap remains, and recent changes to contribution and amortization practices will have only a gradual impact, similar to how reforms to other public defined benefit pensions generally have worked.

Further, Fitch believes it would be wrong to conclude that the pension obligation belongs at the state level. Fitch includes in the state rating the NPL attributed to it as reported in the state's audited financial statements. Although additional appropriations by the state are an available tool, Fitch believes it unlikely the state will address unfunded liabilities directly from its own resources and relieve local government and public authorities of contributions funded by their own revenues. Fitch also believes it unlikely in a common plan for a state to give relief to one plan participant and not others in the plan, whether done directly or indirectly.

SIMILAR FRAMEWORK ACROSS STATUTORY SCHEMES; ULTIMATE BURDEN ON EMPLOYERS

Statutes governing cost-sharing plans often have a broadly similar framework, as exemplified by South Carolina's plan. Public employees are required to become members and participating employers are liable for contributions. Benefits owed to individual employees are declared a liability of the plan and not a liability of any participating employer (including the state). Because the direct liability for pension benefit payments lies with the plan, it is sometimes argued that the employers therefore have no liability that should be considered in their rating. Fitch does not believe this withstands reasonable scrutiny, however, because the statutes also typically provide that the plan is obligated to meet its responsibility through mandatory assessments on participating employers and employees where needed, to complement returns from invested assets. The net pension liability is, in effect, a measure of the burden of future mandatory contributions that will need to be made by employers to meet their obligation to their own employees.

The statutory framework typically includes state oversight and state responsibility for assuring plan solvency through assessments on plan employers. Typically, once an employer opts to participate in the plan, participation is irrevocable, with a state intercept mechanism in the event a participating employer does not make the mandatory contribution; benefits cannot be forfeited. A state government generally has the power to appropriate as an alternative to assure plan solvency whether this is in the statute or not. Fitch does not factor this power into a rating where it has not generally been exercised to restore balance to a statewide common plan or provide direct funding on behalf of participating employers.

TEXAS HOSPITAL DISTRICTS IN CONTRAST

As noted above, how an issuer's unfunded pension obligation and overall leverage profile affect a rating outcome depends very much on an assessment of an issuer's capacity to respond to an increased burden with either available revenue tools or operating cost flexibility. Fitch's ratings on Texas hospital districts provide a helpful contrast. Texas hospital districts have independent taxing powers and can levy property taxes within certain bounds to enhance revenues from operating resources.

Fitch recently downgraded Dallas County Hospital District (Parkland) to 'A+' based on application of the updated criteria. Parkland has a reported net pension liability for its own single employer plan of $423 million and a Fitch-adjusted net pension liability of $588 million. Its relevant metrics include net adjusted debt to EBITDA of 4.1x and cash to adjusted debt of 37%. However, the district has substantial unused taxing power that can be tapped to maintain its financial balance and meet any increased pension liability without straining its financial profile. Fitch noted the 'A+' Issuer Default Rating (IDR) and limited tax General Obligation (GO) ratings reflect Parkland's weaker net leverage profile under a stress scenario through the cycle relative to its mid-range operating profile and exceptionally strong revenue defensibility. Fitch views Parkland's unusually strong 'aa' revenue defensibility, as demonstrated by Fitch's estimated $1 billion taxing margin available for operations, as mitigating a weaker net leverage position, allowing Fitch to place the final rating in the 'A' category despite a weak financial profile, which would typically result in a lower rating.

The importance and relevance of individual issuer characteristics particularly as it relates to pension liability is also illustrated by Fitch's 'AA+' rating of Bexar County Hospital District, in Texas. The district's cash-to-debt and cash-to-adjusted debt of 133% and 94%, respectively, as of Dec. 31, 2017 (based on unaudited data at the time), reflect unrestricted cash and investments of $895 million in relation to $670 million of long-term fixed rate GO debt and adjusted debt. Under Fitch's criteria, adjusted debt includes Fitch's capitalization of operating leases (estimated at $60 million) and the Fitch-adjusted net pension liability (estimated as of its fiscal 2016 audit at $224 million based on a 6% discount rate, instead of the $139 million level reported by the district, which uses a 7.5% discount rate). The district, which participates in a statewide agent multi-employer plan, migrated to a cash balance plan in 2012, limiting exposure to future significant pension liability changes. Net adjusted debt-to-adjusted EBITDA, which is a measure of how many years of cash flow is needed to repay long-term debt outstanding, was solid at 0.3x at Dec. 31, 2017.

CASE STUDY – SOUTH CAROLINA CONSTITUTION & RETIREMENT PLAN STATUTES

The following excerpt from South Carolina's Retirement Systems Act describes the pension obligation as one of the retirement system (not the state itself), which is not uncommon among U.S. plans. Fitch uses GASB treatment of the allocation of the liability among plan participants as its reasonable-basis methodology. The language below further states that employers participating in the plan are obligated to appropriate and that benefits to members are non-forfeitable:

Section 9 1 1690: "Credit of State is not pledged for payments; rights in case of termination of System or discontinuance of contributions.

All agreements or contracts with members of the System pursuant to any of the provisions of this chapter shall be deemed solely obligations of the Retirement System and the full faith and credit of this State and of its departments, institutions and political subdivisions and of any other employer is not, and shall not be, pledged or obligated beyond the amounts which may be hereafter annually appropriated by such employers in the annual appropriations act, county appropriation acts and other periodic appropriations for the purposes of this chapter. In case of termination of the System, or in the event of discontinuance of contributions thereunder, the rights of all members of the System to benefits accrued to the date of such termination or discontinuance of contributions, to the extent then funded, are nonforfeitable."

The state constitution (excerpted below) describes the obligation of the state to assure adequate funding of the plan by all members. In the event of an unfunded liability, Fitch believes the most likely scenario to closing it is that the state will increase both employer and employee contributions, with the bulk of the burden falling to employers, consistent with the state's historical practice. Lexington Health is the third largest, and Spartanburg Health is the eighth largest participant in SCRS by covered employee as of the system's fiscal 2017 financial statement.

Article X, Section 16: "[t]he General Assembly shall annually appropriate funds and prescribe member contributions for any state-operated retirement system which will insure the availability of funds to meet all normal and accrued liability of the system on a sound actuarial basis as determined by the governing body of the system."

Finally, the following section from the Retirement Systems Act describes state remedies in assuring employer funding of the pension obligation including withholding of state funding until the defaulted payment is cured. This mechanism is essentially an intercept provision. Fitch believes certain revenues received from the State, including Medicaid and others, could and would be withheld in the unlikely event a participating entity did not make its required pension contributions. This mechanism further supports Fitch's view that the liability ultimately is the responsibility of the employer and there is no flexibility associated with the pension contribution burden.

SECTION 9 1 1170, Collection of Employers' Contributions:
"If . . . .the full accrued amount of the contributions and interest provided for under this section due . . . from an employer other than the State has not been received by the System from the chief fiscal officer of the employer within thirty days after the last due date as provided in this item, then upon notification by the Board to the State Treasurer and Comptroller General as to the default of the employer as provided in this item, any distributions which might otherwise be made to the employer from any funds of the State must be withheld from the employer until notice from the Board to the State Treasurer that the employer is no longer in default."

In 2017, South Carolina enacted Act 13, which reformed contributions and actuarial assumptions of SCRS, positioning the system to gradually reduce the burden of liabilities in the coming decades if the lowered 7.25% investment return and other actuarial assumptions can be achieved. This rate, while below average for major systems, is above the 6% level assumed by Fitch in assessing expectations for pension liabilities and long-term investment returns. Other reforms included a gradual reduction in the amortization period for the unfunded pension from 30 years to 20 years by fiscal 2028.

Contact:

Jessalynn Moro
Managing Director
+1-212-908-0608
Fitch Ratings, Inc.
33 Whitehall Street New York, NY 10004

Kevin Holloran
Senior Director
+1-512-813-5700

Thomas McCormick
Analytical Consultant
+1-212-908-0235

Douglas Offerman
Senior Director
+1-212-908-0889

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

Additional information is available on www.fitchratings.com

Fitch: Statutory Lien Treatment Lifts AZ, RI Local GO Ratings.

Fitch Ratings-Austin-12 July 2018: Enhanced bondholder protection provided by statutory lien provisions in Arizona and Rhode Island local government statutes has resulted in general obligation (GO) bond ratings two notches above the local governments’ Issuer Default Ratings (IDR) in those states, according to Fitch Ratings.

As discussed in Fitch’s tax-supported rating criteria, a statutory lien is defined in Section 101(53) of the U.S. Code as a lien arising automatically by force of statute on specified circumstances or conditions. The statutory lien preserves bondholder rights to tax revenues securing the tax-backed bond received by the municipality after it enters bankruptcy court.

Although the automatic stay provisions of the Code would not prevent a payment default, the holder of a statutory lien is entitled to recover the value of the lien in the bankruptcy proceeding. The determination of value is not detailed in the Code, but recovery values may be substantially higher than an unsecured credit that competes with other general claimants for a claim on the municipality’s revenues. As a result of the robust protection afforded bondholders benefiting from a statutory lien in a bankruptcy, Fitch rates ULTGO bonds issued by local governments in both states and backed by revenues with a statutory lien for bondholders two notches higher than the IDR.

Fitch acknowledged this credit feature in Arizona following 2016 and 2017 amendments to the state's local government statutes. Fitch reviewed the provisions and determined they provide bondholders with a substantial preferential right in a bankruptcy proceeding, warranting a GO bond rating two notches higher than an entity's IDR. The statutory lien applies only to ad valorem tax revenues and applies both to GO bonds previously issued and to be issued in the future. Rhode Island established a statutory lien for GO bondholders in 2011.

The GO bond ratings of the Arizona and Rhode Island entities (currently 18 in Arizona, six in Rhode Island) are linked to their IDR, and any change in credit quality that affects the IDR will also impact the GO bond rating.

Contact:

Steve Murray
Senior Director
+1 512 215-3729
Fitch Ratings, Inc.
111 Congress Ave., Suite 2010
Austin, TX 78701

Amy Laskey
Managing Director
+1-212-908-0568

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

Additional information is available on www.fitchratings.com

Puerto Rico Bankrupt Utility Is Leaderless After Pay Scandal.

- **Upheaval comes amid furor over new CEO's $750,000 base salary**
- **Public employees, residents face government austerity policies**

Most board members of Puerto Rico's power utility resigned Thursday after a chorus of outrage over pay for its new chief executive officer, who then pulled out of the job. The tumult leaves the troubled agency leaderless at a critical time in its bankruptcy and sale of its assets.

In a letter to Governor Ricardo Rossello, five members of the panel said they were dismayed by "petty political interests." Earlier, Rossello joined politicians and residents in decrying the $750,000 salary pledged to incoming chief executive Rafael Diaz-Granados, which they said was exorbitant in light of the island's financial crisis and the possibility that public employees may soon face reduced benefits.

"We no longer believe that we have the support to perform the politically unpopular tasks necessary to drive the change from within PREPA," the board members wrote in the resignation letter, which was confirmed by a person with direct knowledge of the matter. "When the petty political interests of politicians are put ahead of the needs of the people, the process of transforming the Puerto Rican electricity sector is put at risk."

Diaz-Granados, himself a board member, quit that position and won't take the chief executive job, according to the person, who asked not to be named because it wasn't yet official.

Rossello will name board replacements before he leaves for a personal trip to attend the FIFA World Cup final in Moscow between France and Croatia, according to Public Affairs Secretary Ramon Rosario.

Rich and Poor

Executive pay has turned into a sensitive topic for the U.S. commonwealth. As the entire island wades through bankruptcy proceedings, many regular Puerto Ricans, including low-level public employees, face the prospect of seeing pension payouts, Christmas bonuses and even sick and vacation days slashed. Also under scrutiny is the paycheck for the executive director of the island's fiscal control board, which the U.S. Congress installed to right the island's fiscal accounts.

Diaz-Granados was named CEO on Wednesday, just hours after the surprise resignation of Walter Higgins. Higgins quit after the legislature had sought to prevent him from receiving a bonus on top of his $450,000 salary. Diaz-Granados's higher base salary, which the utility said was in line with industry standards, appeared intended to circumvent the legislature's anti-bonus measure.

Daunting Task

The Prepa crisis comes at a critical time. It's navigating bankruptcy court and working with investment bankers to sell generation assets, potentially putting the transmission and distribution business under a private concessionaire. The new leadership also faces the daunting task of addressing decades of ingrained corruption, inefficiency and poorly maintained infrastructure.

In a press release Wednesday, the utility said Diaz-Granados's pay was in line with industry standards, citing an American Public Power Association formula based on utilities' revenue.

Diaz-Granados defended his salary in local radio interviews Thursday. He said he was "sacrificing" to take the job, and said his previous position at General Electric Co. paid more than $2 million a year.

Indeed, Constance Lau, the CEO of Hawaiian Electric Industries, a utility that had comparable annual revenue, made $893,533 in base salary in 2017. CEO Patricia Kampling of Alliant Energy Corp., which also posted similar sales, earned $980,000. But those utilities are investor-owned, and the similarities with Prepa's financial situation essentially end there.

By comparison, Gil Quiniones, CEO of the state-owned New York Power Authority, makes $235,000 in base annualized salary. And before Higgins and Diaz-Granados, top Prepa executive Ricardo Ramos had a salary of just $142,000.

Livid Residents

Diaz-Granados, a multilingual Harvard University graduate who is originally from Colombia, spent 15 years at GE, including as president and chief executive officer of GE Spain and Portugal and GE Mexico. Higgins arrived on the island from Nevada in March without much Spanish, but brought 40 years of management experience.

Coraly Ortiz, a 43-year-old bank employee in San Juan, said she was furious about Diaz-Granados's salary.

"It's completely disproportionate and ridiculous, above all with the situation in Puerto Rico," she said. "They're creating an elite of overpaid government officials taking advantage of the crisis."

