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Jamie Stewart

Coalition Releases 2018 New Markets Tax Credit (NMTC) Progress Report.

Report highlights NMTC project data from 2017, including 52 healthcare facilities, 69 manufacturers, 26 facilities for youth and families, and 23 vocational training centers

WASHINGTON, June 6, 2018 /PRNewswire-USNewswire/ — The New Markets Tax Credit Coalition today released its 2018 New Markets Tax Credit (NMTC) Progress Report, the fourteenth edition of the report—providing a survey of NMTC activities in 2017. As in the past, the report documents the flexibility and importance of the NMTC in meeting the needs of the distressed communities where it is deployed and helping to create jobs and grow business opportunities, from more traditional industry and community sectors to new and cutting-edge technology. Despite considerable uncertainty associated with legislative battles on Capitol Hill in 2017, demand by investors remained at record levels despite the uncertainty of tax reform.

"The report findings show that the competition for credits is fierce, and continues to drive efficiency, investment and jobs," said Kermit Billups, NMTC Coalition president and executive vice president of Greenline Ventures. "Last year's projects, once again, raised the bar even higher. We're happy to report the NMTC helped create 60,000 jobs through $5.8 billion in total project investment."

The report was prepared for the NMTC Coalition, a national membership organization of Community Development Entities (CDEs) and investors organized to advocate on behalf of the NMTC. Every year since 2005, the NMTC Coalition surveys CDEs on their work delivering billions of dollars to businesses, creating jobs, and rejuvenating the parts of the country that have been left behind. The annual NMTC Progress Report presents the findings of the CDE survey and provides policymakers and practitioners with the latest trends and successes of the NMTC.

"The Coalition's annual survey asks CDEs to report on the deployment of their allocation, investor trends, and a variety of community impact metrics," said Coalition spokesperson Bob Rapoza. "The findings clearly demonstrate that the NMTC continues to deliver capital to the communities left behind by the changing economy, with 83 percent of projects in severely distressed communities in the last year—far exceeding statutory requirements. Moreover, the program is delivering a significant 'bang for the buck' for taxpayers in terms of the jobs, amenities, community facilities, and tax revenue it generates."

Eighty-nine CDEs participated in the 2018 survey and provided data on their progress raising capital, lending, and investing for 271 projects in 2017 with the NMTC. All told, the report analyzed 81 percent of the NMTC activity in 2017, or about $3.9 billion out of $4.8 billion. Respondents reported projects in 45 states plus the District of Columbia, and they ranged from a public library to a sprawling, $200 million multi-use campus for entrepreneurship.

"As we have seen year over year, the NMTC has unleashed an unprecedented amount of investment in areas struggling with high unemployment and poverty," added Rapoza. "State by state, community by community, the impact and flexibility of the NMTC continues to create economic opportunity in every corner of the nation."

For examples of how the NMTC is making an impact in each state, see the NMTC Coalition's NMTC at Work in Communities report or check out its Project Profile Map.

Download a copy of the report at www.nmtccoalition.org.

How the New U.S. Tax Law Affects Community Development Projects.

As Congress cobbled together the biggest tax overhaul since 1986, they nearly wiped out the essential sources of funding for large-scale community development projects—namely, three federal tax credit programs that attract private investment for neighborhood revitalization. Developers, financiers, and municipalities pushed back and managed to keep most of what they wanted intact. But now they are dealing with what some of them describe as the new tax law's unintended consequences.

One of those unintended consequences: a signature component of the tax act—the reduction of the tax rate on corporations to 21 percent from 35 percent—threatens to diminish the relative value of tax credits. Developers qualify for tax credits from the federal government to help raise equity for their projects. Corporations typically invest in the projects and use the tax credits to offset their federal tax liability. But with the lower tax rate now in place, developers fear that investor appetite for the tax credits may wane.

At issue are the low-income housing tax credits (LIHTCs) that help finance the construction and upkeep of affordable rental units, the federal historic tax credits (HTCs) that preserve historic properties, and the New Markets Tax Credits (NMTCs) that support economic growth in impoverished communities. Early drafts of the tax bill would have scaled back or eliminated all of these tax incentives; when they survived, many developers were relieved—but then braced themselves for more setbacks, says Phillip Kash, a principal at HR&A Advisors, a Washington, D.C.–based consulting firm that specializes in real estate services. "Nobody died, but everybody got hurt," says Kash, a leader of the firm's affordable housing team. "We are just so relieved that we're willing to swallow the pain and find ways to deal with it."

While the three tax credit programs are not the sole source of funding for any one project, they are widely viewed as the pillars of massive community development projects, often used in combination with other financing tools, says Aaron Seybert, social investment officer at the Kresge Foundation in Troy, Michigan. That is why the industry is closely watching how these public/private partnerships will fare. "When you cut a few inches off the leg of a table, you can never be sure how things will calibrate," says Seybert, a former JPMorgan Chase community development banker. "Right now, we just don't know how the market will settle."

Low-Income Housing Tax Credits

In the affordable housing arena, LIHTCs are crucial because they enable developers to build homes with less debt and thereby offer lower rents. But the industry almost lost a key portion of the program late last year when the House version of the tax bill called for eliminating private activity bonds, which more than half of affordable housing projects have been using recently to qualify for the LIHTC. Scrapping the bonds would have effectively wiped out as much as two-thirds of affordable housing production—a loss of roughly 788,000 to 881,000 rental units over ten years, according to Novogradac & Company, an accounting firm based in San Francisco, California, that specializes in real estate services.

Even before Congress took up its tax bills, some real estate projects were affected by the anticipation of lowered tax rates. Rodger L. Brown Jr., managing director of real estate development at Preservation of Affordable Housing Inc. in Boston, says a bank that planned to invest in one of his projects pulled its letter of intent off the table just a few days after Donald Trump was elected president. The bank expected that he would soon make good on his campaign promise to slash the corporate tax rate, and the bank wanted Brown's firm to lower the price of the low-income housing tax credits in the deal.

"By then, it was too late in the process for us to rearrange our capital stack," Brown notes. "The pricing risk suddenly was shifted from the investor to us. To quote them, they said: 'We want you to share in our pain.'" To make the deal work, Brown says his nonprofit firm agreed to reduce the tax credit pricing if the corporate tax rate went down. It honored that commitment, which has left little room to pay for construction change orders and may cut into the firm's development fee by hundreds of thousands of dollars by the time the project is completed, Brown says.

Many developers say they were already struggling to deal with the shortage of federal urban development funds, high land costs, and other challenges before the lower corporate tax rate exacerbated matters. They are forced to lean more heavily on mayors and county executives for financing help at a time when many localities are cash-strapped, and they are looking for possible workarounds.

Stan Wall, a partner at HR&A Advisors, says his firm is advising housing authority officials in D.C. on a plan to redevelop Greenleaf Gardens, an aging public housing complex that spans several blocks in the city's southwest quadrant. The goal is to integrate about 1,200 new market-rate units with 500 new low-rent public housing units for the complex's current residents. Revenue from the market-rate units would help subsidize the public housing so that those tenants' rents do not rise. To fully finance the deal, tax credits must be used along with other funds. But now the tax credits will bring less to the table, Wall says, so developers and housing officials must search for other ways to close the funding gap—something that is easier to do in the District, where land values are high, than in communities where land values are low. "You'll be seeing more frequent use of public land value writedowns, property tax abatements, tax increment financing [TIF], and other funding tools in D.C. and across the nation," Wall says.

The scope of any potential impact to tax credit equity pricing requires insight into the long-term tax positions of current investors, says Peter Nichol, managing director of Pillar Finance, an affordable housing lender in San Francisco. Investors receive LIHTCs over a ten-year period, "so if they planned on using previously acquired tax credits to offset a tax liability of $100 million over ten years, but their tax liability goes down to $60 million, they're sitting on extra tax credits and might decide to put their current investing on hold," Nichol says.

Michael Novogradac, managing partner in the San Francisco office of Novogradac & Company, projects that the supply of affordable housing will shrink by 235,000 homes over the next decade with the lower corporate tax rate in place. But, many factors could affect that baseline projection for better or worse, he notes. On the plus side, housing regulators recently announced that Fannie Mae and Freddie Mac will reenter the LIHTC market in a limited way as equity investors. Affordable housing may also get a boost from a provision in the new tax law that creates tax advantages for private investment in low-income "Opportunity Zones," a program that has yet to take shape. But other provisions in the tax law that are not directly tied to tax credits could nonetheless tilt investment dollars away from such credits. “My general belief is that the headwinds are going to overwhelm the tailwinds,” Novogradac says. “But that has yet to be seen.”

Historic Tax Credits

While the corporate tax rate change could hurt federal historic tax credits, disruption in that market is more directly tied to changes in that program’s prized 20 percent tax credit, which helps finance the rehabilitation of historic properties that will be used for commercial purposes.

Through this Reagan-era program, the federal government awards to developers historic tax credits that cover 20 percent of eligible renovation costs for a historic property. For instance, if a developer buys a historic building for $1 million and spends $1 million renovating it, the government would issue $200,000 in tax credits to the developer for renovation costs. Previously, the credits would fully vest during the year the project opened its doors. But starting January 1, 2018, under the new tax law, the credits will fully vest in installments over five years.

That structure threatens to diminish the value of the credits for impatient investors, who may not be interested in a five-year commitment. With the change pending in November 2017, developers rushed to close on as many deals as possible by year’s end. (Developers were scrambling to get deals done since September, when Republicans released their tax reform framework, which would have cut the entire historic tax credit program. On November 12, the Senate Finance Committee’s version of the tax bill kept the 20 percent program but parceled it out over five years. The worst-case scenario disappeared, but developers were still rushing to close by December 31, 2017, to get the more favorable one-year tax credit.)

Jonathan D. Shaver, a commercial real estate broker in New Orleans who specializes in the brokerage of historic properties, says that one of his clients put a building in New Orleans under contract the evening of December 27 and closed the deal early December 29, which he says was the fastest turnaround he has been involved in during his eight years on the job. By then—the end of 2017—industry experts were projecting a 7 percent to 15 percent shrinkage in equity raised through the tax credit after the five-year structure is in place. “That loss has to come from somewhere, whether it’s the seller taking less, the investor or developer taking a lower rate of return, or the tenant paying a higher rate,” Shaver says. “For the majority of projects, it just makes it harder to bring them to fruition.”

The pace of purchases has slowed down as the deals that closed last year are now entering the construction phase, says Robert Lay, a partner in Atlanta at Sixty West, which develops commercial historic properties and syndicates federal and state tax credits. It may take a year or so for activity to pick up again. Investors are taking a step back to assess their next move, Lay says. They are trying to wrap their minds around how the new tax law in general—and the tax credits in particular—will affect their tax liability. They also are waiting for regulatory guidance to clarify technical questions as they decide which tax credits to invest in, if any.

Given that investors will have roughly a one-year window to think through their strategy as existing projects make their way through the pipeline, Lay says he is hopeful that there will be a relatively smooth transition. “I’m not saying it’s going to be effortless or painless or without its headaches,” Lay says. “But it won’t be a sky-is-falling scenario.”

That scenario unfolded late last year, when the House of Representatives adopted a version of the tax bill that scrapped the federal historic tax credit program, including a seldom-used 10 percent tax credit for the renovation of historic buildings erected before 1936. The National Trust for Historic

Preservation and other industry stakeholders coordinated a massive letter-writing blitz to Congress and a social media campaign to save the program. Key lawmakers rallied to their side, and Congress ultimately kept the 20 percent program alive, but not its 10 percent counterpart.

New Markets Tax Credit

The New Markets Tax Credit, which lures private investment to some of the nation's poorest communities, faced a similar fate. While the affordable housing and historic properties tax credit programs were codified into law in 1986, the NMTC must be reauthorized by Congress every few years. It was set to expire in December 2019, but its supporters believed it would be extended again as it has been several times before with wide bipartisan support since its creation in 2000.

Instead, the House version of the tax bill called for a repeal of the remaining two years of the program. That proposal made no sense, says Bob Rapoza, spokesman for the New Markets Tax Credit Coalition in Washington, D.C. Between 2003 and 2015, the program had helped finance nearly 2,000 community services and facilities, such as hospitals, schools, daycare centers, and grocery stores. It had generated more than 1 million jobs during that time and lured about $82 billion in public and private investments to credit-starved areas.

The cost of this program to the federal government is more than offset by the tax revenue and economic activity it spurred, Rapoza says. Getting rid of it would not have reaped big savings, only $1.7 billion over a decade in the $1.5 trillion tax package.

The program's repeal did not make its way into the new tax law, and supporters of the NMTC are now rallying behind two measures in Congress that would make the tax credit program permanent, possibly within the next two years. A permanent authorization would help bring certainty for investors and developers, who often combine the NMTC with other sources of capital, including tax-exempt bonds and community development block grants (CDBGs) funded by the federal government. As the federal funds continue to shrink, the tax credits emerge as more critical than ever, supporters say.

"The community development world has been working in this moment of constrained federal resources for the past three decades," Rapoza says. "Tax credits have served to fill at least some of the hole created by the cuts to federal grant programs."

Urban Land Magazine

By Dina ElBoghdady

June 4, 2018

[S&P Credit FAQ: Not-For-Profit Health Care Organizations and the Impact From A Revenue Recognition Accounting Rule Change.]

S&P Global Ratings explains the credit implications of a recent accounting rule change on U.S. not-for-profit health care organizations.

[Continue Reading]

Jun. 5, 2018

Why Cities Can't Stop Poaching From One Another.

It's not just sports franchises: Tax incentives to lure companies tend to help politicians, but they don't really make economic sense.

SAN FRANCISCO — Near the bottom of the lengthy ballot San Francisco voters considered this week, in this state famous for its abundant and oddball ballot initiatives, Proposition I asked voters to establish a policy of not coveting other cities' sports teams.

The measure was part apology for poaching the Golden State Warriors from Oakland, part declaration of city principles ("San Francisco Will Not Endorse or Condone the Relocation of Any Team With an Extensive History in Another Location"). Voters, who said yes to several tax increases, looked at this largely symbolic measure and voted "no."

That result was perhaps predictable; coveting what others have is implicit city policy nearly everywhere. The doctrine explains why corporations are so successful at extracting tax breaks from competing communities, why sports teams know their relocation threats usually work, why Amazon's HQ2 sweepstakes has prompted such a bloated bidding war.

Continue reading.

The New York Times

By Emily Badger

June 8, 2018

"Issue Snapshots" and The Wayback Machine.

The IRS recently sent out an email (to those of you brave enough to willingly put yourselves on a government email list – rather like those intrepid souls who voluntarily follow @CIA on Twitter), regarding its "Issue Snapshots" webpage. The email lists the latest Snapshots, but the full list can be found at the bottom of the page here.

The IRS says that Issue Snapshots are not "official pronouncements of law or directives" (unclear what the difference between those two things is for this purpose). Issue Snapshots "cannot be used, cited or relied upon" as either "law or directives." They are intended to "provide an overview of an issue and are a means for collaborating and sharing knowledge among IRS employees." In essence, we are being allowed a window into the IRS's employee education program. Although the Snapshots may lack the comedic content of certain other employee training programs, and although some of them are rather untimely against the backdrop of recent legislative changes, they are an interesting glimpse into topics that the IRS thinks are worthy of clarifying for its employees. They may also provide hints as to likely future audit targets (the Issue Snapshots usually contain a section ominously called "Issue Indicators or Audit Tips").

Continue reading.

The Public Finance Tax Blog

By Johnny Hutchinson on June 6, 2018

Squire Patton Boggs

TAX - COLORADO

Colorado Union of Taxpayers Foundation v. City of Aspen

Supreme Court of Colorado - May 21, 2018 - P.3d - 2018 WL 2295585 - 2018 CO 36

Taxpayers foundation brought declaratory judgment action against city, alleging enactment of city ordinance that required grocers to charge customers a $0.20 "waste reduction fee" on disposable paper bags, passed without first obtaining voter approval, violated the Taxpayer's Bill of Rights (TABOR).

The District Court granted summary judgment in favor of city. Foundation appealed. The Court of Appeals affirmed. City petitioned for writ of certiorari, which was granted.

The Supreme Court of Colorado held that:

- Foundation had associational standing, and
- Purpose of ordinance was not to raise revenue for the general expenses of government, and thus waste reduction fee was not a tax to which TABOR applied.

Taxpayers foundation had associational standing to bring declaratory judgment action against city, alleging enactment of city ordinance that required grocers to charge customers a $0.20 "waste reduction fee" on disposable paper bags, passed without first obtaining voter approval, violated the Taxpayer's Bill of Rights (TABOR), where two of foundation's members were city residents who paid required bag charge, foundation was formed to educate the public as to the dangers of excessive taxation, regulation, and government spending, and the relief requested in the action, which was a court order that bag charge was unconstitutional, did not require participation of individual members.

Primary purpose of home rule city's ordinance that required grocers to charge customers a $0.20 "waste reduction fee" on disposable paper bags was not to raise revenue for the general expenses of government, and thus fee was not a "tax" to which the Taxpayer's Bill of Rights (TABOR) applied, in action alleging that ordinance, which was passed without first obtaining voter approval, violated TABOR; city council determined that single-use shopping bags contributed to greenhouse gas emissions, litter, harm to wildlife, atmospheric acidification, water consumption and solid waste generation, charge was assessed on consumers who chose to purchase non-reusable paper bags and grocery store remitted a majority of charge to city, which used it to defray the cost of specific waste reduction programs, and city determined charge was reasonable based on a waste-reduction study, city council's own analysis of its recycling costs, and input from community.

TAX - MISSOURI

Cass County v. Director of Revenue

Supreme Court of Missouri, en banc. - May 22, 2018 - S.W.3d - 2018 WL 2311309

County sought writ to prohibit the director of revenue from withholding tax revenue to reimburse city for tax revenues erroneously paid to county.

The Administrative Hearing Commission, Audrey Hanson McIntosh, Commissioner, entered decision allowing the director to redistribute the tax revenue, and county petitioned for review.

The Supreme Court of Missouri held that the Commission was not precluded from allowing the director to redistribute tax revenue on the basis it was a refund matter.

Issue regarding the amount of sales tax revenue collected from taxpayer that was owed to city, but incorrectly distributed to county, did not constitute a matter for which taxpayer was required to seek a refund, and thus, the Administrative Hearing Commission was not precluded from allowing the director of revenue to redistribute tax revenue collected in subsequent years, which would normally go to county, to reimburse city; there was no dispute that taxpayer remitted the correct amount of taxes to the department of revenue, or that the department erroneously or illegally collected or computed the amount of taxes.

TAX - FLORIDA

United States v. Jim

United States Court of Appeals, Eleventh Circuit - June 4, 2018 - F.3d - 2018 WL 2473737

Government brought action against Indian tribe member seeking to reduce income tax assessments on gaming revenue distributions to judgment. Tribe intervened as a defendant.

The United States District Court granted in part government's motion for summary judgment on affirmative defense that distributions were exempt from taxation under Tribal General Welfare Exclusion Act, following bench trial issued findings of fact and conclusions of law and entered judgment against defendants, and denied tribe's motion to alter or amend judgment. Defendants appealed.

The Court of Appeals held that:

- Indian general welfare benefits exemption did not apply to distributions;
- Distributions did not derive from tribal land, and, thus, were not exempt from federal taxation on such basis;
- District Court did not abuse its discretion in denying tribe's motion to amend judgment entered against it.

A Connecticut Bond Default Isn't Out of the Question.

Unlikely, sure. But it never pays to be overconfident.

When it comes to Connecticut connotations on Wall Street, the first thing that comes to mind is surely Greenwich, the world's hedge-fund mecca. Home to AQR Capital Management, Viking Global Investors LP and Lone Pine Capital, among others, the town's name is synonymous with money. A 500-foot stretch along U.S. Route 1 has dealerships for Alfa Romeo, McLaren and Rolls-Royce automobiles.

Take one of those cars for a spin up to Hartford, and you'll find a much different scene.

Connecticut's capital approved a plan earlier this year allowing the state to pay off the city's general-obligation debt — in other words, a bailout. Without the maneuver, bankruptcy and bond defaults seemed unavoidable for a municipality where the population is declining and a third of those who remain live in poverty.

But by assuming the struggling city's debt burden, Connecticut only complicated its own problems. It has been downgraded three times in as many years by S&P Global Ratings, had a fiscal 2017 net pension liability of $37.2 billion (up almost $10 billion from a year ago) and easily has the most tax-supported debt per resident among U.S. states. On top of all that, it has the fewest jobs in finance, insurance and real estate since 1996.

Continue reading.

Bloomberg Opinion

By Brian Chappatta

June 8, 2018, 5:00 AM PDT

Puerto Rico's Sales-Tax Bonds Soar on Optimism About Deal.

- **Deal may allow senior bondholders to receive what they're owed**
- **Some money could also been steered to general-obligation debt**

Puerto Rico sales-tax-backed bonds rallied after a tentative agreement struck in the island's bankruptcy promised to steer a large share of that revenue to owners of the securities, leaving them facing smaller losses than investors previously anticipated.

The details of the pact between two court-appointed agents, disclosed in a filing late Thursday, show that owners of the bonds would get just over half of the future sales-tax revenue they're currently entitled to each year. They would also get all of the $1.2 billion of revenue that's been frozen in a reserve account until the bankruptcy court decides who has a right to the money.

The deal, if ultimately approved, would resolve a key dispute in the island's record-setting bankruptcy, where creditors have been fighting over who has the highest claim on the government's tax collections. The arrangement could leave owners of the most senior sales-tax bonds, known as Cofinas, paid in full. That's a better settlement than one floated a few weeks ago, according to a person familiar with the matter.

"Seniors are in good shape because they get the money first," said Daniel Solender, head of municipal investments at Lord Abbett & Co., which manages $20 billion of state and local debt, including Puerto Rico securities. "With more than half the money going to the Cofina side, the seniors may be fully covered."

Governor Ricardo Rossello declined to comment because he said a final agreement hasn't been reached and talks are ongoing. "We want the government to continue being part of that negotiation," he told reporters in San Juan. "For the benefit of the people of Puerto Rico, I prefer not to comment on the details of the negotiation."

Spokespeople for a group of general-obligation bondholders and a pool of senior sales-tax investors declined to comment on the details of the tentative settlement.

The bonds climbed on the details, pushing up the price of senior sales-tax securities due in 2040 by nearly 10 percent to an average of 83 cents on the dollar. Subordinated debt maturing in 2041 climbed 13 percent to 41.8 cents. The prices of the island's general-obligation bonds were little changed.

Puerto Rico's debt payments have been on hold as it works through bankruptcy. There's about $780 million that's originally earmarked to repay Cofinas in fiscal 2019. The potential settlement would give Cofina more than half of that amount, with the government receiving the rest to repay commonwealth creditors and cover essential services, according to the court documents.

"On the commonwealth side, it's not clear what goes to bondholders and what goes to everything else," Solender said. "Nothing specifically has changed for bondholders on the G.O. side, at this point."

The agents for Puerto Rico and Cofina, the Puerto Rico government-owned corporation that issued the bonds, have asked U.S. District Court Judge Laura Taylor Swain to hold off on ruling on the issue for 60 days as they work out the final details.

The rally since the tentative agreement was announced Wednesday has delivered large gains to investors who've held on to their bonds even as they plummeted in the wake of Hurricane Maria. The price of the subordinate Cofinas Friday is more than five times what they traded for in November, when they touched a record low of 8.2 cents on the dollar.

"It's better than Internet stocks," Solender, whose firm holds senior and subordinate Cofinas, general obligations and debt sold by the island's bankrupt public power utility.

Major Hurdle

Resolving the issue of the sales-tax revenue is a major hurdle in Puerto Rico's bankruptcy because it's essential to determining how much Cofina and general-obligation bondholders will recover. Those two classes of securities account for about $35 billion of the more than $70 billion that the commonwealth owes. Swain called the deal announcement "an enormously significant development" during a hearing Wednesday in San Juan.

As part of the settlement, Cofina would receive all of the money held by Bank of New York Mellon Corp., its trustee, as of June 30, 2018. There was nearly $1.2 billion in that account as of May 1, according to disclosure filings posted on Municipal Securities Rulemaking Board's website.

Starting July 1, Cofina would also get 53.7 percent of the sales-tax receipts that are dedicated to repaying the bonds, growing by 4 percent annually to a maximum of $1.85 billion by 2041. The dedicated revenue totals $783.2 million for fiscal 2019, which starts July 1.

Overdue Payments

While Puerto Rico continues to direct sales-tax revenue to the trustee, Cofina bondholders stopped receiving payments in June 2017. They're owed about $550 million of principal and interest in fiscal 2018, which ends June 30, according to disclosure filings.

Once Cofina receives its full 53.7 percent allocation of the revenue, Puerto Rico will get the rest. Those monies will be placed in escrow and used to resolve claims against the commonwealth, though the island has the ability to use the cash for essential services after its liquidity is exhausted, according to the court filing. A federal board that oversees Puerto Rico's finances will determine which services are essential.

Bloomberg Markets

By Michelle Kaske

June 8, 2018, 5:46 AM PDT Updated on June 8, 2018, 1:00 PM PDT

— With assistance by Steven Church

[Puerto Rico Tax Deal Gives Federal Board Power Over Use of Cash.]

- **That may rekindle clash between board and Governor Rossello**
- **Bonds rally as investors cheer tentative pact to end dispute**

The deal to steer some of Puerto Rico's future sales taxes to a key group of bondholders puts a U.S. oversight board in charge of whether the rest should keep crucial services running if the government runs into financial trouble again.

If the tentative pact between the court-appointed agents is enacted, the federal Financial Oversight and Management Board for Puerto Rico — and not the island's elected officials — will decide if the remaining sales-tax revenue is needed to fund "essential" services, according to terms of the proposed agreement filed in federal bankruptcy court. That will be the case even after the territory's bankruptcy ends.

Bypassing government officials may renew a court struggle between the board and Governor Ricardo Rossello, who succeeded last year in blocking the board from taking control of the island's bankrupt electric utility. To some residents, many of whom favor becoming a state, the board's power smacks of colonialism by weakening their say over Puerto Rico's fate.

On Friday, the governor said there's no final agreement and declined to comment on the details because talks are continuing. His administration wasn't part of the agreement and is still evaluating it.

"We want the government to continue being part of that negotiation," he told reporters in San Juan. "For the benefit of the people of Puerto Rico, I prefer not to comment on the details of the negotiation."

Either the board or Puerto Rico needs to outline what exactly are the island's most necessary expenditures, said Daniel Solender, head of municipal investments at Lord Abbett & Co., which manages $20 billion of state and local debt, including Puerto Rico securities.

"The concern is that there's just no clear definition out there," Solender said. "There needs to be some agreement on what's essential and what shouldn't be."

Investors have questioned the amount of money that Puerto Rico actually has, partly because they suspect that some of what the government describes as spending for essential services may be discretionary. The island has also made dire predictions that it was poised to run out of cash, only to later find the funds needed to avert a shutdown.

Under Promesa, the law passed by the U.S. Congress that allowed Puerto Rico's insolvent government entities to file bankruptcy, the federal board is responsible for developing debt adjustment plans for each agency that seeks court protection, including the commonwealth itself and the government owned utility, known as Prepa.

In November, U.S. District Court Judge Laura Taylor Swain ruled that the federal overseers must share control with local officials. She said Promesa allowed the board to put public agencies into bankruptcy, but doesn't allow it to run them.

But now the two court appointed agents, representing the central government and the agency that sold Puerto Rico's sales-tax bonds, have proposed giving the board, not local officials, control of the revenue.

Investors cheered. On Friday, Puerto Rico's sales-tax debt with the highest legal claim to the money rallied 10 percent to 83 cents on the dollar.

The case is The Official Committee of Unsecured Creditors v. Bettina Whyte, as agent of, the Puerto Rico Sales Tax Corp., 17-257, U.S. District Court, District of Puerto Rico (San Juan)

Bloomberg Markets

By Steven Church and Michelle Kaske

June 8, 2018, 2:36 PM PDT

Puerto Rico's Governor Leaves $0.00 for Bondholders.

Post-Hurricane Maria's devastation, Puerto Rico's financial struggles have worsened with parts of the commonwealth still without power and many people struggling to meet their basic needs. In his efforts to prioritize the continuation of public essential services over making debt service payments, Puerto Rico's Gov. Ricardo Rossello has recently proposed his fiscal year 2019 General Fund budget that has $0 allocation toward the island's central government debt service.

If this proposed budget passes, it will be contrary to Puerto Rico's debt oversight board's decision that contractually obligated the central government to pay $2.54 billion in debt service in the fiscal year 2019.

In this article, we will take a closer look at Puerto Rico's debt restructuring plan, adherence to the oversight board's fiscal plan and what $0 budget allocation means for Puerto Rico's bondholders.

Continue reading.

municipalbonds.com

by Jayden Sangha

Jun 07, 2018

[Whether Opportunity Zones Help Low Income Residents May Fall On Mayors.]

City leaders are faced with how to prepare for a major economic development opportunity "with very few guardrails at the federal level."

BOSTON — Foundation and nonprofit leaders are advising mayors to take proactive steps to ensure low-income residents benefit from a major tax incentive created by last year's federal tax overhaul.

At the U.S. Conference of Mayors annual meeting in Boston, Rockefeller Foundation President Rajiv Shah heralded the new "Opportunity Zones" as "the biggest single opportunity for driving private sector investment into lower income communities since World War II." However, without local leaders stepping up, it's unclear whether existing residents will end up benefiting from these economic development opportunities.

"Whether or not all of that investment capital—that many estimate will be in the scale of tens of billions of dollars of year—actually generates the kind of effect of lifting up families of lower income individuals is really up to those of us around this table and the actions we choose to take," Shah told the assembled mayors at the Council on Metro Economies and the New American City Task Force meeting on Friday.

The Opportunity Zones tax provision provides an infusion of capital to low-income communities by offering investors deferred taxes on previous investments for up to a decade if they reinvest their capital gains into designated opportunity zone communities. The law is designed for investments to be highly flexible, allowing investors to put money in anything from real estate to small businesses. However, with little federal guidance—or precedent—for a tax incentive of this scale, mayors and nonprofit allies of low-income communities are attempting to identify the best ways to ensure the investment is not just fruitful for the investors, but supportive of those who currently live in the designated communities.

The zones—selected by governors and then approved by the U.S. Treasury Department—do focus on areas that need investment, Shah said. The approved zones have an average unemployment rate of 13 percent, with 31 percent of residents living in poverty and a median income of $33,000. However, despite the fact that the incentive program is technically already active across most of the country, money is not yet flowing to those communities.

That is likely because no one knows how the law will ultimately work in practice.

"The law left a lot of questions unanswered," Scott Hoekman, president and CEO of Enterprise Community Asset Management, Inc., explained to the mayors. "There's been very little guidance from IRS and Treasury to date and it's uncertain when further guidance will be forthcoming."

Before an investor is going to make an investment, Hoekman explained, "they need to have assurance they are actually going to get this benefit and that requires getting some additional guidance."

Those waiting, though, should not expect much of a regulatory structure from the Treasury Department, according to Hoekman. The opportunity funds investors will need to set up, for example, will "self-certify." He also expects "very few, if any" reporting requirements or monitoring of impacts to be put in place nationally.

"This was intentionally designed with very few guardrails at the federal level," Hoekman said.

That means local leaders will be on the front lines for ensuring funds going to designated opportunity zones support the existing community.

As Shah put it to the mayors, there is “the challenge of unintended consequences.” For instance, Shah said that the majority of these communities had low rent and affordable housing. That could change if opportunity funds start to see low-income area real estate as a tax haven.

Many opportunity fund investors see this as a chance to be part of the next Williamsburg, Brooklyn-type real estate boom, Hoekman said.

“That may sound terrific news for some cities that have been very underserved by capital, but it may be concerning for others that are concerned about communities being pushed out,” Hoekman said. “I would encourage cities to put measures in place to drive some transparency and reporting on how are these investments actually benefiting your community.”

Mayors are not without tools, however. Most large city mayors have some experience working with public-private partnerships and using zoning to shape how economic development flows into their communities.

In Ohio, Columbus Mayor Andrew Ginther’s city has 44 of the state’s 320 designated opportunity zones. Ginther explained how his fast-growing metropolis has already begun reviewing the city zoning codes to ensure that investment does not displace lower income communities, but rather builds mixed-income communities that raise the income of all residents.

“If we don’t focus on density and affordability, this tool, this great opportunity will actually perpetuate and drive the chasm that much further between those who are sharing the promise of success and those that have it,” Ginther told his fellow mayors. “This is an incredible tool, but it has to be used with intentionality and purpose.”

Baltimore Mayor Catherine Pugh described how her city has invested in infrastructure around new developments to provide incentives for developers, a method that allowed the city to leverage their investment to ensure community priorities were included in redevelopment.

Other mayors may be concerned about their opportunity zones being passed over by investment altogether. Shah pointed out that foundations could be helpful in this regard. The Rockefeller Foundation is collaborating with other foundations to create methods and venues for city leaders to put forward “a genuine pipeline of investment opportunities” to opportunity funds.

Detroit Mayor Mike Duggan suggested the U.S. Conference of Mayors may be in a unique position to help the administration or Congress ultimately put a more comprehensive framework around the new community investment program to ensure it properly supports low-income residents.

Mayors and federal officials may not have much time to adjust, though. According to Hoekman, the way the law is written, investment before the end of 2019 is likely to be more lucrative than waiting. This means investors have an incentive to move their money into communities as quickly as possible.

With perhaps more questions than answers for the time being, Louisville Mayor Greg Fischer simply ended the discussion by saying, “At the next meeting in January we’ll all be celebrating these great investments or be we’ll be saying, ‘this thing didn’t come to light.’”

Route Fifty

By Mitch Herckis

June 8, 2018

Mitch Herckis is Senior Editor and Director of Strategic Initiatives for Government Executive's Route Fifty and is based in Washington, D.C.

New Florida Case Facilitates Public-Private Partnerships.

The Florida First District Court of Appeal recently decided *Crapo v. Provident Group-Continuum Properties, LLC,* which sets forth a rule that should result in more favorable property-tax treatment for P3s in Florida. In general, an economic disadvantage facing privately-owned projects, as compared to publicly owned projects, is the imposition of real estate taxes, which are often around two percent of the property value per year. Although there are many exceptions, in general, privately owned and operated developments are subject to property tax, while government-owned and operated developments are not. P3s, which have elements of both public and private developments, often operate in a legally gray area.

In *Provident Group*, the court analyzed the applicability of a P3 structure where the private partner was tasked with developing and operating student dormitories for the University of Florida (UF), pursuant to the University's standards. The P3 contract provided that the private partner would own the dorms until the end of the contract term, at which point the dorms would be transferred to UF at no cost. Even though the private developer owned the dorms during the period of the agreement, the appeals court ruled that UF was the equitable owner for purposes of property taxes, and the dorms therefore were immune from property taxes. Although P3s are often less costly to the public than a traditional public project even without favorable tax treatment, this ruling will, in many cases, make P3s an even more attractive alternative to state and local governments in Florida that are in need of new public infrastructure and services.

Bilzin Sumberg

June 8, 2018

S&P: New York State's Enacted 2019 Budget And Tax Reform Good For PIT Bondholders, But For Taxpayers It Depends.

The Tax Cuts and Jobs Act of 2017 and its extensive changes to the federal internal revenue code have significantly affected New York State tax burdens and tax receipts in S&P Global Ratings' view. As a result, the state's fiscal 2019 enacted budget decouples the state's income tax from the federal tax law.

Continue Reading

Jun. 6, 2018

S&P Medians And Credit Factors: Tennessee Local Governments.

Tennessee municipalities and counties (or local governments [LGs]) have demonstrated stable credit quality in recent years, and S&P Global Ratings expects credit quality for Tennessee LGs to remain stable in the near term.

Continue Reading

May 23, 2018

S&P: Georgia Cities Face Potential Negative Impact If Issues With Large-Scale Deannexations Become More Pervasive Or Go Unaddressed.

With the passage of Georgia Senate Bills (SB) 262 and 263, which propose revised boundaries for the City of Stockbridge (unrated) and the incorporation of Eagle's Landing without apportionment of Stockbridge's debt, S&P Global Ratings notes that the Georgia local government ratings portfolio faces potential negative impacts if this trend continues.

Continue Reading

May 30, 2018

S&P: Minnesota's New Pension Bill Is A Positive Step Toward Sustainable Funding.

Minnesota's new pension bill is a positive step toward improving funding of the state's pension plans, but because contributions remained fixed in state statute, there could eventually be a regression in plan funded status, in S&P Global Ratings' view.

Continue Reading

Jun. 7, 2018

Houston's Third Ward Turns to Community Land Trust Model.

Houston's Third Ward residents are turning to community land trusts as a push against the effects of rising home prices.

The Third Ward, a historically black community, was established in the late 19th century. Now, more than a century and a half later, the community finds itself threatened by gentrification — in particular, displacement of longtime residents by soaring house prices and property taxes. In response, residents are considering action to help preserve affordability in the face of encroaching gentrification and hold on to the rich culture of the Third Ward. The city's response, reports the Houston Chronicle, is a city-funded community land trust.

A community land trust is a nonprofit entity that aims to make housing permanently affordable through the purchase of land that it can make available for rent or for homeownership to low-income residents at affordable rates in long-term agreements. Community land trusts are on an upswing in cities throughout the country, in response to gentrification and the displacement of low-income, longtime residents and tightly knit communities.

Continue reading.

NEXT CITY

BY BRIANNA WILLIAMS | JUNE 8, 2018

Houston Unveils $1 Billion Harvey Aid Action Plan.

Houston officials have released the first action plan for how to spend $1.15 billion in federal housing aid, part of a $5 billion package allocated to the state, the Houston Chronicle reports. The split is about 60/40 single-family homes and apartments.

“Even though a billion dollars is a lot of money, we know it isn’t enough to meet all of the housing needs in Houston,” Tom McCasland, director of Houston’s Housing and Community Development department, told the Chronicle. “But the opportunity here is one we’ve never had before. It’s a big step toward a city where everyone has a safe, affordable home, in a thriving neighborhood.”

Texas officials planned to publish one statewide plan in March, but Houston Mayor Sylvester Turner accused the state land office of “hogging the $5 billion” and cutting the city out of talks. Now, instead, Houston gets to allocate about $1 billion; surrounding Harris County will publish a similar plan for its $1 billion, and both plans will be attached as amendments to the statewide plan that will address the rest of the Gulf Coast.

Continue reading.

NEXT CITY

BY RACHEL KAUFMAN | JUNE 11, 2018

A Seismic Change Is Coming to California’s General Industrial Stormwater Permit.

California is considering the first-in-the-nation general industrial stormwater permit incorporating Total Maximum Daily Load (TMDL)-related numeric action levels (TNALs) and numeric effluent limitations (NELs). These new standards have the potential to further ramp up federal Clean Water Act (CWA) citizen suit litigation. Under the State Water Resources Control Board’s (State Board) proposed amendment to its stormwater general industrial permit (IGP), a “Responsible Discharger” whose stormwater discharge exceeds an applicable NEL automatically will be in violation of the IGP. Unless it complies with the permit’s existing exceedance response action process, it also will be in non-compliance if its discharge exceeds an applicable TNAL.

Recognizing these consequences, and the difficulties some dischargers have complying with existing IGP requirements, the State Board is proposing two alternative compliance options. Touted as an effort to promote green infrastructure and water reuse, these options could revamp how industry manages stormwater. Both alternatives involve capture and reuse of the runoff from the 85th percentile 24-hour storm event, with the difference being the stormwater retention location. Under the "on-site" option, retention occurs at the facility. Under the "off-site" option, retention occurs at the local publicly owned treatment works (POTW).

Continue reading.

Hunton Andrews Kurth LLP

June 5, 2018

Fitch: Water Conservation Regulations Not Likely to Affect California Utilities.

Fitch Ratings-San Francisco-05 June 2018: Legislation establishing state-wide water conservation standards is not likely to affect ratings for California water utilities, according to Fitch Ratings. That said, rate affordability could become an issue over time.

The regulations, signed into law last week by Governor Brown with implementation beginning in 2022, establish goals for indoor per person water usage, require utilities to set annual water budgets, and institute incentives for recycled water. They follow California's recent five-year drought during which the Governor declared a state of emergency and imposed a state-wide mandatory 25 percent cutback on water use and individual cutbacks for urban utilities of up to 36 percent.

In response to the drought and state mandated conservation efforts, many utilities have already adapted to new normal levels of water demand and raised rates or adjusted rate structures. As such, the legislation codifies changes already underway which, along with increasing capital investments, have pushed some utilities' rates close to or above Fitch's affordability threshold.

Water utilities have largely incorporated increased long-term water conservation and lower demand levels into their planning efforts and rate plans. Although the planning efforts are positive, rate affordability remains a long-term concern.

With an average rating of 'AA', Fitch-rated California water and sewer agencies maintain strong credit profiles overall. While increasing business pressures are likely, Fitch believes that most utilities have sufficient capacity to manage changes in water demand levels and maintain credit quality. Like other water and sewer utilities across the country, California utilities benefit from sound fundamentals rooted in their essential services, monopolistic business nature and generally local rate-setting authority that help to insulate these utilities through changing business and economic cycles.