Bloomberg Markets

By Michelle Kaske, Yalixa Rivera, and Jonathan Levin

July 12, 2018, 9:24 AM PDT Updated on July 12, 2018, 1:46 PM PDT

— With assistance by Mark Chediak, and Lynn Doan

U.S. Judge Nixes Move to Toss Puerto Rico Bankruptcy Case.

(Reuters) – A federal judge on Friday rejected an attempt by a major Puerto Rico bondholder to throw out the U.S. territory's historic municipal bankruptcy case.

U.S. District Judge Laura Taylor Swain ruled that the creation by the U.S. Congress of a financial oversight board for Puerto Rico under a law known as PROMESA and the appointment of the board's members did not violate the U.S. Constitution.

"The oversight board's statutory objectives and scope of authority thus mark its character as territorial rather than federal," Swain's ruling said.

Aurelius Capital Management, an investment firm with a specialty in distressed debt, filed a motion last year arguing that the board's creation violated the U.S. Constitution's Appointments Clause. The hedge fund sought to dismiss the board's May 2017 federal court case to restructure the territory's roughly $120 billion in debt and pension liabilities.

An Aurelius spokesman said the hedge fund declined to comment on the ruling.

Under the 2016 federal PROMESA law, Congress appointed six members to a board tasked with managing the territory's finances, with then-President Barack Obama adding a seventh. PROMESA gave the board authority to push fiscally struggling Puerto Rico into a court-supervised restructuring akin to U.S. bankruptcy.

"As stated in Judge Swain's opinion, PROMESA empowers the Oversight Board to 'approve the fiscal plans and budgets of the Commonwealth and its instrumentalities' and 'override Commonwealth executive and legislative actions that are inconsistent with approved fiscal plans and budgets,'" the oversight board said in a statement on Friday.

Swain, who is overseeing Puerto Rico's case, previously dismissed a lawsuit by Aurelius and other investors over the territory's default on its general obligation bonds.

(Reporting by Karen Pierog in Chicago; Editing by Daniel Bases and Leslie Adler)

July 13, 2018

[Puerto Rico Utility Directors Resign, Alleging Political Interference.]

Most of the Puerto Rican power monopoly's board resigns after the governor demands a CEO salary cut

The independent directors of Puerto Rico's bankrupt public power monopoly resigned Thursday, alleging political interference after top lawmakers and the U.S. territory's governor demanded cuts to a chief executive compensation package.

Five board members at the public power monopoly known as Prepa said in a resignation letter that "political forces in Puerto Rico" had been meddling in their decisions and "want to continue to control Prepa." The incoming CEO was among the board resignations, leaving Prepa leaderless a day after the current CEO, Walter Higgins, said he was departing.

The seven-member board came under fire after offering Mr. Higgins's successor a $750,000 salary, which top Puerto Rican politicians criticized as excessive for a bankrupt utility. Gov. Ricardo Rosselló said the compensation was "not proportional" to Prepa's financial condition and called on the utility's board members to cut the CEO salary or resign.

"When the petty political interests of politicians are put ahead of the needs of the people, the process of transforming the Puerto Rican electricity sector is put at risk," the resignation letter said.

The departures threw Prepa's leadership into disarray as the utility vies with bondholders in court to drive down a $9 billion debt load and solicits new investments for a dilapidated power system.

The resignations also marked an unusual rebuke to political meddling for a public authority often accused of being politicized. Prepa has long been plagued by frequent turnover at the top, with politically connected officials cycling in and out depending on the party in power. Board Chairman Ernesto Sgroi, one of the directors who resigned Thursday, was Mr. Rosselló's 2016 campaign treasurer.

"I strongly reject the allegations of political interference by outgoing members of the governing board," the governor said in a statement.

Wall Street creditors supported the installation of independent board members under a 2016 governance overhaul. The turmoil in Prepa's leadership further clouds the strategy for repairing the damage from last year's hurricane season and improving service for consumers.

"There is a total meltdown of the Puerto Rico Electric Power Authority right now," said Puerto Rico Senate Minority Leader Eduardo Bhatia. He said the resignations could prompt a takeover by the U.S. territory's federal financial supervisors or by Congress.

A spokesman for the House Natural Resources Committee, which has jurisdiction over U.S. territories, said the political influence on Prepa proved it wasn't truly independent.

Since last year's devastating hurricane season, U.S. lawmakers and the Energy Department have discussed a temporary federal takeover of Prepa, but the idea didn't gain broad traction, according to people familiar with the matter. Puerto Rico's federal oversight board tried to take over Prepa last year but was blocked in the courts.

Prepa tapped board member Rafael Díaz-Granados as its new CEO on Wednesday after Mr. Higgins abruptly resigned from the position, saying he believed he wouldn’t be paid what he was owed by Prepa. Mr. Higgins, a high-profile hire with decades of industry experience, was on the job less than four months.

Lawmakers maneuvered in recent weeks to cut nearly half a million dollars in bonuses from his compensation and likewise criticized the pay package offered to Mr. Díaz-Granados, a former General Electric Co. executive who led that company’s operations in Spain, Portugal and Mexico. Prepa said the compensation was comparable to CEO pay at other utilities of Prepa’s size and complexity.

Prepa, one of the largest U.S. utilities, entered a court-supervised bankruptcy last year after a long financial decline. Mr. Rosselló and the oversight board want an end to the utility’s monopoly structure with its various assets privatized.

Union employees worry the strategy will cost them their jobs, while bondholders argue they must be compensated as assets are spun off. The oversight board wants electrical rates slashed to effectively boost family incomes and spur economic growth.

The power grid was destroyed when Hurricane Irma and Hurricane Maria hit Puerto Rico back-t--back last September, and hundreds of customers in central mountainous regions still haven’t had service restored with another hurricane season under way. With Prepa’s system severely damaged, bonds backed by electricity revenue have tumbled in value. A frequently traded bond due in 2040 sold for less than 45 cents on the dollar Thursday, according to Electronic Municipal Market Access.

Prepa has spent hundreds of millions of dollars repairing transmission and distribution lines, unnerving creditors who worried the money wasn’t being well spent. Prepa also has been dogged by allegations of corruption and mismanagement that remain under investigation in Congress.

Costly and unreliable power service is a drain on family incomes and the quality of life in Puerto Rico, which owes roughly $70 billion in debt and another $50 billion in unfunded pension liabilities.

Prepa’s problems have been decades in the making. It earned praise for powering Puerto Rico’s industrialization efforts in the 1940s and 1950s but became more inefficient over time as generating plants, which largely rely on fossil fuels, required major upgrades that were never made or left uncompleted.

When the island sank into recession, Prepa’s finances worsened as business and residential demand for power declined. The exodus of Puerto Ricans to the continental U.S. in the wake of Hurricane Maria is shrinking the island’s population, depleting Prepa’s customer base and leaving creditors fewer avenues to get repaid.

The Wall Street Journal

By Andrew Scurria

July 12, 2018

Write to Andrew Scurria at Andrew.Scurria@wsj.com

- **Ed. Note:** As this is possibly the least newsworthy week in BCB history, please feel free to request

a 1/50th refund of your annual subscription fee at: Ha!_Yeah,right.@bondcasebriefs.com.
- How High Court Rulings Affect Muni Issuers.
- What It Means When the Biggest Banks Reduce Their Muni Debt Holdings.
- The New Gold Rush for Green Bonds.
- Municipal Bonds Are Scarce. That's Good News for Borrowers.
- And finally, Easterbrook in the House! is brought to us this week by *Jones v. Markiewicz–Qualkinbush*, a case about referenda or some such nonsense. The opinion would have been of no particular interest had it been penned by anyone other than the federal court's (ok, arguably) foremost stylist. I speak, of course, of the Honorable Frank H. Easterbrook, Circuit Judge. You know you're in good hands when the opinion begins with, "Thaddeus Jones, an alderman in Calumet City, Illinois, wants to be mayor." and ends with, "The price of political dirty tricks must be collected at the ballot box rather than the courthouse." Go forth and preach the gospel.

SCOTUS - 2 Major Rulings With Positive Implications For Municipal Bond Credit Quality.

The Supreme Court of the United States (SCOTUS), on June 27th, ruled in a 5-4 vote that government workers who choose not to join unions may not be required to help pay for collective bargaining and other union endeavors. Bloomberg estimates that this ruling will affect 5 million workers. Many feel that governments have been at a disadvantage, noting the conflict of interest that may arise when politicians must negotiate with the constituents that elect them. Fewer dollars flowing into the political operations of organized labor may give governments a better negotiating position regarding municipal employee salaries and the pension and other post-employment benefits that are becoming outsized burdens on governments and taxpayers. Later in this commentary, we compare right-to-work states (where employees cannot be required to pay agency fees to a union) and their pension funding status with the 22 non-right-to-work states. The upshot: 76.1% funded compared with 59.3% funded, respectively.

On June 21, 2018, the SCOTUS also ruled 5-4 to allow taxation of internet-based sales by ruling against the physical presence rule in the case of South Dakota vs. Wayfair (NYSE:W). This ruling overturned past rulings that were predicated on an economy that did not depend on internet commerce; the historic Quill case was based on catalog sales. We think this ruling will benefit states and localities that have sales tax as a major revenue component and increase debt service coverage on bonds that are secured by sales taxes. The change in sales tax collection may encourage more businesses to have a local presence because they would no longer be at such a competitive disadvantage with online retailers. Such a trend would further local employment and grow the local tax base.

We think these SCOTUS rulings are favorable for municipal credit, as discussed in further detail in our comments below and as mentioned in John Mousseau's recent commentary, "Tax Free Munis Continue to Perform".

Continue reading.

Seeking Alpha

David Kotok
Chief Investment Officer, Wealth Preservation, portfolio strategy

Cumberland Advisors

By Patricia Healy, CFA

Taxable Municipal Bonds: An Overlooked Fixed-Income Allocation For Portfolio Diversity

Summary

- This article concludes my analysis of taxable municipal bond CEFs.
- In this installment, I look to validate the inferences I made previously that taxable muni bonds can be a powerful diversifying asset class, especially in a tax-advantaged portfolio.
- The results show that two taxable municipal-bond funds have performed better than more widely recommended fixed-income asset classes at improving risk-adjusted and absolute returns.

Continue reading.

Seeking Alpha

July 6, 2018

IMMUNITY - ALABAMA

Ex parte Utilities Board of City of Foley

Supreme Court of Alabama - June 28, 2018 - So.3d - 2018 WL 3153581

Employee of bridge-repair contractor brought action for negligence and wantonness against municipal utility and certain employees to recover for injuries suffered from being electrocuted from overhead power lines while employee was working on the bridge-repair project.

Employee's wife asserted a claim for loss of consortium. The Circuit Court denied utility's and employees' motions for summary judgment. Utility and employees petitioned for a writ of mandamus.

The Supreme Court of Alabama held that:

- Municipal utility's risk manager had state-agent immunity as to the negligence claim, but
- Municipal utility did not have substantive immunity.

Risk manager for municipal utility had state-agent immunity from negligence claim by bridge-repair contractor's employee who was electrocuted from overhead power lines while working on the bridge-repair project, which were lines that were not specifically mentioned in a line-locate ticket that utility received regarding the project; technician who worked on the line-locate ticket perceived no hazard from the ticket's wording or from his visit to the construction site, technician did not bring the ticket to a supervisor's attention, and manager's alleged failure to manage the department in a manner that would have enabled him to prevent the incident fell squarely within state-agent immunity as to administration of a department or agency.

Municipal utility did not have substantive immunity from personal-injury claim by bridge-repair contractor’s employee who was electrocuted from overhead power lines while working on the bridge-repair project, which were lines that were not specifically mentioned in a line-locate ticket that utility received regarding the project; the claims against utility did not involve actions that took place within the municipality.

PUBLIC PENSIONS - GEORGIA

Gold v. Dekalb County School District

Court of Appeals of Georgia - June 1, 2018 - S.E.2d - 2018 WL 2454932

County school district employees brought action against district and board of education for breaching an agreement to provide two years’ advance notice prior to suspending contributions to their tax shelter annuity plan accounts.

After the denial of district’s motion to dismiss was affirmed in part and reversed in part on appeal and after the denial of employees’ class certification motion was affirmed on appeal, the trial court granted summary judgment to district and board. Employees appealed.

The Court of Appeals held that employees were contractually entitled to two years’ notice before district suspended contributions.

School district employees were contractually entitled to two years’ notice before district suspended contributions to tax shelter annuity plan accounts, and thus district breached contract by not providing required notice; even though plan documents did not give employees right to notice, board of education added two-year notice provision as legislative enactment, which became part of employees’ contract of employment, and provision was substantive.

REFERENDA - ILLINOIS

Jones v. Markiewicz-Qualkinbush

United States Court of Appeals, Seventh Circuit - June 14, 2018 - 892 F.3d 935

Prospective city mayoral candidate, voters, and citizens’ group brought action against city officials and county clerk, challenging the constitutionality of an Illinois statute that limited the number of referenda on any election ballot to three and city’s refusal to place on a ballot a referendum proposition for term limits on city mayor’s office.

The United States District Court for the Northern District of Illinois entered judgment in favor of defendants. Plaintiffs appealed.

The Court of Appeals held that:

- Illinois statute did not violate First Amendment right of political expression, and
- City referendum which prevented candidate from running for mayor did not violate equal protection.

Illinois statute that limited the number of referenda that could be placed on any election ballot to three, and which, as a practical matter, effectively excluded private referenda from ballot, in favor of referenda proposed by municipality or state, did not violate First Amendment right of political expression; statute was viewpoint and content-neutral, ballot was non-public forum, and the limit on referenda was rationally related to state's strong interest in simplifying the ballot to promote a well-considered election outcome.

City referendum providing for a term limit for the office of mayor and which prevented candidate from running for mayor based on his prior five consecutive four-year terms as alderman did not violate candidate's equal protection rights; even if aimed at particular candidate, referendum was rationally related to city's legitimate governmental interest in imposing term limits.

BALLOT INITIATIVES - MASSACHUSETTS

Anderson v. Attorney General

Supreme Judicial Court of Massachusetts, Suffolk. - June 18, 2018 - 99 N.E.3d 309

Voters brought action to have quashed the Attorney General's certification for the statewide ballot an initiative petition that would impose a graduated income tax on residents with income above a particular level and earmark revenues from the proposed tax for public education and transportation.

A single justice of the Supreme Judicial Court reserved and reported the case for consideration by the full court.

The Supreme Judicial Court of Massachusetts held that provisions of initiative petition were not mutually dependent, which precluded certification.

Provisions in initiative petition to amend the Commonwealth's constitution to impose a graduated income tax on certain high-income taxpayers and to earmark the new revenues for public education and transportation were not mutually dependent, and thus the certification of the initiative for the statewide ballots was not warranted; previous petitions seeking to impose a graduated income tax had been presented to the voters as stand-alone initiatives, funds for education could be raised separately from those for transportation, and funds for transportation could be raised separately from those for education.

PUBLIC UTILITIES - MINNESOTA

Jennissen v. City of Bloomington

Supreme Court of Minnesota - June 20, 2018 - N.W.2d - 2018 WL 3040547

Group of city residents opposed to city's efforts to implement organized collection of solid waste brought action against the city, seeking to compel the city to place proposed charter amendment, requiring city to seek voter approval before establishing system of organized collection of solid waste, on next general-election ballot.

The District Court granted summary judgment in favor of city. Residents appealed, and the Court of Appeals affirmed. The Supreme Court granted review.

The Supreme Court of Minnesota held that:

- For purposes of determining whether state law occupied the field, subject matter legislature

intended to regulate was the process a city must follow before it can organize waste collection, and
- Subject matter was not fully covered by state law.

In determining whether a state law has pre-empted a field so as to invalidate local legislation on the same subject, one must consider whether the subject matter has been fully covered by state law, whether legislature indicated that subject is a matter solely of state concern, and whether the subject matter itself is of such nature that local regulation would have unreasonably adverse effects.

For purposes of determining whether state law "occupied the field" in proposal by city to change from a system of open collection of mixed solid waste to a system of organized collection, subject matter legislature intended to regulate was the process a city must follow before it can organize waste collection; plain language of statute outlined procedures related to the process of implementing organized collection of solid waste.

For purposes of determining whether state law "occupied the field" in proposal by city to change from a system of open collection of mixed solid waste to a system of organized collection, subject matter was not fully covered by state law so as to have become solely a matter of state concern; state statute's process for organized collection did not include a municipality's actual decision to organize collection, statute described only the minimum steps that a municipality must take to organize collection, and Legislature intended, not to preempt, but to provide municipalities with considerable flexibility.

BALLOT INITIATIVES - MONTANA

Montana Mining Association v. State by and through Fox

Supreme Court of Montana - June 19, 2018 - P.3d - 2018 WL 3031078 - 2018 MT 151

Mining association brought original jurisdiction action requesting to overrule Attorney General's determination that initiative, which would change mine permitting process, was legally sufficient.

The Supreme Court of Montana held that issue of whether initiative delegated rulemaking authority was outside scope of Attorney General's legal-sufficiency review of initiative and thus also outside scope of Supreme Court's pre-election initiative review.

Issue of whether initiative, which would change mine permitting process, delegated rulemaking authority, as would determine required effective date of initiative, was outside statutory scope of Attorney General's legal-sufficiency review of initiative and thus also outside scope of Supreme Court's pre-election initiative review; answering question of whether initiative delegated rulemaking authority would have required Attorney General to analyze text or substance of initiative in context of relevant caselaw and statutes, which was broader inquiry than whether initiative complied with requirements governing submission of a ballot initiative to electors.

FIRE PROTECTION DISTRICTS - NEW YORK

Waite v. Town of Champion

Court of Appeals of New York - June 27, 2018 - N.E.3d - 2018 WL 3129334 - 2018 N.Y. Slip Op. 04688

Town residents brought article 78 proceeding against town, alleging that town failed to accomplish and complete the dissolution of the town fire protection district as required by the General Municipal Law.

The Supreme Court, Jefferson County, dismissed the petition, and residents appealed. The Supreme Court, Appellate Division, affirmed. Residents appealed.

The Court of Appeals held that town complied with General Municipal Law when it created two legally distinct fire protection districts (FPD) to deliver fire protection services formerly provided by town FPD.

Town complied with its obligations under General Municipal Law when it created two legally distinct fire protection districts (FPD) to deliver fire protection services formerly provided by town FPD in response to passage of referendum to dissolve town FPD; although town residents claimed that town undermined will of voters by retaining control over provision of fire protection services in new districts, upon receipt of petition calling for dissolution proceeding, town held referendum, and upon passage of referendum, town proposed dissolution plan that was voted on and approved, town fire protection district was dissolved, town created two new separate districts that were coterminous with town district but functionally distinguishable, and town contracted with fire departments of separate villages to provide fire protection services within geographic boundaries of each new district.

INJUNCTIONS - OHIO

City of Toledo v. State

Supreme Court of Ohio - June 20, 2018 - N.E.3d - 2018 WL 3062477 - 2018 -Ohio- 2358

After finding statutes regulating local governments' use of traffic cameras unconstitutional, the Court of Common Pleas held state in contempt for passing provisions of budget bill withholding state funds from municipalities unless they complied with statutes and granted a city's motion for permanent injunction precluding enforcement of the provisions.

The Court of Appeals affirmed. State sought further review.

The Supreme Court of Ohio held that:

- Trial court's equitable powers did not authorize it to enter injunction against enforcement of spending provisions, and
- As matter of first impression, court's contempt power did not authorize it to enjoin enforcement of spending provisions.

Trial court's equitable powers did not authorize it to enter an injunction against enforcement of provisions of budget bill withholding state funds from municipalities unless they complied with statutes regulating the use of traffic cameras by local governments, enforcement of which statutes the trial court had previously enjoined after declaring them unconstitutional in city's action challenging the statutes, where city did not file a complaint challenging the constitutionality of the spending provisions and did not prove that the provisions were unconstitutional, as required for trial court to enjoin enforcement of the provisions.

Trial court's contempt power did not authorize it to enter an injunction against enforcement of provisions of budget bill on ground that the provisions, which withheld state funds from municipalities unless they complied with statutes regulating the use of traffic cameras by local governments, resulted in a violation of court's prior injunction against enforcement of the statutes, in city's action challenging the statutes' constitutionality; injunction against enforcement of the spending provisions did not clearly, definitely, and unambiguously prohibit the legislature from passing future legislation, and, moreover, separation-of-powers doctrine precluded a court from enjoining the legislature from exercising its legislative power to enact laws.

PUBLIC UTILITIES - SOUTH DAKOTA

[Matter of PUC Docket HP 14-0001]

Supreme Court of South Dakota - June 13, 2018 - N.W.2d - 2018 WL 2976322 - 2018 S.D. 44

Contestants sought review of decision of the Public Utilities Commission certifying that proposed oil pipeline continued to meet permit conditions.

The Circuit Court affirmed. Contestants appealed.

The Supreme Court of South Dakota held that circuit court lacked jurisdiction to consider appeals.

Contestants had no right under due process clause to judicial review of Public Utilities Commission's certification that proposed oil pipeline continued to meet permit conditions; proceeding involved utility's filing of certification rather than Commission's adjudication of a party's legal rights or privileges after opportunity for hearing.

MUNICIPAL ORDINANCE - TEXAS

[City of Laredo v. Laredo Merchants Association]

Supreme Court of Texas - June 22, 2018 - S.W.3d - 2018 WL 3078112

Merchants association brought action against home-rule city, seeking a declaratory judgment that an ordinance making it unlawful for commercial establishments to provide single-use plastic or paper checkout bags to customers was unenforceable.

The District Court entered summary judgment in favor of city. Association appealed. The San Antonio Court of Appeals reversed. City petitioned for review.

The Supreme Court of Texas held that:

- The Court had jurisdiction over challenge to the ordinance, and
- The Solid Waste Disposal Act preempted the ordinance.

The Supreme Court had jurisdiction over challenge to home-rule city's ordinance that banned single-use plastic or paper checkout bags and that allegedly conflicted with state law, despite argument that, since the ordinance was penal in nature, it could only be challenged in defense to a criminal prosecution for violating it; civil courts had jurisdiction to enjoin or declare void an unconstitutional penal ordinance when there was the threat of irreparable injury to vested property rights, the ordinance prohibited the complaining vendors from using noncompliant bags, and ordinance imposed a substantial per-violation fine that effectively precluded small local businesses from testing the ban's constitutionality in defense to a criminal prosecution.

Solid Waste Disposal Act, which barred a local government from prohibiting or restricting, for solid waste management purposes, the sale or use of a container or package in a manner not authorized by state law, preempted home-rule city's ordinance that banned single-use plastic or paper checkout bags, despite argument that the ordinance was not adopted for solid waste management purposes and that the Act did not clearly apply to new bags for point-of-sale purchases; ordinance's stated purposes were to reduce litter and eliminate trash, which, in sum, equated to managing solid waste, and a single-use paper or plastic bag used to hold retail goods and commodities for transportation clearly fell within the ordinary meaning of "container."

S&P Withdraws Various Puerto Rico Gov't Agency Ratings.

SAN JUAN – Credit rating company S&P Global Ratings has withdrawn its "long-term and unenhanced ratings" on the Puerto Rico Municipal Finance Agency's $413,115,000 2005 series A bonds, $59,075,000 2005 series B refunding bonds, and $258,645,000 2005 series C refunding bonds.

"The ratings were withdrawn due to lack of timely information sufficient to maintain the ratings," S&P said in a report Thursday to the markets.

It also withdrew its ratings for Puerto Rico Municipal Finance Agency's $510,615,000 2002 series A bonds; Puerto Rico Industrial, Tourist, Educational, Medical and Environmental Control Facilities Financing Authority's $13,215,000 1998 series A industrial revenue bonds; and Puerto Rico Public Building Authority's $128,895,000 1993 series L, revenue refunding bonds.

A rating suspension does not imply that the entity is not servicing its debt obligations or that its financial position has deteriorated, but rather that it failed to provide certain information such as its finances, liquidity or operations.

Caribbean Business

By Eva Lloréns Vélez on July 6, 2018

How a Public Bank Could Help You.

A campaign is underway in New York to take money out of Wall Street and put it into the hands of the city.

New Yorkers are known for speaking their minds, but can they put their money where their mouth is? A new campaign is underway to make one of the richest cities into the world reclaim local wealth and make the banking system work for people who actually live here, by putting people over profits.

Community banks and neighborhood credit unions have been around for decades as a way for communities to build assets, launch mom-and-pop businesses, and help keep money in the hands of working people, rather than lining the pockets of international financial institutions. But what if a city as a whole decided to create its own bank? The Public Bank NYC campaign calls for a full-fledged bank, owned and operated by and for the city, which could serve as a public trust invested in social justice, accountable to the public.

Right now, billions of the City of New York's dollars are being held in commercial banks. That's a problem, because it's those same banks that make decisions about whom to lend to, and at what rates—not just on Wall Street but in everyday Main Street businesses and neighborhoods as well. Those banks are also the same big financial institutions that were deemed "too big to fail" during the last financial collapse, and were only kept afloat during the Great Recession with a huge bail-out, ultimately funded by public money.

Continue reading.

The Nation

By Michelle Chen

New Jersey Is Back From the 'Abyss,' Murphy Says. Credit Raters Need More.

- **Record $3.2 billion pension payment first step, governor says**
- **Budget in place, he looks to oversee progressive initiatives**

Governor Phil Murphy's record $3.2 billion pension payment was an easy sell to New Jersey lawmakers who had fought him on other budget initiatives. Still, he said, it was bittersweet to sign a spending plan that won't impress Wall Street enough for an upgrade.

Credit-rating analysts want to see other elements of what the state was lacking under his predecessor, Republican Chris Christie, including recurring revenue, fulfilled obligations and a sizable surplus. Until then, Murphy said Monday in an interview, New Jersey's once top grade will remain second-worst among U.S. states, behind Illinois.

Christie, who insisted that smaller government and lower taxes would boost New Jersey's economy, oversaw a record 11 downgrades by the three major rating firms during his two terms. In many ways, Murphy is his antithesis — a union-backed progressive who believes the solution to New Jersey's recovery is raising taxes to support increased spending on schools, education and infrastructure.

The 2019 budget brings New Jersey "one step back from the abyss," said Murphy, a retired Goldman Sachs Group Inc. senior director and former ambassador to Germany, who took office in January.

Soccer Fan

"This is a major step, but it's one step," the Democrat said as he sipped iced tea at a Red Bank restaurant near his riverfront mansion, in his first media interview since signing a $37.4 billion spending plan for the fiscal year that began July 1.

Dressed in jeans, his trademark Allbirds woolen sneakers and a taco-patterned shirt in recognition of Mexico's World Cup match with Brazil, the 60-year-old governor gave a glimpse of weeklong negotiations with Democratic legislative leaders who had objected to his plan to raise more than $1.5 billion in revenue with a millionaire's tax and a higher sales tax. Without an agreement by July 1, he risked a government shutdown.

On Sunday night, Murphy signed a budget that contained most of what he wanted, though in slightly different form, he said. After negotiations, he agreed on a higher income tax for those who make at least $5 million, no sales-tax increase and a surcharge on the corporate business tax that he had initially resisted.

Budget Deal

Murphy went along despite initial reservations that companies would head for lower-cost states.

“Having a sensible solution on some of these tax policies was, I think, all that they were asking for,” Murphy said of unnamed corporate chief executives with whom he said he had spoken during budget talks. A state will lose businesses no matter what, he said, but the goal was “to keep more than your fair share.”