Longer term, however, credit quality could come under pressure for individual utilities where there is an unwillingness to raise rates to accommodate potentially lower demand levels and support current and projected financial metrics. However, Fitch expects these instances to be rare given the historical willingness of California utilities to preserve their financial results despite operating challenges.

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How California Could Get Its Money Out of Wall Street.

The world's fifth largest economy could keep the money in a state-owned bank to fund local infrastructure.

California needs to spend more than $700 billion on infrastructure over the next decade. Where will this money come from? The $1.5 trillion infrastructure initiative unveiled by President Trump in February includes only $200 billion in federal funding for infrastructure projects across the U.S., and less than that after factoring in the billions in tax cuts in infrastructure-related projects.

The rest is to come from cities, states, private investors, and public-private partnerships. And since city and state coffers are depleted, that chiefly means private investors and PPPs, which have a shady history at best.

At the same time, California has over $700 billion parked in private banks earning minimal interest, private equity funds that contributed to the affordable housing crisis, and "shadow banks"—unregulated financial institutions of the sort that caused the banking collapse of 2008. If California had a public infrastructure bank chartered to take deposits, some of these funds could be used to generate credit for the state while remaining safely on deposit in the bank.

Continue reading.

Yes! Magazine

by Ellen Brown

Jun 06, 2018

- Hawkins Advisory: Cybersecurity – Municipal Disclosure

- NASACT Webinar: GASB Review 2018
- Keeping Special Revenues "Special"
- Update On S&P U.S. Public Finance Priority-Lien Tax Revenue Debt Criteria RFC.
- Assessing Exposure to Climate Risk in U.S. Municipalities.
- How an Arcane, New Accounting Standard is Helping Reporters Follow the Money.
- Lynne Bajema Testifies on GASB'S Revenue and Expense Recognition.
- Why Environmental Impact Bonds Are Catching On.
- And finally, He Would Have Wanted It That Way is brought to us this week by *Horton on Behalf of Estate of Erves v. City of Vicksburg*, in which the Supreme Court of Mississippi repeatedly refers to a fatal fall down a flight of concrete steps as a "tumble". Struck us as a tad playful, that choice of verb. But then again, perhaps Mr. Erves' final thought was, "Whee! Hey look, I'm taking a tumble!" Who are we to say?

CONSTITUTIONAL - CALIFORNIA

Delano Farms Company v. California Table Grape Commission

Supreme Court of California, California - May 24, 2018 - 2018 WL 2347160 - 18 Cal. Daily Op. Serv. 4912

Grape producers brought declaratory judgment action against Table Grape Commission to challenge constitutionality of compelled assessments funding the Commission's promotional activities.

The Superior Court granted summary judgment for Commission. Producers appealed, and the Court of Appeal, affirmed. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court held that grape advertising assessments were not unconstitutional compelled speech.

State of California exercised effective control over California Table Grape Commission, and thus Commission's generic advertising of table grapes through assessments paid by grape producers under Ketchum Act's compelled-subsidy scheme constituted government speech and was not improper "compelled speech" under First Amendment or State constitution, where Commission was established by an act of the Legislature with intent that Commission implement policy through expressive conduct, and Legislature was specific about its expectations for the Commission and its messaging, tasking the Commission with promoting single commodity, table grapes, for fresh human consumption and developing specific messaging campaigns.

IMMUNITY - COLORADO

City and County of Denver v. Dennis on behalf of Heyboer

Supreme Court of Colorado - May 21, 2018 - P.3d - 2018 WL 2295540 - 2018 CO 37

Conservator of motorcycle passenger brought action against the city and county for negligence and premise liability, alleging that the street's deteriorated condition contributed the automobile accident in which passenger suffered permanent brain injuries.

The District Court found that the city and county were immune from suit under the Colorado Governmental Immunity Act (CGIA) and dismissed for lack of subject matter jurisdiction. On appeal, the Court of Appeals reversed. City and county petitioned for certiorari, which was granted.

The Supreme Court of Colorado held that:

- Deteriorated condition of the road did not constitute a dangerous condition, and
- Deterioration of the road did not physically interfere with the movement of traffic.

Deteriorated condition of road on which an automobile accident occurred did not constitute a dangerous condition as an unreasonable risk to the health or safety of the public, as required for city and county to waive governmental immunity under Colorado Governmental Immunity Act (CGIA) based on the dangerous condition of a road, where a city pavement engineer examined road eight days before crash and determined it was “well worn” and in “very poor condition” but did not find any deep, wide potholes that could catch a tire or ruts that would redirect a car that would warrant immediate repair, and road did not contain features which would force a driver to make an emergency maneuver, or any other road characteristics such as a raised pavement lip that could damage a vehicle and lead to an accident.

Deterioration of road did not physically interfere with movement of traffic causing motorcycle and a third-party driver to crash, as required for city and county to waive governmental immunity under Colorado Governmental Immunity Act (CGIA) for a dangerous condition of a road, where a third-party driver impeded motorcycle and its passenger by cutting them off, the road itself did not cause motorcycle to act erratically, no safety device malfunctioned on road, and road’s surface, prior to the third-party’s actions, did not prevent motorcycle driver from performing as expected.

IMMUNITY - MISSISSIPPI

Horton on Behalf of Estate of Erves v. City of Vicksburg

Supreme Court of Mississippi - May 31, 2018 - So.3d - 2018 WL 2439659

Estate administratrix for tenant who died after tumbling down home’s exterior concrete stairs filed a negligence complaint against landlords. Administratrix amended complaint to include city and city-code inspector as defendants, claiming that they breached their duty to inspect the property adequately and that city failed to provide reasonable supervision of inspector in his duties.

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

The Supreme Court of Mississippi held that city owed no duty to tenant to inspect home and either condemn the home or note its handrail deficiency.

City owed no duty, to inspect home and either condemn the home or note its handrail deficiency, to tenant who died after tumbling down home’s exterior concrete stairs; city code did not require city and its officials to enforce code’s handrail requirement on structures designated as historic buildings when such buildings or structures were judged by the code official to be safe and in the public interest of health, safety, and welfare, residence was designated as part of the city’s historical zone, and code inspector had judged residence to be safe and in the interest of public health, safety, and welfare.

IMMUNITY - MISSISSIPPI

[Wilcher v. Lincoln County Board of Supervisors and City of Brookhaven, Mississippi]

Supreme Court of Mississippi - May 24, 2018 - So.3d - 2018 WL 2371859

Motorist brought action against county and city to recover for injuries sustained when his vehicle crashed into a large hole left in the road overnight during bridge construction.

The Circuit Court dismissed claim on grounds of discretionary-function immunity. Motorist appealed.

The Supreme Court of Mississippi held that:

- Application of discretionary-function immunity under the Mississippi Tort Claims Act (MTCA) is governed by a two-part, public-policy function test, overruling *Brantley v. City of Horn Lake*, 152 So.3d 1106, and *Boroujerdi v. City of Starkville*, 158 So.3d 1106, and
- Discretionary-function immunity did not shield city and country from liability for hole left in the road without barricades or warning to drivers.

Lack of barricades or warnings to drivers regarding the presence of a large pit or ditch left in the road overnight by construction workers during bridge construction was not the result of a policy decision, and thus discretionary-function immunity did not shield city and country from liability for negligence in action brought by motorist alleging that he sustained injuries when his vehicle crashed into the hole.

PUBLIC RECORDS - SOUTH CAROLINA

[DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Commerce]

Supreme Court of South Carolina - May 23, 2018 - S.E.2d - 2018 WL 2325622

Records requester brought action against chamber of commerce, seeking injunctive relief and declaration that chamber was subject to the state Freedom of Information Act (FOIA).

The Circuit CourT granted requester's motion for summary judgment. Chamber appealed.

The Supreme Court of South Carolina held that chamber was not a "public body," and thus was not subject to FOIA.

Chamber of commerce was not a "public body," and thus was not subject to state Freedom of Information Act (FOIA) disclosure requirements; even though chamber received and expended accommodation tax funds as designated marketing organization for local government and received grant from department of parks, recreation, and tourism, FOIA was general law, and specific tax statute and proviso provided different accountability measures and public access to information regarding how funds were spent.

OPEN MEETINGS - TEXAS

[Schmitz v. Denton County Cowboy Church]

Court of Appeals of Texas, Fort Worth - May 10, 2018 - S.W.3d - 2018 WL 2144141

Neighboring landowners brought action against church and town for violation of Texas Open Meetings Act (TOMA), declaratory judgment, nuisance, and sought a temporary injunction prohibiting church from continuing construction of rodeo arena on its property.

The District Court denied request for temporary injunction and granted pleas to the jurisdiction. Landowners appealed.

On rehearing, Court of Appeals held that:

- Limited waiver of governmental immunity under TOMA applied in connection with claim that town failed to comply with open-meeting ordinances;
- Allegations were sufficiently adequate to plead waiver of town's governmental immunity under TOMA;
- Landowners did not have standing to bring claim seeking declaration that church's actions violated town's zoning ordinances;
- Landowner raised a material fact issue regarding standing and the ripeness of his injury on his private nuisance claim; and
- Denial of request for temporary injunction was not an abuse of discretion.

Allegations by neighboring landowners were sufficiently adequate to plead waiver of town's governmental immunity under Texas Open Meetings Act (TOMA), in action challenging validity of church's construction activities for rodeo arena on its property; landowners alleged in their petition that town's meeting notices were highly prejudicial, designed to convince impacted residents not to oppose zoning change, were not in compliance with town ordinances, and that town council approved zoning change after a closed meeting with no public discussion, and landowners requested a declaration that town approved change and issued a specific-use permit in violation of TOMA and that town's failure to follow ordinances and government code notices for meetings rendered its actions void.

Hawkins Advisory: Cybersecurity - Municipal Disclosure

This Advisory describes recent developments regarding disclosure of cybersecurity risks and incidents and their import for municipal disclosure.

Read the Advisory.

MSRB Launches Re-Engineered Trade Reporting System.

Washington, DC – After an intensive three-year effort to re-engineer the underlying technology of the trade reporting system that supports one of the country's key capital markets, the Municipal Securities Rulemaking Board (MSRB) is now accepting and disseminating municipal securities trade information through a modernized Real-Time Transaction Reporting System (RTRS).

"Investment in technology is critical to the MSRB's ability to ensure a fair, transparent and efficient municipal market," said MSRB President and CEO Lynnette Kelly. "Modernizing our 13-year-old trade reporting system will contribute to improved data quality and enhance the MSRB's ability to prevent and respond to significant service disruptions in this vital market transparency system."

The MSRB created RTRS in January 2005, transforming price transparency in the municipal market by requiring municipal securities dealers to report information about most trades in municipal securities within 15 minutes. This real-time trade data was made publicly available on the MSRB's Electronic Municipal Market Access (EMMA®) website in 2008. The MSRB now processes approximately 39,000 trade reports each day for transactions in the more than 1 million outstanding municipal securities. Read more about the development of the MSRB's market transparency systems.

"RTRS is now better equipped to respond to an evolving municipal market and adapt as needed to future regulatory requirements," Kelly said.

The re-engineered RTRS will continue to accept computer-to-computer trade reports from dealers in the same manner but with some improvements to the way errors are detected and assigned. Dealers that report trades or monitor compliance with trade reporting requirements through the RTRS Web user interface will notice streamlined navigation and enhanced display of information. The MSRB Transaction Subscription Service has also been re-engineered to improve data quality and strengthen system security and reliability. Questions about the RTRS system may be directed to MSRB Support.

Date: May 30, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
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The Places in the U.S. Where Disaster Strikes Again and Again.

In the last 16 years, parts of Louisiana have been struck by six hurricanes. Areas near San Diego were devastated by three particularly vicious wildfire seasons. And a town in eastern Kentucky has been pummeled by at least nine storms severe enough to warrant federal assistance.

Continue reading.

THE NEW YORK TIMES

By SAHIL CHINOY

MAY 24, 2018

Muni Bonds Measure Heads to White House.

The Economic Growth, Regulatory Relief and Consumer Protection Act – good for counties – moves on to the White House for president's signature

On May 22, the U.S. House of Representatives passed S. 2155, the Economic Growth, Regulatory Relief and Consumer Protection Act, which is now headed to the president's desk for his signature.

A provision in the bill — Section 403 — is particularly beneficial to counties because it reclassifies municipal debt as a High-Quality Liquid Asset (HQLA). Under current law, banks are required to meet a Liquidity Coverage Ratio (LCR) to ensure each bank has enough liquid assets in the event of financial stress. By classifying municipal securities as a Level 2B asset, required to account for at least 15 percent of a bank's total stock, banks will be further incentivized to invest in these bonds. This change Muni bonds measure heads to White House would make municipal debt more attractive to investors and banks, keeping the demand for municipal bonds high and interest costs of issuance low for counties and other issuers.

Tax-exempt municipal bonds are used to finance the construction of and repairs to infrastructure important to counties, including roads and bridges, public transportation, seaports and airports, water and wastewater facilities, electric power and natural gas facilities.

Classifying investment grade municipal securities as HQLA will help ensure low-cost infrastructure financing remains available as municipal issuers continue building the local infrastructure on which our communities and the national economy rely.

National Association of Counties

May 28, 2018

2018 State of the Cities Report from NLC: Economic Growth, Infrastructure Top Issues for American Mayors.

WASHINGTON – May 30, 2018 – The National League of Cities (NLC) released its 2018 State of the Cities report today at a national morning press event with city leaders and policy experts. The report shows that economic development, infrastructure, budgets, housing and public safety continue to top the list of agenda priorities for U.S. mayors, as well as revealing that opioids, broadband access and climate change have emerged as new and growing concerns.

Now in its fifth year, NLC's annual report analyzes key issues and trends in the state of the city (SOTC) speeches mayors deliver each year to outline their top priorities. This year's report examined 160 mayoral speeches delivered between January and April 2018 and includes cities across population sizes and geographic regions.

Continue reading.

National League of Cities

May 30, 2018

Lynne Bajema Testifies on GASB'S Revenue and Expense Recognition.

On April 23, 2018, NASACT provided a joint response with the National Association of State Treasurers to the Revenue and Expense Recognition invitation to comment from the Governmental Accounting Standards Board.

On May 30, during the GASB public hearing on the Revenue and Expense Recognition ITC, Lynne

Bajema, Oklahoma state comptroller, provided testimony on behalf of the association. Ms. Bajema is co-chair of NASACT's Committee on Accounting, Reporting and Auditing, and chair of the National Association of State Comptroller's Committee on Accounting and Financial Reporting.

Ms. Bajema testified that the overwhelming majority of NASACT members responding to the ITC agree that the exchange/non-exchange model is the best to classify transactions in a governmental environment. This model is similar to the current approach and will result in less room for misinterpretation when applying the standard since it builds on existing standards. Therefore, it would likely result in a more feasible and consistent implementation across entities.

Ms. Bajema further stated that preparers and auditors are familiar with the exchange/nonexchange terminology and have established processes and procedures for preparing and auditing financial statements using this model.

NASACT does agree that it would be effective to provide additional guidance for classifying and recognizing exchange and nonexchange transactions, including:

- Additional clarification on what is considered equal value;
- Clarifying at what point in time revenue should be considered "earned and reportable" for financial reporting purposes,
- Recognition of certain exchange transactions, one specifically mentioned was multi-year licenses.

Wednesday, May 30, 2018

NASACT

NASACT Webinar: GASB Review 2018

National Association of State Auditors, Comptrollers and Treasurers

July 18 | 2:00 – 4:00 PM EDT

NASACT is pleased to announce the latest in its series of training events addressing timely issues in government accounting, auditing and financial management.

As fiscal year-end for most state governments quickly approaches and a new year begins, it's an opportune time for financial statement preparers and auditors to get a refresher on standards that will be effective for June 30, 2018, financial statements, as well as recently released GASB statements that will require attention in fiscal year 2019.

This webinar will provide "must know" guidance on previously-issued GASB statements that are effective for June 30, 2018 and 2019.

CLICK to see full event details.

NASACT

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Fitch: Natural Disaster Risk Varies for U.S. State & Local Government Ratings.

Fitch Ratings-New York-29 May 2018: Natural disasters have become increasingly acute and chronic, which is presenting operational and financial challenges to some U.S. state and local governments, according to Fitch Ratings. The rating agency considers environmental factors in its U.S. public finance credit ratings through the lens of fundamental credit risk, as detailed in a new report.

The federal government approved $130 billion in aid for natural disasters last year, a considerable 0.7% of the country's $19.7 trillion economy. That said, financial support from the federal government is not guaranteed. Additionally, proposals by current and past administrations have been presented to address the burden of disaster recovery assistance on the federal budget. And although Fitch does not currently anticipate this, a pullback in the level of federal government aid would be viewed as a negative credit factor for state and local governments.

"The federal government's role in disaster response is critical in mitigating natural disaster risk for ratings on state and local governments," said Senior Director Michael Rinaldi.

Rating actions directly linked to climate change or natural disasters have historically been limited, a notable anomaly being Hurricane Katrina and subsequent downgrades of the state of Louisiana and affected areas. However, the damage to vital infrastructure and widespread repopulation that was seen during Katrina has become more commonplace, most recently with Hurricanes Harvey, Maria and Irma last year.

State governments' exposure to environmental risk is limited thanks in large part to the sovereign powers bestowed on states under the U.S. government framework along with ample economic resources that ensure fiscal flexibility and resilience to event risks and systemic challenges. Local government ratings, by contrast, are more vulnerable to climate risk, particularly governments that encompass a small geographic territory or feature a concentrated revenue base. In response, local governments are incorporating environmental risk mitigation and adaptation strategies within long-term financial and capital plans more broadly than in the past.

"Local governments have history on their side in terms of showing financial resilience and prioritizing spending where needed, which in concert with federal and state recovery aid can mitigate credit risk to natural disasters," said Rinaldi.

'Environmental Risks in U.S. State & Local Government Ratings' is available at www.fitchratings.com.

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Additional information is available on www.fitchratings.com

Teleconference Replay: Fitch Rates LINXS APM Project

Fitch Ratings hosted a call with investors to discuss its recent 'BBB+ (EXP)' of the California Municipal Finance Authority's (CMFA) approximately $1.2 billion senior lien revenue bonds. The proceeds of which will be used by the borrower (LAX Integrated Express Solutions, LLC (LINXS)) to construct an automated people mover at Los Angeles International Airport.

Listen to the teleconference.

Fitch: Hawaii Credits Unaffected as Volcano Continues.

Fitch Ratings-New York-30 May 2018: Based on Fitch Ratings' review of initial reports and damage assessments, rating changes are unlikely for Hawaii's U.S. public finance, port and airport credits following ongoing volcanic activity on Hawaii Island. Fitch does expect the state's tourism-driven economy to feel some adverse peripheral effects from the volcanic activity in the short term, but ultimately the fiscal impact of the eruption on rated entities in Hawaii will be largely mitigated by Hawaii's financial flexibility, support from federal and state governments, and private insurance policies.

Kilauea, one of four active volcanoes on Hawaii Island, has been erupting continuously since 1983. The island's major tourist attraction, Hawaii Volcanoes National Park, has closed during the recent increase in eruptive activity but reflects the positive role of volcanoes in Hawaii County's economy. Volcanic events during the most recent activity include localized lava flows, ash and gas eruptions affecting air quality and visibility, and related seismic activity.

The local government most affected by the eruption to date, Hawaii County, is likely to use a combination of federal relief funds, state support and insurance claims to pay for most volcano-related damage. The May 11 federal disaster declaration for Hawaii County enables individuals and local governments to seek individual assistance from the federal government.

Fitch maintains an 'AA+' Issuer Default Rating (IDR) on Hawaii County (population of nearly 200,000), which incorporates an 'aaa' operating performance assessment based in part on its available liquidity. While the ultimate impact of the Kilauea eruption to Hawaii County's economy is not yet known, property damage has been modest to date, destroying 100 to 200 homes in a relatively remote region of the island. Several thousand residents have been displaced, and short-term impacts on tourism, a key industry, appear likely. However, property taxes supporting most local government services are not expected to be materially affected. Lava flows have also threatened Puna Geothermal Venture, which provided one-quarter of the island's electrical supply prior to its recent shutdown, but local utility managers report sufficient reserve capacity to offset this loss.

On the transportation side, management for Hawaii's harbors division (a division of the Hawaii Department of Transportation [HDOT] with harbor system revenue bonds rated 'AA-' with a Stable Outlook) has confirmed to Fitch analysts that commercial ports on Hawaii Island, including facilities at Hilo Harbor and Kawaaihae Harbor, are fully operational with no restrictions resulting from volcanic activity. The harbors division consists of 10 commercial harbors on six islands. Honolulu serves as the state’s principal port and trans-shipment station for cargo that is bound for the other islands.

Cargo and passenger operations remain unimpeded, with vessels continuing to safely enter the harbors and dock. Cargo continues to be discharged without impediment with passengers disembarking and embarking from cruise vessels. Furthermore, management for the harbors division commented that seismic events related to the volcanic activity have not affected the structural integrity of HDOT port facilities to date; HDOT personnel continue to conduct ongoing assessments to monitor potential structural damage to harbor facilities as seismic activity continues.

Similarly, management of Hawaii’s airports division (another division of HDOT, airport system revenue bonds rated ‘A+’ and subordinate COPs ‘A’ with a Stable Outlook) has confirmed to Fitch that, to date, there has been no disruption to air service at either of the airports on Hawaii Island (Ellison Onizuka International Airport at Keahole and Hilo International Airport), and that there has been no structural damage to either facility. The airports division manages airports across the Hawaiian archipelago.

While port and airport facilities are unscathed by the eruption, follow-on effects to the broader tourism-driven economy are likely in the short term. The closure of Volcanos National Park is likely to affect overall visitor numbers, and certain airlines have waived change fees for travel to Hawaii Island. Harbor division management further acknowledged that certain cruise lines have chosen to reroute ships to avoid Hawaii Island due to the volcanic events.

Airport division management indicated to Fitch that they continue to monitor the tourism industry as it relates to the Kilauea eruptions. For May, they noted that air traffic is at or above levels seen a year prior, indicating limited effects from the volcano on overall results thus far. Management noted that most travellers diverting from Hawaii Island are choosing to travel to other Hawaiian islands rather than forgoing Hawaiian travel altogether. Fitch will continue to monitor activity levels for both airport and harbors divisions to evaluate any longer-term effects on financial results.

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

Fitch Ratings-New York-31 May 2018: A potentially landmark Supreme Court ruling concerning public school teachers and right-to-work laws is not likely to have a meaningful effect on state and local government finances, according to Fitch Ratings in a new report.

Recent mass labor actions by public school teachers in several states are shedding light on the practical limitations state and local governments face in managing expenditures. Meanwhile, the SCOTUS is set to rule shortly in Janus vs. AFSCME Council 31, which could potentially eliminate the requirement that non-union public sector employees pay “agency fees” to contribute to the cost of collective bargaining and related activities. If the SCOTUS rules for the plaintiff, it would reverse a precedent-setting SCOTUS decision from 40 years ago.

28 states have adopted right-to-work laws. The Janus ruling, if favorable to the plaintiff, would convey this legal framework throughout the country. Regardless of the legal framework, state and local governments remain limited in their ability to control labor spending. ‘States with right-to-work laws that limit collective bargaining powers can still confront labor-related spending pressures,’ said Managing Director Amy Laskey.

Any change to 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.

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Fitch Updates Thermal Power Project Rating Criteria.

Link to Fitch Ratings’ Report(s): Thermal Power Project Rating Criteria

Fitch Ratings-New York/Chicago/London-01 June 2018: Fitch Ratings has completed the annual update of its “Thermal Power Project Rating Criteria”. The update included refining the revenue risk key rating driver (KRD) assessment, and establishing a clearer link between the revenue risk assessment and indicative coverage guidance.

The update revises the Indicative Coverage Ratios Guidance table in Figure 5 by linking indicative coverage thresholds to the revenue risk KRD. For projects with no merchant exposure and a stronger revenue risk assessment, the indicative coverage thresholds guidance is lowered to 1.5x for ‘A-‘ rated projects, 1.3x for ‘BBB-‘ rated projects and 1.15x and for ‘BB-‘ rated projects. Revenues for projects with a stronger revenue risk KRD rely almost exclusively on contracted capacity payments from strong investment grade counterparties, with cash flows independent of dispatch levels, justifying using lower coverage threshold guidance. The indicative coverage guidance remains unchanged for projects with weaker and midrange revenue risk assessments.

The update clarifies that ratings at or below the ‘B’ category are guided by Fitch’s ratings definitions and also the assessments assigned for all the qualitative key rating drivers.

The update also includes minor clarifications throughout the text and some editing changes.

Fitch does not expect any rating changes as a result of the updated criteria. The report replaces the June 8, 2017 version and is available at www.fitchratings.com or by clicking on the link above.

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Biggest U.S. Banks Cut Municipal-Bond Holdings as Tax Rates Fall.

- **Shift may mark banks' first retreat from market since 2009**
- **Bank of America, Citigroup, JPMorgan, Wells reduced stakes**

More than a half dozen of the biggest U.S. banks reduced their holdings of state and local government bonds by billions of dollars after the federal government slashed corporate tax rates, making the securities less valuable to one of the market's key buyers.

Bank of America Corp., Citigroup Inc., JPMorgan Chase & Co. and Wells Fargo & Co. together cut their stakes by $7.8 billion during the first three months of 2018, according to quarterly filings with the U.S. Securities and Exchange Commission. State Street Corp., Morgan Stanley and First Republic Bank also reduced their municipal-debt holdings.

The figures show a significant pullback from buyers that had been steadily expanding their ownership of state and local government securities since the end of the recession, helping bolster demand. If the large banks are a guide, the quarter will mark the first time the industry has retreated from the $3.9 trillion market since 2009.

"Definitely the tax change has reduced banks' appetite for municipal bonds, although they'll still be part of the mix going forward," said Alan Schankel, managing director and municipal strategist at Janney Montgomery Scott.

The filings confirm the widespread view among Wall Street analysts that tax-exempt debt would be less alluring to banks after the corporate tax rate was dropped this year to 21 percent from 35 percent. Some of the selling may also have been encouraged by an accounting rule shift that allowed banks to make state and local debt available for sale rather than continuing to hold it to maturity, Tom Kozlik, municipal strategist at PNC Capital Markets, wrote in a report.

The selling may not continue at the same pace since the partial rollback of the Dodd-Frank law this year allows them to use the bonds to satisfy liquidity requirements, giving them an incentive to hold the securities. And the low default rate of municipal bonds will continue to make them a draw to banks that need to manage risk, said Scott Siefers, a bank analyst at Sandler O'Neill & Partners.

"Banks are going to try to prudently manage to maintain high credit quality within the portfolio but to also generate some income as well," Siefers said.

But so far, the corporate tax cut seems to be having the biggest effect. By the end of last year, banks held a record $570 billion of municipal bonds, making them the third largest buyer, according to Federal Reserve figures. While the Fed has yet to release first-quarter data, Barclays Plc analysts estimate that banks decreased their municipal-debt exposure during that time by a combined $15 billion and will continue to pull back, albeit at a slower pace.

Among the biggest banks, JPMorgan reported the largest drop, with its holdings of municipals — which includes those for trading, available for sale and held to maturity — declining by about $2.9 billion to $54.1 billion as of March 31. Wells Fargo's dropped by $2.1 billion to $59.3 billion during that time. Bank of America and Citigroup cut their stakes by $1.5 billion and $1.3 billion, respectively, the filings show.

Among rivals, State Street's holdings dropped by $1.8 billion, First Republic's by $1.3 billion, Morgan Stanley's by $363 million and Bank of New York Mellon's by $231 million.

Spokespeople for the banks declined to comment on changes in their municipal-debt holdings.

The tax cut made the securities far less valuable than they were previously to businesses. For example, yields on benchmark tax-exempt bonds due in 30 years were 2.9 percent Wednesday. That would have been equivalent to a 4.46 percent taxable yield under previous rates. But now it's about 3.67 percent, less than what they could earn on top-rated corporate debt with similar maturity, according to a Moody's Investors Service index.

Banks' demand for municipal bonds may also be further diminished as the Federal Reserve raises interest rates. Dick Bove, a former banking analyst who now serves as chief strategist at Hilton Capital Management, said tighter monetary policy may make banks extend more capital to making overnight loans, since that could be more of a draw if short-term rates rise faster than long-term ones.

"The yields on long-term securities have not kept pace with the yields on federal funds," Bove said.

Bloomberg

By Michelle Kaske

May 31, 2018, 6:12 AM PDT

Coming Soon to Cleveland: Luxury Tower Built With Tax-Free Bonds.

- **The $80 million junk-bond sale to finance non-profit project**
- **Offering comes amid strong demand for high-yield securities**

Taxpayers will be subsidizing a luxury apartment in Cleveland that's complete with a yoga studio, fire pits, pool and grill areas.

Not-for-profit Playhouse Square Foundation, which just hosted Disney's Aladdin and will soon be home to Broadway musical Hamilton, is using some of a tax-exempt, $80 million junk-bond offering to finance a $138.9 million, 34-story apartment tower. Once it opens in 2020, the Lumen will have 318 apartment units (including 12 penthouse units) and a parking garage as well as other amenities like a concierge entrance and fitness center, according to bond offering documents.

Though tax-exempt municipals often finance affordable housing projects, it's rare for debt with a tax break to finance luxury apartment buildings. The bonds will be sold through a local authority and the proceeds will be loaned to Playhouse Square, a non-profit company that will be responsible for repaying the debt.

The speculative bond deal is likely to fetch strong interest from buyers who have flocked to high-yield municipal funds. After releasing information about the bond sale, at least two investors contacted the foundation and are coming to Cleveland to visit later this week, Art Falco, chief executive officer of Playhouse Square, said in an interview.

The apartment complex will be located a short walk away from the foundation's center for TV and radio stations, theaters, art galleries, and the ballpark for the Cleveland Indians baseball team. Playhouse Square got its start during a movement four decades ago to save theaters built in the 1920s that were going to be bulldozed as television hurt the live-performance industry. The foundation now owns and operates 11 performance spaces, hosting more than 1,000 events with 1 million attendees in fiscal 2017, according to bond offering documents. It had $70.5 million in revenue in the most recent year, with most of that coming from theater tickets.

Playhouse Square helped build a hotel in the 1990's and owns several offices in downtown Cleveland. It has a "full service" real estate services division that manages its properties.

"What we found was that we had to become a leader in some of these developments in order to see them to reality," Falco said.

Falco said he views the luxury apartment project as a "working endowment" that will provide the foundation with a small return on its investment.

"It's not dissimilar to taking some funding and investing it in the stock market as an endowment would do," he said. The foundation, which has a $24.1 million endowment as of fiscal 2017, has received $95.3 million in pledges for a $100 million fundraising campaign it started in 2014, according to bond offering documents.

While the foundation has a proven track record, it has little experience with residential property management, S&P Global Ratings analysts said in a report this month. The center's work with both performing arts and real estate makes it unique, said analyst Gauri Gupta. The real estate arm adds to the diversification of its revenue stream, which is a positive, she said.

Risks facing investors include the foundation losing its "current national, regional and local reputation as a leading producer and presenter of the performing arts," according to initial offering documents. The bonds will be a general obligation of the foundation, the S&P report says.

The developer is optimistic, with almost 100 people already expressing interested in the apartments, Falco said. "We feel that the project is going to be successful," he said.

Bloomberg

By Amanda Albright

May 29, 2018, 5:56 AM PDT

Seattle and Columbus Show How Cities Can Win.

Turns out location isn't everything.

In the modern U.S. economy, prosperity depends more and more on creating successful cities. But what is success, and how can it be achieved? Seattle, Washington, and Columbus, Ohio, offer some clues.

In tracking the rise and fall of American cities, people often pay attention to population growth. It isn't a perfect proxy for urban success, especially because many cities restrict new housing development and thus prevent their population from growing. But it's definitely one important measure, because more residents equals a larger tax base.

It's interesting, therefore, to look at which cities are growing and which are shrinking. The U.S. Census Bureau recently released its 2017 estimates for the country's 25 largest municipalities:

Continue reading.

Bloomberg

By Noah Smith

May 29, 2018, 3:00 AM PDT

California Must Be Doing Something Right in Trump's America.

The president loves to hate on the Golden State, but the proof is in the profits.

Just about every policy Donald Trump imposes to make his America great is opposed by the world's fifth-largest economy. That would be California, which is growing faster and outperforming the U.S. in job growth, manufacturing, personal income, corporate profits and the total return of its bonds. The most populous U.S. state, with 39.5 million people, supplanted the U.K. as No. 5 in the world with an equivalent gross domestic product of more than $2.7 trillion, increasing $127 billion last year, according to data compiled by Bloomberg.

Trump attributes the prosperity of the U.S. economy during his 17 months as president to his evisceration of environmental regulations and other consumer protections, abandoning the Paris climate accord, aggressively deporting undocumented immigrants, prohibiting people from certain nations (mostly majority Muslim) from emigrating to the U.S., prosecuting sanctuary cities for protecting immigrants, cutting taxes most for corporations and the rich, and appointing a Supreme Court justice who just wrote the 5-4 decision limiting the rights of tens of millions of workers.

Jerry Brown, California's longest-serving governor, takes the opposite approach, and his state thrives. California is the global leader among governments committed to safeguarding the planet from climate change. Corporate California's revenues from clean energy companies dwarf those of the other 49 states or any country. The state's auto emissions law, now contested by the Trump administration, is the nation's most stringent. The legislature voted to become a sanctuary state, preventing police from participating in federal enforcement or asking people about their immigration status. The same assembly also made California the first state to declare a $15-an-hour minimum wage and to require solar panels on new homes. Its citizens approved Proposition 30, temporarily raising personal income and sales taxes to fund education.

California's 4.9 percent increase in GDP last year was more than twice the gain for the U.S. and enabled the state's jobless rate to slide to 4.2 percent, the lowest on record since such data was compiled in 1976. Per capita income since 2013 grew 20.5 percent, making California the perennial No. 1. Among the biggest states sharing the Trump agenda, Texas remains an also-ran with less than a third of California's $31.8 billion in receipts from agriculture, forestry and fishing and $63 billion less than California's $289 billion in equivalent GDP as the nation's largest manufacturer, according to data compiled by Bloomberg. While the Texas unemployment rate is lower at 4.1 percent, California's is falling faster and its total workforce of 17 million is 37 percent greater and has increased 2 million during the past five years, more than any other state.

Investors also make California the best-performing state, with 462 native companies in the Russell 3000 index producing a 587 percent total return (income plus appreciation) during the past decade, 262 percent the past five years, 76 percent the past two years, and 27 percent the past year — easily surpassing the Russell 3000's total return of 371 percent, 154 percent, 59 percent, and 22 percent, respectively. In the market for state and local government debt, California also is superior, representing more than 20 percent of the No. 1 BlackRock Strategic Municipal Opportunities Fund, according to data compiled by Bloomberg.

Although the president said climate change is a Chinese hoax, California takes warming seriously. No country or state has more companies that derive at least 10 percent of their revenue from clean energy, energy efficiency or green technology, according to Bloomberg New Energy Finance. (California has 24 such companies.) The average annual revenue from clean energy companies is 11.8 percent of the sales from the state's major companies, up from 4.5 percent five years ago.

The average revenue of California clean energy companies is 140 percent of their domestic peers' average sales. Only five years ago, the ratio was 49 percent. Their revenue grew 33 percent last year when their counterparts throughout the U.S. reported less than half that increase.

Trump and his enablers in the Republican Party fail to grasp the reality that clean energy increasingly is good for business, especially in California. "He can't distinguish the white horse of victory from the pale horse of death, to quote the Apocalypse," said Brown during an interview at his Sacramento office last week. "He's riding a dead horse. That will become obvious to more and more people."

Brown said that the market forces driving California ahead of other states are inexorable: "China also appears to be ready to adopt ever increasing requirements for zero emissions vehicles. That's the biggest market. That is the market, and they have to sell into it with electric cars and California is trying to do the same thing as well as the states that follow us. It can't be resisted. It's too powerful a force."

Investors already are benefiting from the trend, reflected in analyst estimates compiled by Bloomberg showing the sales of California clean companies rising 29 percent, 16 percent and 11 percent in 2018, 2019 and 2020, compared to 17 percent, 8 percent and 6 percent for similar out-o--state firms.

Shares of California's clean companies, which spend twice as much on research and development as their out-of-state peers, gained an average of 70 percent the past two years, or 23 percentage points more than the average return for the rest of the country. At the same time, California's clean companies created twice as many jobs as their counterparts elsewhere. Productivity also is unsurpassed in California, where the revenue per employee of clean companies rose 7 percent last year, while it fell 3 percent outside the state, according to data compiled by Bloomberg.

The new California law mandating that new homes be built with solar energy is a boon for the renewable industry. San Francisco-based Sunrun Inc., whose shares appreciated 122 percent the past 12 months, will report sales growth of 36 percent in 2018, according to analysts surveyed by Bloomberg. The same analysts predict Sunrun will appreciate another 21 percent by December.

That's another way of saying companies have a better chance of becoming greater when they make their business in California.

Bloomberg Opinion

By Matthew A. Winkler

May 29, 2018, 7:00 AM PDT

— With assistance by Shin Pei

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

Goodbye, Newspapers. Hello, Bad Government.

The collapse of local print media correlates with deteriorating municipal finances.

All across the country, the offices of local newspapers are shutting their doors. The print apocalypse is truly upon us.

It's interesting to ask just why this is happening. It seems very doubtful that simultaneous bad management decisions on the part of dozens of newspapers all across the country could be behind the decline — it must be something structural. The internet is the obvious culprit. Free online classified ads like those on Craigslist capture one source of ad revenue, while platforms like Facebook and Google take the lion's share of other ads. The internet also breaks local news' quasi-monopoly over information, by putting infinite news source alternatives at the tip of every consumer's fingers. In other words, the internet has simultaneously disrupted every aspect of the traditional newspaper business model.

It's highly unlikely that newspapers will disappear — people will always want professional journalists to provide them with news, and op-ed writers like myself to provide them with opinions, ideas and expertise. Instead, the industry will probably consolidate, with a few large players dominating a nationwide (or global) market. This could happen via newspapers acquiring each other, or — as serial media entrepreneur Ev Williams predicts — with Netflix-like platforms offering subscription services for media content.

Continue reading.

Bloomberg

By Noah Smith

June 1, 2018, 7:00 AM PDT

The Hidden Costs of Losing Your City's Newspaper.

Without watchdogs, government costs go up, according to new research.

When local newspapers shut their doors, communities lose out. People and their stories can't find coverage. Politicos take liberties when it's nobody's job to hold them accountable. What the public doesn't know winds up hurting them. The city feels poorer, politically and culturally.

According to a new working paper, local news deserts lose out financially, too. Cities where newspapers closed up shop saw increases in government costs as a result of the lack of scrutiny over local deals, say researchers who tracked the decline of local news outlets between 1996 and 2015.

Disruptions in local news coverage are soon followed by higher long-term borrowing costs for cities. Costs for bonds can rise as much as 11 basis points after the closure of a local newspaper—a finding that can't be attributed to other underlying economic conditions, the authors say. Those civic watchdogs make a difference to the bottom line.

Continue reading.

CITY LAB

KRISTON CAPPS

MAY 30, 2018

Assessing Exposure to Climate Risk in U.S. Municipalities.

May 22, 2018 – 427 REPORT. Cities and counties are bearing the costs of the sixteen billion-dollar disasters in the United States in 2017, raising concerns over the resilience of municipalities to the impacts of climate change and associated financial shocks. Credit rating agencies are increasingly integrating physical climate risk into their municipal rating criteria; however, they lack concrete metrics that compare and assess which municipalities are exposed to climate impacts. Four Twenty Seven's new local climate risk scores provide comparable, forward-looking data to fill this gap. This report discusses our approach to measuring exposure to climate hazards and highlights cities and counties most exposed to the impacts of climate change.

Continue reading.

By Nik Steinberg

May 22, 2018

CDFA Summer School.

August 6-10, 2018 | Pittsburgh, PA

CDFA Summer School is a week long series of courses presented by the CDFA Training Institute. CDFA Summer School will offer five different training courses at the Renaissance Pittsburgh Hotel, in Pittsburgh, PA. Learn from our expert practitioners and experience CDFA's most interactive educational event of the year live in Pittsburgh.

All courses at CDFA Summer School qualify for the CDFA Training Institute's Development Finance Certified Professional (DFCP) Program. Participants may register for one, two, or three courses during this week-long event. Complete three courses, and you will have fulfilled half of the requirements for the DFCP Program. Join us in Pittsburgh, and start down the road to personal and professional advancement today.

Click here to learn more and to register.

CDFA EDA Revolving Loan Fund Webinar Series: Strategies for Addressing Non-Performance and Loan Defaults

Strategies for Addressing Non-Performance and Loan Defaults

August 14, 2018 @ 2:00 PM Eastern

Successful RLF programs always make every attempt to craft a good loan. Some businesses, though, will inevitably struggle to repay. How your fund handles loans and borrowers during this difficult period can help minimize losses and maximize recovery. As part of the CDFA EDA RLF Best Practices Program, this webinar will highlight a variety of corrective action strategies and proactive approaches that can successfully reduce defaults.

Speakers will be announced soon.