Republicans fear the state will lose more of its residents and businesses. Democrats are “taxing with impunity,” Doug Steinhardt, chairman of the New Jersey Republican Party, wrote Tuesday in a northjersey.com column.

“Democratic leaders brand their budget compromise a stronger and fairer New Jersey,” Steinhardt wrote in his column. “It isn’t. We are weaker and poorer because of it.”

On Monday, Murphy said he was a few moments late to the interview because he was having a phone conversation with a chief executive of a publicly traded company, which he declined to identify, that already was planning to add 800 employees to its New Jersey workforce of 100. Companies consider more than taxes when deciding where to locate, he said.

“If all you care about, literally all you care about, is the tax rate, and you don’t care about infrastructure, location, public education, higher ed, what are you doing with incubators, what are you doing to develop talent, keep talent — New Jersey will have a hard time in that fight, right?” he said. “It’s like a single-issue voter.”

Demand for New Jersey bonds has increased this year. Debt sold in the state has gained 0.17 percent, beating the overall municipal-bond market’s 0.25 percent loss, according to Bloomberg Barclays Municipal Bond Index.

In the weeks heading to the spending deadline, Murphy had public appearances and news conferences alongside members of groups backing a $15 minimum wage and environmental causes as well as unions representing public employees. Christie had alienated the government workforce by failing to make promised pension payments after they agreed to pay more toward retirement and health benefits — and then calling for more concessions.

Murphy said he intended to keep employees in his corner, even as he examines how to reduce their costs to taxpayers.

“I’m committed to earning that trust back,” he said. “It isn’t just to have a nice relationship. It’s the right thing to do, to again be a state that people say, ‘You know, I trust this place.’ Rating agencies, God willing, will trust us again.”

Bloomberg Politics

By Elise Young

July 3, 2018

— With assistance by Michelle Kaske

Bad Things Can Happen When U.S. Towns Rely on One Taxpayer.

- **DTE Energy filed tax appeal on aging power plant in Michigan**
- **City of Monroe could see a quarter of its budget wiped out**

American cities routinely dole out tax breaks and other subsidies to lure big companies to set up shop. But one small town in Michigan is discovering the risk that comes with relying too heavily on corporate taxpayers.

Monroe, a 20,000-resident city 40 miles (64 kilometers) south of Detroit, could see a quarter of its revenue wiped out if DTE Energy Co. wins a challenge to its property-tax bill for a coal-fired power plant. That could jeopardize funding for crucial services from public safety to special education, Monroe County's chief financial officer, Michael Bosanac, wrote in an email.

An overdependence on one industry has proven a pitfall for other U.S. municipalities. Detroit collapsed into bankruptcy after decades of seeing its population dwindle as auto-industry jobs disappeared. Atlantic City had to be rescued by New Jersey as some casinos shuttered and others appealed their tax bills. Wayne, New Jersey, could be in trouble now that its third-largest taxpayer, Toys 'R' Us, is out of business.

"A concentrated tax base is a principal credit risk in a small government," said Matt Fabian, managing director and senior analyst at Municipal Market Analytics Inc. "Their reliance on a single industry or company creates potential volatility and that could be hard for a small government to manage."

That's been true for cities that draw a lot of tax money from aging power plants. Energy producers across the U.S. have pushed to wrest concessions from local, state, regional and federal policymakers to keep nuclear and coal power plants afloat in the era of cheap natural gas and the rise of wind and solar power. DTE also filed a tax appeal on its nuclear power plant Fermi 2, located in Monroe County.

First Priority

The company says the appeals are "merely protective," and it intends to negotiate with city and county officials.

"DTE Energy's appeals with the Michigan Tax Tribunal regarding the taxable value of the Monroe and Fermi plants were merely protective appeals that needed to be logged by a set deadline because agreements with the local taxing jurisdictions were not completed," the company said in an emailed statement. "DTE's goal is to reach a reasonable agreement regarding the amount and timing of any reductions before the tribunal makes its decision."

Still, Monroe is set to see the amount of money it gets to fund government services slashed, even as it must continue to make payments on $45.4 million in outstanding general-obligation bonds. The city recently warned investors about the tax appeal in a filing with the Municipal Securities Rulemaking Board. Repaying investors is the city's first priority, said City Manager Vincent Pastue. The bonds are rated AA- by S&P Global Ratings.

"Your first obligation is to make your debt payments, Pastue said in a telephone interview. "You don't really have a choice."

Even in cases where tax revenue disappears, bond defaults by cities remain extremely rare. While Toys "R" Us disclosed that it plans to lay off 1,159 employees in Wayne in March, the city still has an Aaa rating from Moody's Investors Service. Atlantic City, which once had a monopoly on gambling in the East Coast, continued paying investors even as its property-tax base has shrunk, though the price of the bonds slipped as its credit rating dropped to junk.

Bloomberg Markets

By Sophie Alexander

July 3, 2018, 5:41 AM PDT

— With assistance by Tim Loh

How High Court Rulings Affect Muni Issuers.

Three rulings by the U.S. Supreme Court this term will have a lasting impact on the finances of many municipal bond issuers, according to report released by Fiera Capital.

"As anticipated, the Supreme Court ruled against public sector unions in the high-profile case of *Janus v. American Federation of State, County, and Municipal Employees*. The Janus ruling will have important long-term credit implications for many state and local governments," Bryan Laing, vice president of credit research at Fiera, wrote in a market comment released late Friday. "This case, along with the recent ruling on sports wagering and online sales tax collections combine for a busy season for state and local governments at the nation's highest court."

The impact of the Janus v. AFSCME ruling is more than likely to be a weakening of union finances, Laing said, which may have a dampening effect on their power over the longer term. He said it was an important long-term development for many municipal issuers, particularly those facing elevated pension burdens.

Continue reading.

The Bond Buyer

By Chip Barnett & Christine Albano

July 02 2018

Municipal Bond Closed-End Funds Could Be Ripe for Tax-Loss Sales.

- **Almost 90 percent of closed-end funds have posted losses**
- **Investors could sell fund shares to offset stock gains**

It's July, but it's not too early to discuss selling municipal-bond closed-end funds to offset a capital gains tax liability, according to Greg Neer of Relative Value Partners.

Almost 90 percent of closed-end funds monitored by Bloomberg posted a loss this year as rising interest rates increased the cost of leverage that the funds use to buy longer-dated debt, putting pressure on dividends. In addition, yields on 30-year municipal bonds rose 0.4 percentage point in the first quarter, reducing the value of the debt held by the funds.

More than a third of muni closed-end funds posting losses this year have declined more than 5 percent and four funds have lost more than 10 percent, according to data compiled by Bloomberg. If the losses hold, investors could sell closed-end fund shares, Neer said.

“If things stay as is or as people expect, you’ll likely get a significant amount of sellers come early fall and winter,” Neer said. “They may not be able to accept the volatility of what they thought was a more stable asset, or they’re going to say, let’s swap, let me take my loss on Fund A and buy Fund B and realize that loss.”

Municipal closed-end funds rebounded in the second quarter, getting a boost from a Treasury rally spurred by political unrest in Italy that had global investors fleeing to relatively safer assets.

Many closed-end funds borrow short-term and buy higher-yielding, long-dated debt. Short-term borrowing costs in the muni market have almost doubled to 1.51 percent in a year, and the Federal Reserve is expected to raise short-term interest rates two more times this year.

Rising leverage costs narrow the profit that can be made by investing in long-dated debt, eating into distributions to investors. On Monday, BlackRock Inc. said it was cutting dividends on 20 of its muni closed-end funds.

“Leverage costs seem like they’re only going one way: up. The curve keeps flattening, dividends will continue to get pressured,” Neer said.

Tax-loss selling could cause discounts on muni-closed end funds — the difference between a closed-end fund’s share price and the underlying value of its assets — to widen further, Neer said. Discounts typically widen in the fourth quarter and rebound in the first quarter, he said.

National leveraged municipal closed-end funds traded at an average discount of 6 percent as of June 13, compared to their 52-week average discount of 3 percent, according to UBS Global Wealth Management.

However, in the near-term muni closed-end funds could benefit from stronger seasonal demand for tax-exempt debt. The volume of new municipal bond sales in July will be far less than the amount of money investors will receive from interest payment on maturing securities, according to Citigroup Inc.

Bloomberg Business

By Martin Z Braun

July 5, 2018, 10:30 AM PDT

Fitch: California Better Equipped for Next Recession.

Fitch Ratings-New York-02 July 2018: There is a strong likelihood California’s next governor will encounter recession, though a new Fitch Ratings report says that the state is fundamentally better positioned to withstand the next inevitable economic downturn.

With Governor Jerry Brown's final budget now official and his second term nearing an end, California continues to benefit from strong economic growth in the midst of the second-longest national economic expansion. Whether the state's choice for next governor is Democrat Gavin Newsom or Republican John Cox, the state is likely to experience a "what goes up, must come down" scenario with a stiff economic test likely for California's economy.

'Governor Brown's popularity among voters helped him to successfully raise taxes, establish a rainy day reserve and budget conservatively, advantages the next Governor may not have,' said Senior Director Karen Krop. 'However, the next governor will benefit from structural changes made over the last decade that will heavily affect how the state's budget performs through the next inevitable recession.'

Among the post-recession changes made that underpin Fitch's 'AA-' rating for the state are lower voting requirements to approve state budgets, improved access to internal liquidity, transference of some state responsibilities to local governments, and a new funding mechanism for the rainy day fund. While the structural enhancements are in place, the next governor will face the same pressure to address issues such as healthcare, homelessness, infrastructure and access to higher education, among other quality of life challenges that will be magnified in a broader economic downturn. This makes the response when the next recession comes very integral to California's future ratings and Outlook.

'California after Governor Jerry Brown' is available at 'www.fitchratings.com'

Contact:

Karen Krop
Senior Director
+1-212-908-0661
Fitch Ratings, Inc.,
33 Whitehall Street
New York, NY 10004

Karen Ribble
Senior Director
+1-415-732-5611
One Post Street, Suite 900
San Francisco, CA 94104

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

Additional information is available on www.fitchratings.com

Fitch: Georgia Water Credits Risks Rise in Dispute with Florida.

Fitch Ratings-New York-06 July 2018: In a recent US Supreme Court (SCOTUS) decision, the justices sided with Florida in an ongoing dispute over water allocations between Florida and Georgia from the Chattahoochee and Flint River basin. The eventual outcome of this lawsuit could have credit implications for water utilities as it would raise the need for borrowing to create additional supply, Fitch Ratings says.

The special master appointed to hear the dispute between Florida and Georgia decided there was insufficient evidence to prove that limiting Georgia's water use would benefit Florida. However, SCOTUS reviewed that decision and ruled the special master should reconsider Florida's argument that a cap in Georgia's water consumption could benefit Florida's Apalachicola Bay.

As urban populations grow, competing demands for water and supply stability are making decisions like this one more important for water utilities and increasing the frequency of disputes. A court decision that leads to a reduction in, or ultimately limits, supplies could raise a water utilities' borrowing to finance additional supply development. That would force utilities to strike a careful balance between charging higher water rates and/or assuming lower financial margins. The added costs of water replacement supply development could also divert funding from ongoing renewal and replacement of existing infrastructure, escalating future expenses.

Raising water rates is becoming more difficult as, for decades, water and sewer rate increases exceeded CPI and median household income (MHI). While CPI slightly more than doubled from 1988-2014, typical residential water bills more than tripled and wastewater rates more than quadrupled, according to The American Water Works Association. User charges have steadily climbed toward Fitch's 2% of MHI affordability benchmark, although Fitch-rated credits by and large still have sufficient affordability cushion.

Declining water use in the US overall has meant that cross border disputes will occur within fast growing regions that share water resources. Water use in the United States in 2015 was estimated at 9% less than in 2010, making withdrawals the lowest level since before 1970, according to the U.S. Geologic Survey.

Contact:

Julie Garcia Seebach
Director, U.S. Public Finance
+1 512 215-3743
Fitch Ratings, Inc.
111 Congress Avenue, Suite 2010
Austin, TX 78701

Doug Scott
Managing Director, U.S. Public Finance
+1 512 215-3725

Robert Rowan
Senior Analyst, Fitch Wire
+1 212 908-9159

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

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

Fitch Upgrades DC to 'AA+' and Rates $476MM GOs 'AA+'; Outlook Stable.

Fitch Ratings-New York-03 July 2018: Fitch Ratings has upgraded the District of Columbia's (the District) Issuer Default Rating and the ratings on approximately $4.8 billion of general obligation (GO) bonds to 'AA+' from 'AA'.

Fitch has also assigned an 'AA+' rating to the following District GO bonds:

–$172.9 million series 2018A general obligation bonds;
–$303.4 million series 2018B general obligation refunding bonds.

The series 2018A and B bonds are scheduled to be sold through negotiated sale on or about July 18.

The Rating Outlook is Stable.

SECURITY

The bonds are general obligations of the District, with its full faith and credit pledged. Also pledged is revenue from a special real property tax, unlimited as to rate or amount and levied in an amount to pay debt service on GO and parity bonds.

ANALYTICAL CONCLUSION

The upgrade of the District's IDR and GO rating to 'AA+' from 'AA' reflects ongoing strong economic and fiscal performance despite federal contraction and the District's repeatedly demonstrated ability to manage its budget to meet identified needs, most recently by increasing revenues to provide enhanced funding for the Washington Metropolitan Area Transit Authority (WMATA, the local public transit operator). Fitch has raised the assessments of the District's revenue framework and long-term liability burden key rating drivers. A more than 40-year history without Congressional intervention in revenue policy substantially mitigates concerns about the theoretical limit to the District's independent revenue control implicit in the federal relationship while the improvement in the long-term liability burden assessment incorporates the strong growth prospects for the District's resource base and recognition of the notable share of its liability burden that is exported to non-residents.

The ratings continue to reflect the District's exceptionally strong budget control by an independent chief financial officer (CFO), prudent financial management throughout the business cycle and strong growth prospects. The federal government plays a key role in the District's credit profile given its economic importance to the District and direct fiscal support for retiree liabilities as well as Medicaid. A statutory cap on debt service, strong commitment to long-term capital planning with sizable pay-go commitments and steady economic growth should keep the long-term liability burden relatively stable.

Economic Resource Base
Government employees and spending comprise a significant portion of the District's economy and provide an important source of stability. The District's economic base has proven resilient to federal volatility, including sequestration and a federal government shutdown. Continued private sector expansion, supported by robust population growth and favorable demographic trends, offsets the exposure to federal spending.

KEY RATING DRIVERS

Revenue Framework: 'aa'
The District's revenue growth will likely be in line with or above the level of U.S. economic growth, driven by overall economic expansion. The District has unique limitations in its independent legal ability to raise revenues given the level of congressional oversight; however, a long record of District revenue actions without Congressional interference substantially reduces the risk presented by this factor.

Expenditure Framework: 'aa'
The District has solid flexibility to manage primary expenditure demands, with workforce challenges common to many highly unionized localities, offset by low carrying costs. Material federal support assists the District in managing key spending needs, including Medicaid and pensions. Federally mandated reforms also established structural budget management tools that impose spending discipline and limit the natural spending growth rate.

Long-Term Liability Burden: 'aa'
While pension and OPEB funded positions are very favorable, the District bears a substantial burden commensurate with its responsibility for services that are normally provided by a combination of state and various local levels of government. Statutory policies establish clear caps, but extensive capital needs indicate long-term liability burden metrics will remain around current levels for the foreseeable future. The liabilities as a percentage of market value metric, which incorporates the benefit of the strong tourism presence in the District's economy and other non-resident economic activity, indicates a lower burden than suggested by the resident personal income-based metric alone.

Operating Performance: 'aaa'
The District is well positioned to address cyclical downturns with robust reserve balances and related statutory funding requirements, midrange inherent budgetary flexibility and relatively strong expected general fund revenue growth. The CFO's office provides extensive budget monitoring and control, supporting the District's operating profile.

RATING SENSITIVITIES

FISCAL MANAGEMENT: The District's 'AA+' IDR is sensitive to shifts in fundamental credit characteristics, including continued strength in the District's concentrated economic profile , proactive and conservative financial management including solid reserve funding and continued careful management of a sizable long-term liability burden with debt issuance matched to economic and fiscal capacity.

FEDERAL OVERSIGHT AND SUPPORT: The federal government's role is a critical factor in the District's rating. Direct fiscal contributions support the District's strong expenditure framework and temper the long-term liability burden. Material changes in the federal government's relationship with the District could trigger rating movement. Congressional intervention in the District's revenue policy would lower the revenue framework assessment.

CREDIT PROFILE

The District's income levels are very high, but an income equity gap remains. The 2017 per-capita personal income was by far the strongest in the nation (relative to U.S. states) at approximately $77 thousand, or more than 150% of the national level. However, the poverty rate is also high at 19% versus a national rate of 13%. Population growth has been triple the national rate since 2010, reaching nearly 700,000 in 2017. The District is responsible for funding its public schools, including charter schools, and overall enrollment has grown steadily at roughly 3% annually between 2014 and 2017, with additional growth anticipated in coming years, commensurate with the overall population trends.

Revenue Framework
The District has diverse tax revenues with real and personal property taxes, personal and corporate income taxes and a sales and use tax. Combined, these sources account for approximately three-fourths of its general fund revenues.

Stability in property taxes offsets volatility in the income and sales taxes, while the growth potential of the latter two taxes supports Fitch's assessment of strong revenue growth going forward. Strong revenue growth over the past decade, well above the rate of national GDP, indicates fundamental resilience despite federal government contraction. Fitch's assessment recognizes that the actual historical growth rate that is somewhat overstated given revenue policy actions the District implemented during this period.

The District's independent legal revenue-raising capability is theoretically limited by federal oversight, but not fundamentally so given a long historical record without any Congressional interventions on District revenue measures. The federal Home Rule Act established the District as essentially a federal agency for budgeting purposes, requiring explicit congressional approval as part of federal appropriations bills before local budget bills become effective. Local budget bills are the only way for the District to authorize spending of revenues, including tax or fee increases implemented under separate local legislation.

Under a local Budget Autonomy Act enacted by the District council in 2012 and a local court decision upholding it, the District believes its local funds budget is now only subject to a 30-legislative days congressional review period. Some members of Congress have challenged this assertion and, in Fitch's view, the final outcome remains somewhat unclear.

Since a 2016 decision in the District's Superior Court, the District has followed the budgeting process outlined in the Budget Autonomy Act. After council and mayoral approval, the District submits the local funds budget bills to Congress and considers them fully enacted after a 30-legislative days congressional review period. However, Congress has continued to follow Home Rule Act provisions and included the District's local funds budget in its federal appropriation bills.

Historically, the federal appropriations bills have included all provisions, including revenue changes, in the local funds budget approved at the District's level. They have also usually included additional policy riders inserted by Congress that modestly restrict the District's expenditure authority. For fiscal 2018, Congress inserted provisions prohibiting any expenditure of local funds to legalize marijuana and tightly limiting expenditures for abortions. As it traditionally has, the District intends to comply with these provisions included in the federal appropriations bills.

The Home Rule Act also subjects all non-budget enacted local legislation, including revenue raising measures, to a 30- (for civil matters) or 60-(for criminal matters) legislative days congressional review period. Congress can void the legislation during the review period with a joint resolution of both houses, signed by the president. This represents a significant political hurdle, as locally approved legislation has been voided only three times and not since 1990. None of the voided legislation related to fiscal policy or revenue changes.

Beyond the federal provisions noted above, the District has no other legal limitations on its ability to raise revenues through tax or fee increases, or base broadenings. Since the 1973 enactment of the Home Rule Act, Congress has never voided or otherwise overturned revenue-raising measures approved by the District's council and mayor.

Expenditure Framework

The District's responsibilities are very broad, as it provides city, county and education services to its population. In addition, the District also functions as a state government sharing the most significant expenditure challenge facing most state governments, Medicaid. An enhanced Federal Medical Assistance Percentage (FMAP) match provides the District with a level of federal support exceeding that provided to most states, offsetting some of the burden.

Overall spending should continue to grow in line with revenues. The District faces a wide range of expenditure pressures but benefits from a resilient revenue stream primed for continued growth.

Federal action to revise Medicaid's programmatic and financial structure, including a basic restructuring of federal Medicaid funding to a capped amount, remains a possibility. Whether a change in Medicaid funding has consequences for Fitch's assessment of the District's credit quality would depend on the District's fiscal response to those changes. Responses that create long-term structural deficits or increased liability burdens could negatively affect both the expenditure framework assessment and the IDR.

Carrying costs (debt service, pension actuarially determined contribution [ADC] and OPEB actual contribution) are low at about 8% of spending and should be fairly stable (if actuarial assumptions for the pensions are achieved as noted below) as the District consistently pays full actuarial amounts for both pensions and OPEB. Debt amortization is relatively slow, reflecting statutory caps that limit annual debt service. Federal support also plays a key role in minimizing carrying costs. District employees except police, firefighters, and teachers participate in either the federal Civil Service Retirement System (for those hired before Oct. 1, 1987), with the District making percentage of payroll contributions as a participating employer or a District-managed defined contribution system.

Police, firefighters and teachers participate in single employer defined benefit plans managed by the District of Columbia Retirement Board (DCRB). Under the federal National Capital Revitalization and Self-Government Act of 1997, the federal government took on the liabilities and annual contribution requirements for police, firefighters and teachers accrued through June 30, 1997. District funding of actuarial liabilities accrued since then has been in line with actuarially determined amounts. Fitch anticipates annual pension spending will remain relatively stable given the DCRB's adoption of more conservative actuarial assumptions including a closed 20-year amortization, level dollar (as opposed to the more common level percent of payroll) amortization and 6.5% investment return assumption.

The District's workforce is highly unionized with approximately 75% of the workforce subject to collective bargaining, and Fitch views the workforce environment as a neutral to weaker factor in the District's overall expenditure flexibility assessment. Employees are not permitted to strike but all collective bargaining units are eligible for binding arbitration to resolve contract negotiations.

The District reports it has settled contracts with essentially all bargaining units, except for the police officers' union. While Fitch has not fully evaluated terms of other labor settlements, the District's CFO reviewed them for fiscal sustainability the costs and are incorporated into the fiscal 2019 budget and multi-year financial plan The budget and fiscal plan also includes estimates for settlement of the police contract, on terms consistent with what the contract for fire and emergency medical services personnel. Given the anticipated strong growth in revenues, Fitch does not believe the new contracts will materially affect its expenditure framework assessment.

Recent action by the District, Maryland, Virginia (collectively the contributing jurisdictions), and the Washington Metropolitan Area Transit Authority (WMATA, the local public transit operator) addresses the authority's key capital needs without materially affecting the District's expenditure and long-term liability demands. In 2018 legislative sessions, the contributing jurisdictions all implemented measures to provide a combined approximately $500 million annually in new and permanent capital funding. This level of dedicated funding meets WMATA's recent request from the jurisdictions to allow it to fully fund an ongoing capital plan to improve safety and reliability. As the District's only public transit operator, WMATA's sustainability and success is an important factor in the District's economic growth prospects.

For the District, the increased contributions will be supported with a mix of recurring revenue increases and dedication of pay-go capital funding. The recurring revenue will derive first from a dedicated share of sales tax revenues. That dedication will be ultimately supported by several tax policy changes including rate increases in the sales tax to 6% from 5.75% (matching Maryland and Northern Virginia) and in the ride-sharing tax to 6% from 1%, as well as 3-cent of a 4-cent increase in the commercial property tax rate to $1.89 per $100 from $1.85.

Importantly, this newly dedicated funding is on top of other capital and operating support the contributing jurisdictions have historically provided to WMATA, and Fitch anticipates that the other support will continue. The District's operating contributions have consumed between 4% and 5% of its general fund operating expenditures in recent years, while the District's annual share of WMATA's capital budget has been approximately $130 million, or 10% of the District's capital spending.

Long-Term Liability Burden
Pensions and OPEB liabilities are very low with both obligations essentially fully funded, setting the District apart from the vast majority of U.S. governments. Federal support described earlier plays a key role in this extremely strong funded position. However, the debt burden reflects the District's responsibilities for functions that would normally be shared between state and local governments. Pro-forma combined debt and pension liabilities are approximately $11.5 billion, or 22% of the District's 2017 personal income (debt represents 21%).

Given the District's position as one of the nation's premier tourist destinations and other significant economic activity generated by non-residents including commuters, Fitch also considers a total liabilities-to-market value metric. Relative to fiscal 2017 taxable assessed value of just over $200 billion, the ratio is approximately 6%. As the nation's capital and home to many not-for-profit groups, one-third of the District's tax base is tax-exempt, somewhat overstating this ratio.

Fitch's analysis includes outstanding debt as of March 31, 2018 and an estimated $550 million in new money issued since then or anticipated later this year. This includes recent GO bond anticipation notes, the new money portion of the bonds rated here and an additional new money issuance anticipated for later this year.

Fitch expects the District's long-term liability burden to remain relatively stable driven by a steady flow of capital needs, offset by likely steady and strong economic growth. The District's annual long-range capital financial plan report provides an extensive assessment of foreseeable capital needs over a multi-decade timeframe and its ability to fund them. This type of explicit very long-term capital planning is uncommon for state and local governments. Fitch anticipates the District will remain committed to addressing what it considers a long-term capital needs gap identified in its report by regularly issuing new debt but also by increasing other financing sources including pay-go.

Operating Performance
The District's resilient revenue base, solid spending flexibility and sizable reserves leave it very well positioned to manage through a moderate economic downturn. Available general fund balance was approximately 24% of spending at almost $2 billion at the end of fiscal year 2017 (ended Sept. 30),

aided by a roughly $300 million operating surplus. The revised budget for fiscal 2018 forecasts a roughly $100 million surplus, which should allow the District to further boost its sizable reserves.

Available general fund balance includes all unrestricted fund balance (including the cash flow reserve and fiscal stabilization reserve), and two components of the restricted general fund balance (the contingency cash reserve fund and emergency reserve fund). The latter two funds were established under federal statute to provide fiscal flexibility and both are available for intra-year cash flow needs, supporting Fitch's view that they are part of the District's available financial cushion.

Fitch views the extensive powers and responsibilities of the independent CFO and other federally established mechanisms as key strengths of the District's operating environment. Fiscal discipline instilled following the District's financial crisis in the 1990s is institutionalized, largely in the form of the CFO's office. The CFO establishes the official binding revenue forecast used for budgeting and regularly updates it; monitors annual revenue and expenditure trends to ensure budget compliance and to flag any unanticipated shortfalls; scores all local legislation with potential fiscal consequences and can essentially block legislation that leads to a projected budget deficit; and develops annual multi-year revenue estimates.

Under the Federal Home Rule Act, the District's annual budget also includes a detailed multi-year outlook for operating and capital revenues and spending. Revenues in particular (presented by the CFO) tend to be based on conservative assumptions. While the federal financial control board is dormant, federal law establishes clear guidelines for its automatic reinstatement (namely, signs of significant District fiscal distress).

During the current economic expansion, the District made rapid progress in restoring fiscal flexibility with measures like steady rebuilding of its general fund balance (including establishing the cash flow reserve and fiscal stabilization reserve accounts in fiscal 2011) and rolling back temporary personal income tax increases implemented to address effects of the great recession.

CURRENT DEVELOPMENTS

In the June 2018 quarterly revenue estimate, the CFO projected modest growth in local sources, general fund revenue growth of 2.4% in fiscal 2018, and then approximately 3% growth in the outyears through 2022. The fiscal 2018 projection is particularly affected by short-term stimulus effects of the recent federal tax changes enacted in December 2017. The CFO's overall revenue outlook derives from an expectation of continued economic growth, but at a slightly reduced pace. Fitch considers the revenue estimates prudent and achievable, assuming continued national economic stability.