Register in advance to confirm your participation and receive login information. Registration is free and is open to all interested stakeholders.

Register

CDFA Federal Financing Webinar Series: U.S. Environmental Protection Agency (EPA)

August 16, 2018 | 2:00 PM Eastern

In this webinar, experts on EPA financing programs will give a thorough overview of the financing options the EPA provides to support brownfields redevelopment and the development of water infrastructure. CDFA will place a specific emphasis on the various EPA Brownfields Grant Programs, including Brownfields Assessment Grants, Brownfields Revolving Loan Fund Grants, and Brownfields Cleanup Grants, as well as the financing offered through the Water Infrastructure Finance And Innovation Act (WIFIA).

Register Now

Colorado Supreme Court Interprets TABOR, Holding City's "Waste Reduction Fee" is Not a Tax .

Municipalities wield considerable power over local businesses as a recent Colorado Supreme Court decision demonstrates.On May 21, the Colorado Supreme Court decided the case of *Colorado Union of Taxpayers Foundation v. City of Aspen*. The Court held, in a 4 to 3 ruling, that a City of Aspen ordinance imposing a charge of $0.20 on the right to use a paper bag at a grocery store was not a tax, subject to Colorado's Taxpayer Bill of Rights (TABOR), which was enacted in 1992.

The City of Aspen ordinance was adopted by the City Council in 2012, and prohibits grocery stores in the city from providing disposable plastic bags to customers at check-out, while also imposing a charge of $0.20 on each use of a paper bag, which is known as a "waste reduction fee." The City Council concluded that the use of single-use shopping bags contributed to greenhouse gas emissions, litter, atmospheric acidification and solid waste generation.

TABOR "specifically limited the legislative taxing power of the state and local governments by requiring that a new tax must receive voter approval prior to implementation." However, the Court also notes that TABOR did not define the term "tax." The Court held that this fee is not a tax because it is not a revenue-raising device, but is assessed to defray the city's costs in administering a "specific, regulatory, waste-reduction scheme, and, particularly, to recoup the costs of recycling the bags that the shoppers are still permitted to use under this regulatory scheme."

The dissenters argued that this fee was clearly a tax, indeed a "sin tax," and that the Court , in reaching this decision, failed to follow its precedents in interpreting TABOR.

Additional Source: [Court Finds Plastic Bag Ban Constitutional]

Pillsbury Winthrop Shaw Pittman LLP – Anthony B. Cavender

May 31, 2018

Keeping Special Revenues "Special"

Special revenues may not be as special as many bondholders have historically expected. Two recent rulings[1] from District Court Judge Laura Taylor Swain in the Puerto Rico PROMESA proceeding have held that bond issuers are not required to make post-petition special revenue bond payments during a pending Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA")[2] Title III bankruptcy proceeding. Judge Swain also held that unless the Oversight Board authorizes special revenue payments, the court lacks authority to compel the payment. The rulings are at odds with existing precedent, legislative history, and market expectations and have alarmed the municipal finance industry.

In this blog post, we look at the immediate impact of Judge Swain's interpretation of the Bankruptcy Code—pending appeal—and consider how to mitigate bondholder risk for new special revenue secured bond issuances.

What does the Bankruptcy Code say about special revenues?

Special revenues are revenues derived from a project or system, for example toll revenue generated by a highway or bridge project. Under section 928 of the Bankruptcy Code, special revenues acquired after the commencement of the case remain subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case.

Section 922 of the Bankruptcy Code expressly provides that the filing of a petition does not operate as a stay of application of pledged revenues to payment of indebtedness secured by such revenue. The marketplace has commonly understood that section 922 of the Bankruptcy Code protects special revenues and directs their payments to issuers notwithstanding a pending bankruptcy.

What did Judge Swain say about the automatic stay and special revenues?

Despite market expectations, Judge Swain held in the Assured Adversary Proceeding that the holders of special revenue bonds cannot compel the debtor to apply special revenues to debt service post-petition. Specifically, the Court held that the exception to the automatic stay found in section 922(d) did not authorize actions to compel the debtor to apply net special revenues to debt service—it merely allows debtors to voluntarily make such payments if they so choose.

Judge Swain cited legal commentary, noting that nothing in the plain language of section 922(d) demonstrates congressional intent to give the holders of special revenue secured bonds the power to compel continued application of such revenues to payments during the course of a Chapter 9 proceeding.

Is this ruling consistent with the Bankruptcy Code and prior precedent?

Legislative history suggests that section 922(d) was intended to avoid the impairment of special revenue bonds in bankruptcy by excluding such payments from the automatic stay. Indeed, the market has long viewed the continuation of payments on special revenue debt as a certainty.

Consistent with that expectation is Judge Thomas Bennett's decision in the Jefferson County Chapter 9 proceeding. In Jefferson County, Judge Bennett analyzed a pledge of special revenues pursuant to the definition contained in section 902(2)(A) to find that specifically pledged sewer revenues were not subject to the automatic stay.[3] Judge Bennett held that the automatic stay does not bar application of pledged special revenues to indebtedness, regardless of whether the special revenues are generated pre- or post-petition or whether they have been paid over to the trustee. The Jefferson County opinion does not address whether such payments were voluntary or compulsory, but the ruling is consistent with perception that Congress intended to protect special revenues in an effort to ensure a stable municipal finance market.

What is the Basis for Judge Swain's Opinions?

Judge Swain dismissed the bondholder's claims in the Assured Adversary Proceeding, holding that section 922(d) only grants a municipality "permission" to continue paying special revenue obligations in its discretion during a bankruptcy and does not compel a debtor to make such payments. The Court narrowly read the plain language of section 922(d), finding no express payment obligation, and concluded that section 922(d) does not sanction non-consensual interference with governmental properties or revenues under section 305 of PROMESA. Section 305 of PROMESA is similar to section 904 of the Bankruptcy Code—they both protect debtor property from court interference. Section 904 generally prevents a court from issuing any stay, order, or decree that might interfere with any of the property or revenues of the debtor. Under section 304 of PROMESA, the consent of the Oversight Board is required or the enforcement must be in connection with a plan of adjustment if property rights or revenues are to be implicated.

While the Assured Adversary Proceeding merely touches on the authority of the court under section 305 of PROMESA, the ACP Adversary Proceeding takes a deeper dive. In the ACP Adversary Proceeding, Judge Swain dismissed a complaint by bondholders regarding the payment of special property tax and clawback revenues, ruling that section 305 of PROMESA denied the Court subject matter jurisdiction to enforce the payment of special revenues post-petition because the Oversight Board did not consent to such payments. Judge Swain read section 305 of PROMESA broadly. Taking these two opinions together, Judge Swain has held that where the debtor is in possession of the special revenue proceeds and they have some property interest in those funds (be it a small reversionary interest or something else) or the funds are the debtor's revenues, the Bankruptcy Code does not compel that the payments be made and section 305 of PROMESA prevents the court from ordering the Debtor to pay.

How Safe Are Special Revenues?

Not as safe as they were prior to Judge Swain's rulings, but safe enough if a bondholder is able to establish as a matter of law that they hold an enforceable security interest and lien on special revenues. Bondholders with liens are still able to prove their lien and seek payment and/or adequate protection once a Chapter 9 proceeding is filed.

The market's reliance on the assumption that the Bankruptcy Code protects special revenues and mandates their application to debt service in a Chapter 9 proceeding must adjust to reflect the new reality—that the payment of special revenue bonds post-petition is not mandatory, but permissive. Both rulings are on appeal to the First Circuit Court of Appeals[4] and, until those appeals are determined, parties structuring special revenue bond issuances should consider the difference between permissive and mandatory turnover of special revenues post-petition in pricing and in accessing risk in the event of an issuer Chapter 9 filing.

If a special revenue issuance is protected by a state statutory lien, there may be broader protection in the event of a Chapter 9 filing. This is particularly true if the state statute requires the special revenues to be received by a third party, never be in the possession, custody or control of the issuer, and state or other applicable law requires that the funds received be applied to debt service.[5]

Bond documents should clearly identify the statutory lien and be consistent with state statutory requirements regarding the flow of funds. There is greater protection when a statute prohibits the issuer from ever receiving the special revenues because under this scenario, to allow a debtor to receive and perhaps reallocate special revenues would be a violation of state law. It is important when issuing special revenue secured debt pursuant to a state statute that the offering statement, indenture, issuer's resolution, and payment agent agreement are consistent and comply with the statute.

What Does the Future Hold?

It depends on what the First Circuit determines on appeal. If the First Circuit accepts Judge Taylor's statutory interpretation, then the certainty previously enjoyed with regard to turnover of special revenues post-petition must be reconsidered in terms of deal structure and pricing and risk to enforceability during a bankruptcy proceeding. Market access for some issuers will be limited unless state law provides for a statutory lien and payment through a third party intermediary and not the debtor. Should the First Circuit uphold Judge Swain's ruling, we expect that there will be pressure on Congress from all parties within the municipal finance industry, including issuers, to revise section 922(d) to require or mandate turnover of special revenues after a Chapter 9 filing.

[1] *Assured Guaranty Corp. et al. v. Commonwealth of Puerto Rico et al.* Adv. Proc. No. 17-155-LT and 17-155-LTS (Bankr. D.P.R., January 30, 2018) ("Assured Adversary Proceeding"); *ACP Master, LTD., et al. v. The Financial Oversight and Management Board for Puerto Rico as representative of Commonwealth of Puerto Rico, et. al.,* Adv. Proc. No. 17-189-LTS (Bankr. D.P.R., Jan. 30, 2018) ("ACP Adversary Proceeding"). The Assured Adversary Proceeding and the ACP Adversary Proceeding were filed in *In re The Financial Oversight and Management Board For Puerto Rico, as representative of Commonwealth of Puerto Rico*, No. 17BK 3283-LTS (Bankr. D.P.R.). The Puerto Rico Highways and Transportation Authority ("PRHTA") is one of several Title III debtors.

[2] PROMESA was enacted by the U.S. Congress and signed into law in 2016. PROMESA is codified at 48 U.S.C. §§2101, et seq.

[3] *In re Jefferson Cnty., Ala.*, 47 B.R. 228, 262-74 (Bankr. N.D. Ala. 2012).

[4] *See* appellate case numbers 18-1165/18-1166 (Assured) and 18-1108 (ACP Master Fund).

[5] Note that in the *Assured* case, the Puerto Rico Fiscal and Advisory Authority, on behalf of PRHTA, delivered instructions to the fiscal agent directing the agent not to make scheduled payments to bondholders and that any such payment, if made, would violate the automatic stay under PROMESA. Accordingly, the fiscal agent did not make the payments.

By Karol Denniston and Peter Morrison on May 29, 2018

Squire Patton Boggs

With Shootings on the Rise, Schools Turn to 'Active Shooter' Insurance.

Gun violence costs lives — and money. The financial burden can overwhelm governments, especially when they're small or struggling.

After every mass shooting, more calls come in: from private companies, from large stadiums, and — increasingly — from government agencies and public schools. They all want to talk about the same thing. "We probably have seen a tenfold increase in inquiries since Parkland," says Paul Marshall, an insurance broker for McGowan Program Administrators, an underwriter based in Ohio. "People just feel vulnerable when [a shooting] happens. And that's when we get phone calls, because it feels inevitable and very difficult to manage."

Since the February attack on Marjory Stoneman Douglas High School in Parkland, Fla., which killed 17 and launched a nationwide push for additional gun control measures, at least seven South Florida school districts have purchased about $3 million worth of "active shooter" coverage from McGowan. This kind of coverage, which the insurance broker first began offering in 2016, is a small but rapidly growing slice of the company's portfolio. There's no database that tracks which school districts carry this type of coverage, but Marshall says his company is consistently seeing 20 percent increases in the number of inquiries month over month. Other insurance companies are also seeing an increase in inquiries and purchases of this type of insurance. Over the course of one week shortly after Parkland, Hugh Nelson, senior vice president at Southern Insurance Underwriters Inc., says he received half a dozen inquiries. According to Reuters, while some insurance companies have offered these policies since 2011, many more have sprung up since 2016.

It's one trend following another, deeply troubling one: The incidence of active shooter events is going up. According to FBI data, the average number of shootings per year jumped from 6.4 between 2000 and 2006 to 16.4 in the period from 2007 to 2013. (Overall, active shooter incidents, which the FBI defines as events in which an individual is actively engaged in attempting to kill people in a populated area, claimed 1,043 lives between 2000 and 2013.) In 2014 and 2015, that number rose again, to 20 shootings per year. About 10 percent of those occurred on government property, while an additional 24 percent occurred in schools. In fact, according to data recently compiled by The Washington Post, since the 1999 massacre at Columbine High School in Littleton, Colo., some 208,000 children at 212 schools have experienced gun violence on campus.

Some of the deadliest of these incidents have happened in just the past six years. In addition to the Parkland shooting in February, there's been a mass-casualty shooting at a concert in Las Vegas, which killed 58; in the Pulse night club in Orlando, which killed 49; in a San Bernardino, Calif., city center, which killed 14; and at Sandy Hook Elementary in Connecticut, which killed 26. In May, the latest attack took place: A student shot and killed 10 of his classmates at Santa Fe High School in Texas.

Aside from the loss of life and the pain these events inflict on a community, deadly shootings also have financial costs that can be difficult for governments, especially small or struggling municipalities, to bear. San Bernardino had already filed for bankruptcy when it had to pay $4 million for the response to the terrorist attack at the Inland Regional Center. Connecticut gave the city of Newtown $50 million just for the costs of rebuilding Sandy Hook Elementary School. The total costs from the 1999 shooting at Columbine High School also came to roughly $50 million. In Parkland, the Florida Attorney General's Office paid for funeral costs, and the school district plans to tear down and rebuild the part of the school where the shootings occurred.

The tangible costs alone can overwhelm a government: litigation, compensating victims, paying for funerals, providing trauma counseling, reconstructing or refurbishing buildings, and investing in new security measures to prevent another attack, to name a few. The impact of intangible costs to a community — reputational damage, loss of tourism revenue and high turnover among workers — is impossible to measure, according to experts. "These events are very expensive in so many ways. People are so traumatized by responding to the event that they leave the field. I've talked to people who've left education because of this," says Mike Dorn, a school security expert at Safe Havens International who is currently working on his 13th active shooter case. Dorn was also a school district police chief at Bibb County Public Schools in Georgia for 13 years.

In the face of these potentially huge costs, there is debate about whether and to what extent general liability policies will cover active shooter events. Marshall, the McGowan insurer, says that general liability policies typically have what's called a "duty to defend" clause, meaning that they require a lawsuit to be filed in order to activate coverage. That's a process that can take months or even years. And general policies will not provide victims with the kind of compensation that's likelier to stave off litigation.

In contrast, active shooter policies tend to go into effect as soon as a person walks onto the organization's property and commits a targeted attack, and they generally cover attacks with any weapon, such as guns, knives, bombs or vehicles. Coverage pays for a host of expenses associated with these events as well, including victim expenses, particularly medical bills; agency costs, like extra security and business income losses; and traditional liability costs for lawsuits.

Some insurance companies that offer this kind of coverage also offer risk assessment and mitigation strategies to organizations trying to prevent an active shooter attack, says Nelson of Southern Insurance Underwriters. "Many governments are already doing this type of [risk mitigation and preparation] thing, but they want to see what more can be done," Nelson says.

McGowan's risk mitigation policies also make up a substantial part of its coverage, though Marshall says some governments and agencies already feel like they're doing enough to secure their properties. Marshall says one prominent city parade hired risk-mitigation services from McGowan this year, which included social media monitoring and coordination with local police. According to him, it was the first year the parade didn't have to deal with a violent attack threat.

That aspect of the coverage was one of the main reasons that Palm Beach County School District, the fifth largest district in Florida and the 10th largest in the country, decided to purchase active shooter insurance last summer. Dianne Howard, the district's director of risk and benefits management, says Palm Beach was one of the first jurisdictions to adopt this kind of insurance in her state. "We wanted the risk assessment and training service" that came with the coverage, Howard says. "Sometimes, departments tell you that they're doing everything they need to do, but when you look at other places where [attacks] have happened, you see there was actually a problem. So I wanted an outside perspective to see what else we could do."

Howard purchased the district's insurance from McGowan, and she said the company found some "areas where we could improve" in terms of mitigating risk. She purchased $1 million in coverage, which she said she hopes to increase. (According to Marshall, many others have done so since the Parkland shooting.)

Some risk mitigation techniques, however, can actually interfere with their insurance policies. Arming teachers — an idea that has received support mainly among Republicans in Congress and in statehouses — is one such security strategy. When some Kansas school districts considered letting teachers and campus administrators carry concealed weapons after the Sandy Hook massacre, their insurance companies pushed back. “Concealed handguns on school premises pose a heightened liability risk. We have chosen not to insure schools that allow employees to carry concealed handguns,” EMC Insurance Companies wrote to Kansas districts. Several districts abandoned their plans to arm teachers as a result.

“We don’t recommend arming teachers in the United States,” Dorn, the school security expert, says. “Trying to teach people to [use a gun against] an active shooter is even harder than just teaching them how to use a firearm.” Dorn says that even police officers sometimes don’t respond appropriately in emergency situations. In Parkland, a campus police officer notoriously stayed outside of the building even as he heard gunshots inside.

Dorn also cautions against similar solutions, like the Pennsylvania superintendent who suggested students were protected from active shooter situations thanks to a bucket of river rocks in the classroom, or the other Pennsylvania school district that issued mini baseball bats to teachers. “Great idea. Now some kid gets mad and gets ahold of the bat and beats up another kid and we have a $4 million lawsuit on our hands,” Dorn says.

He says behavioral interventions — like identifying potentially violent students and intervening before anything takes place — are by far the most effective strategy for stopping violence on school property. They’re also less expensive than physical solutions such as bulletproof glass and metal detectors. “If you’re a school without strong behavioral approaches [to preventing violence], you’re extremely vulnerable to litigation, because this is so well established. It’s like a standard of care,” Dorn says. “You can spend $5 million [on extensive security measures] and still have a shooting because you didn’t spend a tiny fraction of that on good behavioral approaches.”

As the difficulty of preventing violence becomes clearer to the public, and if violent incidents like Parkland continue to become more common, Marshall and Nelson both say they expect that this portion of their insurance practice will continue to grow. Just recently, Marshall says, a large municipality flew him out for an informational presentation and decided immediately to buy coverage.

And insurance companies keep updating the coverage they offer in response to tragic events. A year ago, McGowan did not offer coverage for vehicle attacks. Now it does. The sorts of coverage that insurance companies provide will continue to evolve, says Marshall. “At this point, [people feel that] everyone is kind of a target.” Attackers today, he says, have become more likely “to handle disputes in a violent manner, with guns, knives, vehicles, bombs. It’s very concerning to people.”

GOVERNING.COM

BY NATALIE DELGADILLO | JUNE 2018

How to Calculate What Opioid Overdoses Cost Government.

New research provides a formula to help cities and counties know what to expect, financially, when drug deaths spike.

As governments grapple with the rising cost of the opioid crisis, one group may have found a way to predict how high those costs will go.

For every three fatal overdoses, a local government's public safety costs can increase by an average of 1 percent, or $150,000, according to research from the data platform OpenGov. What's more, once deaths start spiking, government costs tend to steadily increase at that rate for about three years until they begin to plateau.

The findings give local governments an idea of what to expect financially as they respond to rising overdose deaths. The data were gathered from 20 cities and counties across five states considered to be on the front lines of the crisis — Kentucky, Maryland, Massachusetts, Ohio and Pennsylvania — and released exclusively to Governing.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | JUNE 4, 2018

How an Arcane, New Accounting Standard is Helping Reporters Follow the Money.

MARK NIESSE WAS one of two reporters in a conference room inside a government building in downtown Atlanta in June 2017, listening to a presentation about an obscure accounting rule change. For the first time ever, governments were required to release detailed information about tax breaks given to companies. Niesse, a reporter at the Atlanta-Journal Constitution, hoped to answer a question that had long nagged him: Are tax incentives worth it?

In Fulton County, the largest of nine counties in the Atlanta metro area, officials were trying to comply with the new disclosures and had hired Ernst & Young to help. As the accountants spoke, Niesse peppered them with questions. At one point, the accountants left the room to discuss the accuracy of their numbers. "When they came back out, they agreed they needed to present the information in a clearer way," Niesse recalls. That's when Niesse noticed an extensive spreadsheet on an accountant's laptop, open on the conference room table. Unlike the PowerPoint, the spreadsheet was crystal clear: it showed the parcel IDs and property taxes not paid on every recent development in Fulton County.

Niesse made a verbal FOIA request to the public relations officials in attendance. "They weren't counting on that," he recalls. Back in the newsroom, he followed up with a written request, and by late June, the spreadsheet—with its 56 columns and 77 rows of data—was open on his computer. "It was a lot of good information," he recalls. "I would have had a hard time doing that myself."

Continue reading.

Columbia Journalism Review

By Mya Frazier

MAY 29, 2018

Why Environmental Impact Bonds Are Catching On.

They give cities a way to share the risk and learn whether new approaches work.

Washington, D.C., had a problem. Like many cities with antiquated sewer systems, D.C. was under orders from the Environmental Protection Agency to reduce stormwater runoff that threatened the region's water quality. To solve the problem, the city wanted to experiment with "green infrastructure" as an alternative to building costly new pipes and pumps. But green infrastructure had not yet been tried at that scale, so how could the city finance this unproven approach?

The answer, for D.C., was to launch the nation's first environmental impact bond in 2016. An EIB enables the city to share the risks — and the rewards — of innovative problem-solving with investors. EIBs are considered a "pay for success" strategy because investors' returns depend on whether the project meets its goals. Because of the need for extensive measurement around those goals, the jurisdiction also learns what works best for future planning. This approach is catching on, with Baltimore and Atlanta recently announcing plans to issue EIBs.

In Washington, the impact investing firm Quantified Ventures worked with DC Water on a $25 million EIB for large-scale green infrastructure: rain gardens, permeable pavement and other landscaping designed to absorb and divert stormwater. The EIB was privately placed with Goldman Sachs' Urban Investment Group and Calvert Impact Capital.

The need for intervention was clear. D.C. (like more than 770 other American cities) has an outdated combined sewer system, meaning that stormwater is funneled into the same pipes that handle raw sewage. On a good day, all that wastewater goes to a sewage treatment plant. But on a bad day — and climate change guarantees more of those — heavy precipitation exceeds the capacity of the pipes and untreated sewage is discharged directly into local rivers.

In 2005, D.C. entered into a consent decree with the EPA to address this problem. The city's plan A was a $2.6 billion tunnel system to capture the combined-sewer overflow. But halfway through that 20-year project, green infrastructure began to look like a viable and less expensive plan B. And green infrastructure has the potential to create ancillary benefits such as increasing access to green space, reducing the urban heat island effect and creating ongoing jobs in landscape maintenance. The EIB allows D.C. to test that hypothesis at scale.

Of course, testing a hypothesis depends on rigorous monitoring and evaluation, a feature that distinguishes EIBs from other modes of finance, such as standard municipal bonds. But while the full results of the D.C. EIB won't be known until the project's completion in 2021, other cities are already betting on the new approach.

Baltimore, another city with combined sewer problems, also will utilize EIBs to finance green infrastructure. Here, too, the need is urgent: Baltimore is required by federal and state regulators to reduce and treat polluted runoff from more than 4,000 acres of pavement and buildings by 2019. In partnership with the Chesapeake Bay Foundation and with support from The Kresge Foundation, Baltimore plans to issue up to $6.2 million in EIBs later this year to help pay for stormwater management in some three dozen neighborhoods.

And Atlanta is the first winner of the "Environmental Impact Bond Challenge," funded by the Rockefeller Foundation and in partnership with Quantified Ventures and municipal-bond broker Neighborly. Atlanta's will be the first publicly offered EIB, allowing residents to invest in improving their city. The city plans to use EIBs to fund approximately $12.9 million worth of green infrastructure projects in flood-prone neighborhoods on the city's west side.

Kresge and Rockefeller believe that EIBs can deploy impactful solutions to resilience, water quality and other environmental challenges. But not everyone has embraced environmental impact bonds. Some, for example, have compared them unfavorably to "green bonds" (which are similar to standard muni bonds but earmarked for environmental projects), observing that EIBs are more costly to issue and that the monitoring and evaluation they require diverts time and resources from funded projects.

Ben Cohen, a senior associate at Quantified Ventures, concedes that "EIBs are not the best tool for every issue and geography." But when cities want to try unproven approaches, scale up solutions that have been tested on a small scale, or share financing costs with other entities that may benefit from projects, the monitoring and evaluation requirement "is a feature, not a bug," Cohen says. Evaluation is essential to make sure that taxpayers are not on the hook for projects that don't work, while providing investors — who often have a social or environmental impact mandate — with an assessment of the outcomes their dollars are creating.

By focusing on outcomes and carefully measuring progress along the way, EIBs can also garner bipartisan support from those who want to see more government effectiveness and accountability. And as cities experiment with untested solutions to the unprecedented challenge of a warming planet, EIBs offer a valuable way to share risks and rewards. "EIBs are a powerful new tool in the municipal toolbox," says Cohen.

governing.com

By Laurie Mazur | Contributor
Editor of the Island Press Urban Resilience Project

MAY 25, 2018

[Update On S&P U.S. Public Finance Priority-Lien Tax Revenue Debt Criteria RFC.]()

On Nov. 13, 2017, S&P Global Ratings issued a Request for Comment (RFC) on its proposed "Priority-Lien Tax Revenue Debt" criteria. Given the change in the proposed methodology and the criteria's potential impact on existing ratings, we undertook a substantial effort to reach a broad base of constituents interested in the proposed criteria.

Continue Reading

May 29, 2018

Save the Crew (Part Two)!

Last week, we posted a story about the lawsuit brought by the Ohio Attorney General under Ohio's "Art Modell Law" to prevent Major League Soccer's Columbus Crew from moving to Austin, Texas. We wondered aloud whether other states might enact similar laws if Ohio can succeed in preventing the Crew's departure. Readers might have wondered (aloud or otherwise) whether Ohio's efforts to enforce the Art Modell Law would inhibit professional sports leagues from expanding to Ohio.

The answer, at least for now, appears to be "no." Major League Soccer announced on May 29 that Cincinnati has been awarded an expansion team, FC Cincinnati, which will commence play in 2019. The stadium in which FC Cincinnati will play will be financed, in part, with taxpayer funding, which will bring the team within the scope of the Art Modell Law. The law didn't impede MLS expansion in Ohio, and it just might leave Ohio with two MLS teams, rather than one.

The Public Finance Tax Blog

By Michael Cullers on May 31, 2018

Squire Patton Boggs

Tough Conversations About Climate Change Planning in California.

The nature of sea-level rise is such that it threatens whole regions at once, with no respect for municipal boundaries. But in most cases, local communities are left to develop their own strategies for addressing the threat. And the decisions they make, based on local concerns about environmental conditions and property rights, have ramifications that spread out to neighboring cities and towns.

The coastal city of Del Mar, California, in San Diego County, is currently facing that challenge. Last week, the Del Mar city council, which represents about 4,300 residents, voted against including the strategy of "managed retreat" in its long-term Sea-Level Rise Adaptation Plan.

Managed retreat refers to a simple concept that can be very complicated in practice: abandoning land and sometimes developed property in coastal areas as the sea rises. It's considered a last resort for sea-level rise adaptation. While the city had initially included the strategy in its plan last month, the city council ultimately decided to strike it from the documents after residents objected that it would sink the values of their properties overnight.

Continue reading.

NEXT CITY

BY JARED BREY | MAY 29, 2018

Neighborly Issuer Brief: What the Supreme Court Ruling on Sports Betting Means for Credit.

This Issuer Brief is brought to you by Court Street Group.

Supreme Court OKs Legal Sports Betting: What Does it Mean for State Credit?

The recent U.S. Supreme Court decision that eliminated a 25-year ban on legal sports gambling in all but four states is a case study on state credit.

Different stakeholders have wondered whether the legalization of sports betting would produce some kind of windfall for state revenues through taxation of those activities. If we were to bet, we would take the under on that play from a state credit point of view, with a number of factors to support such a wager.

Not every state has current plans to implement sports betting. Only Connecticut, Pennsylvania and 16 other states have stated an interest in legalizing sports betting. So while there has been support for the concept, it is far from clear how large the amount of revenues from would be from the taxes collected on those activities and whether they would be captured at all.

Continue reading.

Neighborly

by Joseph Krist

05/30/2018

Last Week in the Muni Market: Italian Government Debt Making Waves.

The Muni market was a passenger on the interest rate roller coaster last week. First, U.S. interest rates reacted to Sovereign Bond issues in Italy. Italian Government Debt was the big focus as a possible shift in administration flamed fears of Italy becoming more indebted and less interested in being part of the EU. U.S. rates rallied in a flight to quality bid to 2.78% on 10yr U.S. Government bonds. Flight to quality is also referred to as a Risk-Off trade — the idea being that in times of uncertainty the assets of choice are high quality debt tied to stable currencies.

Municipal Bonds underperformed as the bids to buy was not at the same pace as that of U.S. Government debt. The Municipal market demand was most pronounced for California debt.

Finally Italy's coalition government was sworn in and Spain's Prime Minister was toppled in a no-confidence vote. And traders ate their ant-acid/Tums and went back to business as usual. The volatile rate environment reversed over the course of the week, ending with Friday's surprising May Non-Farm Payrolls data release by the Bureau of Labor and Statistics (BLS). The unemployment rate dipped to 3.8% and wage growth surpassed expectations with average hourly earnings rose 0.3%.

The stronger employment data have traders feeling more confident that the Fed will raise rates at the next meeting in June.

Overall, there was lots of volatility but rates ended up near where we started the week at 2.90%.

This week will be a larger than average (~$5bn per week YTD) Municipal new issue supply week with an expected $10bn of Muni New Issues. The State of Connecticut's $500 Million deal pricing will get most of the attention as the State's fiscal issues and pension obligation is on most market participants radar.

Neighborly Insights

Posted 06/04/2018 by Homero Radway

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The Nation's Freshwater Coast Is a Key Fulcrum for Rust Belt Revival.

There's growing evidence of rapidly spreading income and opportunity divides between the dynamic, growing metropolises of America's East and West coasts and the Heartland in between.

Yet there is a third U.S. coast, a "freshwater coast" along the more than 10,000 miles of Great Lakes shoreline, that is proving to be an important fulcrum for economic renewal in America's interior. Continued federal efforts are especially critical for securing the future of many smaller communities that line that coast.

As documented in prior posts, heavy industry along the Great Lakes shores and rivers of the region powered the Midwest's economic growth. Green Bay, Wis. grew as a paper mill town, fouling the Fox River as it entered Lake Michigan. Across the lake in Muskegon, Mich., paper mills, chemical plants, and auto parts plants turned spectacular Muskegon Bay into a toxic hotspot. Duluth, Minn.'s waterfront was an industrial port, where the Front Range's iron ore was shipped to Marquette across Lake Superior and on to the steel mills abutting the Great Lakes in Gary, Ind., Cleveland, and Buffalo.

Continue reading.

The Brookings Institute

John C. Austin

Thursday, May 31, 2018

Evolving Tax Incentives: A Shared Value Approach to Economic Development in Portland.

In 2015, the global auto manufacturer Jaguar Land Rover (JLR) invested in a $4 million innovation incubator in Portland to encourage and support new software-based automotive technologies. The incubator created slots for up to 12 startup firms, each benefiting from mentoring, space to test and deploy technology, and up to $3 million in contracts from JLR. In turn, the incubator provides fertile grounds in which JLR can jointly test technologies with smaller firms.

Many companies invest in local incubators, but a unique incentive program run by Prosper Portland, the city's economic development arm, distinguishes this approach. To receive a tax incentive, JLR entered into a public benefits agreement and committed to partnering with the local startup community on inclusive entrepreneurship programs, identification of career ladder opportunities for underrepresented populations, and diversity goals around hiring and training underrepresented populations.

The work that JLR is doing is emblematic of a shared value approach, a concept wherein companies find business opportunities in solving social problems. Using this model, Prosper Portland has turned its traditional economic development tax incentive program, the Portland Enterprise Zone (E-Zone), into an innovative, nation-leading model which aims to identify shared value between business, community, and the public sector.

The work that JLR is doing is emblematic of a shared value approach, a concept wherein companies find business opportunities in solving social problems.

Acknowledging the past, changing our ways

The pivot toward the shared value approach has its roots in the city's racist history: Discriminatory practices from the 1950s to the 1980s, such as redlining, destabilized communities of color and people who were not landowners. Prosper Portland's own subsequent urban renewal efforts, while focused on the preservation of Portland's neighborhoods and a lively downtown, also created conditions ripe for gentrification. Those conditions pushed lower-income households, frequently people of color, to more affordable areas of east Portland at the outer fringe of the city.

The result has been gaping disparities in employment, income, and wealth between white communities and communities of color in our city. Today, Portland has a booming economy, but due to decades-long patterns of institutional discrimination, widely shared prosperity is not flowing to those who have been displaced and live at the city's edges. Wage earners in the less diverse central city and west Portland earn an average $102,209, while wage earners in east Portland, home to a higher percentage of communities of color, earn an average $44,328.

Prosper Portland's response to that dichotomy is to deepen its commitment to building an equitable economy, driven by a strategic plan based on four cornerstones: growing family-wage jobs, advancing opportunities for prosperity, collaborating with partners for an equitable city, and creating vibrant neighborhoods and communities.

Embracing shared value

Over the past 30 years, Prosper Portland has administered tax incentives, including local tax abatement and state income tax credits, to compete with other regions and states for new economic development projects. The direct benefits of job creation and investment continue to be core to our efforts to recruit and retain businesses.

Today, however, corporate social responsibility has become equally important to both workers and customers, and society demands that companies act differently.

These norms align with the shared value model. According to the Shared Value Initiative, "More companies are now building and rebuilding business models around social good, which sets them apart from the competition and augments their success. With the help of NGOs, governments, and other stakeholders, business has the power of scale to create real change on monumental social problems."

Corporate social responsibility has become equally important to both workers and customers, and society demands that companies act differently.

Already, we are seeing the private sector collaborate with schools and universities, nonprofits, and government, agreeing on shared values that strengthen both the business and social framework—a new way to achieve economic success across previously underserved communities. Businesses are recognizing that their competitiveness relies on investments in surrounding economic and social environments, and therefore are more willing partners.

Using the E-Zone program to engage businesses in creating shared value

As we endeavor to create an environment where all Portlanders can thrive, business leaders—local, national, and international—have expressed interest in doing the same.

These new norms presented an opportunity for Prosper Portland to turn the E-Zone program into a tool to address wider disparities. We convened work sessions with representatives from every high school in Portland, local colleges, universities, government, businesses, and more than 50 nonprofit leaders. This effort birthed a public benefits agreement menu which we now use to guide our efforts.

As of 2017, a new city policy requires companies that receive tax incentives through the E-Zone program to engage with public benefits agreements. Prosper Portland defines a public benefit agreement as a legally binding agreement between a governmental organization and a business with the goal of creating shared value and partnership, where the competitiveness of a company and the prosperity of the public we serve are interdependent.

Under this framework, participating companies must fulfill certain requirements—wage levels, career ladder development, local purchasing, and equitable contracting—and then must choose from a menu to provide additional benefits related to jobs, partnerships, neighborhoods, prosperity, and equity. Companies are held accountable for their commitments with obligatory annual tracking and reporting. This is an evolving program, driven by the community, and those same partners who built the menu are now actively working to implement new partnerships between business, community, education, and government.

Impact and goals moving forward

We now have eight companies that have signed agreements, ranging from food manufacturers to software developers, with many more in the pipeline. We hope to deploy this model across our entire portfolio of economic development incentive programs. Other local jurisdictions and statewide programs in Oregon are beginning to incorporate elements of our benefits agreements into tax incentive programs, and companies outside the incentive program have expressed strong interest in joining our efforts even without receiving tax savings.

The city of Portland is home to 32,000 businesses. Our hope and dream is that each of them engage for good, even on just one or two things—where every kid has a summer job or internship if they want one, where every small business has access to free business consulting from larger companies, and where communities that have been left behind have more hope for the future. Scaling the effort to this degree offers yet another opportunity for the shared value approach, wherein big data and artificial intelligence could be deployed to track results.

As Portland Mayor Ted Wheeler said while introducing the new city policy that established the shared values model, “When we create policy that enables companies to do more, we see the positive results in neighborhoods and among residents throughout the city. That is the path to an equitable economy.”

The Brookings Institute

by Andy Reed
Project Manager – Prosper Portland

Tuesday, May 29, 2018

Early Decade Big City Growth Continues to Fall Off, Census Shows.

Suburban growth outpaces city growth for second straight year

Newly released census data for city population growth through 2017 show that what I and others previously heralded as the "decade of the city" may be less valid during the waning years of the 2010s. While most big cities are still gaining population, the rates of that gain are falling off for many of them as the nation's population shows signs of broad dispersal.

The new numbers for big cities—those with a population of over a quarter million—are telling. Among these 84 cities, 55 of them either grew at lower rates than the previous year or sustained population losses. This growth fall-off further exacerbates a pattern that was suggested last year. The average population growth of this group from 2016 to 2017 was 0.83 percent—down from well over 1 percent for earlier years of the decade and lower than the average annual growth rate among these cities for the 2000 to 2010 decade (see Figure 1).

Continue reading.

The Brookings Institute

William H. Frey
Senior Fellow – Metropolitan Policy Program

Tuesday, May 29, 2018

Municipal Bonds Weekly Market Report: Unemployment Hits 18-Year Low at 3.8%.

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

- Treasury and municipal yields all decreased again this week.
- Muni bond funds break the inflow trend with an outflow this week.
- Be sure to review our previous week's report to track the changing market conditions.

Continue reading.

municipalbonds.com

Brian Mathews

Jun 05, 2018

Modernizing Infrastructure Policies to Advance Public-Private Partnerships.

In an era of political tribalism, infrastructure investment is one of the few areas of American public policy that polls well among everyone. Which makes sense; who doesn't like the idea of filling potholes, new airport terminals, and water systems that don't burst?

The challenge is keeping up with the country's enormous investment needs, whether it's maintaining what we've already built, integrating new digital technologies, or adding capacity in growing regions. State and local governments—who are responsible for managing our public assets—continue to spend larger amounts, but there is always more to do.

One of the most promising innovations to emerge over the past decade is greater use of public-private partnerships (P3s) to complement traditional funding. When designed well, collaborating with the private sector can attract greater net investment, unlock new management efficiencies, and strike an ideal balance between protecting the public interest and generating private return on investment. Yet not all collaborations are designed well, and there is a growing recognition that it is often state and local governments who are not yet ready to tap these new approaches.

Continue reading.

The Brookings Institute

by Annibel Rice, Ranjitha Shivaram, and Adie Tomer

Tuesday, May 22, 2018

Financing the New Water Infrastructure.

When it comes to addressing the nation's water infrastructure crisis, cities and towns are ground zero. They account for 80% or more of spending on drinking water, stormwater and wastewater nationwide, as federal and state support for these vital public services have dwindled over the last thirty years. The news is filled with concerning estimates that it will take billions, or trillions, to address municipal water resource needs going forward.

But it may be that these gloomy estimates are overblown.

Green and distributed infrastructure options are having their moment, and municipal leaders are taking notice. Permeable pavements capture and filter stormwater; recycling technology is turning buildings into treatment facilities; water-efficient appliances, landscaping and water smart tech tools are stretching water supply far beyond projections.

Continue reading.

By NLC Staf on May 29, 2018

IRS to Crackdown on SALT Deduction Cap Workarounds.

On May 23, 2018, the IRS and the Treasury Department issued Notice 2018-54 announcing their intention to propose regulations addressing the federal tax treatment of state workarounds to the $10,000 ($5,000 in the case of married individuals filing separately) state and local tax deduction limitation (SALT Cap) under IRC section 164 as revised by the Tax Cuts and Jobs Act. The regulations will address certain state responses to the SALT Cap, which offers taxpayers an option to contribute to state or local controlled funds in exchange for credits against state or local tax obligations. These state responses to the SALT Cap are intended to provide taxpayers with a deductible charitable contribution in lieu of state and local tax payments, the deduction of which would be limited under the SALT Cap. The regulations will emphasize that federal income tax substance-over-form principles, not state laws, dictate the determination of whether a payment is a charitable contribution or is otherwise deductible for federal income tax purposes.

New York (S.B. 7509), New Jersey (S.B. 1893), and Connecticut (Subst. S.B. 11) already have enacted workaround legislation intended to allow taxpayers to claim a federal tax deduction for payments that exceed the SALT Cap. New Jersey, for example, has authorized its municipalities, school districts, and counties to create charitable funds that grant contributors property tax credits for up to ninety percent of their payments. New York offers a similar arrangement, offering tax credits for payments to state charitable funds, up to eight-five percent of the amount of such contributions in the case of state income taxes and up to ninety-five percent for local property taxes. Other states such as California (S.B. 227) and Illinois (H.B. 4237) have introduced similar bills allowing tax credits for charitable contributions. The California bill passed in the Senate and is held up in the Assembly, while the Illinois bill passed in the House and its third reading in the Senate is scheduled for today, May 24, 2018.