The District's council-approved fiscal 2019 budget includes modest increases in local funds spending of less than 2%, supported by revenue growth and use of between $100 million to $200 million of the prior year's ending balance specifically designated for fiscal 2019 spending. Given the District's historical practice of conservative revenue and expenditure budgeting, Fitch anticipates actual performance could exceed the forecast leading to another operating surplus.

Contact:

Primary Analyst
Eric Kim
Director
+1-212-908–0241

Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Secondary Analyst
Amy Laskey
Managing Director
+1-212-908-0568

Committee Chairperson
Laura Porter
Managing Director
+1-212-908-0575

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

Additional information is available on www.fitchratings.com.

The Week in Public Finance: The Red State That's Considering a 'Millionaire's Tax'

The revenue-raising strategy is more common in blue states. So far, four Democratic-controlled states have passed such a tax.

The latest state to consider a so-callled millionaire's tax may surprise you.

Tax hikes aimed at the rich are a revenue-raising strategy that's been embraced mostly by blue states in recent years. New Jersey became the most recent government to enact one this week, following a trend set by California, Connecticut, New York and Washington, D.C.

But this fall, voters in conservative Arizona seem set to vote on whether to tax the state's wealthiest residents in order to pay for teacher raises. This week, organizers for the Invest in Education Act said they have collected enough signatures to put the question on the ballot in November. The deadline was Thursday, but the Arizona Secretary of State still needs to verify them before the ballot measure becomes official.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | JULY 6, 2018

What It Means When the Biggest Banks Reduce Their Muni Debt Holdings.

For both individual and corporate investors, your tax rate serves as one of the biggest alluring or deterring factors in buying any municipal debt instruments. Typically, the interest earnings from municipal debt is tax exempt, safeguarding your total interest income from your marginal or corporate tax rate.

However, recent Securities and Exchange Commission filings by some of the major U.S. banks showed them reducing their state and local government bond holding by billions of dollars. For instance, Bank of America, JPMorgan Chase and Wells Fargo collectively reduced their local and state government holdings by close to $8 billion dollars during the first three months of 2018 and many other small and mid-size banks are following suit.

In this article, we will take a closer look at the steady increase in municipal debt demand after the economic collapse of 2008, the factors leading to significant reduction in muni debt exposure by major banks and what the future holds for the demand of municipal debt instruments.

Continue reading.

municipalbonds.com

by Jayden Sangha

Jul 05, 2018

The New Gold Rush for Green Bonds.

Investors are lining up to buy green bonds. Can they survive the hype.

Hanging on the wall just outside Bryan Kidney's office in Lawrence, Kan., is the framed first page of a bond offering statement. Unlike most — or really, any — bond statements, this one required a color printer. It could even be described as cheeky: It's for the sale of the city's first green bond, and every reference to "green bond" or "green project" is printed in green ink.

Kidney, the city's finance director who shepherded the $11.3 million sale last year, says the green ink originally started out as a joke.

But then, he thought, why not? When the projects are fully implemented, Lawrence is projected to save 3,201 tons of carbon dioxide equivalents (CO_2e) annually, which is equal to burning 3.5 million fewer pounds of coal. "I get really passionate about this stuff," Kidney says. "I was just so excited that Lawrence stepped up to be a leader in sustainability."

Green bonds are an emerging category of finance. Their purpose is to fund projects with clear, definable and measurable environmental benefits. As the Trump administration has walked back federal climate change policy — most notably, backing out of the Paris Agreement — states and localities are increasingly taking charge of their own environmental strategies. Green bonds are a natural funding tool. The vast majority of them finance water-related projects, but they also are used to finance, for instance, solar and wind power or reduced methane emissions. In Lawrence's case, they are funding a slew of energy efficiency projects identified by a state Facility Conservation Improvement Program audit. The audit determined that certain upgrades, such as energy-efficient lighting and heating and cooling systems, would reduce the carbon footprint for this city of 96,000 and save it money in the long run.

The concept of green bonds was developed a little more than a decade ago by a London-based group called the Climate Bonds Initiative. The idea was to help the world's growing cadre of environmentally conscious investors identify climate-friendly investments. These are folks who aren't only interested in a financial return on their investment. They want to know that their money has helped improve the environment. "If you're doing a bond issuance that's electric or coal generated, those investors don't want to be part of that transaction," says Tim Fisher, government affairs manager for the Council of Development Finance Agencies. "They're putting their investments into securities that have a double- or even triple-bottom line."

For the first few years, green bonds remained something that only large global institutions like the European Investment Bank and the World Bank dabbled in. It wasn't until 2013 that the first green bond issuance made its way to the U.S. municipal market when Massachusetts sold $100 million in bonds to finance energy efficiency projects. The following years saw other large issuers like California and New York take part. To date, those three states — Massachusetts, California and New York — are by far the most frequent issuers, accounting for $2 out of every $3 of green bonds issued in the past five years. More recently, a few municipalities have begun to experiment with them. But even as muni market issuance of green bonds doubled last year to $11 billion and is predicted to almost double again this year, green bonds remain largely outside of the mainstream.

So it's saying something when a place the size of Lawrence decides to jump in. The city may very well be a bellwether of the next big leap for green bonds. That would be good news for issuers since the bonds have the potential to attract a fresh set of investors at a time when tax reform has created fewer incentives for banks and insurance companies to buy municipal bonds. Some even think that green bonds will someday be cheaper for states and localities to issue than general obligation debt. But before any of that happens, there are underlying challenges with green bonds' authenticity that have to be resolved first.

Since they debuted a decade ago, green bonds have been issued under a variety of names — environmental impact bonds and climate bonds being among the most prevalent. Whatever their name, one of the biggest threats to the long-term viability of these bonds is a matter of meaning. The definition of what's "green" seems to alter slightly with each issuer.

In recent years, some groups have taken a stab at narrowing down the variables in what makes a bond green. Moody's Investors Service has come up with a green bond assessment tool, which looks at the likelihood that the bond money will go toward environmental improvements. S&P Global Ratings has also come out with commentary. But neither provides a rating or measurement of how environmentally positive a bond might be. Elsewhere, the Climate Bonds Initiative has released a set of green bond principles for issuers while state and local governments are increasingly seeking third-party certification for their green bonds.

Compounding matters is the reality that the investment community doesn't agree on what's green and what isn't. Everything is optional. Julie Egan, director of municipal research at Community Capital Management, a major green bond investor, says her standard for "green" is that it has to be an innovative project. But that doesn't always apply when she's shopping for some of her clients who might not feel the same way. When she looks at a water and sewer system's green bond sale, she often sees something that looks like "the exact same thing they've been doing for years. Is it green? Technically, for some people, it is: They're providing clean water," she says. "But there's no new technology. It just is not something that would create a great deal of excitement at our firm."

Clearly, what some might see as environmentally forward-thinking in one place is just run-of-the-mill in another. It's led to accusations of so-called greenwashing, a term originally coined in the 1980s and meant for corporations that present themselves as caring environmental stewards, even as they are engaging in environmentally unsustainable practices. Some governments are now being accused of slapping on a label to entice investors while doing nothing else to ensure the sustainability of a project. Case in point: In early 2015, the Climate Bonds Initiative's CEO called out the Massachusetts State College Building Authority for its "pathetic" green bond sale that included funding a garage for 725 cars. Until these inconsistencies are resolved, the future of green bonds will remain in doubt.

For water utilities, green bonds have seemed like a natural fit. The reasons are fairly obvious. These authorities spend a lot of money on cleaning water — a slam dunk of an environmental benefit if ever there was one. Water and sewer authorities have many ways in which they go about defining, packaging and communicating about their green bonds. That is, many green bond investors want additional reports on the environmental impact of the projects they're financing. For issuers, that's an additional process.

The way in which DC Water handled its green bond is an early model. DC Water, which serves the greater Washington, D.C., region, was the first water authority to issue green bonds, not just in the U.S. but globally. In July 2014, it sold $350 million in environmental impact bonds to finance a phase of its Clean Rivers Project. In part because the concept was so new — it was only the third green bond issuance in the U.S. — DC Water looked to Europe for best practices. Following the green bond principles outlined by the Climate Bonds Initiative, it opted to get a third-party verification and used that to both market the sale and offer a glimpse into the sort of annual impact reporting investors could expect on the bonds' proceeds. "Quite frankly, for DC Water, we wanted to set a high bar because we wanted to distinguish ourselves from other issuers," says Mark Kim, the authority's former chief financial officer and now the chief operating officer of the Municipal Securities Rulemaking Board.

The approach worked. In fact, DC Water upsized its issue by $50 million on the day of the sale thanks to the high demand from investors. Since then, the authority has issued more than a half-billion dollars in green bonds. It releases annual green bond reports that detail where all that money is being spent and gives updates on environmental outcomes. Investors who bought a DC Water green bond in 2014, for example, know that their money helped finance the first phase of the DC Clean Rivers Project, which has now helped significantly reduce nitrogen and phosphorus levels in the Anacostia and Potomac rivers.

That level of reporting isn't for everyone. And that's another challenge for the green bond movement. The additional reporting can be expensive, though it doesn't necessarily have to be. In some cases, as in Lawrence, the impact reporting is already part of the project: Lawrence has a sustainability coordinator whose job includes reporting on the city's energy savings and carbon emissions.

There are other strategies. In 2016, when the Massachusetts Water Resources Authority issued $682 million in green bonds, the first of what has been a handful of green bond sales for the authority, it took steps to avoid the extra cost of ongoing environmental impact reporting. All the bonds have been refinancings for projects completed under the federal Clean Water Act and Safe Drinking Water Act. "We thought it would be just as easy to issue refundings as green bonds because investors already know what that money was spent on," says CFO Tom Durkin. "We have limited resources and try to be frugal here. To have to produce a glossy five- or six-page report seemed like one more burden we didn't want to put on our Treasury Department."

Cleveland, on the other hand, made no claims about impact reporting in its 2016 green bond sale. It offered up $32 million in green bonds for stormwater projects and sewer upgrades and repair, telling investors in its offering statement that the city assumes no obligation to ensure the projects comply "with any legal or other standards or principles that relate to Green Projects." Instead, it committed to simply reporting on the use of proceeds until the bond money was spent. Investors bought them anyway.

Many issuers remain unconvinced of the advantage of green bonds. In part that's because there has yet to be a proven pricing benefit. The bonds don't win better rates from investors to justify the expense of the additional reporting, but Lawrence's Kidney and others make the case that selling green bonds opens up governments to new institutional investors. These are people who sit on the environmental or social investing side of a firm — nowhere near the municipal investor desk. For others, like the Eastern Municipal Water District in Southern California, that's just not enough of a selling point. "[When] we start to see a pricing bump," says Eastern's Deputy General Manager Debby Cherney, "then we'll certainly take a much more serious look at coming into the market."

Without agreed-upon standards about what a green bond is and what the reporting requirements should be, some say it's only a matter of time before an issuer falls out of favor by either using proceeds for a project that isn't green, or by not delivering on the environmental impact reporting that's expected. Until that happens — and some believe it's inevitable — governments are likely to keep pushing the margins. "Not all green bond issuers are alike and I'd say some have not adhered to best practices," says Kim, the former DC Water CFO. "Some have taken liberties with their designation." But he thinks enforcement has to come from investors. "They need to do their due diligence and hold municipal bonds accountable for what they're selling," he says. "And if they don't like what they see, don't buy it."

Maybe. Perhaps this new breed of environmentally conscious buyers will be different, but relying on investors to police the muni bond market hasn't worked before. It's more likely that until there is a real cop on the beat to instill some kind of standard, the legitimacy of the green bond market as a whole will remain in question.

GOVERNING.COM

BY LIZ FARMER | JULY 2018

New York City Turns Inward With 2019 Budget.

New York City's fiscal 2019 budget process concluded on June 14 with the adoption of an $89.15 billion budget. The budget incorporates recently settled state and federal questions while managing for future risks, addressing new spending requests, and increasing reserve set-asides.

Continue Reading

Jun. 25, 2018

The "Opportunity Zone" Program – Moving Forward

The 2017 tax reform legislation created a new federal subsidy for investment in low-income communities, known as the "Opportunity Zone" program. (We previously covered it on the blog here.) The program allows taxpayers to defer gain from the sale of assets by investing the proceeds into an "Opportunity Fund," which is a fund that invests in low-income communities that have been designated as "opportunity zones."

A few weeks after Congress enacted the program, our colleague Steve Mount wrote a complete analysis of the legislative provisions. Steve has written another piece for *Bloomberg's Tax Management Real Estate Journal*, tackling the questions about the program that linger. As Steve describes, three things need to happen to get the Opportunity Zone program going: (1) each state (and the District of Columbia and certain territories) needed to nominate O Zones within their jurisdictions and have them certified by the Treasury Department; (2) Treasury needed to promulgate rules on how to certify an O Fund; and (3) the IRS needed to issue guidance on several of the basic requirements of the Opportunity Zone statute. We've gotten (1) and (2), but we await (3). Steve's piece follows a very helpful Q&A format. Read it here.

By Johnny Hutchinson on July 3, 2018

The Public Finance Tax Blog

Squire Patton Boggs

CDFA // BNY Mellon Webcast Series: Climate Change - Financing Resilient Infrastructure.

Tuesday, August 21, 2018 | 1:00 PM Eastern

Click here to learn more and to register.

States Finalize Fiscal 2019 Budgets - Updated July 5

As of July 5, 49 states have enacted a new or revised budget for fiscal 2019. Massachusetts does not currently have a full-year budget for fiscal 2019; however, an interim budget has been passed to fund the state through the end of July.

46 states began fiscal 2019 on July 1 (New York began on April 1, while Texas begins on September 1 and Alabama and Michigan on October 1). Last year, 17 states enacted budgets covering both fiscal 2018 and fiscal 2019.

For the most current information on states' budgets, 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.

By Brian Sigritz posted 05-09-2018

NASBO

Connecticut Receives Federal Approval for All Qualified Opportunity Zone Nominations.

On May 18, Connecticut Governor Dannel Malloy announced that the U.S. Department of the Treasury approved all 72 "Qualified Opportunity Zones" that had been nominated by his administration, 29 of which are located in Hartford, New Haven, Stamford and Bridgeport.

Qualified Opportunity Zones are a creation of the Tax Cuts and Jobs Act (the Act), enacted on December 22, 2017, and serve as part of a new tax incentive mechanism to spur long-term investment in economically distressed communities throughout the United States. Pursuant to the Act, U.S. states and certain territories can nominate communities to be designated as Qualified Opportunity Zones, with such nominations subject to approval by the Secretary of the Treasury.

A taxpayer who invests in a designated Qualified Opportunity Zone through a Qualified Opportunity Fund (an Opportunity Fund) is eligible for preferential tax treatment. For these purposes, an Opportunity Fund is an investment vehicle that (i) is organized as a corporation or partnership formed for the purpose of investing in Qualified Opportunity Zone property and (ii) holds at least 90 percent of its assets in Qualified Opportunity Zone property. Notably, there are some significant tax benefits that Opportunity Fund investors may be eligible to receive:

1. Tax Deferral: If an investor sells an asset and reinvests the resulting capital gain in a an entity constituting an Opportunity Fund within 180 days from the date of such sale, the investor can defer tax on the reinvested capital gain (the Deferred Gain) until the earlier of (i) the investor's disposition of its investment in the Opportunity Fund or (ii) December 31, 2026 (the Taxation Date). To defer the associated tax on the Deferred Gain, the investor must so elect when filing its U.S. federal income tax return for the year in which the Deferred Gain arose.
2. Reduction of Tax on Capital Gains: If an investor holds an Opportunity Fund investment for at least five years, such investor's basis in the Opportunity Fund (initially $0) will be increased by 10 percent of the Deferred Gain. This "step-up" in basis will be increased by an additional 5 percent of the Deferred Gain if the Opportunity Fund investment is held for at least seven years. In any event, on the Taxation Date, the taxpayer will be subject to capital gains tax on the lesser of (i) the Deferred Gain over the taxpayer's adjusted basis in the Opportunity Fund or (ii) the fair market value of the taxpayer's investment in the Opportunity Fund over the taxpayer's adjusted basis in the Opportunity Fund. In a best-case scenario (i.e., if the taxpayer holds its Opportunity Fund investment for at least seven years and the taxpayer's investment in the Opportunity Fund has appreciated), the taxpayer will generally be subject to capital gains tax on only 85 percent of its initial Deferred Gain and will have deferred the associated tax on 85 percent of the Deferred Gain for at least seven years.
3. Elimination of Tax on Realized Appreciation: If an investor holds an Opportunity Fund investment for ten or more years, the investor's basis in the Opportunity Fund will be stepped up to the fair market value of its investment on the date the investment is sold or exchanged. As a result, following 85 percent of the Deferred Gain being subject to tax at capital gains rates on the Taxation Date (item 2 above), any future appreciation of the taxpayer's interest in the Opportunity Fund subsequent to the Taxation Date will generally be tax-free to the investor if the investor holds the Opportunity Fund investment for more than ten years.

Importantly, a taxpayer must self-certify its investment in an Opportunity Fund. No approval or action is required by the Internal Revenue Service; rather, the taxpayer must complete the appropriate form and attach it to the taxpayer's federal income tax return. Such form is not yet available, but is expected to be released by the IRS this summer.

Day Pitney Advisory

June 29, 2018

Day Pitney Author(s) Von E. Sanborn Aaron T. Kriss Jeffrey M. Kole

---

Is Washington, D.C. Prepared for the Amazon HQ2 'Prosperity Bomb'?

The biggest news in economic development in the past year has been the bidding war among cities and counties in response to Amazon's announcement that it is seeking a location for a second headquarters (dubbed HQ2) which would employ up to 50,000 workers with an average annual compensation over $100,000. The company received more than 200 bids, and in January announced a short list of 20 finalists, including Washington D.C. and two areas in suburban Maryland and Northern Virginia.

As the countdown to a final decision continues, it's worth thinking about the impact—both positive and negative—if Amazon were to select the District proper, which is enjoying a renaissance that nonetheless leaves some residents and neighborhoods behind. A newspaper columnist in Seattle, the home of HQ1, coined the term "prosperity bomb" when reflecting on the upsides and downsides of the company's presence.

Washington, D.C. is a city with significant assets, enough to make us a serious contender for Amazon: an educated workforce, good schools (if you can afford to buy a house in the right neighborhood or know how navigate the system), renowned colleges and universities, and extensive public transportation and walkable communities. The addition of up to 50,000 new jobs, most of them high-paying, would further strengthen and diversify the city's economy, which has long relied on federal employment and associated industries.

Continue reading.

The Brookings Institute

by Martha Ross

Friday, June 29, 2018

TAX - GEORGIA

City of Dublin School District v. MMT Holdings, LLC

Court of Appeals of Georgia - June 22, 2018 - S.E.2d - 2018 WL 3083617

Taxpayer brought putative class action against, inter alia, city school district, seeking, inter alia, refund of ad valorem taxes that taxpayer alleged had been illegally assessed and used by school district to meet obligations not approved by voters.

The trial court denied school district's motion for summary judgment and granted taxpayer's motion for summary judgment. School district appealed.

The Court of Appeals held that statute governing refunds of erroneously or illegally assessed and collected taxes did not entitle taxpayers to seek refund of ad valorem taxes from school district, and thus school district was entitled to sovereign immunity from taxpayers' claims. While statute's plain language entitled taxpayers to seek refund from governing body of county and municipality, statute said nothing about filing suit or seeking refund from school district, and statute did not contain any language that could be read as broadening waiver of immunity to encompass governmental entities other than those specifically listed.

Municipal Bonds Are Scarce. That’s Good News for Borrowers.

U.S. states and cities are issuing fewer bonds, partly in response to changes to tax exemptions on refinancings.

The prices for municipal bonds have recovered from their worst first-quarter slump of the last 15 years. The reason: U.S. states and cities continue to cut back on their borrowing.

Municipalities borrowed $156 billion in the first two quarters of this year, down 17% from last year. Citigroup researchers are projecting that year-over-year decline will reach 25% by the end of the year.

The low supply is pushing up the value of existing bonds and reducing borrowing costs for some governments, particularly on riskier bond deals. Twelve-year bonds backed by settlement payments from tobacco companies to the state of California sold with yields of 3.07% in June, compared with yields of 3.25% in March of last year.

“It’s a seller’s market,” said Howard Cure, director of municipal-bond research at Evercore Wealth Management, which invests in public debt. “We’re trying to be careful about that aspect of it and not go down that path of sacrificing for a little extra yield and having a big decline in credit quality.”

The Bloomberg Barclays Municipal Bond Total Return Index edged up 0.87% in the second quarter, after falling by 1.11% in the first quarter. The first-quarter drop was the biggest decline of any first quarter in the past 15 years.

About half of the drop in supply resulted from Congress’s decision last year to end tax exemption for early refinancings of outstanding municipal bonds, according to an estimate by Vikram Rai, head of municipal strategy at Citigroup. Borrowers also rushed to sell municipal bonds amid talk of other legislative proposals—such as a ban on tax-exempt issuance by hospitals and universities—that weren’t ultimately enacted.

“The rush to market toward the end of 2017 emptied out a lot of the forward pipeline,” Mr. Rai said.

Aftershocks from the 2008 recession are also contributing to the drop-off. Municipal bonds typically become eligible for refinancing a decade after they are issued. Issuance of new money bonds fell 24% in 2008 as the recession destabilized city and state finances, leading to a smaller-than-usual crop of bonds eligible for refinancing in 2018.

Those factors combined to push the total amount of refinancing deals in the first half of this year down to $44 billion, the lowest since 2000.

All that scarcity has driven up prices despite rising interest rates, which typically erode the value of outstanding bonds. Central-bank officials last month raised the benchmark federal-funds rate by a quarter-percentage point, their second rate rise this year. They projected a total of four increases for 2018, up from three at their March meeting.

Exchange-traded funds are one relatively new beneficiary of the stronger demand for municipal bonds. Their municipal-debt holdings have grown from zero in 2007 to about $30 billion this year, according to federal data. The iShares National Muni Bond ETF received inflows of $630 million last month, the highest since December 2016, according to FactSet. The inflows followed a decision on June 1 to cut fees for that ETF by more than 70%.

Demand is expected to remain high in July and August, as outstanding bonds mature and investors look for new municipal debt investments, analysts said.

Some government borrowers could get an additional market boost from a recent Supreme Court decision banning public-employee contracts that require workers to pay union dues. The decision is expected to empower governments seeking to curtail pension benefits.

"You're talking about the states retaining some negotiating leverage and being able to improve their fixed cost structure long-term," said John Miller, co-head of Global Fixed Income at Nuveen Asset Management.

The Wall Street Journal

By Heather Gillers

July 8, 2018 2:59 p.m. ET

Write to Heather Gillers at heather.gillers@wsj.com

Five Steps to Prepare the Next Generation of Water Workers.

Much like investing in water infrastructure, the country often overlooks the pressing need to invest in a skilled workforce to manage these systems. Nearly 1.7 million "water workers" construct, operate, and maintain water systems found in every region, whether employed in utilities, engineering firms, or other industries. And many water workers are in short supply due to a wave of retirements and a lack of younger talent, even though they earn more competitive wages, tend to only need a high school diploma or less, and develop valuable skillsets over time.

These workforce challenges are not unique to the water sector. Multiple other infrastructure employers are also struggling to hire, train, and retain more workers, especially those in the trades. If local water employers can design new ways to develop their workforce pipeline, the solutions could be replicated across the country and the broader infrastructure sector.

Developing these solutions, though, requires new techniques. In other words, local success depends on local innovation, ideally supported by broader regional collaborations and national investments. Building off a new "water workforce playbook" we developed through conversations with water and workforce leaders across the country, below are five steps that all types of localities can follow to accelerate their recruitment, training, and retention efforts:

Continue reading.

The Brookings Institute

by Joseph Kane

Friday, June 29, 2018

Addressing our Infrastructure Woes: Is Private Equity the Answer?

The ancient Romans were among the first advanced civilizations to understand the importance of public roads and other infrastructure. Modern civilization has come a long way from these early beginnings. From colossal bridges and tunnels to super highways and major hi-speed rails, the need for replacing outdated infrastructures – or creating entirely new ones – remains a continuing financial challenge for states and local governments. Typically, the cost for these projects is substantial, ranging in the millions, and even billions, of dollars. For most local governments who simply cannot afford to pay for or finance these costs, public-private partnerships are the only option.

While the concept of public-private partnerships is not new and has been used successfully for decades in the United States, new financial pressures on federal, state and local agencies have resulted in a renewed focus toward P3s as a means to reduce operating budgets by turning operations and maintenance responsibilities over to private companies.ii However, attracting private equity to fund infrastructure projects still presents major challenges, particularly in regions where public-private partnerships have not gained acceptance due to the political climate or regulatory hurdles in these regions. Unfortunately, major public infrastructure projects such as tunnels, roads and bridges have seen only limited investment by private equity firms who are hesitant to invest due to political fears and the slower pace of completing governmental projects. “Any time you’re involving a governmental agency or authority, it can be much more difficult to complete the deal…There can be political issues, and things often just move a lot slower.”iii Indeed, “[m]any people thought the Trump administration’s push for U.S. infrastructure upgrades would open the floodgates for private equity firms to step in and help modernize the country’s infrastructure…”iv Contributing to the reluctance of these firms to get involved is the fact that some states lack any legislation governing public-private partnerships. As a result, these states are missing out on a golden opportunity to attract private equity as a means of funding sorely needed infrastructure improvements.

A majority of states, such as Florida, do have specific legislation addressing public-private partnerships.v In Florida, for instance, there is legislation covering public transportationvi, turnpikesvii, local transportation facilitiesviii and expressway and bridge authoritiesix. In fact, Florida has, in recent years, had some significant P3 projects, as have other states. These “P3 friendly” states present the perfect environment for private investors who have the necessary capital and desire to partner with state and local governments. Investors can make a return on their capital, while the public benefits from improved or new infrastructure. It’s potentially a “win-win” for both sides, and should prompt more states to follow in the footsteps of Florida and other states with P3 legislation. While road and bridge projects have been the most traditional applications of P3s in the past, some investors are predicting a broadening of the types of projects that will be funded via P3s, such as in the water and wastewater industries, and potentially in the university housing markets. Thus, moving forward, there should be more opportunities for government contractors in industries that have not traditionally used the P3 model.xii

Click here for footnotes.

Saul Ewing Arnstein & Lehr LLP

July 6, 2018

New Municipal Public Right of Way Laws Fueled by Changes to Ohio Revised Code.

In response to Ohio House Bill 478, new right of way (ROW) ordinances are currently being considered by a number of Ohio municipalities. Ohio House Bill 478 amends Ohio's existing laws governing use and occupancy of the public ROW to further accommodate small cell facilities in support of 5G cell phone technology. The new legislation will go into effect on August 1, 2018. (See Ohio House Bill 478)

As a result of the forthcoming changes to [1]ORC Chapter 4939 by Ohio House Bill 478, a flurry of Public Way Notices (PWN) have recently been filed with the Public Utilities Commission of Ohio (PUCO) by municipalities considering the enactment of new or revised ROW ordinances. Since May 1, 2018, 27 PWNs have been filed with PUCO.

Although it seems likely that many of the newly proposed ROW ordinances being considered by municipalities are *intended* to apply to small cell facilities in the ROW, ambiguous language in certain sections of the new proposed ordinances could allow municipalities to impose their new requirements upon energy companies with existing facilities in the public ROW. Such application may cause permitting delays and increased costs for an energy company attempting to repair, replace, or maintain its infrastructure.