A key question the impending regulations will likely address, given the Notice's mention of substance-over-form principles and a reference to the federal charitable contribution deduction, is the charitable intent of the taxpayer. IRC section 170 provides that a taxpayer may deduct any "charitable contribution," defined generally as a contribution or gift to or for the use of qualifying entities, from taxable income. Such contributions must be made voluntarily and with donative intent. If the taxpayer is making the contribution in order to obtain the credits, the donative intent may not be present. Additionally, if a taxpayer receives a benefit for a charitable contribution, the related deduction is generally limited to the amount that the transfer surpasses the fair market value of the benefit received. Hence, workaround contributions in New Jersey, as noted above, would be limited to a ten percent deduction.

by Robert S. Chase II, Jeffrey A. Friedman, Taylor M. Kiessig, Todd A. Lard, Benje A. Selan and Samantha K. Trencs

Eversheds Sutherland LLP

USA May 24 2018

[The Week in Public Finance: Can the IRS Stop States' Tax Reform Workarounds?]()

The IRS wants to thwart state efforts to avoid the new cap on state and local tax deductions. It's unclear whether that would be legal — or effective.

Now that three states have created workarounds to a part of last year's federal tax overhaul, the Internal Revenue Service (IRS) is trying to stop others from following.

Last week, the IRS announced that it would propose regulations that address attempts by states to help their residents avoid the new federal cap on state and local tax deductions. So far, California, New Jersey and New York are nearing passage of laws that would allow residents who owe more than $10,000 in state and local taxes to pay the remainder into a state charitable trust. Because charitable contributions are still tax-deductible under federal law, the state trust contribution offers residents a workaround.

It’s no surprise, says Jared Walczak, a senior analyst at the conservative-leaning Tax Foundation, that the IRS is striking back. “The IRS was never going to be fooled by these workarounds.”

Continue reading.

GOVERNING.COM

BY LIZ FARMER | JUNE 1, 2018

Fighting Neighborhood Displacement, One Sewer Plant at a Time.

A San Francisco infrastructure project shows the potential for creating good jobs that can preserve and strengthen a marginalized community.

Bayview-Hunters Point, a low-lying, four-square-mile pitch of southeast San Francisco, has seen its fair share of transition, and even drama. Occupied by the Ohlone people before the arrival of the Spanish, it once hosted slaughterhouses that fed the city’s growing population. To support the wars of the 20th century, the Navy made dramatic investments in the shipbuilding industry there. And in 1982, long before Candlestick Park was turned into dust, Dwight Clark made a miraculous endzone catch to bring home a championship to a city that badly needed some good news.

During the Great Migration, blacks came to the region on the promise of good blue-collar jobs at the shipyards, and “the Bayview,” as the community is known to locals, became a bastion of black home ownership. Even today, as the community continues to reckon with crime and poverty, the area’s majority of black and Asian-American residents forge strong and diverse social networks bound by churches, neighborhood groups, youth organizations and community gardens.

Now the Bayview is undergoing yet another transition. Massive real estate projects on the sites of the decommissioned Navy shipyard and Candlestick Park are bringing thousands of new homes and associated commercial activity, signaled by the appearance of craft breweries, coffeehouses and rising real-estate prices that are displacing long-time residents. This is happening even as the realities of environmental injustice continue to burden the community. Only recently were its gas-fired power plants shut off, and questions around remediation of a former Navy radiation lab remind everyone of the public-health risks the community has long grappled with.

Continue reading.

GOVERNING.COM

by Jayant Kairam | Contributor

JUNE 4, 2018

Congress Considers Big Changes to New Federal Water Infrastructure Bank.

Click here to read the Latham & Watkins Client Alert.

Latham & Watkins LLP

May 25 2018

USDA Seeks Applications for Rural Water and Waste Disposal Infrastructure Projects, Planning Grants.

PORTLAND, Oregon, May 24, 2018 — The U.S. Department of Agriculture (USDA) Rural Development is seeking applications for rural water and waste disposal infrastructure projects, including planning grants.

The Water and Waste Disposal Program provides loans, loan guarantees, and grants to fund the construction, upgrade, or expansion of clean and reliable drinking water systems, sanitary sewage or solid waste disposal infrastructure, and storm water drainage in rural areas. With the passage of the 2018 omnibus spending bill, up to $65 million in direct loans and $10 million in grants is available in Oregon this fiscal year, which concludes on September 30.

Most state and local government entities, private nonprofits, and federally-recognized tribes are eligible to apply. Projects must be located in a rural area with a population of 10,000 or less. Applications are accepted year-round.

The Water and Waste Disposal Predevelopment Planning Grant Program assists low-income communities with initial planning and development of applications for USDA Water and Waste Disposal loans, grants, or loan guarantees. Grants of up to $30,000 or 75 percent of the predevelopment planning costs are available. Most state and local government entities, nonprofits, and federally-recognized tribes serving an area with a median household income below the poverty line or less than 80 percent of the statewide non-metropolitan median household income are eligible to apply.

Additional planning grant funding is available for communities with a population of less than 2,500 and a median household income of less than $42,284 through the Special Evaluation Assistance for Rural Communities and Households (SEACH) Program.

Contact a local Community Programs Specialist near you today to discuss your project concepts and to learn more about submitting a successful application.

Contact: Erin McDuff
(503) 414-3304

Financing Water Infrastructure Projects Under WIFIA.

Click here to view the Latham & Watkins Client Alert White Paper.

Latham & Watkins LLP

USA May 25 2018

States Request $82 Billion for Water Infrastructure.

Boston — New data show that project requests to fund water and wastewater infrastructure projects through the U.S. EPA-administered State Revolving Fund (SRF) Program have increased 25 percent since last year. For the most recent cycle, 2017/2018 fiscal year, $26.9 billion has been requested for drinking water and another $55.3 billion for clean water (wastewater), according to new state-by-state project analysis from Bluefield Research (http://www.bluefieldresearch.com/research/state-revolving-fund-budget-allocations).

"Outside of revenue generated from customer billing, the SRF program represents a bedrock source of funding for municipal utilities, reaching almost 20 percent of their capital expenditure needs," according to Erin Bonney Casey, Research Director for Bluefield. "Although, the $67 billion difference between requested and awarded funding signals the looming financial challenge for system owners."

This year, $14.4 billion was committed to SRF loans and grants, which include federal allocations, state matching funds, and state-specific financing programs for water infrastructure projects. Of awarded funds, treatment system projects received the lion's share — 36 percent of drinking water projects and 53 percent of clean water projects. Other types of projects include transmission and distribution networks, sewer collectors and interceptors, water or stormwater storage, water reuse, and stormwater overflow corrections.

Bluefield's annual analysis of the SRF Program identifies projects and systems that requests these low-interest loans and grants to fund capital improvements. The data also demonstrate high variability from state-to-state that is underpinned by more local factors.

State highlights include the following:

- Ohio dominates the funding allocations because it has committed to fund all eligible projects, totaling $2.2 billion in 2017.
- Illinois issues bonds to augment the available money from state revolving funds.
- California and Texas voted in financing to address drought concerns in 2014 and 2013, respectively, which have boosted the size of SRF resources.
- Select states, such as Tennessee, have not fully matched federal funding, therefore left funding on the table in the short and long term.

The current program is already oversubscribed, with only 17 percent of the total requests receiving funding — loans or grants. Further, only a small percentage of municipalities leverage the program. Of the approximate 49,000 drinking water and 18,000 wastewater systems in the U.S., Bluefield has mapped, 3,911 drinking water and 3,730 wastewater systems that have requested funding this fiscal year.

"The noted success of the SRF program has not been overlooked in Washington," Casey said. "In light of what else is happening in D.C. to tackle the nation's infrastructure challenges and roll-backs of EPA regulations, the SRF program has remained intact amid budget reviews and cuts that have impacted other programs."

Civil + Structural Engineer Magazine

MAY 30, 2018

Opportunity Zones Could Worsen Blight.

More and more, American leaders are realizing that economic policies must be designed with a specific region in mind. Usually, the context is discussion of how to revitalize regions in decline, such as rural Appalachia or the post-industrial Midwest. That's important, because when many people leave these areas, those who remain — for family reasons, or because it's costly to move — are stuck with half-abandoned neighborhoods and infrastructure that's too expensive to maintain. Revitalizing declining regions can help promote economic efficiency, as well as giving aid to those unable to relocate.

But there's another important reason to focus on struggling places — equality. It's not just declining regions that need help, but poor neighborhoods within big cities.

Cities have always had slums and poor areas. But in the mid-20th century, things went from bad to worse for many impoverished city residents. The loss of industrial jobs from urban cores, along with white flight, left many people and their descendants stranded in blighted neighborhoods with few economic opportunities.

In the late-20th century, a number of states tried to revive their most blighted urban areas, with programs called enterprise zones. These programs, however, were not very effective. Several studies by economists in the late 1990s and early 2000s showed little or no improvement from state enterprise zones on local employment.

Then the federal government stepped in. In 1993, Congress created empowerment zones in the poor neighborhoods of six cities — Atlanta, Baltimore, Chicago, Detroit, New York and Philadelphia-Camden, New Jersey. The zones, which averaged about 10 square miles and 113,000 people, would receive federal assistance for a period of 10 years. These were truly blighted areas, with poverty rates averaging 48 percent.

Companies that employed workers within the empowerment zones could receive tax credits proportional to the wages they paid, up to the first $15,000 (about $26,000 in today's dollars), as long as the workers also lived in the zones. This was essentially a wage subsidy. Each zone also received a $100 million block grant, to be spent on things like business investment and lending, assistance and support to private businesses, infrastructure and worker-training programs. In total, about $400 million was spent on the first six zones (a series of follow-up bills later in the decade created more empowerment zones).

Unlike the state-level programs, the federal empowerment zones were effective in improving blighted areas. A 2013 paper by economists Matias Busso, Jesse Gregory and Patrick Kline carefully compared the zones to similar areas that didn't receive federal assistance, and concluded that the impact on the local economies of these neighborhoods was substantial and enduring.

Busso et al. focused on three main indicators of economic success — wages, employment and rents. Comparing the years 1990 (well before the program was implemented) and 2000, they found that the federal empowerment zones boosted employment of local residents by about 18 percent, and wages by 8 percent to 13 percent. Housing costs, meanwhile, may have increased slightly over the long term, but in the short term the authors couldn't detect an increase.

In other words, the empowerment zones substantially boosted the economic fortunes of the urban poor. Nor was this success the result of a favorable choice of location by the federal government — before the zones' creation, the targeted areas had all been doing worse than the other areas the author used for comparison. The authors estimate that the increased income created by the programs, when added up over the years, totaled around $700 million — a good deal more than the cost of the program.

In other words, policies aimed at revitalizing blighted urban areas can really work. They don't produce miracles, and they require some outlays of money, but the rewards to society's most disadvantaged people and places can be significant.

Now, President Donald Trump's new tax reform aims to repeat the success of the empowerment zones with a new program called opportunity zones. Instead of investing in companies and paying them to hire workers, the opportunity zones offer tax credits for investment in poor areas.

Will the opportunity zones work as well as the empowerment zones? It seems unlikely. This is because much of the investment money lured into the zones may flow into real estate. In empowerment zones, money was targeted toward businesses, but the new program may direct money into houses.

That wouldn't create many jobs in blighted areas. But it could easily push up housing costs, including starter-home prices and rents. If real estate investment in opportunity zones causes landlords to convert rental units into condos, it would exacerbate an already severe shortage of housing supply in the nation's cities. Rent across the country is rising faster than prices overall.

Poor areas don't need wealthy investors to plow money into houses and buildings. They need investment in businesses that will give them jobs and better wages. Let's hope the new opportunity zones result in increased business investment, like the empowerment zones did.

THE POST AND COURIER

BY NOAH SMITH

May 30, 2018

Noah Smith is a Bloomberg Opinion columnist.

Will The New Opportunity Zones Work As Intended?

Concerns regarding developers lack of interest in tax incentive programs that aim to help revitalize low-income communities has some questioning the effectiveness of the Opportunity Zone Program — the first new economic tax incentive program to surface in nearly two decades following last year's federal tax cut legislation

The goal of OZP is to provide an incentive, in the form of a potentially sizable federal tax break, for investors to reinvest capital gains into economically distressed areas.

"The Opportunity Zones initiative is the most ambitious federal attempt to boost private investment in low-income areas in a generation, one with the potential to drive billions of dollars in new private investment to struggling communities over the coming decade," Economic Innovation Group President John Lettieri told Congress in testimony this month.

[Continue reading.]

BisNow

Dees Stribling, Bisnow National

May 29, 2018

TAX - UTAH

[Triumph Mixed Use Investments III, LLC v. Commissioner of Internal Revenue]

United States Tax Court - May 15, 2018 - T.C. Memo. 2018-65 - 2018 WL 2228198 - T.C.M. (RIA) 2018-065 - 2018 RIA TC Memo 2018-065

Taxpayer, a limited liability company (LLC) that was subject to partnership provisions of the Tax Equity and Fiscal Responsibility Act (TEFRA), petitioned for redetermination of final partnership administrative adjustment (FPAA) in which IRS determined it could not claim charitable contribution deduction for its donation of real property to city, that it had unreported gross receipts and net earnings from self-employment with respect to two tax years, that it could not claim long-term capital loss or bad debt deduction, and imposed accuracy-related penalties.

The Tax Court held that:

- Taxpayer was not entitled to claim charitable contribution deduction;
- Taxpayer did not have unreported income for year in which IRS failed to provide substantive evidence linking it to unreported income;
- Taxpayer had unreported income from installment sale obligation that was transferred to it;
- Taxpayer could not claim long-term capital loss for property conveyed upon loan default;
- Taxpayer could claim bad debt deduction;
- Taxpayer was required to report gross receipts attributable to sale of property as self-employment income; and
- Taxpayer was liable for accuracy-related penalties.

Benefit that taxpayer received from its contribution of real property and development credits to city was not incidental to the transfer, but rather, was expected, thus defeating the donative intent necessary for a charitable contribution deduction from income tax; taxpayer requested and received approval of its development plan and expected that another plan would also be approved after transferring the property in response to initial public opposition to its proposed plan and city council's requirement, as solution to such opposition, that taxpayer dedicate open space and reduce density before plan was approved.

TAX - MISSISSIPPI

[Rankin County Board of Supervisors v. Lakeland Income Properties, LLC]

Supreme Court of Mississippi - May 10, 2018 - So.3d - 2018 WL 2147128

Tenant, which operated shopping plaza on land leased from airport, appealed decision of county board of supervisors assessing ad valorem taxes.

The Circuit Court granted summary judgment to tenant but found that exemption applied for only one tax year. Parties appealed.

The Supreme Court of Mississippi held that:

- A taxpayer who claims entitlement to an exemption from ad valorem taxation that is automatic or self-operating need not file an objection before appealing to the circuit court;
- Tenant was entitled to exemption from ad valorem taxation;
- Tenant's exemption was automatic; and
- Tenant's right to refund was subject to general three-year statute of limitations.

Lease between tenant and airport, under which tenant used land to operate shopping plaza, was for "commercial purposes" in connection with operation of airport, and thus tenant was entitled to exemption from ad valorem taxation; leased premises had a commercial purpose, and with noise concern, land leased for commercial purpose was compatible with airport.

The Role of Community Land Trusts After Hurricane Maria.

Lucy Cruz has lived all of her 58 years in Caño Martín Peña, an informal community centrally located in the Puerto Rico capital of San Juan. Eight distinct neighborhoods make up the community, clustered around a stream, a caño, that gives the area its name and identity.

Some 1,200 homes in Caño Martín Peña lost their roofs during Hurricane Maria, according to Cruz, who says that the community has worked collectively to gather supplies and rebuild those roofs. They have managed to rebuild 75 completely, but in many places, blue tarps keep out the elements, according to Cruz. Access to federal funds can make a substantial difference.

For working class areas of Puerto Rico, like Caño Martín Peña, it's been a tough go of accessing those funds. FEMA, the Federal Emergency Management Agency, has strict requirements for emergency funding recipients to prove homeownership. Proving that in the aftermath of a Hurricane can be difficult.

Continue reading.

NEXT CITY

BY ZOE SULLIVAN | JUNE 1, 2018

Illinois Passes Budget, Moving to Avert Repeat of Impasse.

- **House approves spending plan that Senate passed late Wednesday**
- **Budget now goes to Governor Rauner's desk for signature**

Illinois lawmakers approved a bipartisan spending plan, leaving the state poised for its first on-time budget in four years and avoid a repeat of the record impasse that pushed its credit rating to the brink of junk.

The state House of Representatives voted Thursday to approve the $38.5 billion spending plan for the year that starts July 1, after the Senate approved the measure late Wednesday. Governor Bruce Rauner said he will sign the package of bills, which will mark the first time since the Republican took office in 2015 that the state has enacted a full-year budget on time.

“We’ve had to come a long way to get to this point,” said Representative Greg Harris, a Democrat, who thanked his colleagues on both sides of the aisle. “It is a balanced budget.”

Both Harris and Representative Tom Demmer, a Republican, presented parts of the appropriations bill on the House floor to demonstrate the plan’s bipartisan nature. Harris pointed out that Hans Zigmund, Rauner’s budget director, was sitting in the gallery and had helped advise lawmakers.

This “reflects a true sense of bipartisan negotiation to find a budget that’s balanced, a budget that’s workable, and something that can give us stability and predictability over course of the upcoming year,” Demmer said on the floor before the vote.

Illinois’s bonds, which had already rallied this month amid optimism a budget would be approved on time, moved higher on Thursday, when the debt was among the most-frequently traded in the municipal market. Taxable debt due in 2033, the most active, climbed 1.7 percent to 96.3 cents on the dollar, pushing the yield down 16 basis points to 5.46 percent, according to data compiled by Bloomberg.

Both legislative chambers approved the spending plan with broad support from Republicans and Democrats, a stark contrast to previous years of contentious debate. Last year’s partisan fighting over the budget nearly turned Illinois into the first U.S. state to lose its investment-grade status. The failure of the Democrat-led legislature and Rauner to reach an agreement led to a record two-year stalemate that wrecked havoc on the state’s finances.

That impasse ended last July after lawmakers overrode Rauner’s veto to enact a tax-hike. The money from that levy made this year’s budget negotiations easier as the gap between spending and revenue had narrowed.

“There’s still a lot that needs to be done, but it’s a big positive sign,” said Dan Solender, head of municipal investments at Lord Abbett & Co., which holds $20 billion of state and local debt, including Illinois bonds. “Given the optimism now, it could bring in more buyers,” he said, adding that “the trends are turning positive instead of further down.”

Starting June 1, a three-fifths majority of each legislative chamber is required to pass any bill, making approval of a spending plan more difficult. The state’s unpaid bill backlog stands at $6.6 billion, according to the comptroller’s office, which is less than half of what it was last July, after they piled up because of the stalemate.

The 2019 budget spends more on education and includes cuts to the department of corrections and other operating areas, as well as some pension savings through buyouts and other changes, according to lawmakers. The state’s unfunded pension liability across its five retirement systems climbed to $137 billion as of last June, bond documents show.

On Thursday, Moody’s Investors Service, which rates Illinois Baa3, one step above junk, warned that the state is facing an “inflection point” as its pension costs are poised to climb in the coming years, eating up more of the budget. Without changes, like foisting more pension costs on lower levels of government, state spending on pensions, debt and other retirement benefits will climb $1.3 billion, eating up about 30 percent of revenue next year, Moody's said in an emailed report.

"I don't think just getting a budget passed by the end of the regular session is any sort of accomplishment that's positive for the state's credit," Ted Hampton, Moody's lead analyst on Illinois, said in a telephone interview. "A key point of consideration for us will be whether the enacted budget helps manage or exacerbates the state's long-term fixed cost challenge."

Bloomberg

By Elizabeth Campbell

May 31, 2018

[Illinois' Accounting Practices Deny Investors Transparency.]

It has been nearly two decades since the state of Illinois had a balanced budget.

Faced with a mounting debt crisis and growing social unrest, the state is grappling with the very real possibility of being downgraded to junk status. Yet, Illinois' most recent budget deficit ran much smaller than many had expected, raising fresh suspicion over the state's accounting practices.

A study conducted by the Illinois Policy Institute found that state lawmakers employed "cash-based" accounting as a way to mask the true extent of the budget shortfall. The Policy Institute determined that the reported deficit of just under $8 billion for fiscal 2017 was really $14.6 billion when factoring in spending incurred in the actual year.

Against this backdrop, investors must be reminded that Illinois' perilous financial situation cannot be concealed or distorted through unethical accounting practices. This is important to bear in mind when weighing the decision to invest in the state's municipal bonds.

Continue reading.

municipalbonds.com

Sam Bourgi

May 31, 2018

Savings From Illinois' Pension Buyout Plan Could Fall Short.

CHICAGO (Reuters) – Illinois might not be able to bank on all of the $423 million in much-needed pension savings from a buyout plan included in a fiscal 2019 budget that received final approval in the state legislature on Thursday, government finance experts said.

The budget for the fiscal year that begins on July 1 calls for bond-financed buyouts of pension benefits after past attempts to cut retirement benefits were tossed out by courts on constitutional grounds.

The fact that buyouts would be voluntary raised concerns about the feasibility of the projected savings.

Illinois is struggling with an unfunded pension liability that has climbed to $129 billion after years of skipped or actuarially inadequate annual state contributions to its five retirement systems. Those contributions are projected to grow from $8.43 billion in fiscal 2019 to just over $10 billion by fiscal 2023, according to a state legislative commission report.

Under the buyout plan, current workers could cash in the 3 percent compounded cost of living adjustment (COLA) owed them in retirement for 70 percent of the value and a reduced 1.5 percent COLA. The state would also offer vested former workers 60 percent of the value of their pensions if they choose to end them.

Steve Malanga, George M. Yeager Fellow at the Manhattan Institute, a conservative think tank, called the savings from the buyouts “speculative.”

“Often these buyouts don’t attract as many participants in the public sector as they might in the private sector because of how good the benefits are for government employees,” he said in an interview.

He added that given the “especially generous” compounded 3 percent COLA, only workers urgently in need of money may opt for a buyout of that benefit.

But Republican State Representative Mark Batinick, who has worked on pension buyout legislation for three years, said the plan is based on reasonable assumptions.

“I don’t think the issue with any of this is going to be the (buyout) takers,” he said.

Laurence Msall, president of the Civic Federation, a Chicago-based government finance watchdog, said it was difficult to determine the effectiveness of the plan without an actuarial analysis. He also took issue with the up to $1 billion of general obligation bonds the state would sell over three years to fund the buyouts.

“The state has had an expensive practice that will continue this year to rely on borrowing to fund the pension buyout,” he said.

MISSOURI PENSION BUYOUTS

So far Missouri is the only state to offer pension buyouts to former workers, according to Keith Brainard, research director at the National Association of State Retirement Administrators. He added he is unaware of any states buying out COLAs.

Of the 17,005 former workers in the Missouri State Employees Retirement System, 3,740 applied for a lump sum payment, resulting in a first-year saving of about $2.5 million and a projected long-term reduction in state contributions of nearly $90 million, the pension fund reported in January.

Ted Hampton, a Moody’s Investors Service analyst, said the pension buyout and other aspects of the enacted state budget will be evaluated to see if they “really advance the capacity to deal with retiree benefits and debt service long-term, or whether they are primarily a way to provide near-term fiscal relief.”

Pensions, along with retiree healthcare and debt service on bonds, will consume 30 percent or more of state revenue in fiscal 2019, Moody’s said in a report released on Thursday.

While that is about triple the median level for U.S. states, Moody's warned that reducing statutory pension funding requirements would weaken Illinois' credit rating, which at Baa3 with a negative outlook is just a notch above junk.

Reporting by Karen Pierog in Chicago; Editing by Matthew Lewis

MAY 31, 2018

Moody's Says State Withholding Harvey Money is "Credit Negative" for all Illinois Municipalities.

On p. 32 of its new Credit Outlook this week, Moody's notes last week's decision by the Illinois comptroller partially denying the City of Harvey's request for relief from revenue withholding under a state law requiring minimum pension contributions is the latest in a series of events involving Harvey that reinforce strong protections for pensions to the detriment of bondholders, and is thus credit negative for Illinois' local governments. The comptroller's response has important implications for other municipalities in the State of Illinois (rated Baa3/negative outlook) struggling to provide services and pay pensions because it clearly prioritizes underfunded pensions over municipal services.

Harvey is structurally insolvent, with an available fund balance of negative $56 million, or negative 199% of revenue, as of the fiscal year that ended April 30, 2017. The city has already racked up numerous general obligation bond defaults, missing two debt service payments in fiscal 2016, six in fiscal 2017 and as of February had missed four in fiscal 2018. Harvey historically has underfunded actuarially determined contributions (ADCs) for its public safety pension plans, contributing very little to its firefighter pension fund from 2009-2013, and even its far higher 2017 contribution fell far below the ADC.

Local pension plans in Illinois can request that the state withhold revenue from a sponsoring municipality if that municipality does not make minimum contributions. Harvey's public safety pension funds have made such requests, and the state has withheld more than $2 million to date. In protest, Harvey warned that it cannot afford to provide essential public services. The city asserts that it will soon be unable to meet payroll, and last month announced layoffs. The state comptroller's office has responded that it has no discretion under state law to consider Harvey's hardship.

Now facing solvency challenges, Harvey's pension funds have won legal judgments that mandate city funding. Following a host of judicial rulings and appeals over the state's revenue withholding, including at the Illinois Supreme Court, the state comptroller's office announced its intention to send $2.3 million of withheld revenue to Harvey's police pension fund to begin satisfying that judgment.

We estimate that at least 25%, or roughly $5.4 million, of the city's $21.9 million of budgeted general fund revenue in fiscal 2017 was eligible for withholding under the comptroller's announced framework. Since the city's two pension judgments amount to nearly $20 million, it will likely take several years of revenue withholding to retire the obligations unless a court intervenes, a settlement is reached or state law is changed.

Moody's declaration of "credit positive" or "credit negative" does not connote a rating or outlook change. It is indicative of the impact of a distinct event or development as one of many credit factors affecting the issuer.

Capitol Fax

Tuesday, May 29, 2018

- GASB Establishes New Implementation Guidance to Assist Stakeholders with Recent Pronouncements.
- Custodial Receipts: A Useful Tool for Restructuring Insured Municipal Bonds.
- The Week in Public Finance: Governments Haven't Had Rules for Revealing Their Private Debt — Until Now.
- Banking Bill Expected to Help Lower State and Local Borrowing Costs.
- Better Disclosure Is One Florida Issuer's Path to Lower Borrowing Costs.
- Three Sneaky Ways Brokers or Dealers Can Take Advantage of Bond Transactions.
- Fitch: Build IL Downgrade Contrasts State/Local Dedicated Tax Approach.
- A Narrow Win for Bondholders Still Sets an Ominous Precedent in Illinois.
- BDA's 10th Annual National Fixed Income Conference is Open for Registration.
- And finally, James Madison, I Need a Hug is brought to us this week by *Manley v. Law*, in which the Federal Court of Appeals had to gently break it to a school board member that she did not have a "protected liberty interest in her emotional well-being upon which she could base her procedural due process claim." While we do not recall this particular issue arising in Con Law, that is almost certainly due to the fact that this is simply the first incident in which the government has failed to tend to the emotional well-being of (3/5 of) its citizens. Surely no group has been treated as insensitively as school board members who have been publicly shamed for "accosting a student outside a high school play." Surely.

HIGHWAYS - CALIFORNIA

Lamar Advertising Company v. County of Los Angeles

Lamar Advertising Company v. County of Los AngelesEyeglasses – Previously viewed in last 30 days for current Client IDSaved to Folder Court of Appeal, Second District, Division 8, California - May 8, 2018 - 232 Cal.Rptr.3d 394 - 18 Cal. Daily Op. Serv. 4295 - 2018 Daily Journal D.A.R. 4287

Billboard owner, which had rebuilt billboard that was blown over in a windstorm, filed petition for writ of mandate to challenge citation issued by County Department of Regional Planning for violation of county zoning ordinances.

The Superior Court denied the petition, and billboard owner appealed.

The Court of Appeal held that:

- Reconstruction did not constitute "customary maintenance" under the Outdoor Advertising Act;
- Advertising display was completely destroyed in windstorm such that billboard was not eligible for customary maintenance and its re-erection was a placement of a billboard; and
- Billboard did not fall within county ordinance allowing restoration of a "damaged or partially destroyed" nonconforming structure.

Reconstruction of non-conforming billboard which was blown down by wind did not actively maintain its display in its existing approved physical configuration and size dimensions, and therefore did not constitute "customary maintenance" under the Outdoor Advertising Act; reconstructed billboard had a smaller wood surface face, reconstruction added an electrical box as well as new lateral supports and a new catwalk, and billboard repairs were not incidental, but rather owner essentially replaced and upgraded the entire display mounted on the posts.

Billboard's advertising display was completely destroyed in windstorm such that it was not eligible for customary maintenance and its re-erection was a "placement of a billboard" under the Outdoor Advertising Act, even if some of the support poles did not fall over in the windstorm, where owner replaced the entire advertising display mounted on the posts.

Billboard blown over in windstorm was totally destroyed and thus did not fall within county ordinance allowing restoration of a "damaged or partially destroyed" nonconforming structure, where billboard could no longer function in any way as an advertising surface, billboard was unrecognizable after the windstorm and consisted only of some remaining "telephone posts" and "lateral boards," there was no message for the motoring public to see, and billboard owner had to replace entire advertising display mounted on the posts.

LAND USE - CALIFORNIA

Hardesty v. Sacramento Metropolitan Air Quality Management District

United States District Court, E.D. California - March 31, 2018 - F.Supp.3d - 2018 WL 1567757

Property owners and operator of sand and gravel mine on their property brought action alleging that county and county officials revoked owners' right to continuing mining on their property in violation of their procedural and due process rights, and retaliated against them by dramatically increasing financial deposit necessary to continue operating mine after they filed case.

After jury verdict in plaintiffs' favor, defendants filed renewed motion for judgment as matter of law and, in alternative, for new trial.

The District Court held that:

- Defendants waived claim that plaintiffs lacked any cognizable due process liberty interest;
- Substantial evidence supported jury's determination that owners had due process property interest in continuing to conduct mining operations on their property;
- Clear weight of evidence supported jury's conclusion that plaintiffs had due process liberty interests in pursuing their chosen occupations;
- Substantial evidence supported and clear weight of evidence was not against jury's finding that plaintiffs had vested right to mine entire tract;
- There was sufficient evidence to support jury's determination that county officials acted with improper motive;
- Substantial evidence supported jury's finding that plaintiffs experienced complete deprivation of their substantive due process rights;
- Jury's damages award of $105 million was not excessive;
- Evidence supported jury's finding that officials violated plaintiffs' procedural due process rights;
- There was sufficient evidence to support jury's finding that county retaliated against owners for filing suit;

- Member of county board of supervisors was not entitled to legislative immunity;
- Issue of whether officials were entitled to qualified immunity was for jury; and
- Substantial evidence supported jury's punitive damages awards.

EMINENT DOMAIN - FLORIDA

Chmielewski v. City of St. Pete Beach

United States Court of Appeals, Eleventh Circuit - May 16, 2018 - F.3d - 2018 WL 2225053

Owners of beachfront property brought § a 1983 action against city, alleging that city encouraged and invited access to property by the general public, causing an illegal seizure in violation of their Fourth Amendment rights, and a taking without just compensation in violation of the state constitution.

The United States District Court denied city's motion for judgment as a matter of law, and subsequently entered judgment on the jury verdict, and awarded $1,489,700 in damages. City appealed.

The Court of Appeals held that:

- Evidence was sufficient to support takings claim, under Florida law, and
- City was not entitled to transfer of fee title to beachfront property.

Evidence was sufficient to prove that city encouraged and invited access and use by the general public of owners' beachfront property, supporting judgment in favor of owners, in takings claim against city, under Florida law; the testimony and other evidence presented showed that the city placed beach access signs, cleared vegetation around the parcel, created nearby parking spaces, hosted events at the property, and refused to remove trespassers from the property.

City was not entitled to transfer of fee title to beachfront property, upon jury verdict in favor of property owners and award of damages in the amount of $1,489,700, in takings claim against city, under Florida law; jury did not find that city had affected a physical taking of the entire beachfront parcel, but that the city's actions in encouraging general public access gave members of the public a permanent and continuous right to pass across the parcel, which was in the nature of an easement, and the damages award was based on appraisal which determined the loss of the value to the owners' property as a result of the easement-type taking.

ATTORNEYS' FEES - IDAHO

City of Middleton v. Coleman Homes, LLC

Supreme Court of Idaho, Moscow - April 2018 Term - May 18, 2018 - P.3d - 2018 WL 2271385

City brought action for declaratory relief against home developer and homeowners' association, seeking declaration that parties' impact fee agreement and parks dedication agreement were valid and enforceable.

After developer and homeowners' association amended their original answer and conceded validity of agreements, the District Court entered order declaring that agreements were valid and enforceable. Parties then filed cross-motions for summary judgment regarding amount of public access space developer and homeowners' association were responsible for under parks dedication agreement. The District Court ultimately ordered developer and homeowners' association to designate 12.8 acres of land as public access space and ruled that they were obligated to provide financial guarantee, if necessary, and found city to be the prevailing party and awarded city $28,048.17 in attorney fees. Developer and homeowners' association appealed, and city cross-appealed.

The Supreme Court of Idaho held that:

- Trial court did not abuse its discretion by considering declaratory judgment in determining that city was prevailing party for purposes of rule providing that prevailing party was entitled to costs;
- Trial court did not abuse its discretion by failing to consider impact fees that city returned to developer and association when determining that city was prevailing party for purposes of rule entitling prevailing party to costs;
- Trial court did not abuse its discretion by failing to consider that developer and association were four separate entities when determining which party was prevailing party for purposes of rule entitling prevailing party to costs;
- Trial court's error, if any, in failing to consider that developer and association were four separate business entities was invited;
- Trial court did not clearly err by determining that judgment was entered on date when clerk placed filing stamp on judgment, not on date when judge signed judgment;
- Trial court did not clearly err by determining that city's petition for attorney fees and costs was served on date listed on certificate of service; and
- Trial court did not abuse its discretion by awarding city attorney fees.

CONSTITUTIONAL LAW - ILLINOIS

Manley v. Law

United States Court of Appeals, Seventh Circuit - May 10, 2018 - F.3d - 2018 WL 2148188

School board member and her husband brought § 1983 action in state court against school district and district superintendent, alleging their handling of investigation of board member's alleged bullying of student and their public criticism of board member violated her due process rights.

Defendants removed action to federal court. The United States District Court granted summary judgment to district and superintendent. Board member appealed.

The Court of Appeals held that:

- There is no liberty interest, protected by the Due Process Clause, in a feeling that the government has dealt with an individual fairly;
- Board member did not have a protected liberty interest in her emotional well-being upon which she could base her procedural due process claim; and
- District's and superintendent's alleged failure to follow school board policy and state procedural law in investigating board member did not constitute a denial of any constitutionally protected liberty interest.

SEWER IMPACT FEES - NORTH CAROLINA

Quality Built Homes Incorporated v. Town of Carthage

Supreme Court of North Carolina - May 11, 2018 - S.E.2d - 2018 WL 2175808

Developers brought action seeking declaration that water and sewer impact fee ordinances adopted by city exceeded city's municipal authority under Public Enterprise Statutes.

The Superior Court granted summary judgment in favor of city. Developers appealed. The Court of Appeals affirmed. Developers sought discretionary review, which was granted. The Supreme Court reversed and remanded. On remand, the Court of Appeals, 795 S.E.2d 436, reversed and remanded to trial court on statute of limitations grounds. Town sought discretionary review, which was granted.

The Supreme Court of North Carolina held that:

- Claims accrued at time of fee payments rather than on effective date of ordinances;
- Three-year statute of limitation for a "liability created by statute, either state of federal," applied, overruling *Point South Properties LLC v. Cape Fear Public Utility Authority*, 243 N.C. App. 508, 778 S.E.2d 284; and
- Doctrine of estoppel by the acceptance of benefits did not bar developers' claims.

Developers, who claimed that water and sewer impact fee ordinances adopted by city exceeded city's municipal authority and sought to recover fees, sustained injury when they were required to make impact fee payments for development approvals, rather than when impact fee ordinances were adopted, and thus claims accrued at time of fee payments rather than on effective date of ordinances.

Three-year statute of limitation for a "liability created by statute, either state of federal," applied to developer's action seeking declaration that water and sewer impact fee ordinances adopted by city exceeded city's municipal authority and seeking to recover fees; overruling *Point South Properties LLC v. Cape Fear Public Utility Authority*, 243 N.C. App. 508, 778 S.E.2d 284.

Doctrine of estoppel by the acceptance of benefits did not bar developers' claim that water and sewer impact fee ordinances adopted by city exceeded city's municipal authority and seeking to recover fees; developers did not receive any benefit from the payment of the challenged water and sewer impact fees that they would not have otherwise been entitled to receive, and developers' only alternatives were to either pay the fees or to discontinue development business.

EMINENT DOMAIN - NORTH DAKOTA

North Dakota Department of Transportation v. Rosie Glow, LLC

Supreme Court of North Dakota - May 14, 2018 - N.W.2d - 2018 WL 2188924 - 2018 ND 123

Department of Transportation (DOT) initiated quick-take eminent domain proceeding.

Following trial, the District Court entered judgment on jury verdict awarding landowner severance damages in excess of amount deposited by DOT as well as attorney's fees and costs. Landowner appealed award of fees and costs.

The Supreme Court of North Dakota held that:

- Court is not limited to awarding fees for only a single attorney;
- Court's explanation for drastically reducing first attorney's requested fees was inadequate;
- Court adequately explained reason for reducing second attorney's fee request;
- Court adequately stated reasons for awarding landowner $5,625 for expert's appraisal;
- Court acted arbitrarily by failing to consider expert appraiser's review of DOT appraisal; and
- Landowner could recover costs which expert appraiser incurred in preparing for and attending DOT's deposition.

SPECIAL ASSESSMENT LIENS - OHIO

Williams v. Schneider

Court of Appeals of Ohio, Eighth District, Cuyahoga County - March 14, 2018 - N.E.3d - 2018 WL 1353291 - 2018 -Ohio- 968

Mortgagee, construction company, and other interested parties brought civil actions, in which city later intervened, as a result of the failure of a mixed-use development whose owner later pleaded guilty to criminal charges.

After consolidation of the cases and the appointment of a receiver, the Court of Common Pleas issued a determination of the priority of liens. Mortgagee and construction company appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. On remand, the Court of Common Pleas entered summary judgment that mortgage on one of the five parcels that composed the development was a valid lien and that construction company's mechanics' liens were invalid, then later determined that city's special assessment was not a valid lien, denied construction company's supplemental motion for summary judgment as to the validity of company's judgment lien, and made determinations relating to the distribution of receivership assets. City, mortgagee, and construction company appealed.

On reconsideration, the Court of Appeals held that:

- City substantially complied with requirements to levy a special assessment on the development; but
  Trial court had authority to authorize the sale of the development free and clear of the city's lien by special assessment; but
- City's special-assessment lien had priority over other liens, except for the 10% secured-creditor allocation set up for the benefit of the receivership; but
- City was not entitled to collect legal fees, engineering fees, other professional fees, and miscellaneous expenses associated with its special-assessment lien;
- Legal description in mortgage on parcel in development was sufficient to provide constructive notice to construction company; and
- Trial court abused its discretion by ordering receiver to distribute to unsecured creditors any remaining funds in secured-creditor allocation account.

City substantially complied with requirements to levy a special assessment on failed mixed-use development, and thus any issues with compliance did not constitute a reason to hold the assessment invalid, despite argument that city began work on the project prior to the passage of the special assessment; then-owners petitioned the city to make the special assessment, then-owners knowingly waived defects and irregularities, and subsequent owners benefited from the improvements to the land.

Trial court had authority to authorize the sale of the failed mixed-use development free and clear of the city's lien by special assessment, where the total amount owed on the mortgages and liens on the development exceeded the value of the properties that composed it as estimated before the sale, and where the trial court determined that a sale of the properties other than one free and clear of liens, claims, and encumbrances would have adversely affected the receivership estate and would have been substantially less benefit to the receivership estate.

City's special-assessment lien had priority over other lienholders as to failed mixed-use development, except for the 10% secured-creditor allocation set up for the benefit of the receivership, despite mortgagee's argument that the city began construction on the development before the city passed an ordinance to proceed; only a fraction of work had been done on the project before the city passed its resolution and ordinance to proceed.

City was not entitled to collect legal fees, engineering fees, other professional fees, and miscellaneous expenses associated with its special-assessment lien on a failed mixed-use development, even though the fees may have been part of the project-development agreement where such fees were not included in city's ordinance nor certified to the county auditor for collection.

Legal description in mortgage on parcel in a mixed-use development was sufficient to provide constructive notice to construction company that recorded a mechanic's lien against the parcel, as would support finding that mortgagee's lien had a higher priority than company's mechanics' lien, even though construction company might not have had a legal obligation to do a title search; title agent found that mortgage's legal description for the parcel ended abruptly at a semicolon, and agent also noted that the description's missing portions were along dedicated public roadways whose boundaries could be determined by other instruments of record.

Trial court abused its discretion by ordering receiver to distribute to unsecured creditors any remaining funds in secured-creditor allocation account from the proceeds from the sale of a failed mixed-use development, even though the remaining balance in the account was minimal; funds placed in the account were derived directly from the assets of each secured claim, and secured creditors had vested rights in the balance of the account by operation of law.

IMMUNITY - WYOMING

Whitham v. Feller

Supreme Court of Wyoming - April 30, 2018 - 415 P.3d 1264 - 2018 WY 43

Minor student and his parents brought action against county school district and school district employees, alleging that employees had committed various torts, including negligence, battery, child endangerment, civil trespass, assault, false reporting, and intentional infliction of emotional distress, that school district was liable for employees' actions under doctrine of respondeat superior, and that school district also committed direct acts of negligence.

The District Court found that school district and employees were immune from suit under the Wyoming Governmental Claims Act and granted school district's and employees' motion to dismiss with prejudice. Parents and student appealed.

The Supreme Court of Wyoming held that:

- Student and his parents failed to allege that employees were acting outside scope of their duties, as was required for student and parents to allege that employees and school district were not entitled to immunity under Act, and

- Supreme Court would reject student's and parents' argument that Court, in determining whether school district and employees were entitled to immunity under Act, should balance respective equities and recognize exception to immunity for violations of school policy and/or criminal conduct.

D.C. Airport Bonds to Lead Holiday Week in U.S. Muni Market.

(Reuters) – Washington, D.C.'s airports authority will lead a holiday-shortened week in the U.S. municipal bond market, issuing $578 million in refunding bonds as it forges on with capital projects at the region's two main airports.

City and state government agencies will borrow $3.41 billion in bonds and another $464 million in notes next week, with markets closed on Monday for Memorial Day. Municipal bond issuance has been slow this year as a result of U.S. President Donald Trump's tax overhaul.

The Metropolitan Washington Airports Authority manages Reagan National Airport and Dulles International Airport, which cover a total of nearly 13,000 acres in northern Virginia. The bonds, underwritten by Barclays, will help fund a new regional airline concourse and parking garage at Reagan, and infrastructure improvements at Dulles, according to bond documents.

The South Carolina Ports Authority will issue $325 million in negotiated revenue bonds next week, underwritten by Bank of America Merrill Lynch, while the biggest note issuance will come from the New York City Transitional Finance Authority, a $100 million negotiated offer underwritten by Jefferies.

With muni issuance low and banks trimming municipal holdings, Trump on Thursday signed legislation that reclassifies investment-grade municipal bonds as high-quality liquid assets (HQLA).

The law means banks can hold muni bonds as part of their liquidity requirements, potentially making those bonds more attractive.

Public officials say the long-awaited move will help lower financing costs on infrastructure projects nationwide, but some analysts aren't so sure.

"Lawmakers have taken concrete action to … better position states to invest in infrastructure projects at the state and local level," said Beth Pearce, Vermont's state treasurer and president of the National Association of State Treasurers.

But Barclays analyst Mikhail Foux said in a Friday note that the move, while a positive development for the municipal market, is "unlikely to preclude banks from trimming their municipal holdings."

"At this point, we believe that HQLA is less important to banks, as most have [liquidity coverage] ratios well above 100 percent," Foux said.

Reporting by Nick Brown; Editing by Paul Simao

MAY 25, 2018

The Week in Public Finance: Governments Haven't Had Rules for Revealing Their Private Debt -- Until Now.

A new requirement forces states and municipalities to annually report the terms and amount of loans they have taken directly from banks. It's a growing source of financing for many public entities.

A new rule is going into effect next month that many believe will shed light on a controversial spending area for state and local governments: how much they owe banks for private loans.

The rule, issued by the Governmental Accounting Standards Board (GASB), lays out standards for reporting these loans in government financial reports. Unlike public debt — which is issued through the municipal bond market and subject to regular disclosure requirements — disclosures about direct loans from banks are not regulated. So, up until now, governments revealed as much — or as little — as they wanted about their private debt.

The lack of continuity has been a source of growing frustration, particularly as governments' private debt rolls have ballooned. Since 2009, banks have more than doubled their municipal holdings to $536 billion in securities and loans.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | MAY 25, 2018

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Transparency: A Means to Improving Citizen Trust in Government

Author: Shayne Kavanagh Vincent Reitano

Year: 2018

Citizens' trust in government is vital to the functioning of a democratic system. Transparency is one way in which governments can build trust. However, "transparency" does not mean just making financial data available to those who have an interest in it. In fact, psychological research suggests that people do not rely solely or even primarily on logic and reason to form judgements, such as trust. Hence, governments must go beyond open and accessible data strategies in order to build trust. There are costs associated with transparency. These range from time and money spent on transparency initiatives to less obvious concerns about unintended consequences, like misunderstandings about what data means and giving too much access to special interest groups. Thus, the future of government may not necessarily lie in more transparency, but rather in smarter transparency that:

- Shows that the values government operates by are the same core values held by its citizens;
- Demonstrates that government officials care about citizens' well-being and acting fairly; and
- Provides information on government performance with enough context for citizens to evaluate the quality of government's work.

Download

Government Finance Officers of America

FAF Issues 2017 Annual Report: Standards that Work

Norwalk, CT—May 23, 2018 — The Financial Accounting Foundation (FAF) today posted its 2017 Annual Report to the FAF website. The report is available in print, PDF, and interactive digital versions.

The theme of the annual report is "Standards That Work." It focuses on how the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB) ensure standards work for all stakeholders—a process that begins before a project is added to the agenda and continues after a final standard is issued. Additionally, it highlights how the FAF participates by supporting the Boards and the standard-setting process.

The 2017 Annual Report includes:

- Letters from FASB, GASB, and FAF leaders
- Infographic snapshots of 2017 outreach and other activities that contribute to making standards work, and
- Complete 2017 management's discussion and analysis and audited financial statements (previously posted to the FAF website).

The interactive, mobile-friendly version of the annual report also features new videos and complete lists of all FASB and GASB advisory group members, including the Emerging Issues Task Force and the Private Company Council.

About the Financial Accounting Foundation

Established in 1972, the Financial Accounting Foundation (FAF) is the independent, private-sector, not-for-profit organization based in Norwalk, Connecticut responsible for the oversight, administration, financing, and appointment of the Financial Accounting Standards Board (FASB) and the Governmental Accounting Standards Board (GASB). The FASB and GASB establish and improve financial accounting and reporting standards—known as Generally Accepted Accounting Principles, or GAAP—for public and private companies, not-for-profit organizations, and state and local governments in the United States. For more information, visit www.accountingfoundation.org.

GASB Establishes New Implementation Guidance to Assist Stakeholders with Recent Pronouncements.

Norwalk, CT, May 21, 2018 — The Governmental Accounting Standards Board (GASB) today issued implementation guidance containing questions and answers intended to clarify, explain, or elaborate on certain GASB Statements.

Implementation Guide No. 2018-1, *Implementation Guidance Update–2018*, addresses new questions about application of the Board's standards on pensions, other postemployment benefits, the statistical section, regulatory reporting, and tax abatement disclosures. The Implementation Guide also includes amendments to previously issued implementation guidance on relevant topics.

The requirements of Implementation Guide 2018-1 are effective for reporting periods beginning after June 15, 2018. The guide is available to download free of charge on the GASB website.

Fitch: Build IL Downgrade Contrasts State/Local Dedicated Tax Approach.

Fitch Ratings-New York-25 May 2018: Today's Build Illinois downgrade highlights Fitch Ratings' credit view that the framework for rating U.S. state dedicated tax bonds must differ from that for rating local government dedicated tax bonds because local government security structures fall under Chapter 9 of the U.S. Bankruptcy Code. In contrast, there is no bankruptcy framework for U.S. states, which means that evaluating the prospects for varying state security structures at a time of fiscal distress is by necessity somewhat judgmental.

The downgrade of Build Illinois sales tax revenue bonds reflects a change in Fitch's criteria for rating U.S. state dedicated tax bonds. In the revised criteria, Fitch specified more limited situations in which a state dedicated tax security can be rated without regard to the state's general credit quality. Additionally, the revised criteria include detail on circumstances in which a state dedicated tax security, while not considered distinct from the state's Issuer Default Rating (IDR), can be treated as stronger than but still linked to the state's general credit risk. Fitch determined that the structure of the Build Illinois bonds enhances the prospects for full and timely payment, allowing for a rating above the state's IDR, but does not meet the revised criteria for rating without regard to the IDR. (For more information, see "Fitch Downgrades Illinois' $2.5B Build Illinois Bonds to 'A-'; Outlook Negative" dated May 25, 2018.)

Fitch's approach to rating dedicated tax bonds of U.S. local governments was unchanged in the revised criteria.

The automatic stay under Chapter 9 applies with few exceptions to all tax-backed debts issued by a local government. A local government security's exposure to the government's general credit risk is therefore predictable under the provisions of the Code. The pledged revenues are either subject to the automatic stay, and the dedicated tax rating is capped by the IDR, or they are not, allowing for a dedicated tax rating distinct from the local government's IDR. Fitch does not 'notch up' from the IDR for local governments unless we can identify the likelihood of enhanced recovery prospects for bondholders, such as the presence of a statutory lien.

Both state and local dedicated tax bonds can be rated separately from and without regard to the IDR in limited situations in which Fitch believes that the nature of the dedicated revenue stream or the legal structure render remote the possibility of a successful impairment argument. For states, the security must be very clearly segregated from operations and have no nexus with general functions.

For local governments, Fitch's criteria outline four exceptions where a dedicated tax bond of a local government can be rated above the government's IDR: (1) bondholders are granted a lien on and pledge of revenue that Fitch concludes would be considered special revenues under Chapter 9 of the U.S. Bankruptcy Code; (2) the debt is issued pursuant to a specific state intercept program; (3) the debt is structured as a securitization specifically authorized by state law; or (4) Fitch can identify the likelihood of enhanced recovery prospects.

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Additional information is available on www.fitchratings.com

Muni-Bond Sales Sold by Auction Poised to Reach Two-Decade High.

- **Competitive bond sales rise to 28 percent of the market**
- **Taxpayers get lower borrowing cost through bidding, states say**

State and local governments are selling the greatest share of their bonds competitive bidding in more than two decades as issuers including New York and Rhode Island embrace auctions as a way to save taxpayers money and boost transparency.

Municipalities have sold $33 billion of municipal bonds this year through auctions, about 28 percent of total sales, instead of relying on underwriters picked in advance to set the interest rates and line up buyers. If that percentage holds for the rest of 2018, it would be the highest since 1994, according to The Bond Buyer Yearbook.

The shift comes as sales of new bonds have tumbled this year, leaving banks eager to bid on new deals, after Congress did away with tax-exempt debt sales for a popular refinancing tactic that governments often relied on underwriters to arrange. New York plans to sell at least half of its debt in the current fiscal year, or about $3.5 billion, on a competitive basis, according to the state's capital program and financing plan released this month. Last year, the state auctioned off 79 percent of its debt, about $6.6 billion.

"New York is achieving lower interest and underwriting costs by doing about half our sales through the competitive marketplace, saving money for taxpayers," said Morris Peters, a spokesman for the Division of the Budget. "The decision of whether to conduct a competitive sale reflects market conditions and the level of complexity, but even when we need bank expertise afforded by a negotiated sale, the benchmark set by competitive sales helps with the pricing."

In a competitive sale an issuer offers its bonds for sale and banks bid against each other to purchase the securities at the lowest cost to the issuer. The bank assumes the risk that it might not be able to sell all the bonds it bought. In a negotiated sale, a municipality hires a pool of banks to find buyers, with interest rates set in discussions with those underwriters.

Last year, states and local governments sold about 24 percent through auction, their highest level since 2000. Bank of America Corp. is the top underwriter of competitive deals this year, winning more than a quarter of municipal bonds auctioned.

Debt issued by highly-rated municipalities, well-known issuers or with simple structures — such as bonds backed by a general pledge to pay or by utility revenues — are suitable for sale by auction, said Jonas Biery, business services manager at Portland, Oregon's Bureau of Environmental Services and the chair of the Government Finance Officers Association's debt committee.

By contrast, negotiated sales are suitable for lower-rated bonds, debt with unique security features and terms or securities sold by infrequent borrowers.

"If you think about the volume of things that go the market, there should be more competitive sales," Biery said. "The majority of credits are going to be more akin to well rated, A or above, fairly standard terms, fairly standard credits."

Biery speculated that the share of competitive sales has grown because Congress abolished advanced refundings, which were often sold by negotiation, the volume of lower-rated debt sales has dropped and direct loans by banks has declined because the reduction in corporate tax rates made them less lucrative for lenders.

Rhode Island adopted a policy of issuing general-obligation bonds through competitive bid in 2016 after newly elected state treasurer Seth Magaziner realized the state hadn't auctioned its bonds in a decade.

"We thought it would be a more transparent approach to begin selling the state's GO debt competitively," said Kelly Rogers, Rhode Island's deputy treasurer for policy and public finance. "Through a competitive sale you're able to point to the specific savings that you potentially gain through the bidding process, which is information you're not privy to through the negotiated process."

When Rhode Island auctioned $150 million in tax-exempt and taxable bonds last month, the winning bids saved the state $1.5 million, said Rogers.

New York State, one of the biggest issuers of municipal bonds, could push the percentage of competitive sales over 30 percent.

In fiscal 2009, New York instituted a policy to sell 25 percent of its bonds competitively, raising that to 50 percent three years later. Over the past five years, the state has sold $19.4 billion of its debt, or 60 percent of the total issued, through competitive bid, according to the state's division of the budget.

A budget division analysis of New York's personal income tax-backed bounds found that the yields on bonds sold by competitive bidding were 0.1 percentage point closer to the benchmark, on average, than when the state selects an underwriter in advance, said Peters.

New York also pays lower fees to underwriters on competitive sales. Over the last five years, the state paid $2.19 per $1,000 bonds for bonds sold by auction and $4.79 per $1,000 on negotiated deals, on average, for personal income tax- and sales tax-backed securities, according to Peters.

Bloomberg

By Martin Z Braun

May 25, 2018, 7:31 AM PDT

— With assistance by Joe Mysak

Wells Fargo Dismisses Bankers in Struggling Muni-Bond Unit.

- **Senior bankers in New York, Los Angeles, Chicago leave**
- **Public finance chief's shake up follows loss of market share**

Wells Fargo & Co.'s new public finance chief Stratford Shields is shaking up the department by dismissing senior bankers in New York, Chicago and Los Angeles and bringing in colleagues from his former employer, Morgan Stanley.

Fifteen employees from its public finance department were removed, retired or quit as the bank shifted its strategy, according to a person familiar with the matter. Shields, who took over in November, has hired six bankers and plans to continue hiring, said company spokeswoman AnnMarie McDonald.

"Wells Fargo has one of the largest balance sheets of municipal lenders and a superior municipal sales and trading operation," McDonald said in an email. "The change in leadership gives us an opportunity to reinvest to position the business for continued growth."

The steps come after Wells Fargo's share of the municipal-bond underwriting business shrank in part because some governments severed ties with the San Francisco-based bank after revelations that employees created bogus accounts in customers' names to meet sales targets. Competition has also increased as debt sales plunged 20 percent this year after Congress eliminated a popular refinancing tactic and interest rates increased.

Wells Fargo was the seventh-biggest underwriter of U.S. municipal bonds last year, falling two spots from the previous year, according to data compiled by Bloomberg. This year, it fell to eighth as it managed $4.9 billion long-term debt sales.

California, Illinois and Chicago suspended no-bid business with the bank after regulators fined the firm for opening potentially millions of bogus customer accounts, while New York City imposed a ban because Wells Fargo received a poor federal Community Reinvestment Act rating. While Chicago’s ban has since expired, the others are still in force.

Illinois’s ban applies to investments through the treasurer’s office, according to Paris Ervin, a spokeswoman for the treasurer.

Lawrence Richardson, who led the Midwest public finance group in Chicago, and David Johnson, who headed California municipal banking, are no longer at Wells Fargo, according to broker registration records. Craig Hrinkevich, a senior banker in New York City, also no longer works at Wells Fargo, records show.

Wells Fargo also cut derivatives and quantitative positions, but is hiring for positions in transportation, infrastructure, affordable housing and health care, McDonald said.

Richardson didn’t return a call seeking comment and Hrinkevich declined to comment. Johnson couldn’t be reached.

Shields ran public finance at Morgan Stanley for five years before joining Royal Bank of Canada in 2014. He has hired former Morgan Stanley colleagues Paula Dagen, Chuck Peck, Randy Campbell and Jim Perry, as wells Kevin Hoecker, a former RBC banker based in Chicago.

Dagen, a managing director in Wells Fargo’s northeast group, was Morgan Stanley’s lead banker covering New York. Peck, based in Denver, is taking over as head of the west and Midwest region.

Campbell and Perry are on so-called garden leave, after giving notice to Morgan Stanley. Campbell will serve as head of public-private infrastructure partnerships and sports finance, while Perry will be a managing director in the south-central region.

Separately, Wells Fargo’s foreign-exchange business cut 22 salespeople, according to a person briefed on the matter, the latest casualties of a slump in market activity.

Bloomberg

By Martin Z Braun and Danielle Moran

May 23, 2018, 9:28 AM PDT Updated on May 23, 2018, 4:32 PM PDT

— With assistance by Elizabeth Campbell, Romy Varghese, and Amanda Albright

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Will Seattle's Controversial Tax on Big Businesses Stunt Its Economy?

It’s already stirring anger among corporations, and nearby cities are trying to capitalize on that.

Seattle’s new so-called head tax is far from the first of its kind. But while the per-employee tax on the city’s largest employers may not be unique, it may be the most blatant effort yet to grab revenue and is already stirring anger in the business community.

Earlier this month, the Seattle City Council unanimously passed a $275-per-employee tax on companies that gross over $20 million a year, such as Amazon and Starbucks. The city estimates it will generate nearly $50 million per year — a roughly 3.5 percent increase to its budget — to address housing affordability and homelessness, which reached emergency levels in recent years. The tax is scheduled to go into effect in 2019 and sunset after five years.

Unsurprisingly, the idea is controversial. Seattle businesses have already formed a coalition to get a voter referendum on this fall's ballot to repeal the tax.

But observers say the issue isn't necessarily the tax, it's Seattle's approach to it. "There are places where this concept can be successful," says Brian Kirkell, principal at the tax consulting firm RSM. "It's just that Seattle isn't one of them."

A big factor is the price tag. Both Chicago and Denver have implemented head taxes on companies, but they only charged businesses $48 per employee. Even at $48 a year, Chicago Mayor Rahm Emanuel called the tax a job killer and eventually eliminated it in 2014. (Denver's head tax is still in effect.)

Another issue is that many see Seattle's move as a thinly veiled attempt to squeeze revenue from Amazon, which would contribute $1 out of every $5 the new tax raises. When it was initially proposed, city officials were calling for an even higher rate. In retaliation, Amazon halted construction on a 17-story downtown tower.

It has since resumed the skyscraper, which will host as many as 8,000 workers, but Amazon Vice President Drew Herdener blasted the city council last week for its "hostile approach and rhetoric toward larger businesses, which forces us to question our growth here."

Nathan Jensen, a professor for the University of Texas at Austin, agrees that targeting a jurisdiction's wealthiest employer isn't an attractive policy solution. He sympathizes with Seattle's limited options — it is prohibited from charging an income tax, and many feel the city's property and sales tax rates are maxed out. "But I think it would have been better if Seattle came up with a plan to address homelessness, [determined] how much it needed and then figured out the best way to raise additional revenue," he says. "I'm worried this approach is more symbolic than real."

Indeed, Seattle's legislation didn't designate a set-aside for the new revenue. So, while the city plans on spending the new money on housing, the final decision will be left to the budgeting process next year. By contrast, Washington, D.C., took a targeted approach to a new employer charge. It recently implemented a 0.62 percent payroll tax on employers to fund the city's paid family leave program for residents.

Kirkell, the tax expert, also suggests that before implementing a tax like this, cities should consider whether they offer something its regional competitors can't. For Washington, that's quick access to Capitol Hill and the White House. "Are K Street lobbyists and lawyers going to leave D.C. to move their entire business to Northern Virginia?" asks Kirkell. "It could happen, but the probability is low."

Seattle's neighbors are already lobbying corporations to make the move. Last week, the city of Tacoma began courting Seattle-based companies with a "No Head Tax Here" ad campaign.

Still, some think that's a long shot. Calling the tax "relatively modest," Fitch Ratings says the city's talent pool of employees, highly educated population and public amenities all point to strong economic growth. Even if companies do decide to respond by leaving or curtailing their plans for expansion, Fitch says, "any impact would be felt marginally over many years and would thus be difficult to distinguish from other rationales for corporate decisions."

GOVERNING.COM

BY LIZ FARMER | MAY 23, 2018

[The Fight for Advanced Refundings Continues.]

The Fight to Re-generate Access to Advanced Refundings Continues

Discussions around the ongoing fight to recreate access to advanced refundings through new legislation have been in the news. Steve Benjamin, Mayor of Columbia, S.C., Chair of Municipal Bonds for America (a non-partisan coalition of municipal bond issuers and state and local government officials), and the incoming President of the Conference of Mayors, has been particularly vocal in his defense of advanced refundings.

There are three main components to understand and consider in this discussion:

Continue reading.

by George Friedlander

Posted 05/23/2018

Neighborly Insights

These Insights are brought to you by Court Street Group Research.

A Narrow Win for Bondholders Still Sets an Ominous Precedent in Illinois.

CHICAGO – Harvey, Illinois, revenue bondholders won a partial victory this week when the state comptroller concluded they will continue to get first crack on local home rule sales tax collections.

But the comptroller's ruling sets a precedent that is worrisome for many other local bondholders around the state who fear they will fall behind bondholders in competition for a limited pot of revenue.

Holders of the Harvey's $6 million Hotel-Motel Sales Tax Revenue Bonds issued in 2008 will continue to receive the city's home rule taxes collected on its behalf by the state — likely enough to cover debt service. But they took a backseat on the city's normal share of state sales taxes, which will go directly to cover overdue pension fund contributions.

State Comptroller Susana Mendoza delivered a letter ruling on the Harvey dispute ahead of a court hearing Monday. It marks the conclusion of her review of the city's protest of the Harvey police pension fund's certified request that state funds be diverted to meet a $7 million pension funding judgment.

"The office of the comptroller is statutorily bound to withhold and remit to the pension fund the payments that are the subject of this protest," the letter says.

The first implementation of the state's newly implemented public safety pension intercept law appears to give pension funds an edge to claim revenues bondholders and local government services also rely upon.

Conclusion of the review clears the path to distribute of $2.3 million of intercepted funds to the police fund Wednesday under a 2011 public safety pension funding law and 2015 amendments that allow for the diversion of "state funds" beginning in fiscal 2016.

The letter does not address a competing firefighter pension fund claim, filed shortly after the police fund's certified request, arguing it should share in the distribution to cover its own $12 million judgment.

Withheld home rule taxes would be distributed to the bond trustee at the same time as the other taxes are sent to the police fund.

"Municipal home rule sales taxes are not state funds" under the applicable pension code articles "and shall therefore be released according to standard procedure," the letter continued. The comptroller has so far diverted $279,000 in home rule taxes that would have flowed to bond trustee Amalgamated Bank of Chicago in monthly payments since February.

Those funds plus future monthly additions will likely be sufficient to cover the next debt service payment of $415,000 due Aug. 1. The $145,000 Feb. 1 payment was made with previously forwarded funds.

The latest development in the Harvey saga unfolded Monday in Cook County Circuit Court Judge Raymond Mitchell's courtroom. The comptroller's office distributed the letter to lawyers for Harvey, Amalgamated Bank, the police fund, and the firefighters' fund.

The distribution plans, however, are far from final. Harvey is trying to reach what it describes as a "global settlement" with the various stakeholders to free up about 75% of the $2.3 million of the withheld funds and divert a similar amount going forward.

Such a settlement remained elusive Tuesday.

"I'm more optimistic than I have been," Mitchell said Monday. The city and the firefighters' pension fund asked Mitchell to issue a temporary restraining order blocking the comptroller from distributing the funds as planned Wednesday whether or not a settlement is reached. That's because it would take several days for the pension boards to convene and cast a vote. The judge granted the firefighters' fund TRO request Tuesday..

The withholding has triggered municipal market concerns that a flood of such requests could have widespread impact on local government finances. It's also fueled broader concerns outlined in several rating agency reports that debt service will take a back seat to pension obligations around Illinois.

In the case of the Harvey revenue bondholders, those fears came to fruition with the interruption of their flow of revenue to the trustee.

It was not immediately clear whether the comptroller's finding, given the mixed results for Harvey bondholders, would ease worries or further fuel concerns among municipal market participants.

It was also not immediately clear whether the comptroller's decision would fully resolve the bondholders' involvement in the Harvey case. "That's to be determined," Brent Vincent of Bryan Cave Leighton Paisner, a lawyer representing the bond trustee, told the judge Monday, but it was generally viewed in the courtroom as a victory for bondholders.

Lawyers predicted even if the Harvey revenue bondholder claim is resolved by freeing up home rule taxes, other similar situations could surface as public safety funds take advantage of the intercept law. The comptroller's conclusions could also face litigation from another municipality.

"Harvey is the first, but it's not the last," according to one lawyer, who said there are eight to 10 other borrowers with similar sales tax bond structures. The diversion issue could also eventually impact general obligation bondholders if intercepted revenues leave a municipality to choose between maintaining critical services and paying debt service.

For Harvey, the intercept law has prompted a funding crisis that threatens city operations. The city already cut its public safety staff by about half. Without a solution, the city would not see any state-collected funds until the $7 million police pension judgment and $12 million firefighters' fund judgment are paid off.

"The city can't afford any more and maintain operations," Harvey's attorney, Bob Fioretti, said Monday.

The revenue bondholders were granted authority to intervene in the case on May 10.

Holders of the Hotel-Motel Tax and Sales Revenue Bonds are repaid with revenues from the city's hotel-motel tax and then by its share of state-collected sales, use, and occupation taxes under the bond ordinance adopted by the city council on Aug. 25, 2008.

All state-shared sales taxes and all home rule taxes needed to cover debt service go directly to the trustee from the comptroller. The city treasurer is supposed to remit all hotel taxes directly to the trustee but the city has long failed to forward any from existing facilities and the hotel project was never built.

The city collected $163,000 in hotel motel taxes in 2016 but debt service totaled $560,000 that year.

In their complaint, bondholders argue that the pension law in question, approved in 2010 and amended in 2015, does not apply to overdue contributions prior to fiscal 2016 when the diversion provision took effect.

The intercept levels were phased in from 2016 to fiscal 2018 with 100% of funds now available for diversion. The intercept process was not put in place until this year.

The lawsuit asks the court to declare that the bondholders' irrevocable "contractual pledge" of state collected revenues is superior to the pension fund claims because they possess "a pre-existing superior vested right to payment from those collections."

The bondholders also want the judge to find that the home rule taxes don't qualify as "state funds" because the state solely collects them on behalf of the city – an argument the comptroller agreed with in her decision Monday.

"The interception of 100% of local share state taxes and home rule taxes substantially impairs the city's performance of its pre-existing contractual obligation under the 2008 bond ordinance" and is unconstitutional, the bondholder complaint says. "The legislature's decision to prioritize the rights of pension fund holders to the intercepted funds over parties such as the Series 2008A bondholders who have pre-existing contractual pledges of and irrevocable rights to the local share state taxes and home rule taxes is arbitrary and capricious."

The comptroller's office did not elaborate or publicly disclose its reasoning behind the finding that the pension claim comes ahead of the bond obligation with regard to state sales taxes.

Various lawyers at the hearing suggested that the office's finding was likely based on the city's ordinance, which simply directs the state to send to a third party – the trustee – revenue the city is entitled to receive.

The pension claims take precedent because the intercept is a direct order under state law that interferes with the existing flow of revenues.

"We don't have discretion," an official from the comptroller's office said during the hearing.

The issue could eventually be the subject of litigation, several lawyers at the hearing said.

Proceeds of the revenue bonds were supposed to finance construction of a hotel and conference center. The city diverted proceeds to cover operations and the project was never built, so bondholders have had to rely on the sales tax collections to recoup their investment. All debt service payments are current.

The city faced regulatory sanctions for misleading bondholders about the use of proceeds and repayment prospects and the Securities and Exchange Commission in an unprecedented move went to court to block an impending sale in 2014 as its probe was ongoing.

The city argues in its own lawsuit filed last month to free up the withheld funds that bondholders have a priority claim on the sales taxes and the sales taxes are city property that is pledged to bondholders.

The diversion prompted a recent back-and-forth in the courts as the circuit court originally rejected the city's preliminary injunction request to free up the funds. An appellate court overturned that decision but the Illinois Supreme Court on April 26 vacated the appellate ruling.

The central issue holding up a potential settlement is how to divide funds between the police fund and the firefighters' fund. The firefighters fund wants a greater share than the police fund has offered and the city has so far said it can't make up the difference, lawyers told the judge Monday.

"We've got kind of an impasse here," said Andrew Schwartz, of Schwartz & Kanyock LLC, who represents the firefighters' fund. He contends the 2011 law does not define priority status on pension fund claims. The firefighters fund also wants any share it is to receive under a settlement to flow directly from the comptroller's office and not the city.

If a settlement is not reached, the firefighters fund would likely contest the comptroller's decision that the police fund comes first because it was first to submit a certified claim. The pension statute doesn't provide direction on priority status of claims.

The comptroller's office is hoping for a settlement or court guidance and its attorney general's office lawyers suggested the parties could seek a recertification process that would specify what percentage of funds are to be withhold and the parties to which they would be distributed.

The law stands to have a sweeping short- and long-term impact statewide, S&P said in a recent special report, because if the intercept becomes commonplace it could strain some issuers. Moody's Investors Service warned that the Harvey crisis illustrates how municipal pensions are 'must-pay' obligations under Illinois law and have greater protection against default than a city's general obligation bonds.

Published reports have warned that several hundred pension funds may qualify for use of the intercept with more than 600 local government public safety pensions outside Chicago carrying about $9.9 billion of unfunded liabilities with a collective funded ratio of 57.58%. Harvey is not rated by any rating agency and it has previously defaulted on some debt service payments.

BY SOURCEMEDIA | MUNICIPAL | 05/22/18 07:04 PM EDT

By Yvette Shields

Custodial Receipts: A Useful Tool for Restructuring Insured Municipal Bonds.

Municipal restructurings pose many challenges distinct from those encountered in a typical corporate bankruptcy. One challenge frequently encountered in the context of a municipal restructuring is how to restructure municipal bonds insured by a monoline insurance company. Custodial receipts, which have long been used to facilitate secondary market insurance for muni bonds, can be a useful tool that allows a policy on a legacy bond to be mated with a new muni security being issued in a restructuring.1

Municipal Bond Insurance in a Nutshell

Under a classic municipal bond insurance policy, a bond insurer will agree to essentially guarantee payment of principal and interest when due on the insured bonds, in accordance with the original payment schedule. If the issuer of the insured bonds defaults, in the payment of interest or principal, the insurer makes the payment to bondholders and will be subrogated to the bondholders' right to the missed payment. Typically, as a condition of, and in exchange for, the insurer covering the missed payment, bondholders will be required to assign their rights to the missed payment to the insurer, and the insurer will be fully subrogated to the bondholders' rights to the missed payment. Usually, so long as a bond insurer has not defaulted on its policy, the bond insurer will control the exercise of most remedies in respect of the insured bonds.

Challenges in Restructuring Insured Municipal Bonds

This works well enough so long as the original bonds remain outstanding. However, often in bankruptcy, an issuer's bonds are canceled, and new restructured bonds are issued in their stead. The economic terms of the restructured bonds may diverge from those of the original legacy bonds in certain key ways, including reduced principal amount and interest rate and an extended amortization schedule. The cancellation of insured bonds in exchange for new restructured bonds gives rise to various questions and uncertainties, including:

- Are payments made by the issuer under the restructured bonds credited against payments owed by the bond insurer on its insurance policy for the legacy (i.e., now canceled) bonds?
- How does the right to payments under the bond insurance policy trade following the restructuring, after the insured bonds are no longer outstanding? Should it trade separately from or together with the restructured bonds?
- How do the insurer's subrogation and assignment rights apply where bonds it is insuring no longer exist, and does the insurer retain subrogation/assignment rights in respect of the new restructured bonds?
- Who has voting rights with respect to the restructured bonds issued in exchange for the legacy insured bonds?

The challenges posed in restructuring insured bonds were highlighted by a New York case in which a monoline insurer argued that it was no longer obligated to make payments on its policy since the insured bonds were canceled as part of the plan of reorganization.2 While the trial and appellate courts both rejected this argument, the case demonstrated the importance of considering issues relating to bond insurance policies when preparing a plan of reorganization.

Custodial Receipts and Secondary Market Insurance

One tool that may be useful to address the challenges of restructuring an insured muni bond is custodial receipts — an instrument borrowed from the secondary insurance market.

Unlike the primary insurance market, where policies are purchased by a bond issuer contemporaneously with the original issuance of the insured bonds, secondary market insurance is purchased by holders of uninsured bonds at some point after the original issuance of the bonds. Bondholders wishing to acquire the insurance deposit their bonds with a custodian and receive a custodial receipt, often referred to as a “certificate of bond insurance” or “CBI,” representing the right to receive scheduled principal and interest payments from the custodian.

Ordinarily, payments from the custodian would simply be principal and interest payments on the bonds held in custody, which the custodian receives from the issuer. Should there be a default on the bonds, the custodian will fund the payments through a draw on the secondary market insurance policy issued by the insurer.

The terms of the custody agreement are set forth in a custody agreement between the insurer and custodian, with the holders of the CBIs being identified as third-party beneficiaries of the custody agreement.

The SEC staff has granted no-action relief for secondary market issuance of custody receipts without registration under the Securities Act of 1933 and without the custodian having to register as an investment company under the Investment Company Act of 1940. See Fin. Sec. Assurance, Inc., SEC No-Action Letter, 1988 WL 234169 (Mar. 30, 1988). This no-action relief has been premised on various representations, including that the custodian would play a purely ministerial role.

Custodial Receipts as a Tool for Restructuring Insured Municipal Bonds

While originally developed in the secondary insurance market, custodial receipts can be used to facilitate a restructuring of insured bonds. And unlike secondary insurance market arrangements where the custodial agreement is grafted onto the existing debt documentation, in the restructuring context, the indenture and other bond documents can be designed to work in tandem with the custody agreement.

Of course, the utility and feasibility of custodial arrangements will depend on the particulars of the terns of the restructuring. However, where the replacement debt securities are designed to track certain basic features of the legacy insured bonds, such as their payment schedule, a suitable custody arrangement can be engineered.

CBIs as a Replacement for Legacy Insured Bonds

The terms of a custodial arrangement may in these circumstances include features and provisions such as the following:

- On the effective date of the plan of reorganization, the insured legacy bonds are canceled, and the former holders of the insured legacy bonds receive custody receipts, or “CBIs,” representing a participation in the custody arrangement established under the plan.

- The CBIs are issued under their own CUSIP in "street name" through DTC, which facilitates the trading of beneficial interests in the CBIs.
- Also on the effective date, the restructured bonds issued in respect of the insured legacy bonds are deposited with an independent custodian. Consistent with the no-action letters for secondary market insurance, the role of the custodian is purely ministerial.
- The insurance policy for the insured legacy bonds is also deposited with the custodian.
- The custodian holds the restructured bonds and the insurance policy in custody on behalf of, and for the exclusive benefit of, the holders of the CBIs, pursuant to the terms of a custody agreement, to which the custodian and the insurer are parties.
- The CBIs represent the right to receive the payments that would have been due on the legacy uninsured bonds (had they not been canceled) in such amounts and at such times as they would have been due in accordance with the original unaccelerated payment schedule of the insured legacy bonds.
- The custodian uses debt service on restructured bonds held in custody to fund a portion of these payments.
  To the extent debt service on the restructured bonds is insufficient, the custodian makes a draw on the insurance policy to fund the shortfall.
- As part of the custody arrangement, the insurer agrees to remain bound by its original insurance policy, notwithstanding the cancellation of the original insured bonds.
- So long as the restructured bonds remain in custody and the insurer continues to perform under its policy, the insurer retains its rights of consent and control over exercise of remedies in respect of the restructured bonds to the same extent as it had such rights and control in respect of the legacy insured bonds under the legacy indenture.
- After all amounts are paid to the holders of the CBIs in accordance with the original payment schedule of the legacy insured bonds, the custodial relationship is dissolved and the restructured bonds held in custody are transferred to the insurer.

Issues to Be Considered

The parties, particularly representatives of the legacy bondholders, will need to consider and address a variety of issues in structuring a custodial arrangement under a muni bond plan of reorganization. These may include:

- How and by whom the custodian is compensated.
- The means for removing and replacing the custodian.
- Availability of information concerning the CBIs and the custodial arrangements, through postings on EMMA or otherwise.
- Availability of information concerning payments of principal and interest on the restructured bonds, and draws on the insurance policy, which may be required by bondholders for tax and accounting purposes.
- How and under what circumstances the custody agreement may be amended.
- The rights and remedies available to holders of the restructured bonds in the event of an insurer default, including the role, if any, of the indenture trustee in these circumstances.

Custodial Receipts as One Tool Among Many

Custodial arrangements will not be suitable for all situations. For example, these arrangements are unlikely to be attractive where long dated insured capital appreciation bonds are to be replaced with current pay restructured bonds. Also, the parties will need to be cognizant of the tax and securities law and other regulatory considerations relevant to CBIs. Where custodial arrangements are unsuitable, parties and their counsel will need to consider alternative means of preserving the benefits of the insurance policy for the legacy bondholders and their successors. Nonetheless, the custodial model should be on the radar of parties engaged in the restructuring of insured municipal bonds. In the appropriate circumstances, it can be a linchpin of a successful restructuring that effectively preserves the economic expectations of insured bondholders.

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1 Kramer Levin recently served as counsel to holders of insured municipal bonds in a restructuring that employed custodial arrangements of the kind described in this article.

2 See Oppenheimer AMT-Free Municipals v. ACA Fin. Guar. Corp., 959 N.Y.S.2d 90 (Table), 36 Misc. 3d 1229(A) (Sup. Ct. 2012), aff'd as modified, 971 N.Y.S.2d 95 (App. Div. 2013).

Kramer Levin Naftalis & Frankel LLP

by Steven Segal

May 3, 2018

Three Sneaky Ways Brokers or Dealers Can Take Advantage of Bond Transactions.

Whether you are managing your own investment portfolio or a private or public institution looking for investment vehicles for their pooled cash accounts to earn a better return than a bank account, we all directly or indirectly deal with brokers or dealers in the investment world.

In this day and age, more and more investors are turning towards online platforms to customize their investment portfolios and look for investment choices that best fit their needs. A broker or dealer is even more necessary in the municipal debt markets where an investor seeking municipal debt as a potential investment must contact one to get any pricing information on a buy or sell transaction. This is primarily due to the non-standardized and decentralized nature of the municipal capital markets. In simple terms, there are over 1 million municipal debt instruments outstanding at any given time and each debt could have a different structure. This warrants a need to have broker and dealers in the markets to facilitate trading.

In this article, we'll take a close look at the broker/dealer role in the municipal debt markets, various ways in which brokers can manipulate investors and some way to help investors protect their interests.

Brokers, Dealers and Municipal Debt Markets

Before we look at the mechanics of a municipal debt transaction, investors must be fully aware of the firm – either broker or dealer – and their role in the trade execution.

Let's look at the following example to understand a firm's capacity in executing a client's trade. Suppose a client goes to XYZ firm seeking to purchase a particular municipal debt instrument. If the firm is acting as a broker, it is simply taking a client's purchase order to market and helping him or her fill the order for a commission or fee. However, when a firm is acting as a dealer, they are filling the client's order themselves, meaning that if a client goes to XYZ firm to sell his muni debt instrument, the firm will buy (i.e. fill) that order by purchasing those instruments for the firm's own account and can resell them later. This also means that a dealer is acting in a principal capacity (i.e. as a market maker) and charges a markup or markdown when executing a transaction.

In either capacity, brokers and dealers are playing an integral part in the transaction execution. As mentioned above, the municipal debt markets still operate under a decentralized structure, which means that independent investors are highly dependent on their brokers and dealers to execute their trades at the right prices and look out for their best interests. Brokers and dealers often use a system where multiple brokers and dealers can provide quotes for bond transactions they are interested in buying or selling, also known as the Alternative Trading System (ATS). In theory, this creates a competitive environment for the individual investor looking to buy or sell.

Check out our article on the benefits of the all-to-all trading system here.

However, there are ways dealers can potentially take advantage of their retail customers.

How Muni Bond Market Intermediaries Can Take Advantage of You

There are the 3 key scenarios that muni bond investors need to be aware of while sending their next trade order to their brokers and dealers.

1. Internalization of Highest Bids

This practice is still prevalent in some of the dealer trade executions and can be quite costly for investors looking to buy or sell a particular security.

As mentioned above, in an ideal situation, when a dealer is to sell a bond on its customer's behalf, the dealer can host bids wanted on an alternative trading system and sell the bond at the highest bid, which will serve the client's best interest. However, there is a loophole; since the dealer has access to see all the bids coming in for their client's security, they are very well aware of the highest bid.