For instance, on May 4, 2018, an Ohio village filed a PWN for a proposed ordinance entitled "Small Cell Facilities for Wireless Support Structures." The title reflects that the proposed ordinance is intended to govern only wireless communication facilities in the ROW, but inexact drafting within the Village's new proposed ordinance could put energy companies at risk of falling under the new ROW rules for the Village. Examples include:

- The term *facilities* is undefined and used throughout the proposed ordinance, whereas the terms "Micro Wireless Facility" "Small Cell Facility", "Eligible Facilities" and "Wireless Facility" are all defined. One could argue that when *facilities* is used alone, it means something other than those specifically defined terms. Thus, *facilities* could be read to include underground or aboveground transmission and distribution lines.
- The term "Work Permit" is defined broadly as "A permit issued by the Village that must be obtained in order to perform any work in… any part of the public ROW…" This requirement could apply to any work by a utility on infrastructure located within the ROW, as it is not limited to ROW work involving small cell facilities and wireless support structures.

Similar problems from imprecise drafting may continue in other forthcoming ROW ordinances from municipalities that have recently filed PWNs.

Drafts of the proposed ordinances are not yet available from the majority municipalities that have recently filed. This is because of a new tactic employed by these municipalities – to file notice with PUCO of their consideration and proposed enactment of a public way ordinance, pursuant to ORC § 4939.04(E), without attaching the proposed ordinance supposedly under consideration. Many municipalities responded that the ordinance supposedly under consideration had not yet been drafted following written request of the proposed ordinances by the author. It seems these municipalities are taking the position that notice to PUCO of their consideration of an *undrafted*

PWO somehow starts the 45-day notice period under ORC § 4939.04(E).

Application of new municipal ROW ordinances to energy service providers is not limited to the situation of imprecise drafting within an ordinance geared towards small cell facilities. Some of the PWNs filed with PUCO are for newly proposed municipal public way ordinances with broad and sweeping changes regarding a City's governance of the public way, intended to impact energy service providers.

For example, Akron's new proposed ordinance requires initial and annual registration with the City, and mandates registration fees, annual maintenance fees, new construction permit fees, and bonds for registration, construction, restoration, and removal, among other costly and burdensome requirements.

It is important for energy companies to be aware of the upcoming changes to municipal ROW ordinances in Ohio due to amendment of ORC 4939 from House Bill 478.

[1] Ohio Revised Code Chapter 4939 governs use of municipal public ways and generally grants authority to municipalities to manage the rights of way in their jurisdiction. House Bill 478 will amend Chapter 4939 to provide, among other things, that municipalities must permit wireless service providers, cable providers, and video service providers, to attach small cell wireless facilities to municipally owned support structures located in the right of way, including on utility poles, traffic signals, and street lights and to construct, maintain, operate, or replace a wireless support structure in the right-of-way.

Benesch

July 9, 2018

Municipal Bonds Weekly Market Report: With Inflation Hitting Target Goal, Fed Might Raise Rates Twice in 2018

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 dropped this week.
- Muni bond funds saw inflows for the fourth 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

Jul 03, 2018

[Supreme Court Declines Review of Tenth Circuit Case Holding Tribal Acquisition of an Interest in an Allotment Defeats Eminent Domain Authority.]

The Supreme Court recently denied a petition to review the Tenth Circuit's opinion in *Public Service Company of New Mexico v. Barboan*1. The Tenth Circuit affirmed the district's court ruling that tribal ownership of a fractional interest in an "allotment," land the United States holds in trust for individual Indians, bars condemnation of any interest in the allotment, despite 25 U.S.C. § 357 that authorizes condemnation of "lands allotted in severalty to Indians" under state law. The Tenth Circuit agreed that tribal ownership of a fractional undivided interest in an allotment converts an allotment from "lands allotted in severalty" to "tribal land," and so Section 357 no longer applied. The Supreme Court denied Public Service Company of New Mexico's petition for a writ of certiorari on May 3, 2018.2

The *PNM* decision could have significant effects on right-of-way acquisitions and negotiations with individual Indian allottees for both new rights-of-way and renewals. The decision ignores the very real consequences to entities providing necessary public commodities whose infrastructure is now or will be located on allotted lands. We have seen this play out in a federal district court in Oklahoma where that court recently found a pipeline company in trespass, after concluding that the pipeline company could not invoke Section 357 because of tribal ownership of fractional interests in allotments, and ordered the pipeline to cease operations immediately and remove the pipeline within six months.3 In our opinion, the Tenth Circuit's now final decision deprives utilities and other public entities of the ability to ensure access for fair market value without regard to allotment landowner consent, which in turn may negatively impact continued, reliable transportation of necessary public commodities—and the public—across allotted lands. The impacts of the Tenth Circuit's decision are significant geographically as well because tens of thousands of fractional interests in allotments have been transferred to, and will continue to be transferred to, Tribes nationally under recent federal statutes and federal policies.

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

by Deana M. Bennett and Lynn H. Slade

Modrall Sperling

USA July 4 2018

[Reducing Exposure to Lead in Drinking Water: Status of Revisions to Lead and Copper Rule (Parts 1 & 2)]

The Administration is considering substantial changes to the current regulatory approach to reducing exposure to lead in drinking water. The US EPA (EPA) is assessing long-term revisions to the Lead and Copper Rule (LC Rule), a Safe Drinking Water Act (SDWA) regulation that seeks to protect public health by minimizing lead and copper in drinking water, primarily through corrosion control measures. Lead contamination in drinking water has been the subject of national scrutiny in the aftermath of the public health crisis in Flint, Michigan, where high levels of lead leached from aging pipes into the city's drinking water after the city switched its source of drinking water to the Flint River, the quality of which was more corrosive than the prior source. Congress eventually banned lead pipes in new construction with amendments to the SDWA in 1986, but in a 2016 survey, the American Water Works Association estimated that 6 million lead-containing service lines continue to distribute drinking water to 15-22 million people in the United States. As state and local governments nationwide confront similar challenges, EPA appears poised to address the legacy of lead infrastructure through updates to the LC Rule. In January 2018, EPA Administrator Scott Pruitt pledged to update the LC Rule as part of his "war on lead" in drinking water.

The SDWA requires EPA to determine a health-based maximum contaminant level goal (MCLG) for identified contaminants that may be found in drinking water. MCLGs reflect levels at which no adverse health effects are likely to occur, with an adequate margin of safety and are not enforceable. The MCLG for lead is zero, based on EPA's finding that there is no safe level of lead exposure, particularly for young children and pregnant women.

The SDWA also requires EPA to establish enforceable national primary drinking water regulations. For each contaminant with an MCLG, EPA must designate either a maximum contaminant level (MCL) or a "treatment technique." MCLs must be set "as close to the MCLG as feasible," whereas "treatment techniques" are allowed if it is not economically or technologically feasible to ascertain the MCL. EPA has established a "treatment technique" for lead, which is set forth in the LC Rule.

First promulgated in 1991, the LC Rule includes requirements for corrosion control treatment, source water treatment, lead service line replacement, and public education, as well as monitoring, reporting, and recordkeeping . Some of these requirements are triggered if action levels are exceeded. The action level for lead is 15 parts per billion (ppb) (or 0.015 mg/L) and is triggered if more than 10% of consumer taps sampled during a monitoring period contain lead concentrations in excess of 15 ppb. An exceedance indicates that corrosion control is not effective and the public water system must take additional steps to reduce lead in drinking water. The applicable corrective action depends upon the size of the public water system and the actions previously taken. Replacement of lead service lines is a last resort.

Critics have argued that the LC Rule is too reactive, too complex, and too lenient. EPA discussed these concerns in an October 2016 white paper, which declared that the LC Rule and its implementation "are in urgent need of an overhaul." The white paper indicates that EPA views the LC Rule as insufficiently proactive because it compels protective actions only after an action level is exceeded, thus creating a disincentive for public water systems to identify potential problems in drinking water before they become a public health concern. The LC Rule is also "one of the most complicated drinking water regulations for states and drinking water utilities to implement." Identifying the source(s) of lead contamination can be difficult, and the LC Rule is the only regulation that requires sampling in homes, often by the consumers themselves. Many lead service lines are also partially or entirely privately owned, and the responsibility for addressing the lead contamination may be up to the homeowner. Furthermore, the LC Rule confers public water systems with considerable discretion in regard to how they optimize corrosion control treatment, leaving many systems without fully optimized or maintained corrosion controls.

To address these concerns, EPA is considering technology-driven and health-based revisions to modernize and strengthen the LC Rule. Regulatory changes may include full lead service line replacement, health-based benchmarks, more prescriptive corrosion control treatment requirements, point-of-use filters, and improvements to sampling requirements, among other ideas. US EPA's Office of Ground Water and Drinking Water met with stakeholders as recently as January 2018, and solicited written comments from the public in March. EPA's current rulemaking schedule calls for the Agency to release a draft rule in August 2018 and a final rule in February 2020.

Whether the EPA ultimately follows through with a draft rule in 2018 remains to be seen. Meanwhile, communities across the United States are taking action to address lead contamination in their jurisdictions. For example, the Michigan Department of Environmental Quality will soon release an update to its own Lead and Copper rule, which may provide a template for other states. In January 2017, the State of Illinois passed a law that requires each school to conduct lead testing, and mandates remediation if elevated lead levels are found. New York, New Jersey, Oregon, Virginia, and California have also implemented similar laws (some are voluntary). While these states and other public water systems may have learned lessons from Flint, actually tackling the invisible problem of lead contamination is challenging as it can be extremely costly to implement and is fraught with economic, political and legal issues.

Addressing those issues in a fair and balanced way is important, especially because failure to comply with the LC Rule can expose public water systems to significant criminal and civil liability. For example, the Flint, Michigan disaster led to 15 criminal charges, two class action lawsuits, and a settlement that requires the State of Michigan to fund $100 million for the City of Flint's replacement of lead service lines. The SDWA includes a citizen suit provision, and the Natural Resources Defense Counsel and Newark Education Workers Caucus recently filed a Notice of Intent to Sue the City of Newark, New Jersey and the New Jersey Department of Environmental Protection for alleged violations of the SDWA—specifically, failure to comply with various provisions of the LC Rule.

Please stay tuned for Part 2 of this post, which will address in more detail issues related to liability under the SDWA and LC Rule.

By Sarah Quiter on May 17, 2018

Hunton Andrews Kurth

- Hospitals are Moving to Single Ratings: Here's Why
- BDA: MSRB Requests Comment on Draft FAQs for Rule G-40.
- Public Pension Network Responds to Introduction of the Public Employee Pension Transparency Act.
- New Riffs on TIFs: Lessons in Innovative Financing from Detroit
- *Wisniewski v. Murphy* – Appeals Court holds that issuance of $300 million in bonds to finance comprehensive renovation of state capitol complex did not violate state constitution's debt limitation clause.
- And finally, Great Moments in Municipal Competence is brought to us this week by *Archbold–Garrett v. New Orleans City*, in which The Big Easy sold a building at a tax sale, sent a notice of code enforcement lien to the individual who had owned the property *18 years* earlier, for no apparent reason cancelled the lien, demolished the building anyway, neglected to inform the new owners of the pending demolition, and then sent a bill to the new owners for the costs. As the court noted, "Unsurprisingly, they filed suit." Bam! The Honorable Edith H. Jones brings the deadpan! But surely this incident is unlikely to be repeated, as the municipality in question has not recently encountered any type of meteorologic event that would leave it with an abundance of unclaimed properties. Oh.

PUBLIC UTILITIES - COLORADO

City of Boulder v. Public Service Company of Colorado

Supreme Court of Colorado - June 18, 2018 - P.3d - 2018 WL 3014943 - 2018 CO 59

Utility supplier brought action against city, city council, and various elected officials, seeking judicial review of city ordinances related to city council's creation of light and power utility.

The District Court granted city's motion to dismiss for lack of subject matter jurisdiction due to time bar. Utility supplier appealed. The Court of Appeals vacated, and city petitioned for writ of certiorari.

The Supreme Court of Colorado held that:

- Utility supplier's complaint asserted a viable declaratory judgment claim against city, rather than simply a claim for judicial review of city's attempt to create a light and power utility, and
- Ordinance was a final action by city council for purposes of utility supplier's declaratory judgment claim, and thus, the trial court did not lack jurisdiction over the claim.

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.

Contact:

Amy Laskey
Managing Director
+1-212-908-0568
Fitch Ratings
33 Whitehall Street
New York, NY 10004

Laura Porter
Managing Director
+1-212-908-0575

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

Additional information is available on www.fitchratings.com

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'

Contact:

Kevin Holloran
Senior Director
+1-512-813-5700
Fitch Ratings, Inc.
111 Congress Avenue
Austin, TX 78701

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

Additional information is available on www.fitchratings.com

[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

Contact:

Mikiyon Alexander
Director
+1-646-582-4796
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Kasia Reed
Analytical Consultant
+1-646-582-4864

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

Additional information is available on www.fitchratings.com

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

---

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

---

[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
202-838-1500
jgalloway@msrb.org

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

.

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.

Contact:

Douglas Offerman
Senior Director
+1-212-908-0889
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Laura Porter
Managing Director
+1-212-908-0575

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

Additional information is available on www.fitchratings.com

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.

Contact:

Eric Kim
Director
+1-212-908-0241
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Karen Krop
Senior Director
+1-212-908-0661

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

Additional information is available on www.fitchratings.com

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

---

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.

Contact:

Dennis Pidherny
Managing Director
+1-212-908-0738
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

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

Additional information is available on www.fitchratings.com

[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.

Contact:

Katherine Falconi
Regional Credit Officer, Americas
+1 212 612-7881
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Gabriel Foguel
Associate Director, Credit Policy
+1 212 908-0506

Robert Rowan
Senior Analyst, Fitch Wire
+1 212 908-9159

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