However, instead of informing the client about the highest bid, the dealer will buy the bond as a principal from their client below the highest bid price and keep it as inventory. The dealer knows that they have bought the instrument for less than the actual highest bid, and there is potential for them to later resell that security and make a profit.

Be sure to check out our previous article here that explains how to avoid overpaying for individual munis.

2. Bid Filtering

While partaking in the ATS, both the brokers and dealers can potentially filter out some of the bids coming in for a particular security they are trying to buy or sell for their investor as long as they have a valid reason not to transact with a particular counterparty.

However, the reason to not transact with a particular party is loosely monitored by the regulatory authorities. Therefore, dealers can unethically use this method to weed out the highest bids under false pretenses, and the dealer can execute that trade from its inventory at a lower bid. This also means that the customer will have to sell or buy the new security at an unfavorable price and without even knowing that there could have been higher offers.

3. Last Look Advantage

This tactic may not be as harmful to individual investors looking to buy or sell as the previous two tactics. But it certainly goes against trading fairness for other individual buyers or sellers in the market. Under this technique, a dealer reviews all the bids offered for the debt instrument an investor is looking to sell, and instead of selling the bond to the higher bidder, he or she acts as the principal and creates their own bid, slightly higher than the highest bid, and purchases that security for their own inventory.

Although the investor selling the particular security got the highest bid and it worked in his or her favor, it was still an unethical practice due to the unfair treatment of the other buyers or bidders. The dealer has an unfair advantage to look at all the bids and offer a slightly higher bid to win the business.

Not sure how to go around looking for the right muni bond? You can check our newly launched Municipal Bond Screener to explore muni bond CUSIPs across the U.S. based on custom parameters including issuing state, insurance status and a range for different bond attributes such as maturity, coupon, price and yield.

municipalbonds.com

by Jayden Sangha

May 24, 2018

Municipal Bonds Weekly Market Report: Fed Chair John Williams Using Neutral Rate as Guidance.

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 increased this week.
- Muni bond funds saw its second week of inflows.
- Be sure to review our previous week's report to track the changing market conditions.

Continue reading.

municipalbonds.com

by Brian Mathews

May 22, 2018

How Exposed Is Your State to Trade Tensions?

More than a dozen states have above-average international trade exposure, per a new Moody's report.

Implementation of U.S.-China tariffs or withdrawal from the North American Free Trade Agreement would have bigger economic effects on some states compared to the more limited impacts of other recent trade decisions, a new Moody's Investors Service report found.

U.S. talks with Mexico and Canada to renegotiate NAFTA are ongoing, although it remains unclear exactly when a new deal might be inked. President Donald Trump has said reducing the trade deficit with China is a major priority, with both sides at various points raising the threat of tariffs on imports.

The impacts of the U.S. pulling out of the Trans-Pacific Partnership after Trump became president and imposing duties on washing machines, solar panels, steel and aluminum earlier this year were short lived.

Continue reading.

ROUTE FIFTY

by Dave Nyczepir

MAY 25, 2018

IRS, Treasury Take Icy View of State Workarounds to Capped Deduction.

A notice issued on Wednesday could have implications for some recently passed state laws.

The Internal Revenue Service and the Treasury Department are calling into question the leeway states will have to provide taxpayers with ways to circumvent a recently imposed federal limit on state and local tax deductions.

Last year's Republican-led overhaul of the nation's tax code capped at $10,000 a deduction households can claim on their federal tax returns for state and local property, income and sales taxes they have paid.

Since then, lawmakers in some states have looked for legislative workarounds to the cap for their residents.

But, on Wednesday, the IRS and Treasury signaled they could take a dim view of states taking this sort of action.

The agencies issued a notice saying that they plan to propose regulations to "help taxpayers understand the relationship between federal charitable contribution deductions and the new statutory limitation on the deduction of state and local taxes."

"Taxpayers should be mindful that federal law controls the proper characterization of payments for federal income tax purposes," the notice says.

Jared Walczak, a senior policy analyst at the Tax Foundation wrote Wednesday that the move by the IRS and Treasury is "clearly bad news for the charitable contributions in lieu of taxes approach."

That approach involves states allowing taxpayers to effectively pay their taxes in the form of "charitable contributions," which would be credited against the taxes they owe at the state and local level, but still fully deducted at the federal level.

New Jersey is one state that turned to this option.

Other states, including New York and Connecticut, have come up with more elaborate alternatives to get around the cap. Walczak noted that the effect the new regulations would have on these workarounds remains unclear, but that they could also be at risk.

The IRS and Treasury did not indicate specifically when the regulations would be released.

New York Gov. Andrew Cuomo, a Democrat and a leading critic of last year's tax revamp, issued a statement on Wednesday slamming the pending regulations. "We have been and will continue to fight against this economic missile with every fiber of our being," he said.

"The IRS should not be used as a political weapon," he added.

Capping the state and local tax, or SALT, deduction, helped the lawmakers who crafted the tax law partially offset the loss of billions of dollars in revenues expected in the coming years due to corporate and individual tax cuts.

State and local government groups fought against the elimination of the tax break, and characterized it as a threat to their ability to levy taxes in order to pay for expenses like schools, infrastructure and public services.

Route Fifty

By Bill Lucia,
Senior Reporter

MAY 23, 2018

TAX - NEW JERSEY
Gamma-Upsilon Alumni Ass'n of Kappa Sigma, Inc. v. City of New Brunswick
Tax Court of New Jersey - April 26, 2018 - 30 N.J.Tax 426

Taxpayer, a non-profit fraternal organization that was exempt from federal income tax, sought review of city's assessment of a fraternity house that it owned.

City moved to dismiss taxpayer's complaint on grounds that taxpayer failed to respond to assessor's request for income and expense information of the property.

The Tax Court held that:

- Fraternity house was "income producing" under state statute barring a property owner from appealing an assessment after failing or refusing to respond within 45 days of request for income information if property was income-producing;
- City was not required to plead as an affirmative defense in its answer that taxpayer failed to respond to request for income information;
- City's motion to dismiss did not equate to a summary-judgment motion;
- Taxpayer was not entitled to discovery on a revaluation firm's involvement in sending request for income information; and
- Taxpayer was not entitled to discovery to explore whether the assessor would have used the

information provided had taxpayer responded to request for income information.

TAX - WISCONSIN

Thoma v. Village of Slinger

Supreme Court of Wisconsin - May 10, 2018 - N.W.2d - 2018 WL 2170153 - 2018 WI 45

Landowner petitioned for writ of certiorari to challenge board of review's tax assessment of developer's property, which had been re-classified from agricultural to residential.

The Circuit Court affirmed. Landowner appealed, and the Court of Appeals affirmed. Landowner petitioned for certiorari review, which was granted. While appeal was pending, landowner filed motion to vacate based on alleged faulty testimony, which the Circuit Court denied. Landowner filed petition to bypass the Court of Appeals. The Supreme Court granted the petition and consolidated the cases.

The Supreme Court of Wisconsin held that:

- Use of property only to maintain ground cover was not an agricultural use, and
- Assessor's improper reasoning for re-classification of property, which was based on injunction prohibiting agricultural use of the property, did not warrant relief from judgment.

Use of property to maintain ground cover was not an "agricultural use" required for agricultural tax classification, even if village assessor incorrectly believed when re-classifying property from agricultural to residential that injunction which prohibited agricultural uses required selection of residential classification for the property.

Assessor's re-classification of landowner's property from agricultural to residential based on improper reasoning that injunction prohibited agricultural use of the property did not warrant relief from judgment based on any other reason justifying relief, as landowner, who admittedly only used property for ground cover maintained by regular mowing, did not present any evidence before board of review to support a finding of agricultural use as defined by tax law.

Foundation Offers Charter Schools New Low-Cost Financing Options.

A foundation with a philanthropic vision is combining forces with impact investors to provide charter schools with alternative low-cost financing options for building and renovating schools.

The Walton Family Foundation, based in Bentonville, Ark., provided seed funding to create two "innovative" educational facility financing vehicles that it said would provide charter schools with new long- and short-term financing choices, in part because some schools don't have access to public financing.

With $200 million from the foundation to start up, the Charter Impact Fund will be a revolving-loa--type fund offering long-term, fixed-rate loans to high-performing charter schools for up to 100% of project costs.

It will also offer impact investors a forum to support high-quality charter schools, and will eventually tap into the bond market, according to Chief Executive Officer Anand Kesavan.

The Facilities Investment Fund, backed by commercial and philanthropic capital, will offer charter schools five-year, fixed-rate loans for up to 90% of project costs for new construction or renovations. It received $100 million from the foundation and Bank of America Merrill Lynch.

"Funds like Walton's will help charter schools send more resources directly to students and teachers, and work toward the day when more private, public, and philanthropic dollars lead to a level playing field for charter facilities," said Walton K-12 Education Program Director Marc Sternberg.

Charter schools – public schools that are independently run – serve more than 3.2 million students in 44 states and the District of Columbia.

Surveys suggest there are an additional 2.5 million students whose parents would enroll them in a charter school if location and capacity were not problematic, according to "Strengthening Federal Investment in Charter School Facilities," a February report commissioned by the Washington, D.C.-based National Alliance for Public Charter Schools.

"Access to facilities is and will continue to be a challenge to the growth of the sector," the report said. "Public charter schools do not have access to the same financing structures as traditional district schools."

The report said 15% of every dollar spent by charter schools goes to facilities or facility-related costs.

It also estimates that the interest rate for charter school borrowing is two times higher than it is for traditional public schools.

Charter school advocates say that less than half of all states authorizing them provide a per-pupil monetary allowance for their facilities, and that opportunities to share space with district schools are rare.

Charter school access to the municipal bond market is also on the rise across the country.

With two decades of tax-exempt bond financing activity on the books, the charter school sector continues to mature with "healthy increases" in the number of transactions and par-amount sold annually, NewOak director and senior analyst Wendy Berry said in a 2017 Year in Review released Feb. 20.

Charter school tax-exempt bond volume in 2017 totaled $3.5 billion, representing the sixth consecutive year of record issuance, said Berry, who specializes in covering the charter sector.

"This volume figure represents a robust increase of more than 20% in par-amount issued over 2016 statistics," she said, adding that a "substantial amount" of the increase was fueled by the proposed elimination of private activity bonds in early versions of the federal Tax Cuts and Jobs Act.

Although the final act signed into law in December retained PABs, Berry said she believes 2018 could be another year of record volume with issuance likely once again to be concentrated in a handful of states.

Given the solid growth rate in the number of charter schools, along with the expansion of many high-performing schools, she said it is not surprising that more charter schools are accessing the tax-exempt bond market.

“Although charter school bond issuance represents a relatively small piece of overall tax-exempt issuance – still less than 1% of annual municipal volume – it continues to grow at a very healthy pace,” she said.

Charter schools in 22 states and the District of Columbia entered the bond market in 2017, Berry’s year-end review found, though the number of transactions and the par amount associated with each jurisdiction varied widely.

On a combined basis, the top five issuing states were responsible for 54.6% of the number of transactions as well as 59.5% of the total par sold in 2017.

Arizona topped the list with $824.5 million of bonds issued in 27 transactions.

Texas came in second with sales of $482.9 million and California was third with $295.3 million, followed by Florida with $258 million and Utah with $199.7 million.

Because some charter schools don’t have access to the bond market, advocates contend that’s why there’s a need for alternative low-cost financing, a void that the Walton Family Foundation’s initiatives can help fill.

Kesavan said interest from prospective borrowers has been strong since the Charter Impact Fund was announced in April.

“We are in the underwriting process with several borrowers and expect to announce our first round of loans in late summer,” Kesavan said. “Interest from schools has considerably exceeded what our initial capital can fund, which tells us that we should bring more impact investors into the opportunity to help high-quality charter schools serve more students and families.”

The structure of the CIF, Kesavan said, is modeled after successful state revolving funds that serve projects in other sectors, such as clean water and affordable housing.

Over time, the CIF plans to expand lending activity with the objective of tapping the tax-exempt bond market with a structure that will preserve lower-cost financing for school facilities while offering impact investors an attractive option to put capital to work in the sector.

The “CIF is the first pooled fund of its kind for public charter schools, providing permanent, credit-enhanced loans at low cost,” Kesavan said.

Loans will offer charter schools funding for a project from a single source, freeing them from spending significant resources securing multiple streams of private funding. There will be no fees associated with issuance, and no debt service reserve costs.

Generally, loans will be guaranteed by the borrower’s credit, net revenues and real property.

“Chief among our eligibility criteria is the charter school’s academic standing, which must be high, and its sustainability, which we can gauge in part through family demand for seats,” Kesavan said. “The goal, of course, is to finance projects for high-quality, in-demand schools that will operate far into the future.”

The Facilities Investment Fund, created in collaboration with BAML and managed by Civic Builders, said it is actively underwriting several deals with schools across the country.

Charter management organizations — which run two or more charter schools — have also shown interest, FIF officials said.

"There continues to be a lot of excitement around the Facilities Investment Fund from charter schools and CMOs that see the program as a solution to many of their facilities funding challenges," the FIF officials said.

The FIF loans also expect to save charter schools money by providing funds from one source. Interest rates are currently under 5% and there's no prepayment penalty.

"The philanthropic and private capital blend allows FIF to achieve an interest rate for schools below commercial market levels," officials said.

FIF loans will be structured with a first-lien position on the property being financed.

Loans can be made in jurisdictions where real assets revert to the district upon charter revocation, depending upon jurisdiction and how the deal is structured.

Both CIF AND FIF initiatives are designed to make it easier and more affordable for public charter schools to build and renovate facilities, according to foundation board member Alice Walton, the daughter of Walmart founder Sam Walton and his wife Helen.

"This effort will allow resources that were spent on facilities to be directed back into the classrooms, back to the teachers and back to where it should be with the students," she said.

BY SOURCEMEDIA | MUNICIPAL | 05/23/18 07:08 PM EDT

By Shelly Sigo

S&P Extra Credit Podcast's Look at Infrastructure.

This week's theme is, infrastructure! Global Practice Leads Tina Morris and Susan Gray talk about public and private sector infrastructure issues. Kurt Forsgren discusses autonomous vehicles and Ted Chapman and Obioma Ugboaja cover water bundling.

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May 21, 2018

Transportation Remains in Forefront in Muni Credit.

Washington Metro Mini Summer of Hell

The Washington Metropolitan Area Transit Authority (WMATA), the operator of the Washington, D.C., metro system, has endured several years of delays and disruptions as it attempts to maintain the system's physical plant and improve its safety operations. It may be the most glaring example of infrastructure underinvestment existing right under the noses of Congress.

Now it's embarking on a three-year capital project with dedicated capital funding recently approved by legislatures in Virginia, Maryland and the District of Columbia. It does not include any federal money, once again reinforcing our emphasis on the trend of states and localities moving forward despite federal legislative inertia of infrastructure. Sen. Tim Kaine (D-VA) may have said it best when he said: "This is what happens when we fall decades behind on maintenance — commuters bear the brunt of the inconvenience when it finally comes time to dig out the backlog."

Continue reading.

by Joseph Krist

Neighborly Insights

05/24/2018

This Credit Focus is brought to you by Court Street Group Research.

Atlanta Gets Creative Financing Green Infrastructure.

The city plans to undertake eight projects worth $12.9 million making its Westside more resilient to flooding.

Atlanta is the first U.S. city to use a publicly offered environmental impact bond to fund green infrastructure projects, which the Department of Watershed Management plans to use to improve drainage in a neighborhood plagued by flooding.

The city proposed eight projects worth $12.9 million for improving the resilience of the Proctor Creek Watershed and nearby, flood-prone Westside neighborhoods to win The Rockefeller Foundation's Environmental Impact Bond Challenge.

Investment advisory firm Quantified Ventures is helping Atlanta structure the deal, while financial technology company Neighborly is acting as underwriter.

"I think it really allows the municipality to deploy green infrastructure and apply the findings of projects to its broader infrastructure plans," Lindsey Brannon, Neighborly's head of public finance, told Route Fifty.

The municipal bond market is worth a billion dollars per day, Brannon said, but issuers and investors increasingly seek a "pay-for-success" model that measures project impact—holding state and local governments more accountable for their spending.

Neighborly first worked with DC Water in 2016 on a private environmental impact bond, or EIB, for green infrastructure projects aimed at flood relief. Payment was dictated by successful stormwater reduction over several years.

Rockefeller helped finance that offering and later partnered with Neighborly in July on the new, public challenge. The foundation provides grant funding on Neighborly's online brokerage platform, which then underwrites the bonds and places investors.

There's enough funding for two cities, but Atlanta was the first to be announced.

Green infrastructure captures water with soil and vegetation more cheaply than traditional grey infrastructure, while also creating more urban green space. All eight of the city's proposed projects—including bioretention basins, stormwater planters, bump-outs, and permeable pavement—are designed to reduce strain on its combined wastewater-stormwater sewer system.

"Utilities nationwide are all searching for innovative ways to acquire creative financing, and these projects will successfully demonstrate how community partners working together can advance green infrastructure for our communities," said Kishia Powell, Watershed Management commissioner, in the March announcement.

Atlanta has spent $2 billion on wastewater infrastructure in recent years, earning a Clean 13 designation in 2017 from the Georgia Water Coalition.

Projects benefiting Vine City, English Avenue, Mozley Park, Grove Park, and the Bankhead/Hollowell corridor were shovel-ready, Brannon said, and having stakeholder buy-in ahead of time made Atlanta the perfect choice for an EIB. Neighborly needed an upfront revenue source that could pay back the bonds and wanted to see them benefit vulnerable communities while growing the investor base interested in resilience, Brannon said.

"We wanted to make sure the contribution of the project was also scalable," Brannon said. "Other cities could use this as an example of impact, in terms of financing approach."

Route Fifty

By Dave Nyczepir,
News Editor

MAY 24, 2018

Why We Need a National Infrastructure Map.

Setting priorities is hindered by the lack of systematic information available on the nation's inventory of infrastructure assets, their location and condition.

It is widely accepted that the general condition of America's infrastructure is poor and that major investments are needed. In its latest annual Infrastructure Report Card, the American Society of Civil Engineers issued an overall grade of D+ and estimated that $4.6 trillion would be needed to address the challenge.

Even though major investment in America's infrastructure was called for by many of the candidates running for president in 2016, including President Trump, positive movement on this issue has been stymied by political gridlock. One can blame partisan politics. But, perhaps we find ourselves at a political impasse for other reasons. Perhaps we lack a clear, data-driven picture that could provide public administrators, politicians, industry partners, and citizens alike a common understanding of this enormous infrastructure challenge at sufficient geographic detail that it has meaning to them. Perhaps we need a National Infrastructure Map.

On May 1, the National Academy of Public Administration, in partnership with the American Geographical Society, the National Academy of Construction, the American Society of Civil Engineers, and Arizona State University, convened leaders in public administration, infrastructure development, geospatial technology, and data integration/open data—spanning industry, government, universities and the social sector—to tackle this very basic question.

These organizations came together on this important issue because all understood that to have a hope of a coherent national infrastructure investment strategy, we must have a common understanding, a common picture of our national infrastructure. We must know the condition of all of our highly interdependent infrastructure systems, and how they are arrayed geographically, at a very fine scale if we are to set priorities for investment. This is not just a problem for the federal government. Infrastructure is a fundamentally intergovernmental challenge that requires transparency and accountability across local, regional, and federal governmental organizations of all kinds.

Priority setting is an inherently political process that requires the recognition of mutual interest and deal-making. But this political process cannot function well in the absence of good information. Priority setting in infrastructure is hindered by the lack of systematic information available on the nation's inventory of infrastructure assets, their location and condition. All politics is local and infrastructure is local, yet granular information on the location and condition of infrastructure across the nation is not readily available in a way that can enable a positive-sum politics.

To solve this problem, it is imperative that leaders from every sector join in a thoughtful dialogue about how we, together, can help envision our national infrastructure challenge in a common geographic context that allows us to understand the very specific interdependences that exit between our very real local, regional and national infrastructure needs.

In an age increasingly defined by internet-based systems and open data, the challenge is not primarily one of technology. Geographic information systems for capturing location-based data on infrastructure have been broadly adopted by public agencies and private organizations at every level of government for decades. But access to this information is constrained by a variety of factors, including the lack of interoperability across systems, jurisdictional issues and proprietary rights. Moreover, data is collected for different purposes using different standards and, therefore, is often not comparable.

Consequently, information on the nation's infrastructure is uneven and stovepiped. Infrastructure challenges cannot be assessed in an integrated way or communicated effectively to the relevant decision-makers and constituencies. However nerdy this may sound, the lack of an online, digital National Infrastructure Map that organizes such information for citizens and policymakers alike is a major cause of our nation's inability to achieve political consensus on infrastructure investment. Its absence leaves us unable to govern across the divide.

Congress should be investing in the creation of a National Infrastructure Map—one that provides political leaders and citizens with readily available, systematic, comparable, location-based information about the nation's infrastructure to support an informed political process for determining priorities and acting on them. Done right, this will help overcome the public leadership challenge that has left us stalled, enabling political leaders at all levels of government, across our nation, to marshal support among citizens and key stakeholders around a positive vision for a better nation.

Route Fifty

By Teresa W. Gerton, Christopher K. Tucker, Wayne A. Crew and Jonathan Koppell

MAY 22, 2018

Teresa W. Gerton is the president and CEO of the National Academy of Public Administration; Dr. Christopher K. Tucker is the chairman of the American Geographical Society; Wayne A. Crew is general secretary of the National Academy of Construction; and Jonathan Koppell is dean and professor at Arizona State University's College of Public Service and Community Solutions.

Water Infrastructure Legislation Gushes Ahead in Congress.

A House committee passed its Water Resources Development Act legislation unanimously on Wednesday.

WASHINGTON — A House panel moved forward Wednesday with a bill that would call for certain tax dollars be spent on port and harbor projects in future years.

The House Transportation and Infrastructure Committee unanimously approved its Water Resources Development Act, or WRDA, legislation that would set policy for the U.S. Army Corps of Engineers, an agency involved in public works like dams, locks and harbors.

Committee Chairman Bill Shuster, a Pennsylvania Republican, said the bill could hit the House floor in early June.

Continue reading.

Route Fifty

By Bill Lucia,
Senior Reporter

MAY 23, 2018

Senate Panel Passes Water Bill That Would Rework Lending Program.

Provisions involving the Water Infrastructure Finance and Innovation Act have drawn backlash from some utility groups.

WASHINGTON — Water infrastructure legislation a Senate committee approved Tuesday would make changes opposed by some major utility groups to low-cost lending programs for water and sewer projects.

The American Water Works Association, which says it represents almost 4,000 utilities that supply about 80 percent of the country's drinking water, withdrew its support for the bill over changes that involve the Water Infrastructure Finance and Innovation Act, or WIFIA.

Tommy Holmes, the group's legislative affairs director, described the provisions as "a virus being injected into the WIFIA program" with the long-term aim of killing it.

But both Democratic and Republican lawmakers support the WIFIA-related provisions, which also have strong backing from the National Rural Water Association.

Sen. John Barrasso, the Wyoming Republican who chairs the panel that passed the bill, said the language would “help smaller rural communities” complete waterworks upgrades.

The Senate Environment and Public Works Committee voted 21-0 to approve the Water Resources Development Act, or WRDA, legislation it passed on Tuesday.

Apart from the the squabble over WIFIA, the bill enjoys bipartisan support and has the backing of groups ranging from the National Association of Counties to the National Audubon Society.

WRDA bills typically come up in Congress every two years and deal primarily with policy for the Army Corps of Engineers, an agency that oversees infrastructure like locks, dams and levees.

But the Senate bill also has sections that deal with drinking water, sewer utilities and the Environmental Protection Agency.

Lawmakers on the House Transportation and Infrastructure Committee are taking a different approach. The WRDA bill they released last week focuses tightly on Army Corps.

“I’m committed to getting a major infrastructure piece of legislation to the president’s desk,” Barrasso said when asked about the differences between the bills after Tuesday’s hearing.

“We’re looking forward to working with the House,” he added.

The version of the bill the Senate committee approved includes language that would effectively extend WIFIA lending terms to another set of waterworks programs known as the drinking water and clean water state revolving funds.

With the revolving funds, EPA awards “capitalization grants” to states. States contribute a 20 percent match, and then use the money to provide low-cost loans and other financing assistance for drinking water and wastewater projects. The funds are one of the primary ways the federal government provides support for local water infrastructure across the U.S.

WIFIA was created in 2014. It currently allows the federal government to lend directly for water projects at interest rates that mirror the generally low rate for U.S. Treasury debt.

The program targets larger projects, with cost thresholds of at least $5 million in communities with 25,000 people or less and at least $20 million in bigger places.

Critics of WIFIA frequently complain that it has left small and rural communities boxed out.

This idea of blending WIFIA with the revolving funds was proposed in a bill that Sens. John Boozman, an Arkansas Republican, and Cory Booker, a New Jersey Democrat, introduced in the Senate in January. An identical bipartisan bill was also introduced then in the House.

The legislation would enable states to offer revolving fund loans, with Treasury interest rates, for water and wastewater projects that they’ve determined to be priorities.

In some cases, the bill would allow for interest rates that are even lower than the Treasury rate. It would also allow for loans to cover up to 100 percent of project costs, in contrast to a 49 percent cap that is imposed under the traditional WIFIA program.

“I’m proud to support this innovative provision,” Booker said Tuesday.

When the possibility emerged that the WIFIA-related provisions could end up in the Senate WRDA bill, the American Water Works Association, the Association of Metropolitan Water Agencies and the Water Environment Federation sent a seven-page letter to the Environment and Public Works Committee outlining in detail why they were opposed, as Route Fifty reported earlier this month.

One of their main arguments against the legislative proposal is that it would undercut the ability of the WIFIA program to "leverage" limited federal dollars for major projects.

"Communities that wish to finance large-scale water and wastewater projects would be unable to take advantage of any of the funding made available," the groups wrote.

Holmes, with the American Water Works Association, said some boosters of the revolving fund-WIFIA concept fought against the creation of WIFIA, and have opposed appropriations for the program since then.

But Mike Keegan, who lobbies for the National Rural Water Association, applauded the WIFIA measures in the Senate bill. "This simply increases the fairness of WIFIA," he said. "Large communities can still compete."

Keegan highlighted language meant to direct funding to places with greatest "need," which he said the current WIFIA program does not do.

"This created an unfair playing field for federal funding, allowing federal funds to be used by less needy projects at the expense to the more needy," he said.

WRDA bills are not spending measures. But the Senate bill would authorize lawmakers to appropriate $100 million annually for fiscal years 2019 and 2020 to support the types of revolving fund-WIFIA loans that the legislation proposes.

Although the EPA and the Army Corps have the authority to establish WIFIA programs only EPA has one up and running. The agency awarded its first WIFIA loan last month—up to $134.5 million for a Seattle-area stormwater and wastewater facility.

Estimates by states and the EPA show that needed investments in U.S. water and wastewater infrastructure will total $744 billion over a 20-year period.

Route Fifty

By Bill Lucia,
Senior Reporter

May 22, 2018

[Credit Analysts Focus on Substance Over Timing of Illinois Budget.]

CHICAGO — The heat is on for Illinois lawmakers to address the state's financial problems in a fiscal 2019 budget that faces a May 31 deadline for passage with a simple-majority vote, credit rating analysts said on Friday.

Illinois' general obligation (GO) bond ratings, the lowest among the 50 states, are just a notch or two above the junk level, reflecting a huge unfunded pension liability, escalating pension contributions and a chronic budget deficit.

“The question is what progress will the state make, if any, in breaking out of those long-running challenges?” Moody’s Investors Service analyst Ted Hampton said in a phone interview. He added that the outcome of the budget process will be more significant than when the process ends.

An impasse between Republican Governor Bruce Rauner and Democrats who control the legislature left the nation’s fifth-largest state without complete budgets for an unprecedented two-straight fiscal years. Lawmakers enacted a fiscal 2018 budget and income tax rate hikes over Rauner’s vetoes in July, sparing Illinois from becoming the first state with a junk rating.

“Nobody sees the advantage of creating another impasse,” said Steve Brown, spokesman for House Speaker Michael Madigan.

Rauner, who proposed a $37.6 billion general fund budget in February, has been meeting with legislative leaders to try to reach a deal on a spending plan for the fiscal year that begins July 1.

But details are scarce.

“Rank and file members have no idea what the budget is going to look like,” State Representative Jeanne Ives, who narrowly lost the March Republican primary for governor against Rauner, said during Friday’s House session.

Prospects for tackling the state’s $129 billion unfunded pension liability appear to be slim given bipartisan opposition in the House to Rauner’s proposal to shift some pension costs onto school districts.

Constitutional concerns are also clouding chances for legislation Rauner wants to reduce pension costs by giving workers a choice of counting future raises they may receive toward their pensions or receiving retirement payments that include a 3 percent annual cost-of-living increase.

Fitch Ratings analyst Eric Kim said a return to political gridlock that fuels fiscal pressures could trigger a negative rating action for Illinois’ GO debt.

Using recently revised criteria, Fitch on Friday downgraded by five notches the rating on $2.5 billion of Build Illinois sales tax revenue bonds to A-minus. The firm cited too big a spread between the debt’s previous AA-plus rating and the state’s GO rating of BBB with a negative outlook.

Meanwhile, Illinois’ so-called credit spread for 10-year bonds over Municipal Market Data’s benchmark triple-A yield scale narrowed in recent days to 190 basis points, signaling easing concerns by investors over the state’s debt.

(Graphic: Illinois credit spread January-May 24 – https://reut.rs/2KVG25c)

(Reporting by Karen Pierog in Chicago; Editing by Daniel Bases and Matthew Lewis)

By Reuters

May 25, 2018

Fitch Downgrades Illinois' $2.5B Build Illinois Bonds to 'A-'; Outlook

Negative.

Fitch Ratings-New York-25 May 2018: Fitch Ratings has downgraded and removed from rating watch negative the ratings on the following Build Illinois sales tax revenue bonds of the state of Illinois to ‘A-‘ from ‘AA+’:

–$1.41 billion senior obligation bonds;
–$1.08 billion junior obligation bonds.

Fitch placed the bonds on Rating Watch Negative on April 4 following release of its revised criteria for rating U.S. state dedicated tax bonds. With the annual update to its “U.S. Public Finance Tax-Supported Rating Criteria”, Fitch specified more limited situations in which a state dedicated tax security can be rated without regard to the state’s general credit quality. Additionally, the revised criteria include detail on circumstances in which a state dedicated tax security, while not considered distinct from the state’s Issuer Default Rating (IDR), can nonetheless be treated as stronger than but still linked to the state’s general credit risk. In these cases, Fitch limits the rating to no more than three notches above the state’s IDR.

Under the revised criteria, the degree of allowable notching above the state’s IDR, for those credits that do not meet Fitch’s requirements for rating without regard to the state’s IDR, is informed by: the breadth of the dedicated revenues (the narrower the better); the nature of the borrowing program (the more specific the better); and the use of residual revenues (the more segregated the better).

This downgrade is based on a review of the Build Illinois bonds under the revised criteria.

The Rating Outlook is Negative, reflecting the Negative Outlook on the state’s IDR, to which the Build Illinois bond ratings are now linked.

SECURITY
Build Illinois bonds have a first and prior claim on the state share of the 6.25% unified sales tax and a first lien on revenues deposited into the Build Illinois Bond Retirement and Interest Fund (BIBRI). Debt service payments on the junior obligation bonds are subordinate to outstanding senior lien debt service; the senior lien is not closed.

KEY RATING DRIVERS

RATING LINKED TO STATE IDR: Dedicated revenues for the Build Illinois bonds are structurally protected from the state of Illinois’ general operations through statutory and bond document provisions, warranting a rating above the state’s IDR of ‘BBB’, Outlook Negative. However, because the bond security includes a statutory pledge of the state share of sales tax revenues, and those revenues flow to state general operations after debt service set-asides, the bonds cannot be rated without regard to the state IDR under Fitch’s revised criteria.

TWO-NOTCH DISTINCTION: The narrowness of the pledged revenue stream, based on the additional bonds test leverage limitations for the senior and junior liens, and the statutorily defined nature of the borrowing program support a rating two notches above the Illinois IDR.

ROBUST COVERAGE AND RESILIENCE: Debt service coverage on both the senior and junior lien bonds from the state share of sales tax revenues (pledged revenues) is very high. Given the legal leverage limitations, pledged revenues can sustain a significant level of decline and still maintain ample debt service coverage on both the senior and junior liens. This is consistent with a ‘aaa’ assessment of resilience through economic declines.

MODEST GROWTH ANTICIPATED: Illinois' economic performance, while positive, has lagged that of the U.S. as a whole and Fitch anticipates pledged revenues will grow essentially in line with inflation. This is consistent with a 'a' assessment for pledged revenue growth prospects.

RATING SENSITIVITIES
STATE IDR LINKAGE: The ratings on the Build Illinois bonds are sensitive to changes in the state of Illinois' IDR, to which they are linked.

PLEDGED REVENUE TRENDS: The ratings are also sensitive to the performance of sales tax revenues and resulting debt service coverage, although the state IDR linkage currently limits the rating to well below what an analysis of the pledged revenue stream alone would support. Limits on additional debt issuance that require very high historical coverage provide significant cushion against revenue declines.

CREDIT PROFILE

Illinois is a large, wealthy state at the center of the Great Lakes region. It benefits from a diverse economy centered on the Chicago metropolitan area. Illinois' economy has gradually shifted, similarly to the rest of the U.S., away from manufacturing to professional and business services. The remaining manufacturing sector is less concentrated in the auto sector than surrounding states but remains vulnerable to cyclical downturn. By most measures the economy has grown slower than the nation for many years, and population levels have been stagnant.

Build Illinois bonds are secured by a first priority pledge of the state share of sales tax revenues (80% of total state sales tax revenues) up to the amounts needed annually to meet debt service requirements, as well as a lien on the moneys in the fund (BIBRI) that receives monthly transfers of the state share of sales tax revenues. The state sales tax rate has been 6.25% since 1990 and the state share is defined statutorily as 80%, or 5% out of the 6.25% levy. The state share was $8.5 billion in fiscal 2017 (essentially flat with 2016), providing 26x coverage of annual debt service on aggregate debt, including the junior obligations. Debt service declines steadily each year.

Certain of the Build Illinois bonds authorized by legislation enacted in July 2009 also benefit from revenues deposited in the state's Capital Projects Fund. These revenues include sales taxes levied on candy and grooming products, and on certain beverages. Ultimate security for these bonds is the same as all other Build Illinois bonds and Fitch's analysis focuses on the pledge of the more significant state share of sales tax revenues.

LINKED TO STATE IDR
To rate a state dedicated tax security above the state's IDR, dedicated revenues must be structurally insulated from the state's general financial operations. Strong legal provisions for the Build Illinois bonds establish a flow of funds where the state share of sales tax revenues (pledged revenues) is segregated from Illinois' general operations to first meet requirements under the Build Illinois bonds' master indenture, including for debt service. This structure enhances the prospects for full and timely payment, allowing for a rating above the state's IDR, but does not meet Fitch's criteria for rating without regard to the IDR.

As there is no bankruptcy framework available to U.S. states, evaluation of the prospects for varying security structures at a time of fiscal distress is by necessity somewhat judgemental. Absent a bankruptcy framework, the primary limit on state action and source of protection for state bondholders is the contract clause of the U.S. constitution and equivalent clauses in state constitutions. Although contract clause protections under federal and state constitutions restrict the ability of a state government to impair its obligation to pay bondholders from dedicated tax revenue, the judicial interpretations of the contract clause indicate that it does not impose an absolute constraint. One of the key legal tests of whether a contract can be impaired is whether the impairment is necessary and reasonable.

Given this legal backdrop, under the revised criteria, the only cases in which Fitch can rate a state dedicated tax bond distinct from and without regard to the state IDR are rare situations where Fitch believes that the nature of the dedicated revenue stream or the legal structure render remote the possibility of a successful impairment argument. The security must be very clearly segregated from state operations and have no nexus with general state functions. Examples include bonds issued to fund state unemployment compensation and worker's compensation systems.

STRONG LEGAL PROVISIONS
In the Build Illinois Bond Act and the 1985 master indenture for the Build Illinois bonds, the state pledges and establishes a first and prior claim on the state share of pledged revenues for payment of the bonds. The pledge is limited to the greater of the amount necessary to meet annual debt service requirements, or 3.8% of the state share – the indenture defines this amount as the Required Bond Transfer and this has been the 3.8% of pledged revenues since fiscal 2013. The Act and the indenture require the State Treasurer and Comptroller to make monthly payments of the greater of 1/12th of 150% of the certified annual debt service or 3.8% of the state's share of sales tax revenues to the trustee.

The Act serves as an irrevocable and continuing appropriation and provides irrevocable and continuing authority for the Comptroller and Treasurer to make these monthly payments, as directed by the Governor. Under the Act and Indenture, the state also covenants not to impair the rights of bondholders, and specifically not to limit or alter the basis of the pledged revenues.

TWO-NOTCH DISTINCTION
The Build Illinois bond structure warrants a rating two notches higher than the state's IDR given the narrowing of the dedicated revenues through the additional bonds tests (ABT) and the specific nature of the borrowing program. The open-ended use of residual revenues for general state operations keeps the rating below the maximum three notches above the state's IDR allowable under Fitch's criteria.

While the state share of the sales tax revenues is a broad revenue source, the leverage limitations imposed by the senior and junior liens' ABTs' significantly narrow the scope of the dedicated (pledged) revenues. At full leverage under the ABTs, 9.8% of the state share of sales tax revenues would be used for debt service.

Specific uses for Build Illinois bond proceeds are defined in the Act. While the four defined uses are broad, the Act also explicitly lists specific projects or types of projects to be funded with Build Illinois bond proceeds. The state has targeted its use of the Build Illinois program with bond proceeds primarily used by three agencies (Department of Commerce and Economic Opportunity, Department of Natural Resources, and the Environmental Protection Agency) and for smaller economic development projects. The state has not used the program for general capital borrowing.

The state share of sales tax revenues in excess of the annual Required Bond Transfer is available for general operations. Sales tax revenues are a key revenue source for Illinois' general operations, comprising between 25%-30% of annual general fund revenues in most years. The recent increase in income tax rates will reduce the portion of general fund revenues derived from sales tax revenues, but they will remain significant. Also the indenture permits the state to transfer excess pledged revenues at the end of each fiscal year to its general fund. The state reports that $2.5 million is typically kept within the indenture with any amounts above this transferred to the general fund. Between fiscal 2015 and 2017, the state transferred an average of approximately $125 million of excess pledged revenues to its general fund.

EXCEPTIONAL RESILIENCE OF PLEDGED REVENUES

To evaluate the sensitivity of the dedicated revenue stream to cyclical decline, Fitch considers the results of the Fitch Analytical Sensitivity Tool (FAST), using a 1% decline in national GDP scenario, as well as assessing the largest decline in revenues over the period covered by the revenue sensitivity analysis.

Based on a 15-year pledged revenue history, FAST generates a 3% scenario decline for the state share of sales tax revenues in the first year of a moderate economic downturn. The largest peak-t--trough historical decline was 12% between fiscal 2008 and 2010.

Additional bonds tests require debt service be no more than 5% of the state's prior year sales tax receipts to issue senior lien bonds and 9.8% to issue junior obligation bonds; this effectively requires 20x coverage to issue senior lien bonds and 10.2x coverage to issue junior obligation bonds. With issuance up to the 10.2x ABT for junior lien bonds (the maximum legal leverage on the pledged revenues), the state share of sales tax revenues could withstand a 90% decline – equivalent to 31x the projected decline in Fitch's scenario of a moderate economic downturn and 7.5x the largest historical peak-to-trough decline – and still cover maximum annual debt service . This is an exceptional level of resiliency.

MODEST GROWTH IN REVENUES

With a relatively slowly growing state economy, Fitch expects pledged revenues will grow essentially in line with inflation. Sales tax revenues are economically sensitive, as illustrated by the cumulative 12% decline during the Great Recession. Revenue performance was more robust after the end of the Great Recession. But growth has tailed off recently and fiscal 2017 collections were roughly equal to fiscal 2015. The state reports that the current softness is caused in part by lower gasoline prices. The state levies its sales tax on gasoline as a percentage of the per-gallon price. Over the past decade and including the Great Recession, average annual growth in pledged revenues has been 1.4%, just below inflation. Fitch anticipates pledged revenues will grow modestly on a real basis over the long term.

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In addition to the sources of information identified in Fitch's applicable criteria specified below, this action was informed by information from Lumesis and InvestorTools.

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Additional information is available on www.fitchratings.com

How Public Pensions Can Start Healing Themselves.

A series of questions and answers can help.

Our discussion last week about representatives of the League of California Cities urging CalPERS, the state's huge pension fund for public employees, to juice up investment returns generated a lot of interesting feedback.

It is clear that public-pension funds need some help. Rather than offer specific investment recommendations, I am going to make some suggestions to help them think about what they should be considering when reviewing their own portfolios.

It is important for managers and public representatives to understand what they know, what they don't know, and what they can't possibly know. Some of the biggest mistakes in asset management come from not knowing the answers to those deceptively simple questions.

Continue reading.

Bloomberg View

By Barry Ritholtz

May 21, 2018, 10:00 AM PDT

States Turn to New Tool to Sustain Pension System Funding.

Stress tests help policymakers plan for the next recession.

Eager to strengthen the long-term financial health of their public-sector pension systems, officials in several states have embraced a nonpartisan, data-driven approach to more precisely assess their ability to fulfill the benefit promises made to public employees.

Called stress test reporting, this new practice can show policymakers how adverse economic scenarios could affect retirement system investments and state budgets. Because earnings on investments typically make up the largest share of pension fund revenue, lower returns or losses need to be offset by higher contributions from the state government and workers. The stress testing model created by The Pew Charitable Trusts also allows states to account for the condition of their economy and tax collections, offering a broad look at the impact of pensions on their overall fiscal health.

A forthcoming report by the John F. Kennedy School of Government at Harvard University looks at initial results using the Pew approach in 10 states.

[Continue reading.](#)

Route Fifty

By The Pew Charitable Trusts

May 22, 2018

[Study: Public Pension Funds Still Highly Vulnerable.](#)

The Mossavar-Rahmani Center for Business and Government at Harvard University studies what could happen to pension funds in 10 states under various economic scenarios.

CHERRY HILL, NEW JERSEY — Many pension funds for public workers already owe far more in retirement benefits than they have in the bank, and the problem will only grow worse if the economy slows down, according to a report released Thursday.

The study from The Pew Charitable Trusts found that the New Jersey and Kentucky funds are in such perilous shape that they risk running dry.

Governments have been ramping up contributions to the funds to help cover the promises they've made to retirees, but that leaves less money to spend on schools, police, parks and other core government services.

Another option is reducing pension benefits. A plan to do that in Kentucky led to teacher walkouts earlier this year.

The Pew study, published by the Mossavar-Rahmani Center for Business and Government at Harvard University, examines what would happen to pension funds in 10 states under various economic scenarios.

If a fund doesn't bring in enough money to cover its promised retirement costs, the state would have to make up the difference. In New Jersey, that would mean spending at least $2 billion more a year.

"These findings don't come as a surprise and underscore the need to bolster the state's surplus," said Jennifer Sciortino, a spokeswoman for the state Treasury Department. She said Gov. Phil Murphy, a Democrat who took office in January, wants to increase the surplus by 50 percent.

New Jersey is gradually raising its contributions, but the Pew report says getting to full funding will be a challenge for the state.

Kentucky Gov. Matt Bevin, a Republican, signed a bill last month reducing some retirement benefits for current and future teachers, but not for those already retired.

On Thursday, Bevin spokeswoman Elizabeth Kuhn said the Pew findings echo warnings from the governor since he took office. She said addressing the pension fund's $60 billion unfunded liability is his top fiscal priority.

"After years of Kentucky governors underfunding and mismanaging the pension system, the report confirms that Gov. Bevin's commitment to fully fund the system will provide a stronger financial outlook for the state," she said in a statement.

The report said that even with changes, Kentucky could be in a situation similar to Connecticut and Pennsylvania. Both states have increased state pension contributions and might have to keep them high for decades to come, squeezing out funding for other priorities in the state budget.

The report also found that the relatively healthy pension systems in North Carolina and Wisconsin are more likely to weather downturns. Pew also looked at the funds in Colorado, Ohio, South Carolina and Virginia.

Notably absent from the report was California, which has the two largest public pension funds in the nation. They had a combined $168 billion in unfunded liabilities in 2016, according to another recent Pew report. Mennis said California's funds were not included in the stress test study because they are so large and uniquely structured.

Nevertheless, the issue has been on the mind of California Gov. Jerry Brown, a Democrat who is in his final year in office. Brown suggested earlier this year that when a recession hits, pensions "will be on the chopping block."

By Geoff Mulvihill

May 25, 2018

Congress Passed the Banking Bill. Here's What City Leaders Need to Know.

In the wake of the Great Recession, there was broad consensus that Congress and bank regulators needed to take measures to ensure the largest banks in the country, those deemed systemically important financial institutions (or SIFIs), were safeguarding themselves and the role they play in the national economy from dangerous levels of risk.

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act. The Act established a host of regulations for the financial industry and defined SIFIs as banks with more than $50 billion in assets. Consensus split on whether or not $50 billion was a fair threshold for determining whether a bank was "too big to fail," or an arbitrary number that would harm community and regional banks.

This March, the Senate passed the Economic Growth, Regulatory Relief, and Consumer Protection Act (S. 2155), otherwise known as the Senate Banking Bill. And yesterday (May 23), after an agreement to tackle other banking legislation at a future date, the House passed S. 2155 as is and sent it to the President's desk for him to sign into law. The measure is the most substantive banking bill since Dodd Frank and eases some financial regulations.

The legislation also contains provisions, outlined below, that will help cities served by community banks by providing targeted regulatory relief, and will lower interest rates for municipal bonds by making them more attractive to large institutional investors.

1. Community Banks: By raising the threshold for SIFIs from $50 billion in assets to $250 billion, S. 2155 alleviates stricter regulations for smaller community and regional banks. Many community and regional banks fall within the original range and have been constrained by the accompanying compliance regulations that larger national banks are more easily able to meet.

By alleviating these constraints, community banks will be better able to compete in a market that has recently been marked by consolidations of smaller banks into larger ones. Regulatory relief for community banks will help encourage lending and investment in city economies across the country, spur job creation, provide stronger support for anchor institutions and strengthen local economies in communities that have lagged while the national economy has recovered.

2. HQLA Reclassification for Municipal Bonds: Dodd-Frank also required certain banks to meet a Liquidity Coverage Ratio (LCR) to ensure financial institutions have enough liquid assets to weather periods of financial stress. As part of the requirements, banks needed to retain certain levels of "high quality liquid assets" (HQLA).

Bank regulators failed to include municipal bonds as HQLA when they jointly issued their Final Rule on Liquidity Coverage Ratio in the fall of 2014, despite municipal debt having a near-zero default rate and being as — if not more — stable than other assets included in the final rule. Since 2014, NLC and other state, local and public finance groups have pushed for municipal bonds to be classified as HQLA.

S. 2155 instructs bank regulators to reclassify investment grade municipal bonds that are both market ready and liquid as level 2B "high quality liquid assets" (HQLA). Classification of municipal bonds would make them more attractive to larger financial institutions who would then be able to use municipal bonds to satisfy part of their Liquidity Coverage Ratio (LCR) requirements. This in turn would lower interest rates on municipal debt.

National League of Cities

By Brian Egan

[Congress Reclassifies U.S. Muni Bonds, Likely to Lower Borrowing Costs.]

NEW YORK (Reuters) – The U.S. House of Representatives on Tuesday passed legislation that reclassifies investment-grade municipal bonds as high-quality liquid assets, a long-awaited move that public officials say will help lower financing costs on infrastructure projects nationwide.

The measure was included in bipartisan legislation, which already passed the Senate in March, that would ease bank rules introduced in the wake of the 2007-09 financial crisis.

The bill also raises the threshold at which banks are subject to stricter oversight and eases trading, lending and capital rules for smaller banks.

Cities and states sell muni bonds to finance construction of bridges, roads, schools and an array of other projects.

If the bonds are designated as so-called HQLA assets, banks can hold them as part of their liquidity requirements, therefore making the bonds more attractive overall and supporting the muni market.

“Lawmakers have taken concrete action to lower borrowing costs and better position states to invest in infrastructure projects at the state and local level,” said Beth Pearce, Vermont state treasurer and president of the National Association of State Treasurers in a statement after Tuesday’s vote in the House.

The bill now goes to President Donald Trump, who is expected to sign the legislation as part his campaign promise to try to spur more economic growth by cutting regulation.

Reporting by Hilary Russ; Editing by Lisa Shumaker

May 22, 2018

Congress Passes Legislation to Classify Municipal Securities as High Quality Liquid Assets.

This week the House of Representatives passed Senate legislation addressing a rule approved by the Federal Reserve Board, Federal Depository Insurance Commission and the Comptroller of Currency in September of 2014, which established new liquidity standards for banks. The new standards, which went into effect in January of 2015, require financial institutions with at least $250 billion in total assets to maintain prescribed levels of liquid assets that can quickly be converted into cash in times of national economic stress. These asset classes included foreign sovereign debt, but failed to classify municipal securities as High Quality Liquid Assets.

S. 2155 – Economic Growth, Regulatory Relief, and Consumer Protection Act (Closed Rule, One Hour of Debate) (Sponsored by Sen. Mike Crapo / Financial Services Committee) is now headed to the President’s desk. Included in the bill is a provision that will mend an oversight of the Liquidity Coverage Ratio rule to include municipal securities as High Quality Liquid Assets. The core features of investment grade municipal securities are consistent with all of the criteria characterized as HQLA, including limited price volatility, high trading volumes and deep and stable funding markets, as described below.

The municipal securities market is a large, deep pool of capital representing a $3.85 trillion market. Institutional investors dedicate capital to the municipal market because muni securities are a secure investment. Municipal bonds are traded by a large number of committed retail participants in high trading volumes with timely and observable market prices through the MSRB’s reporting system, EMMA.

After US Treasuries, municipal securities are the safest available investment, with state and local governments having nearly a zero default rate. Some municipal bonds (such as the GO bonds of nine states) are more highly rated that US treasury securities.

Classifying investment grade municipal securities as HQLA helps ensure that low-cost infrastructure financing remains available for state and local governments to continue to build the infrastructure for commerce, public safety, job creation and the development of an educated workforce. We applaud Leadership’s recognition that the ability of banks to invest in municipal securities for infrastructure projects is critically important and should not be impaired and Congress’ dedication to ensuring the municipal bond remains the cornerstone of a healthy and productive economy.

House Passes Senate-Approved Bank Regulatory Reform Bill – BDA's Advocacy Efforts Help Classify Muni Bonds as HQLA.

On May 22, 2018, the US House of Representatives passed by a vote of 258-159 the Senate's bank regulatory reform bill, *The Economic Growth, Regulatory Relief, and Consumer Protection Act* (S. 2155). With the bill's passage in both Chambers, the President is expected to sign it into law before the start of the weekend.

A legislative success for BDA members in the bill is a provision (Section 403) that directs the FDIC, the Federal Reserve, and the OCC to classify qualifying investment-grade, liquid and readily-marketable municipal securities as level 2B liquid assets under the agencies' liquidity coverage ratio (LCR) rules. This classification ensures that municipal bonds remain an attractive and low-cost financing tool for public infrastructure.

Working in tandem with state, local, and issuer groups, BDA has supported and advocated for the high-quality liquid asset (HQLA) provision in the bill. BDA's work on this issue can be viewed here.

Next Steps

The BDA will be tracking and updating members as the federal banking agencies amend LCR regulations to reflect the change in law.

Section 403 directs all the banking agencies to amend their LCR rules and any other regulation that incorporates similar liquidity definitions within 90 days after the date of enactment of the legislation.

Bond Dealers of America

May 23, 2018

Banking Bill Expected to Help Lower State and Local Borrowing Costs.

The banking bill President Trump signed into law on Thursday promises to help reduce state and local borrowing costs, public finance officials and experts said.

A section in the bill would reclassify investment grade municipal bonds as "high-quality liquid assets," referred to as HQLA for short.

This change opens the door for the nation's biggest banks to use the bonds to meet federal liquidity requirements. Liquidity is a measure of how swiftly assets can be converted to cash to meet financial obligations.

Enabling banks to count the bonds as liquid assets is expected to drive up demand for the bonds and, in turn, push down interest rates for state and local borrowers.

"HQLA is huge for us," said Emily S. Brock, who leads the Government Finance Officers Association's federal liaison center. "We've been working it for about four years."

The Federal Reserve, Federal Deposit Insurance Corporation and the Comptroller of the Currency approved liquidity rules in 2014 for banks with over $250 billion in assets, setting guidelines for the high-quality liquid assets that they need to maintain. But “muni” bonds didn’t qualify as an HQLA asset under those rules.

Vermont Treasurer Beth Pearce is the current president of the National Association of State Treasurers.

“For me as a treasurer, and treasurers across the country, we’re concerned about the cost for our taxpayers and we see this as an important improvement,” Pearce said.

“It’s a very big deal,” she added.

State and local governments commonly borrow to pay for infrastructure like roads, schools and water systems. The municipal debt market in the U.S. totals about $3.8 trillion.

It’s too early to know how much the HQLA designation could save states and localities, according to Brock and Pearce.

But Brock anticipates no shortage of interest among banks in municipal debt. “Banks love safety, they love liquidity and they love yield,” she said. “Municipal securities do it for them.”

The bipartisan legislation the president signed Thursday is dubbed the Economic Growth, Regulatory Relief, and Consumer Protection Act.

It rolls back rules for small- and medium-sized banks that were imposed as part of the 2010 Dodd-Frank law, which lawmakers passed in the wake of the nation’s 2008 financial crisis.

Route Fifty

By Bill Lucia,
Senior Reporter

MAY 24, 2018

Puerto Rico Update: Bond Insurers Leading A Divided Charge.

Another courtroom battle is shaping up between holders of the Puerto Rico Sales Tax Corp (COFINA) bonds and Puerto Rico general obligation bonds. At stake are who has the first claim on the sales tax revenue, one of the few reliable revenue sources dedicated to bond service. The issue arises because the government has not guaranteed the COFINA bonds in a way that puts them on par with GO obligations. The issue is particularly critical to the bond insurers who differ on their exposure to the two issuers. AMBAC has insured some $7.3 billion and MBIA some $4.2 billion of COFINA bonds representing 75% of AMBAC’s and 49% of MBIA’s total exposure in Puerto Rico. Hence, a ruling that favors the GO bondholders could be devastating to AMBAC and windfall to Assured Guaranty (AGO) which has greater GO bond exposure. Some $26.3 billion of Puerto Rico’s $73 billion in bonds carry monoline bond insurance, so all the carriers face serious write offs no matter who wins, however, the AMBAC exposure appears the most crippling. The total exposures are $8.5 billion for AGO, $9.7 for AMBAC and $8.5 billion for MBIA. While this battle takes shape COFINA has also gone into court to obtain relief from its $17 billion bond obligation through a mandatory reduction of the principal amount.

On another front, Governor Ricardo Rossello has thrown out a projection of a 70% to 90% recovery for island GO bondholders if all goes well over the next decade. This projection is more motivated by his power struggle with the oversight board, which wants deeper cuts in the Governor's budget, than by economic realities. The facts in support of any such projections would lead one to a different conclusion. The islands debt burden from bonds and pension obligations total some $123 billion. Divide this by a population of 5.3 million and you get an average debt burden per person of $35,142. Consider this in the light of a population where almost half live in poverty and the average income is $19,350 making the average debt burden 181%. Compare this to the USA where we worry about a 20 trillion national debt which works out to about $55,500 per citizen. Compared to an average income of $53,800 means we have a much lower average debt burden of only 103%. Oh, but I forgot to include our unfunded social security and Medicare obligations of at least another, say, $10 trillion? That would kick our average person debt burden up to 155%. Is that scary or what? Maybe those worrying about our unsustainable debt growth aren't so far off.

The economic hard facts are that, while a few select bondholders with better collateral may possibly achieve a 70% recovery, the average for the rest will likely achieve no more than 15%. This will be done in stages as agreements are reached which are unachievable but have to be dealt with by other than the current participants. A few years later the next generation gets to redo the agreements, blaming the incompetence of their predecessors and the inability to see into the future or anticipate the next hurricane. Isn't a Puerto Rico moment what politicians of all stripe are facing? Isn't that what's going on with those tobacco bonds or unfunded state and municipal pension promises? Yet the market must go on and we all play musical chairs without recognizing that high coupons on bonds mean a lower chance of getting your principal back. Want proof? Our Distressed Municipal Debt database, which contains over 4,000 defaults shows an average coupon rate since 1983 of 8.03%. So when you see yields of 8%, recognize that when they default, the average recovery was 8.7 cents on the dollar.

Forbes

Richard Lehmann, Contributor

MAY 26, 2018

Did States Maximize their Opportunity Zone Selections?

Analysis of the Opportunity Zone Designations

Abstract
The Tax Cuts and Jobs Act included a new federal incentive—Opportunity Zones—to spur investment in poor and undercapitalized communities. Governors (and the mayor of the District of Columbia) have now selected which among the roughly 56 percent of eligible census tracts in the U.S. should be classified as Opportunity Zones. While many criteria could be used to assess how successfully governors targeted Zones, we offer two for consideration: need and benefit. In this brief we gauge governors' selections against tract measures of the investment flows they are receiving and the social and economic changes they have already experienced.

Download PDF

The Urban Institute

by Brett Theodos, Brady Meixell & Carl Hedman

May 21, 2018

Federal Reserve Bank Releases New Opportunity Zones Explorer.

Explore the Explorer.

Opportunity Zones – Driving Community Development Finance Through Equity Investments.

Now that most Opportunity Zones have been designated, we thought it would be good to provide some insight on the basics of Opportunity Zones and how this tax incentive could be used to spur investment into low-income and underserved communities across the country. How should local communities with Opportunity Zones begin the important work of identifying potential investments and attracting investors? We review the basics in this post from the Council of Development Finance Agencies.

Overview
Created as part of the Tax Cuts and Jobs Act, Opportunity Zones are a federal economic development tool aimed at improving the outcomes of distressed communities around the country. Opportunity Zones are low-income census tracts that offer tax incentives to investors who invest and hold their capital gains in Opportunity Funds. These Opportunity Funds must invest at least 90% of their assets in qualified investments located in Opportunity Zones. Investors in Opportunity Funds receive a temporary deferral on their capital gains taxes if they hold their investments for at least 5 years, and a permanent exclusion from a tax on capital gains from the Opportunity Zones investments if the investments are held for 10 years.

Continue reading.

Smart Incentives

by Ellen D. Harpel | May 22, 2018

Hawkins Advisory re: Qualified Opportunity Zones - IRC Sections 1400Z-1 and 1400Z-2

Attached is a Hawkins Advisory describing Qualified Opportunity Zones, which were introduced by the Tax Cuts and Jobs Act of 2017 as a temporary measure to incentivize economic growth and development in certain low-income communities.

Read the Advisory.

[BDA’s 10th Annual National Fixed Income Conference is Open for Registration.]

When: October 25-26, 2018
Where: Four Seasons Hotel, Washington, DC

Click here to learn more and to register.

May 22, 2018

Fitch: Budget Impact of Marijuana Legalization Modest for NYC.

Fitch Ratings-New York-24 May 2018: The potential budgetary impact of legalizing marijuana for recreational use in New York State would be modest for New York City with no impact on credit quality, according to Fitch Ratings. Fitch expects the decision to legalize in New York State, which as a whole would also see modest revenue gains, will be based on political and public policy considerations rather than budgetary ones.

A recent report by New York City’s Comptroller estimates the legal adult-use marijuana market at $3.1 billion in New York State, including $1.1 billion in New York City. The $336 million in annual tax revenue to New York City estimated by the comptroller represents 0.3% of fiscal 2019 budgeted revenues of $89 billion. The budget, which does not assume legalization for recreational use, includes $100 million in excise taxes from medical marijuana, which has been legal since 2014. Fitch expects any increased receipts would take time to become fully realized. If legalization is approved by the state, many details would remain to be worked out, including which elements to tax and at what rate.

The comptroller also estimates a $36 million savings from reduced misdemeanor arrests if legalization is approved, although the mayor has already announced an order for the New York Police Department to stop making marijuana-related arrests and the Manhattan district attorney announced that his office would no longer prosecute most marijuana-related cases.

As Fitch noted in “U.S. States Experiment with Cannabis Legalization,” (August 2017) states have taken a variety of approaches to cannabis legalization (Fitch uses the broader term cannabis to refer to both marijuana, which typically connotes the dried form of the plant used for smoking, as well as oils and other formulations derived from the same plant). Eight states and the District of Columbia have legalized cannabis use for adults for nonmedical purposes, and another 22 have legalized it for medical purposes only. Taxes on nonmedical cannabis vary greatly, reflecting a range of both tax rates and the elements that are taxed. Some states tax based on price, with others based on weight, and taxes can be levied on producers, retailers and/or customers.

The New York City comptroller report’s estimate of $336 million in annual taxes, which is based on surveys of marijuana use and sales per user in states that have already legalized recreational marijuana, equates to a tax rate of 30%, which is sizable but in line with the effective tax rates estimated by Fitch in its review of states that already have legalization for recreational use. States with high effective tax rates may see legal sales shift back to black markets over time, especially if neighboring states legalize with lower effective rates. Price declines over time could also result in reduced tax revenues if the tax is tied to price.

Neighboring states New Jersey and Connecticut are also considering legalization for recreational purposes. Legislators in all three states have proposed bills, and the new governor of NJ made legalization a campaign promise.

In our earlier report, Fitch noted the need for flexibility in implementing new laws, as they may not achieve the expected goals within the anticipated timeframe. Obstacles to successful legalization include state restrictions on cultivation, distribution and sales, which may conflict with other policy goals.

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Fitch: California Solar Rule Neutral for Resi, Power Issuers.

Fitch Ratings-New York-22 May 2018: California's potential building requirement for many types of new residential construction to include solar panels will have a limited credit effect on public power issuers, homebuilders and the housing markets in the state, Fitch Ratings says. If the requirement is implemented, it will be an incremental component of a broader regulatory trend for which Fitch-rated issuers have prepared. California building code already requires all new residential construction to be zero net energy (ZNE) by 2020 and all commercial buildings to be ZNE by 2030. The lack of new construction in California will lower the impact on house prices.

We do not expect the building requirement to have a material effect on public power issuer ratings. The requirements are consistent with the ongoing trend toward greater energy efficiency and reduced per capita electricity consumption in the state. Public power utilities have been planning for, and adapting their long-term supply strategies to, responding to this trend.

Furthermore, many Fitch-rated public power issuers are in built-out communities with modest levels of new home growth. Those in higher growth areas, such as Roseville, already factored the much greater energy efficiency of new homes into their load forecasts.

We do not expect the mandate to install solar panels to meaningfully affect prices of existing homes in the state. Sales of new homes account for a smaller portion of homes sold in California. The incremental cost of installing solar panels is relatively marginal to the buyers of homes in the state, where home prices are already high to begin with. However, higher interest rates and increasing home prices in recent years, combined with the additional cost of installing solar panels, will likely continue to erode affordability for new homes in the state, particularly for entry level/first-time homebuyers. Nevertheless, the total cost of homeownership is likely to go down with lower monthly energy costs. California is one of the largest states, in terms of new home construction, with new home permits in the state accounting for about 9% of the U.S. total in 2017.

Homebuilders in the state have already begun marketing roof top solar features and changed practices to comply with ZNE codes, although adoption has been relatively limited, as most homebuyers have not been willing to pay for the added cost. The requirement to install solar panels could exacerbate the already tight construction labor market. Thus, the large public homebuilders rated by Fitch are well-positioned for the change, as these builders generally have better access to labor and materials due to scale. We expect homebuilders not marketing solar features to have ample time to do so, as the rule would not go into effect for two years. There is a small risk solar panel installations rise quickly, creating supply pressures that raise prices and slow down construction. This risk would be higher if states such as Nevada, Texas and Florida adopt similar building standards.

On May 9 the California Energy Commission voted to adopt the building standards beginning in 2020. The standards still need approval from the California Building Standards Commission. In addition to solar panels, the standard includes requiring residential and commercial buildings to have updated attic insulation and commercial buildings to conform to more energy efficient lighting standards. The standards would apply to apartment buildings of 1-, 2- and 3-stories and single-family homes.

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Florida Cities Are Most at Risk From Climate Change, Report Says.

- **Miami Beach most exposed city in the U.S to climate change**
- **Four Twenty Seven developed new climate change risk index**

The picturesque Florida cities of Miami Beach and Sarasota carry high investment-grade credit ratings and are popular travel destinations. They're also two of the most exposed U.S cities to climate change in the country, according to a new analysis by advisory firm Four Twenty Seven.

The Berkeley, California-based firm has developed an index surveying 761 cities' and 3,143 counties' exposure to sea level rise, water stress, heat stress, cyclones and extreme rainfall based on analysis of changes between current and future conditions. It found that communities in Florida are the most susceptible to climate change risks, with Miami Beach being the most exposed city and Manatee County being the most-exposed county.

The data will help investors, ratings companies and local governments better evaluate the issue, said Frank Freitas, chief development officer at Four Twenty Seven. "We're hoping that municipalities and investors can engage in conversations that see market support for initiatives that foster resilience going forward, just like we've seen investors engage with companies in equity markets on ESG and climate risk," Freitas said.

The $3.9 trillion municipal-bond market has been slow to take climate change risks seriously, said Nicholas Erickson, assistant vice president of portfolio management at Sage Advisory Services. But the hurricanes that battered Florida, Texas and Puerto Rico last year show how significant weather-related events could be for local economies, he said.

"It could have a huge impact," he said.

Investors have pushed credit-ratings companies to give them more of a warning about environmental risks. Moody's Investors Service and S&P Global Ratings say they incorporate environmental risks in their ratings through their analysis of factors such as leaders' preparedness for weather events. Even so, rating methodologies for states, local governments and utilities don't "explicitly" address climate change as a credit risk, Moody's said in a report last year.

For Florida cities and counties, home values could suffer as a result of the risks of cyclones and flooding, which could in turn hurt property-tax revenue that governments rely on, the Four Twenty Seven report said. In order to address water shortages or droughts, water utilities may have to spend more on infrastructure or their customers may have to pay more in fees, it added.

Charleston, South Carolina, and Virginia Beach, Virginia, topped the ranking for cities susceptible to severe hurricanes and typhoons in the future. Heat stress, which measures the frequency and severity of hot days and average temperature, was found to predominantly affect the Southeast and Midwest.

Freitas said he hopes the firm's findings don't cause investors to avoid investing in projects out of the most exposed places to climate change. "Understanding risk is the first step toward helping people invest in resilience as well," he said.

Bloomberg

By Amanda Albright and Danielle Moran

May 22, 2018, 4:00 AM PDT

Hedge Those Bets: Sports Gambling May Not Be a Jackpot for States.

Some states were getting ready to jump into sports gambling even before the U.S. Supreme Court legalized it last week, lining up legislation that would allow their states to cash in as quickly as possible on millions of dollars in tax revenue.

New Jersey, which won the high court case, and Delaware, with its racetracks, could be the first to benefit, potentially hosting sports gambling in a matter of weeks. Mississippi and Pennsylvania also expect to see legal betting soon.

But gambling experts warn that starry-eyed lawmakers might be overestimating their haul from legalized sports betting. Differences in state tax structures, competition for a limited market of gamblers, the push for a federal framework and the continued allure of black-market betting all could cut into the hoped-for windfall.

Continue reading.

The Pew Charitable Trusts

By Elaine S. Povich

May 22, 2018

S&P: Colorado SB 18-200 Outlines A Path Toward Pension Funding; Is It Enough?

DALLAS (S&P Global Ratings) May 21, 2018 – On May 9, Colorado's legislature passed Senate Bill 18-200, which outlines adopted changes to the state's pension system to restore to full funding within 30 years. The governor has not yet signed the law.

Continue Reading

S&P Medians And Credit Factors: Virginia Local Governments.

Local government (LG) ratings in the Commonwealth of Virginia remain strong and stable characterized by low unemployment, high income and wealth levels, and strong budgetary performance, often supported by formal financial policies and regular budget monitoring.

Continue Reading

May 23, 2018

Better Disclosure Is One Florida Issuer's Path to Lower Borrowing Costs.

As the treasurer for the country's fourth-largest school district, Tony Vu says his goal is to lower borrowing costs for a voter-approved $1.2 billion general obligation construction program in south Florida.

Vu said his Miami-Dade County School District is "a Fortune 500-sized organization" that is limited by legislation and faces shrinking resources, growing mandates and tighter regulations.

A priority since becoming the treasurer 10 months ago, he said, was to create a new investor community website to augment the district's use of Digital Assurance Certification and the Municipal Securities Rulemaking Board's EMMA filing system.

The Miami-Dade County School District has $3.73 billion of outstanding debt.

As he considered a new platform, Vu said he was approached by representatives of BondLink, a Boston-based financial technology company that provides investor outreach to municipal issuers. Vu liked what he saw.

"I think from the investor's standpoint we can reach a larger group and a larger pool," he said. "I think one thing we'll definitely be able to do is have a more localized outreach effort."

Vu said he expects BondLink to give him with the ability to get the district's "story out there as effectively as possible," and to conduct targeted and proactive outreach to new retail investors and existing bondholders.

"Higher transparency typically means lower borrowing costs," he said.

Studies have supported the notion that issuers with good disclosure practices tend to elicit lower interest rates.

That was the conclusion of "When transparency pays: The moderating effect of disclosure quality on changes in the cost of debt," a paper by Christine Cuny and Svenja Dube of New York University's Stern School of Business.

In their research, presented at Brooking's July 2017 Municipal Finance Conference, Cuny and Dube examined the relation between disclosure choice, changes in issuer credit ratings, and adverse local housing conditions.

The "results suggest that disclosure quality can lower the cost of debt by attenuating the impact of negative economic outcomes," they said.

Vu said he hopes improved disclosure will help the district lower borrowing costs as it completes its $1.2 billion 21st Century GO Bond Program approved by voters in 2012. To date, the district has issued $929 million of GOs, leaving $271 million in bonding capacity to be sold.

The district's bond advisory committee reported that $546 million has been spent on new and renovated schools and technology upgrades as of Dec. 31.

The Miami-Dade School District also has $2.37 billion of certificates of participation lease-revenue debt outstanding, secured by its capital millage rate, impact fees, and other legally available funds.

The ability of Florida school districts to issue COPs in the future is in question as a result of the Legislature's passage of House Bill 7069 in 2017.

The sweeping education bill required districts for the first time to share with charter schools a portion of their optional 1.5 millage rate dedicated to capital funding. One mill equals $1,000 of the assessed taxable property value.

HB 7069 "won't impact already issued debt," Vu said. The bill requires outstanding debt service of the districts to be paid first before funds are shared with charter schools.

The State Board of Education is continuing to implement the bill, and has yet to determine how the law will impact the ability of Florida school districts to issue COPs in the future.

More than a dozen districts have filed a law suit challenging HB 7069.

The Miami-Dade County School District, which operates 342 traditional public schools and must share a portion of its capital millage with 130 charter schools in the county, is not participating in the HB 7069 suit.

S&P Global Ratings raised its rating on the district's GO bonds to AA-minus from A-plus and its rating on the district's COPs to A-plus from A in April 2017. Moody's Investors Service (MCO) assigns an Aa3 rating to the GOs and an A1 to the COPs. Both have stable outlooks.

BY SOURCEMEDIA | MUNICIPAL | 05/14/18 07:03 PM EDT

By Shelly Sigo

FINRA to Start Examining New Muni Markup Rule Compliance.

WASHINGTON – The Financial Industry Regulatory Authority is going to immediately begin examinations of firms' compliance with markup disclosure rules, with early returns indicating minor speed bumps in the implementation of those landmark requirements, regulatory officials said Tuesday.

Cindy Friedlander, the senior director of fixed income regulation within FINRA's Regulatory Operations group, said during a panel at FINRA's annual conference that the regulator will not wait to begin examining firms' compliance with the markup disclosure requirements that took effect less than two weeks ago.

Amendments to Municipal Securities Rulemaking Board rules G-15 on confirmation and G-30 on prices and commissions require dealers as of May 14 to disclose their markups and markdowns on certain transactions in the confirmations they send to retail customers. Dealers had hoped for a compliance extension, but didn't get it.

Under the rules, dealers initially must look at their contemporaneous trades of the same muni with other dealers or customers to establish a presumption of prevailing market price. If that data is unavailable, they must make a series of other successive considerations.

They must look at contemporaneous trades of the muni in interdealer trades, then trades of the muni between other dealers and institutional investors, then trades on alternative trading systems or other electronic platforms. Further down the waterfall, dealers can look at contemporaneous trades of similar securities.

Markup disclosures must be given as a total dollar amount and a percentage of the prevailing market price.

“We will be examining firms immediately,” Friedlander said. “We are going to be very careful to take into account firms’ good faith efforts to comply with the rules.”

Michael Post, MSRB general counsel, said the board has been discussing how compliance with the markup rule has gone over the first week or so.

“What we’ve heard is that things have gone relatively smoothly,” Post said, acknowledging that there have been reports of some hiccups. “It’s a relief that the issues that people are encountering are things that they think that they can address.”

Post reserved some measure of caution about his remarks, realizing that a firm experiencing a significant compliance failure might be hesitant to admit that to the MSRB.

Peg Henry, a deputy general counsel at Stifel Financial (SF) in St. Louis, said she has spent a lot of time on the trading floor recently and has asked traders in the past couple of days how things are going with markup disclosure.

“The responses I got ranged from ‘not bad’ to ‘so far so good’ to ‘it is what it is,’” she said.

Henry said her firm has experienced some issues, such as the fact that it works with several vendors in its day-to-day business that don’t standardize how they report information. She also added that the size of the markup that needs to be reported on a trade could seemingly be affected by a trade of the same security that occurs later in the day.

“There are situations that have arisen just in the first week that have created problems for us,” she said. “We’ve developed workarounds, but the workarounds are very labor intensive.”

Post said that firms can choose to calculate the prevailing market price of a security earlier in the day if it chooses, so it can disclose the markup before another transaction occurs that could muddy the waters.

Ivonia Slade, an assistant director in the Securities and Exchange Commission’s Public Finance Abuse Unit, said her group is going to remain focused on topics it has acted on over the past several years, such as offering fraud that occurs when issuers make misleading statements in their bond documents. She highlighted the SEC’s focus on enforcing the fiduciary duty requirements of municipal advisors.

“Our focus has been on making sure that they’re meeting those obligations,” she said.

The FINRA conference began May 21 and concludes May 23.

BY SOURCEMEDIA | MUNICIPAL | 05/22/18 07:04 PM EDT

By Kyle Glazier

L.A. Metro Boosts Disclosure With New Investor Website.

The Los Angeles County Metropolitan Transportation Authority launched a new investor relations website Thursday.

The site is powered by BondLink, a Boston-based firm that has been rolling out new municipal bond investor websites regularly since Colin MacNaught, a former Massachusetts deputy treasurer, created the company in 2016 with Chief Technology Officer Carl Query.

The new website comes just months after Metro unveiled a $5 billion capital plan with a long list of projects it wants to complete before the city hosts the 2028 Summer Olympics and Paralympics. The Twenty-Eight by 28 plan is aimed at completing 28 major road, transit and bicycle projects before the event.

“We are excited to work with them; they have a robust capital program, good management and they are an active credit and issuer,” said Colin MacNaught, BondLink’s co-founder and chief executive officer.

The company has created investor websites for issuers across the country. In California, it created websites for the state government, the Port of Los Angeles and West Basin Water District and hopes to launch two more California websites next week.

The websites provide a portal for issuers to share status updates on projects funded by bonds or quarterly cash reports, and allows investors to sign up for custom alerts. The Metro website will provide access to more than 10,000 documents including information on bond sales, credit ratings and investor resources.

BondLink’s websites enable issuers to provide more frequent disclosure to investors, which besides accomplishing the Government Finance Officers Association’s best practices goals, also attracts a broader swath of investors, MacNaught said.

“Academic research shows that more timely disclosure can lower borrowing costs for issuers,” MacNaught said.

Metro remains committed to minimizing borrowing costs in its capital finance program, Metro Treasurer Donna Mills said in a statement.

“This new website will enhance our investor outreach and improve our disclosure and transparency in the capital markets,” Mills said.

Given the size of its capital program, even a small increase in demand for the bonds would lower borrowing costs significantly, MacNaught said.

“California is such a big market and retail plays such a big part of that bond market,” MacNaught said. “Providing a really convenient investor platform for issuers like Metro and the Port of Los Angeles is a big benefit for bond investors including retail.”

BY SOURCEMEDIA | MUNICIPAL | 05/24/18 07:05 PM EDT

By Keeley Webster

[How Sports Teams Exploit City Budgets to Fund Stadiums.]

This past January, the city council of Clark County, Nevada, approved over $750 million in tax-free municipal bonds for the construction of a $1.9 billion stadium for the NFL's Raiders. This comes on the heels of Arlington, Texas, agreeing to provide $500 million for a new $1.1 billion stadium for the MLB's Rangers.

Around the country, other cities' budgets are still reeling from the costs of subsidizing stadiums. Bloomberg News linked Oakland's 2011 decision to decrease its police force by 18 percent to debt from building the Coliseum, cuts which increased average police response time to 17 minutes. And in 2014, Detroit was forced to cut pensions for retirees by 4.5 percent to subsidize a new stadium for the Red Wings, a stadium which the Red Wings will pay one dollar a year to lease.

These projects reflect a larger nationwide trend of local governments footing the bill for the construction of sports stadiums. Of the 45 major stadiums built since 2000, 36 were financed through tax-free municipal bonds. Their total cost to taxpayers? Over $3.2 billion.

Continue reading.

Harvard Political Review

By Michael Wornow | May 21, 2018

[Pennsylvania Sues Over Troubled Harrisburg Incinerator Bond Deals.]

NEW YORK (Reuters) – Pennsylvania Governor Tom Wolf's administration on Monday sued an array of financial, legal and other professional firms over their involvement in a 15-year-old incinerator upgrade project that nearly bankrupted the state capital, Harrisburg.

The state sued RBC Capital Markets, Buchanan Ingersoll & Rooney PC, Public Financial Management Inc (PFM) and others over the 2003 ill-fated trash-to-energy project, which saddled the city with more than $360 million of debt.

The city filed for bankruptcy in 2011 but the case was later thrown out. In its time, Harrisburg's debt saga was the most dramatic episode in U.S. public finance, coming before both Detroit and Puerto Rico filed their respective bankruptcies.

"It is time to hold those responsible for the failed incinerator debt scheme accountable and recoup the taxpayer dollars wasted by their negligence and deception," Wolf said in a statement.

In their push to close bond deals so they could be paid, the professionals named in the lawsuit, dubbed the Working Group, misled the city by providing false information and concealing important facts, according to the complaint.

The city backed the bonds used to finance the project. After the bonds defaulted, the city was forced into the state's first and only municipal receivership – paid for by state and local taxpayers.

A spokeswoman for RBC declined to comment. Representatives of Buchanan Ingersoll & Rooney and PFM did not immediately respond to emails seeking comment.

Eckert Seamans, which provided legal advice to underwriters of the 2003 bonds and in 2007 to the authority that issued the bonds, said on Monday that it had cooperated fully with investigations over the years "because we are confident that the firm represented its clients professionally, competently, and ethically.""We will vigorously defend our service to our clients and aggressively fight these unfounded allegations," the firm's Chief Executive Officer Timothy Hudak said in a statement.

The state seeks punitive damages, with interest.

Adding to taxpayer frustration was the case of Stephen Reed, who was mayor at the time and who ended his 28-year tenure in 2010.

Reed was charged in 2015 with hundreds of criminal counts for using some bond proceeds to travel the country and buy a bizarre list of roughly 10,000 artifacts, including a sarcophagus, a suit of armor and a "vampire hunting kit," that he said were destined for museums.

Last year he pleaded guilty and received probation to a shortened list of charges.

BY HILARY RUSS

May 21, 2018

(Reporting by Hilary Russ; editing by Richard Chang and Lisa Shumaker)

- MSRB Requests Comment on Re-Establishing Standalone Rule on Discretionary Transactions in Customer Accounts.
- SEC Adopts Amendments to Modify MA Forms.
- NFMA Submits Amicus Brief Concerning Puerto Rico Highway Revenue Bond Ruling by U.S. District Court.
- The Curious Case of Hartford: How Can a State Rescue a Debt-trapped City?
- Using Asset Recycling as an Infrastructure Funding Mechanism.
- Fitch's Tolerance for U.S. NFP Hospitals to Stay Viable and Profitable: Five Years.
- *CED Properties, LLC v. City of Oshkosh* – Supreme Court of Wisconsin holds that city was not judicially estopped from specially assessing property owner for special benefits resulting from roundabout construction, even though city conceded no special benefits arose in condemnation action. Quite an interesting eminent domain case.
- And finally, We Winter in Alaska and Summer in Hades is brought to us this week by *Lane v. City & Borough of Juneau*, in which we learned that the City of Juneau, Alaska operates a free campground whose "winter residents included alcoholics, the 'chronically unemployed,' and 'people who were not welcome in homeless shelters' because of 'previous incidents or violence.' We have found our people. We have found our home. Change of address form to follow.

IMMUNITY - ALASKA

Lane v. City & Borough of Juneau

Supreme Court of Alaska - April 27, 2018 - P.3d - 2018 WL 1977730

Campground resident, who was shot and severely injured at campground, brought action against city, which operated the campground, alleging that city created unreasonable risk of violence at the campground, failed to protect resident from that risk, was negligent in hiring and supervising campground's caretaker, and that city was vicariously liable for caretaker's negligent conduct.

The Superior Court granted summary judgment in favor of city. Resident appealed.

The Supreme Court of Alaska held that:

- Municipality does not automatically share the protection of its employees' personal immunity, abrogating *Pauley v. Anchorage School District*, 31 P.3d 1284, and *Mills v. Hankla*, 297 P.3d 158;
- City employee's decision to allow minor alcohol consumption so long as it did not cause problems at campground was planning decision for which the city was immune;
- Resident's negligent supervision claim, alleging that city employee's explanation of alcohol policy to caretaker was inconsistent, concerned operational matter, rather than planning decision, and thus, city was not immune from the claim;
- City's decision not to employ private security for campground was planning decision for which the city was immune; and
- Genuine issues of material fact existed as to whether caretaker was acting within the scope of his employment with the city when he failed to disperse drinking party at which resident was shot, precluding summary judgment as to resident's vicarious liability claim.

ZONING & PLANNING - CALIFORNIA

La Mirada Avenue Neighborhood Association of Hollywood v. City of Los Angeles

Court of Appeal, Second District, Division 2, California - May 3, 2018 - 2018 WL 2057465 - 18 Cal. Daily Op. Serv. 4145

After city council granted variances for corporation to build retail store that did not comply with requirements of municipal code and neighborhood area plan, community associations filed petitions for writ of mandate against city, naming corporation as real party in interest, alleging that construction project violated zoning laws and California Environmental Quality Act (CEQA).

The Superior Court granted writ petitions in part and entered judgment in favor of community associations on writs invalidating six of the eight municipal code variances, enjoining any actions in furtherance of those variances, immediately restraining all construction activities, and authorizing community associations to seek attorney fees. City council and corporation appealed. While appeals were pending, council amended neighborhood area plan to permit construction of retail store. The Court of Appeal dismissed appeal as moot. Community associations moved for attorney fees for prevailing on their challenges to variances. The Superior Court granted community organizations attorney fees. Corporation and city council filed notices of appeal from each attorney fee award, and appeals were consolidated.

The Court of Appeal held that:

- Trial court did not abuse its discretion in concluding that associations were successful parties, as required to be eligible for attorney fees;
- Trial court did not abuse its discretion in concluding that associations' lawsuit conferred a significant benefit on the general public or large class of persons; and
- Change in zoning laws following judgment did not preclude associations from obtaining award of fees.

Trial court did not abuse its discretion in concluding that community associations were successful parties, as required to be eligible for attorney fees under statute permitting award of fees to successful party in action resulting in enforcement of important right affecting public interest, in proceedings challenging city council's grant of variances from neighborhood area plan zoning requirements in order to permit corporation to build retail store; associations sought to vacate variances to vindicate their interest in ensuring that city's decisions were in conformity with municipal code's zoning requirements, associations achieved their objective when many of the variances were invalidated for noncompliance with code, and lawsuit motivated city to amend neighborhood area plan.

Trial court did not abuse its discretion in concluding that community associations' suit challenging city council's grant of variances from neighborhood area plan zoning requirements in order to permit corporation to build retail store conferred significant benefit on the general public or large class of persons, as would support award of attorney fees in favor of associations under statute permitting award of fees to successful party in action resulting in enforcement of important right affecting public interest; city was required to adhere to municipal code's legal requirements for granting variances as a result of lawsuit, which furthered a significant public policy, and city residents benefited from ruling that held city council's zoning decisions to the letter and spirit of the code.

Change in zoning law that permitted corporation to build retail store following judgment in favor of community associations in proceedings challenging city council's grant of variances from neighborhood area plan that allowed corporation to build store did not preclude associations from obtaining attorney fees under statute permitting award of fees to successful party in action resulting in enforcement of important right affecting public interest, even though validity of project to build store under new zoning law was still pending; petitions were not aimed at stopping project, showing that associations put entire dispute to rest was not required to obtain fees, and denying fees because associations had yet to succeed under law as it might be amended would have led to absurd results.

STORMWATER FEES - CALIFORNIA

California Building Industry Association v. State Water Resources Control Board

Supreme Court of California - May 7, 2018 - P.3d - 2018 WL 2090997 - 18 Cal. Daily Op. Serv. 4189 - 2018 Daily Journal D.A.R. 4154

Home-building industry association brought action against State Water Resources Control Board for declaratory, injunctive, and writ relief challenging storm water program fees.

The Superior Court entered judgment for the Board. Association appealed. The Court of Appeal affirmed. Petition for review was granted.

The Supreme Court of California held that:

- Statute providing that any final action of the Board shall be taken by a majority of all the Board members did not apply to approval of storm water program fee schedule;
- Annual permit fees and expenses need not be correlated for each of the program areas within Board's current waste discharge program;
- Association failed to show that storm water program fees exceeded costs of administering permit program;

- Association failed to show that storm water program fees were levied for unrelated revenue expenses; and
- Association failed to show that Board failed to allocate charges to payors fairly.

REGULATORY - GEORGIA

Georgia Republican Party v. Securities and Exchange Commission

United States Court of Appeals, Eleventh Circuit - April 26, 2018 - 888 F.3d 1198

State political parties filed petition for review of Securities and Exchange Commission (SEC) rule governing political contributions of Financial Industry Regulatory Authority (FINRA) members who solicited government officials for investment advisory services contracts.

The Court of Appeals held that:

- One party lacked standing to seek judicial review of rule, and
- Eleventh Circuit was improper venue for other parties' petition.

State political party failed to establish injury in fact as result of Securities and Exchange Commission's (SEC) adoption of rule prohibiting placement agents from engaging in distribution or solicitation activities for compensation with government entity on behalf of investment adviser that provides or is seeking to provide investment advisory services to such government entity within two years after contribution to official of government entity, and thus lacked standing to seek judicial review of rule, despite party's contention that rule inhibited its ability to fundraise, forced it to divert resources, and harmed its members, where party did not identify anyone who wished to contribute to it but would not because of rule, provide support for its assertion that it would have to divert resources, or identify any specific member who would be injured by rule.

Eleventh Circuit was improper venue for state political parties' petition challenging Securities and Exchange Commission (SEC) rule governing political contributions of Financial Industry Regulatory Authority (FINRA) members who solicited government officials for investment advisory services contracts, thus warranting transfer to appropriate circuits, where parties did not reside or have principal places of business within circuit, and parties could not refile their petitions in proper venues due to fact that filing period had expired.

MUNICIPAL CORPORATIONS - MASSACHUSETTS

St. Laurent v. Middleborough Gas & Electric Department

Appeals Court of Massachusetts - April 4, 2018 - N.E.3d - 93 Mass.App.Ct. 901 - 2018 WL 1614048

Individuals, who were injured when a ladder they were near came into contact with an arcing electrical current that allegedly came from an improperly grounded line maintained by town's electric plant, brought negligence suit against electric plant.

The Superior Court denied plant's motion to dismiss for lack of presentment, and plant appealed.

The Appeals Court held that town's electric plant was a "public employer," such that Tort Claims Act applied to negligence claim brought against electric plant.

Town's electric plant was a "public employer," such that Tort Claims Act applied to negligence claim brought against electric plant by individuals, who were injured when a ladder they were near came into contact with an arcing electrical current that allegedly came from an improperly grounded line maintained by town's electric plant; statute defined "public employer" as including any town and any department thereof, including a municipal gas or electric plant.

EMINENT DOMAIN - NORTH DAKOTA

North Dakota Department of Transportation v. Schmitz

Supreme Court of North Dakota - May 8, 2018 - N.W.2d - 2018 WL 2111964 - 2018 ND 113

Following trial to determine the amount due to property owner for eminent domain taking, property owner sought an award of attorney fees, expert witness fees, and litigation costs.

The District Court awarded property owner $137,347.50 in attorney fees, $35,930.96 in expert fees and $8,027.38 in litigation costs. Property owner appealed.

The Supreme Court of North Dakota held that:

- The trial court's order awarding property owner $114,840 in attorney fees was not an abuse of discretion;
- Order lowering the hourly rate of associate attorney to $150 per hour was not an abuse of discretion;
- The trial court's order declining to award expert witness fees for nontestifying expert was not an abuse of discretion; and
- Remand was required to allow the trial court to properly apply statutes addressing litigations costs and disbursements.

The trial court's order awarding property owner $114,840 in attorney fees was not an abuse of discretion, in eminent domain action; the court found reasonable expenditures of 287.1 hours for attorney at $400 per hour, and it expressly considered the character of legal services rendered, the results obtained, the customary fee charged for services in the locality, and attorney's skill and ability.

The trial court's order lowering the hourly rate of associate attorney to $150 per hour when determining attorney fee award in eminent domain action was not an abuse of discretion; the trial court found $150 per hour a customary fee for associates in the locality, and the $150 figure fell within the range of evidence presented to the trial court.

The trial court's order declining to award attorney fees incurred in making the application for attorney fees and costs in eminent domain action was not an abuse of discretion; no authority supported a mandatory award for preparation of an application for attorney fees and costs, and the trial court determined the reasonable number of hours that were expended by attorney and associate attorney for the entire action.

The trial court's order declining to award expert witness fees for nontestifying expert was not an abuse of discretion, in eminent domain action; the trial court excluded costs for nontestifying expert witness because he "added nothing as he did not even testify at trial," and statute gave the trial court the sole discretion over the number of expert witnesses who were allowed fees or expenses.

The trial court's decision to reduce the amount of expert fees and expenses awarded was not an abuse of discretion, in eminent domain action, where the trial court considered area of expertise, education and training, prevailing rates, quality of discovery responses, fee actually charged, and other factors, and the court considered the jury's rejection of the testimony from two experts the most important in its determination, which it categorized as consideration of "other factors."

Remand was required to allow the trial court to properly apply statutes addressing litigation costs and disbursements, in action seeking attorney fees, expert witness fees, and litigation costs associated with eminent domain action; the court found travel expenses, such as airfare, car rental, and meals, were not taxable as costs or disbursements, however statute provided a list of disbursements to be taxed in judgment, and second statute gave the court discretion to award other costs.

EMINENT DOMAIN - VIRGINIA

Commissioner of Highways v. Karverly, Inc.

Supreme Court of Virginia - May 10, 2018 - S.E.2d - 2018 WL 2142871

Commissioner of Highways initiated condemnation proceeding.

The Circuit Court entered judgment on jury verdict awarding $167,866 in damages to remainder. Commissioner appealed.

The Supreme Court of Virginia held that Commissioner was entitled to present expert testimony that take caused no damages to remainder.

In eminent domain proceeding brought by Commissioner of Highways, Commissioner was entitled to present expert testimony that take caused no damages to remainder, which contained daycare center that had been separated from road by buffer that was part of taking; expert for property owner had been permitted to testify that take, absent relocation of improvements, would render any part of property functionally obsolete, and even without testimony of Commissioner's expert, only three of five jurors awarded damages to remainder.

ZONING & PLANNING - WASHINGTON

Schnitzer West, LLC v. City of Puyallup

Supreme Court of Washington - May 10, 2018 - P.3d - 2018 WL 2144379

Commercial property developer filed petition against city requesting a declaration that ordinance, which imposed a variety of new design standards and development regulations, was an invalid land use decision under the Land Use Petition Act (LUPA).

The Superior Court entered judgment in favor of developer. City appealed, and the Court of Appeals reversed and remanded. Developer appealed, and the Supreme Court granted review.

The Supreme Court of Washington held that:

- Ordinance was applied to a specific tract of land;
- Ordinance was a classification change;
- City council was a “specific party” for purposes of whether ordinance was a site-specific rezone; and
- Ordinance was not excluded from review as a legislative approval.

Zoning ordinance extending overlay zone for “limited manufacturing” was applied to a specific tract of land, for purposes of determining whether it was a site-specific rezone reviewable under the Land Use Petition Act (LUPA); ordinance carved out single annexed property from adjacent parcels and left all surrounding annexed properties unaffected, despite their similar characteristics, location, and zoning.

Ordinance extending overlay zone for “limited manufacturing” to landowner’s property was a classification change, for purposes of determining whether it was a site-specific rezone reviewable under the Land Use Petition Act (LUPA), where overlay imposed a building size limitation, restricted the design, size, setback, and orientation of buildings, imposed landscaping, open space, and pedestrian infrastructure requirements, and established regulations pertaining to outdoor storage uses, storm water management, and signage.

City council was a “specific party” for purposes of issue of whether ordinance extending overlay zone for “limited manufacturing” to landowner’s property was requested by city as a specific party and thus was a site-specific rezone reviewable under the Land Use Petition Act (LUPA); city council expressly classified its actions as “approval,” and city code itself named the city council as a specific party with authority to initiate a site-specific rezone application.

Site-specific ordinance extending overlay zone for “limited manufacturing” to landowner’s property was not excluded from review under the Land Use Petition Act (LUPA) as a legislative approval “such as area-wide rezones and annexations,” as overlay extension was not an area-wide rezone or annexation, nor was it similar in nature to either, but rather was a site-specific rezone, confined to a specific tract and impacting a sole owner.

EMINENT DOMAIN - WISCONSIN

CED Properties, LLC v. City of Oshkosh

Supreme Court of Wisconsin - April 3, 2018 - 380 Wis.2d 399 - 909 N.W.2d 136 - 2018 WI 24

Property owner appealed city’s special assessment and conclusion that owner received special benefits from the construction of a roundabout, after owner had obtained summary judgment on a challenge to a previous assessment.

The Circuit Court granted city’s motion for summary judgment. Owner appealed. The Court of Appeals affirmed. Owner’s petition for review was granted.

The Supreme Court of Wisconsin held that:

- “Special benefits” means an uncommon advantage in both the eminent domain statute and the assessment statute;
- Special benefits in eminent domain statute are restricted to local improvements that affect market value;
- Special assessments are not conditioned on conferral of special benefits affecting market value of

property;
- Failure to raise special benefits in eminent domain action does not preclude municipality from levying special benefits via special assessment; and
- Genuine issues of fact regarding validity of special assessment precluded summary judgment.

“Special benefits” has the same meaning, an uncommon advantage, in both the statute governing the determination of just compensation in eminent domain proceedings and the statute governing the general rules applicable to special assessments.

In the eminent domain statute, special benefits are restricted to those local improvements that affect the market value of the property for purposes of determining whether to offset compensation to the owner of property taken for a planned public improvement.

The statute governing the general rules applicable to special assessments does not condition special assessments on the conferral of special benefits affecting the market value of the property; the work or improvement must only provide an uncommon advantage specific to that property.

City was not judicially estopped from specially assessing property owner for special benefits resulting from roundabout construction, even though city conceded no special benefits arose in condemnation action; special benefits in condemnation actions were limited to immediate or imminent increases in property’s fair market value, and city asserted special benefit in special assessment action based on substantial increases in accessibility, which included safer, lower cost, and shorter travel times for customers, deliveries, and employees.

Construction of roundabout was improvement that could be basis for special assessment, rather than service which was arguably not properly subject of special assessment; statutory examples of services have in common removal or rectification of temporary but recurring occurrences, such as snow, weeds, and dead animals, along with repair of sidewalks, curbs, or gutters, but not construction of permanent structure.

Genuine issues of material fact regarding validity of special assessment city levied on property for construction of roundabout precluded summary judgment for city in property owner’s challenge to assessment.

The Curtain Is Lifted For Municipal Bond Markups.

Summary

- FINRA Rule 2232 requires municipal bond markups.
- Bond transaction fees examined.
- Market impact yet to be seen.

As of May 14th, 2018, FINRA Rule 2232 went into effect which requires broker dealers to disclose on customer confirmations their markup for principal trades executed within the same day. Previously, these markups were not disclosed and were rarely discussed. Since bonds are bought and sold on a yield basis, if an investor was looking for a certain yield, maturity, and credit quality, brokers would make sure they achieved these goals while still making a mark-up for themselves. Sometimes this markup was minuscule as is the case with high quality, very short-term bonds. Sometimes it was as much as 3% as it would be on a highly speculative, long dated bond. Dealers would buy bonds in the open market and mark the price up to their clients to cover their expenses and earn a living.

Now some of you may be saying ‘what if I was looking for 5% and I could really get 6%, but my broker’s undisclosed markup ate away at that return?’ If that was occurring, your broker is a jerk (to put it politely). I am not here to defend anyone who does/did that. I am here to defend the reasonable fee charged on the onset of what is typically a multiple year and often a many decade long investment.

In many of the articles I read about the implementation of Rule 2232, the example that I always see is that a customer who invests $100,000.00 and is charged a 1% mark-up will now see that $1,000 one-time fee disclosed on their trade confirmation. This is true, that is how this new rule should work. Without a doubt, there will be some initial and significant sticker shock to seeing this markup printed on an investor’s trade confirmations. “$1,000 for one phone call WTF?!?” What needs to be explained clearly by brokers and understood by investors, is that this is a one-time fee, in contrast to the annual fees charged by other competing products.

I read often that bond investors should look to bond funds or bond ETFs to avoid the fees that come with purchasing individual bonds. Fees that many deem too steep. Let’s use the example of the $100k invested and the 1% fee charged and dig a little deeper. Let’s assume, for argument’s sake, that an investor is looking for a 20-year bond. Not too short, not too long, right in the meat of the yield curve to give a fair representation of an average bond investment time frame. The 1% fee charged at the outset of this investment breaks down to just 0.05% annually. Now, compare that to the 0.36% charged by the Fidelity Intermediate Municipal Income Fund (MUTF:FLTMX), or the 0.09% charged by the Vanguard Tax-Exempt Bond ETF (NYSEARCA:VTEB), or the 0.25% charged by the iShares National AMT-Free Muni Bond ETF (NYSEARCA:MUB). One percent on the onset of the investment doesn’t stack up too bad. Now, bonds can be called in early, or might need to be liquidated by investors prior to maturity, which would increase the transactional annual fee. That I cannot argue with. If you are a true buy and hold investor, transactional fees, on annual basis, are very reasonable.

Fixed income investments, overall, are the buy and hold portion of an investor’s portfolio. Meaning they are not bought and sold frequently to capture short-term gains (as one could do in the stock market) and generate mark ups for broker dealers. Rather bonds are purchased to preserve capital and/or to generate a predictable amount of income over a longer time frame.

I hope that the implementation of this rule does not kick off a large wave of investors moving into bond ETFs from traditional bond portfolios. I feel that these products are a square peg in a round hole. That they appear to accomplish the same goals as individual bond investing but do so by sacrificing certain objectives. We will see how the market reacts.

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Disclosure: I/we have no positions in any stocks mentioned, and no plans to initiate any positions within the next 72 hours.

I wrote this article myself, and it expresses my own opinions. I am not receiving compensation for it (other than from Seeking Alpha). I have no business relationship with any company whose stock is mentioned in this article.

Seeking Alpha

by Dean Myerow
Las Olas Wealth Management of NatAlliance

May 16, 2018

MSRB Requests Comment on Re-Establishing Standalone Rule on Discretionary Transactions in Customer Accounts.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today requested comment on a draft proposal to re-establish a standalone rule governing the handling of transactions in discretionary accounts — those customer accounts in which a dealer is authorized to determine what municipal securities will be purchased or sold.

The MSRB's proposal also seeks to address other uses of discretion for transactions in customer accounts, including when discretion is granted to a third-party agent of the customer, who is not an associated person of the dealer. Specifically, the MSRB believes it is important to expand the scope of the rulemaking to address these scenarios to recognize current practices in the municipal market and to provide investors with basic protections from unauthorized trading in their customer accounts.

The limited new proposed requirements for municipal securities customer accounts are harmonized with requirements of other financial regulators.

Comments should be submitted no later than July 16, 2018. Read the request for comment.
Following the public comment period, the MSRB will carefully consider the comments received and may amend the proposal, submit the proposed rule with any necessary amendments to the Securities and Exchange Commission for its consideration and approval, or take no further action at this time.

Date: May 16, 2018

Contact: Jennifer A. Galloway, Chief Communications Officer
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MBFA Chair Submits Commentary in the Bond Buyer.

Why mayors are 'completely baffled' by loss of advance refunding

The beginning of Infrastructure Week 2018 presents us with the perfect opportunity to highlight a major blow to community control and to local government infrastructure investment: the repeal of advance refunding of municipal bonds in the Tax Cuts and Jobs Act.

I deeply appreciate that the Tax Cuts and Jobs Act maintained the century-old tax exemption for municipal bonds. State and local governments make more than 75% of our nation's infrastructure investments, most of them financed with municipal bonds, and the tax law's preservation of the tax exemption for municipal bonds recognized that the best thing the federal government can do on infrastructure is to first do no harm.

Unfortunately, the tax law's elimination of the tax exemption for the advance refunding of municipal bonds will do considerable harm. This ill-conceived provision robs local governments of the ability to stretch infrastructure dollars and save taxpayer money by taking advantage of lower interest rates. Between 2012 and 2017, advanced refunding saved South Carolina cities, counties, school districts, universities, and utilities (and their taxpayers and ratepayers) approximately ***$164 million***.

Indeed, I am at a loss as to why the same tax law that recognizes the central role of municipal bonds to our nation's infrastructure is the same one that eliminated advanced refunding of municipal bonds. I am, to quote one of my fellow mayors, "completely baffled" by the law's advance refunding provision. Summaries of the tax law offered no policy justification for this provision, making it clear that it was nothing more than a money grab from local governments and local taxpayers to finance tax cuts elsewhere in the bill.

Even worse, I fear that eliminating advanced refunding does not even work as an offset for tax cuts: the Joint Tax Committee's estimate that it will generate $17 billion in revenue over the next decade seems to assume that issuers will continue to move forward with advanced refunding issues per usual, an assumption that defies common sense.

As Infrastructure Week launches and we focus on our nation's infrastructure challenge, Congress has an opportunity to make things right. Representatives Randy Hultgren, R-Ill., and Dutch Ruppersberger, D-Md., the Chairs of the bipartisan Municipal Finance Caucus have introduced legislation to reinstate that tax exemption for advanced refunding of municipal bonds.

It is no surprise that Hultgren and Ruppersberger are leading this charge. Both spent much of their careers in public service in local government and they are therefore fully aware of how infrastructure gets built, who builds it, and what tools are needed to do so. Members of Congress who care about infrastructure should follow their leadership and support their legislation to correct this blow to our nation's infrastructure, municipal finance, and local taxpayers.

Bond Dealers of America

by Steve Benjamin

Steve Benjamin is the Mayor of Columbia, South Carolina. He serves as Chair of Municipal Bonds for America, a non-partisan coalition of municipal bond issuers and State and local government officials along with other municipal market professionals working together to explain the benefits of the tax-exempt municipal bond market which provides the financing needed to build vital infrastructure throughout the United States.

May 15, 2018

SEC Adopts Amendments to Modify MA Forms.

The SEC recently adopted a set of rule amendments removing certain personally identifiable information (PII) from a group of SEC forms, including Forms MA and MA-I (and their variants). Specifically, the amendments eliminate portions of the forms that request filers to provide certain PII, including Social Security numbers, dates of birth, or Foreign ID numbers. **The amendments**

take effect today, May 14th. Information on the amendments can be viewed here.

Though the rules have been amended, the actual forms the filers complete in EDGAR have not yet been updated to reflect the rule amendments. As a result, when completing Form MA, MA/A, MA-A, or Form MA-I or MA-I/A, filers will see sections that ask for PII. Filers should not provide this information.

A copy of the Commission's Adopting Release regarding the rule amendments can be viewed here.

Bond Dealers of America

May 14, 2018

Fitch's Tolerance for U.S. NFP Hospitals to Stay Viable and Profitable: Five Years

Fitch Ratings-Austin-16 May 2018: Capital projects are an inevitability in order for U.S. not-for-profit hospitals to stay viable and so are the disruptions to profitability that arise from seeing those projects to fruition, according to Fitch Ratings in a new report.

Taking those two commonalities into account, a question Fitch frequently receives from investors is "How long will you be patient with the rating before you see our improved results?" Fitch's answer: an uncharacteristically direct "five years". More specifically, Fitch's five-year scenario analysis, which offers a look ahead into a hospital's ability (or inability) to maintain its rating through a cycle.

'Since a hospital's balance sheet will inevitably take a hit once a capital project goes through its various stages up to completion, the key will be how much cash the hospital can generate in order to soften the impact on the balance sheet,' said Senior Director Kevin Holloran 'Whether the hospital can generate enough cash flow until the capital project is completed will go a long way in dictating whether the rating is affirmed, upgraded or downgraded.'

This may raise questions among some investors as to whether hospitals have more difficulty adhering to Fitch's five-year scenario analysis in light of heightened sector pressure. 'Not necessarily. Hospitals are showing surprising resiliency thus far in light of recent broader tax reform changes and other secular pressures,' said Holloran. 'If there is a subset of not-for-profit hospitals that could be affected, however, it would be those organizations that either begin capital projects from a position of financial weakness or are unable to grow top line revenues.'

'Rating Tolerance through Capital and Strategic Projects' is available at 'www.fitchratings.com'.

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Fitch: Limited State, Casino Impact From US Sport Betting Ruling.

Fitch Ratings-New York-14 May 2018: The U.S. Supreme Court's (SCOTUS) decision to strike down a federal law banning states from permitting gambling on the outcome of sporting events will lead to an increase in the number of states permitting sports betting, Fitch Ratings says. However, those revenues will only have a small impact on overall gaming revenue and is unlikely to have a material adverse impact on Las Vegas' sports betting activity.

The ruling struck down the Professional and Amateur Sports Protection Act (PASPA), which unconstitutionally restricted state governments. The ruling was directly linked to a case involving New Jersey but Connecticut, Mississippi, New York, Pennsylvania and West Virginia have already enacted laws to offer legal sports betting, anticipating SCOTUS' ruling. At least 14 other states have had sports gaming legislation introduced in recent sessions. New Jersey filed the case with SCOTUS, arguing PASPA violated the 10th Amendment, which prohibits the federal government from compelling states to impose federal laws.

Sports betting will not contribute substantially to either gross gaming revenue (GGR) or state tax revenue. Notably, sports betting in Nevada, where it is already legal, accounts for a relatively small proportion of gaming revenue. The Nevada Gaming Control Board reported almost $4.9 billion in sports handle in 2017, with $249 million in GGR and about $17 million in associated state tax revenue. That is a small fraction of the state's $4 billion in General Fund revenue.

Casino operators could grow sports betting to a wider range of locations. However, the growth will depend on several local factors. Setting competitive tax rates will be required to draw participants from existing illegal or informal wagering pools and could limit the growth of some markets. Higher tax structures, such as Pennsylvania's, or those with a handle-based integrity fee, which charges approximately 1% on each wager and pays it to the sports league, will limit margins for casino operators and could lower their ability to be competitive in those markets.

The impact of this expansion on casino operators will be small. We expect casino operators to set up sports books, or partner with companies such as William Hill, to offer betting at their facilities or, if permitted, online. The revenue effect will be small and Fitch expects sports books to be offered as amenities to drive higher visitation, rather than raise revenue.

We do not expect the growth of other markets to have a negative impact on casino operators in Las Vegas. We do not anticipate sports books in regional markets will materially compete with Las Vegas during marquis sporting events, such as the NCAA Final Four or the NFL Super Bowl, as Las Vegas has firmly established its attractiveness as a leisure destination.

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

Insurers Pull Back From Muni-Bond Market as Tax Rates Fall.

- **Progressive, Travelers, Chubb reduce holdings, filings show**
- **Filings confirm speculation that tax overhaul would cut demand**

Some of the biggest U.S. insurers reduced their holdings of state and local government bonds after the corporate tax cut took effect this year, marking a retreat by a key buyer in the $3.9 trillion municipal-securities market.

The disclosures, made in filings by companies including Progressive Corp. and Chubb Ltd., confirm the speculation among analysts that the lower tax rate would weaken demand for municipal debt, which offers lower yields because the income is tax-free. The pullback, if sustained, could create headwinds for a market that's already contending with periodic selloffs as investors brace for the Federal Reserve to raise interest rates further.

Progressive, Travelers Cos. and Chubb have collectively decreased their holdings of municipal bonds by $2.37 billion, according to their most recent quarterly reports. Progressive cut its holdings by 24 percent, the steepest drop among the largest publicly-traded property and casualty insurers. Chubb cut its investments by 4.6 percent, while Travelers reduced its stake by 2.9 percent.

"The new corporate tax rate we use to value our tax-exempt holdings rendered these bonds less attractive relative to alternative taxable investments," Mayfield Village, Ohio-based Progressive said in its filing.

The cutbacks came as municipal bonds posted their biggest drop during the first quarter since late 2016, when President Donald Trump's surprise victory raised concerns that his tax and spending plans will accelerate the pace of inflation. While individual investors and mutual funds are bigger owners of state and local government securities, insurers remain a large source of demand. According to the most recent Fed statistics, the companies held about 14 percent of all outstanding municipal bonds, nearly almost as much as banks.

"It's not a great signal when an industry that has represented a significant percentage of your investors doesn't see it as attractive, on an absolute or relative basis, as they used to," Meyer Shields, an insurance analyst at Keefe, Bruyette & Woods, said in a phone interview.

Not every part of the industry is retreating, and some of the pullback may have been driven as much by the market's rocky performance or routine portfolio-adjustments as by changes to the tax code.

Life insurer Principal Financial Group Inc., which decreased its holdings by 3 percent to $6.25 billion, still views the asset class as "important," according to a statement by James Welch, a portfolio manager with Principal Global Investors, the company's asset management arm.

"The first quarter was certainly difficult for all asset classes and any adjustments in allocation amounts should not be construed as a material shift in long-term strategy," he said in the statement, which the company provided in response to questions.

Life insurers have historically been less active buyers of state and local bonds because of limits on how much they could benefit from the tax advantages, though the tax overhaul tweaked the law to give them more incentive to hold the securities. Several of the largest life insurers added to their muni portfolios this year. MetLife Inc., Prudential Financial Inc. and Lincoln National Corp. added a total of $146 million to their holdings in the first quarter, the filings show.

MetLife, the largest U.S. life insurer by market share, upped its holdings by 0.09 percent to $10.76 billion. That increase included a pickup in taxable munis, a decision driven by many factors including tax code changes, according to James Murphy, a MetLife Investment Management spokesman.

The approach was also mixed at Allstate Corp. and American International Group Inc., both of which have substantial property and casualty operations as well as life insurance businesses. Allstate's muni holdings increased by 4 percent to $8.4 billion, while AIG's declined by 2.5 percent to $16.94 billion.

Allstate said that "shifts in asset allocation reflect purposeful decisions intended to balance risk and return considering current and expected market conditions."

Progressive spokesman Jeff Sibel didn't return calls and emails requesting comment. Lincoln spokeswoman Holly Fair said the increase was not a result of tax changes. Chubb, Prudential, AIG and Travelers declined to comment.

Bloomberg

By Katherine Chiglinsky, Romy Varghese, and Brian Louis

May 17, 2018

— With assistance by Amanda Albright

Fire Sale for Closed-End Muni Funds Means Only Brave Should Buy.

- **Average discounts on muni closed-end funds are 9 percent**
- **Leverage fees are up and longer duration means more volatility**

Shares of municipal-bond funds are trading at their deepest discounts since 2013 as the rising cost of leverage, dividend cuts and the market's worst first quarter since 1996 have pushed share prices down.

The discount, or the difference between a closed-end fund’s share price and the underlying value of its assets, is 9.1 percent, according to Ryan Paylor, a portfolio manager at Thomas J. Herzfeld Advisors, Inc. in Miami who invests in the sector. Those gaps reached a more than four-year high of 9.67 percent in March, dangling a potential arbitrage opportunity.

“If you’ve got the stomach for it, this is a fairly decent level to be adding because discounts are wide and should provide some cushion if there’s a further sell-off in rates,” Paylor said.

Closed-end funds raise a fixed amount of money from shareholders in a public offering, unlike mutual funds, which continually sell and redeem shares. The funds are traded on stock exchanges and can trade at premiums or discounts to their net value of the securities they own.

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.

Those rising leverage costs narrow the profit that can be made by investing in long-dated debt, whose yields haven’t increased as much, eating into distributions to investors, Paylor said. More than 80 percent of municipal closed-end funds have cut dividends in the past year, according to data compiled by Bloomberg. Bond traders are pricing in a more than 50 percent probability that the Federal Reserve will hike rates three more times this year.

The overall muni market has lost about 1 percent this year, posting the biggest first-quarter loss in more than two decades, largely because of the January sell-off triggered by concern the Fed would raise interest rates more aggressively than previously expected.

Muni closed-end funds have fared worse, losing an average of 4.5 percent, according to Paylor. If inflation and economic growth pick up more steam, causing interest rates to rise, closed-end funds will incur even bigger losses.

This potential for higher rates and the risk that the lower corporate tax rate will spur selling by banks and insurers has led BlackRock Inc. to shorten duration, reduce leverage and buy bonds with higher credit ratings, Peter Hayes, the head of the company’s municipal bond group, said in a conference call with the firm’s muni closed-end investors last week.

“The market hasn’t really been tested thus far,” Hayes said.

But there are opportunities in closed-end funds for more conservative investors, Paylor said. Some muni-closed-end funds that don’t use leverage are also trading at discounts and have higher dividend yields than municipal exchange traded funds, which trade at their net asset value. Investors are better off buying the closed-end fund, which gives you the opportunity for price appreciation when discounts narrow, Paylor said.

“In my experience, that discount goes away,” he said.

Bloomberg

By Martin Z Braun

May 17, 2018

[The Week in Public Finance: This Illinois Town Is on the Brink of Bankruptcy. How Many Will Follow?]

Harvey, Ill., is facing insolvency thanks to its pension crisis. Some say it won't be the only one.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | MAY 18, 2018

S&P: The Road Ahead For Autonomous Vehicles.

Growth of fully autonomous vehicles will be influenced by and significantly lag the market growth of electric vehicles, which could approach a 10% share of U.S. light vehicle sales by 2025 (compared to 1.1% today), behind our forecast 25% share in Europe and 20% share in China.

Continue Reading

May 14, 2018

Cities Now Use Taxes to Fight Blight. Is It Working?

Land use experts question whether vacant property taxes are the right way to spur development.

It's a scenario that plays out over and over in cities across the country: A small business in a hip neighborhood closes, the storefront is left empty for months — maybe years — and then eventually gets replaced by a national chain.

Whether it's gentrifying Brooklyn, Greenwich Village in Manhattan or Miami Beach, the coffee shops, boutiques and eateries that drew many residents to those areas are struggling to stay.

But why?

The notion of greedy landlords hiking up rents makes an easy scapegoat for policymakers and residents. But the real picture is much more complicated, with an insistence on long-term leases and major disruptions in retail shopping habits all playing a role in the vacancies, according to commercial real estate analysts.

Still, cities are turning to vacant property taxes to nudge property owners of both retail and residential spaces to lease, develop or sell their properties before a short-term vacancy turns into what some cities see as blight.

Cities opting for this solution are seeing varying degrees of success.

Continue reading.

GOVERNING.COM

BY J. BRIAN CHARLES | MAY 14, 2018

S&P: Level U.S. State Debt Reflects Long-Term Management Strategies And Affordability Concerns.

Despite elevated credit pressures in fiscal 2017, state debt levels for the most part stayed constant. Although we anticipate more positive credit conditions heading into fiscal 2019, we think it is unlikely that there will be a significant uptick in debt levels.

Continue Reading

May 14, 2018

S&P Live Webcast: U.S. Charter Schools Fiscal Medians Webcast

Jun. 14, 2018 | New York, NY

Please join our leading S&P Global Ratings analysts from the Charter School team for a live interactive webcast on **Thursday, June 14th at 2:00 pm Eastern Daylight Time**, where they will provide their views on the sector's fiscal 2017 financial medians and general trends in the sector.

Register For This Webcast

S&P: Shifting Competition Leads U.S. Not-For-Profit Health Care Organizations To Accelerate New (And Old) Strategies.

Since the turn of the century, the competitive environment facing hospitals and health systems has changed at an ever-increasing pace, requiring strategies that are vastly different compared with the days when all a hospital had to worry about was putting patients in beds.

Continue Reading

May 14, 2018

TAX - OHIO

Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin County Board of Revision

Supreme Court of Ohio - April 26, 2018 - N.E.3d - 2018 WL 1960259 - 2018 -Ohio- 1612

Taxpayer, which owned restaurant, filed complaint seeking reduction in valuation of property for property tax purposes by county auditor based on property's sale price, which city board of education opposed in countercomplaint.

The Board of Revision retained county auditor's valuation. Taxpayer appealed. The Board of Tax Appeals adopted valuation by Board of Revision. Taxpayer appealed.

The Supreme Court of Ohio held that:

- Effective date of sale was date conveyance-fee statement was filed with county auditor's office, and
- Taxpayer presented facially qualifying evidence of sale of property more than 24 months after lien date, thus triggering rebuttable presumption of recency for property tax purposes.

Effective date of a sale for real-property-valuation for property tax purposes is the date the conveyance-fee statement is filed in the county auditor's office.

Taxpayer, which owned restaurant, presented facially qualifying evidence of sale of property, including certified copies of deed, conveyance-fee statement, and disbursement statement, which occurred more than 24 months after tax-lien date, thus triggering rebuttable presumption of recency, under statute governing use of sale price as true value for property tax purposes when sale was recent and arm's length transaction.

TAX - NEW JERSEY

Gourmet Dining, LLC v. Union Township

Tax Court of New Jersey - March 14, 2018 - 2018 WL 1352651

Operator and manager of restaurant in building which public university leased from the New Jersey Educational Facilities Authority (NJEFA) filed complaints contesting county board of taxation's judgments dismissing its petition of appeal challenging tax assessments by township.

Township filed motions for summary judgment and operator and manager filed cross-motion for summary judgment. The Tax Court ordered that NJEFA and university be joined as necessary parties. University joined in operator and manager's cross-motion for summary judgment.

The Tax Court held that:

- Operation and management of restaurant did not serve public purpose;
- Operation and management of restaurant was not an actual use for college purposes;
- Restaurant operator and manager was not NJEFA's agent;
- University and university foundation were not NJEFA's agents;
- Restaurant operator and manager occupied building as a tenant or lessee; and
- Statute imposing an assessment and taxation on otherwise-exempt real property based on the property's use applied to operator and manager.

Operation and management of restaurant in public-university building did not serve public purpose and, thus, was not exempt from local property tax; restaurant was not public dining establishment, provision in resolution by university's board of trustees stating certain fees paid by operator and manager would be used for scholarships did not make restaurant's operation and management a public purpose, operator and manager's employment of university students did not serve as benefit to community as a whole and was not related to government functions, and fact that restaurant was allegedly integrated into university's mission and contributed to university's academic programs did not render its operation a use for public purposes.

Operation and management of restaurant in building public university leased from the New Jersey Educational Facilities Authority (NJEFA) was not an actual use for college purposes and, thus, restaurant operator and manager was not entitled to exemption from local property taxes, even though university foundation was paid a management fee and a percentage of gross revenue before restaurant realized any profit, where intent and motive of restaurant's operations were to generate profit, operation of restaurant generated gross revenues for its operator and manager, and any profits remaining after all expenses of restaurant's operations were paid belonged to operator and manager.

Operator and manager of restaurant in building public university leased from New Jersey Educational Facilities Authority (NJEFA) was not NJEFA's agent and, thus, was not subject to exemptions from local property tax granted to NJEFA and its agents; contractual agreement by which operator and manager operated restaurant was with university foundation, rather than with NJEFA, and did not involve any transactions, sales, or leases with NJEFA, and no third parties perceived operator and manager to have been conferred some authority by NJEFA or relied on any alleged apparent authority they perceived operator and manager to possess on behalf of NJEFA.

Public university and university foundation were not agents of the New Jersey Educational Facilities Authority (NJEFA), from which university leased a building, and, thus, operator and manager of restaurant located in building were not entitled to exemption from local property tax as agent of the university or the foundation, even though five sections of lease agreement between NJEFA and university contained the word "agents," where agreement contained no provision or term expressly creating an agency relationship between university and NJEFA.

Operator and manager of restaurant in building public university leased from New Jersey Educational Facilities Authority (NJEFA) occupied building as a tenant or lessee and, thus, was not exempt from local property tax under the Leaseholding Taxing Act; management subcontract agreement between university foundation and operator and manager was a contract, concerned a defined property, delineated a set term of years, required operator and manager to pay a fixed annual rate, and afforded operator and manager rights that were akin to those of a lessee, including the right to exclusively occupy the property.

Statute imposing an assessment and taxation on otherwise-exempt real property based on the property's use applied to operator and manager of restaurant in building which public university leased from New Jersey Educational Facilities Authority (NJEFA), where operation and management of restaurant failed to serve a public purpose.

[S&P: California's Tax Increment Bonds Prove Increasingly Resilient; Sector Trend Is Stable To Positive.]

In 2018, S&P Global Ratings expects California's tax increment bond quality to remain stable to positive, supported by assessed valuation (AV) that is on the upswing, limitations on additional debt, and a stable legislative landscape.

Continue Reading

May 16, 2018

[S&P: U.S. Tax Increment Sector Is Stable, Amid A Sustained Economic Recovery.]

S&P Global Ratings believes the U.S. tax increment sector will remain stable in the next one to two years fueled primarily by its expectation that the national economy will continue to experience favorable, albeit modest, property value growth.

Continue Reading

May 16, 2018

Save the Crew!

The Tax Cuts and Jobs Act, as introduced in the House of Representatives on November 2, 2017, would have prohibited the issuance after that date of tax-exempt bonds to finance a professional sports stadium. The Tax Cuts and Jobs Act, as enacted, did not contain this prohibition.

Even if it had, it would likely not have ended the financial assistance that state and local governments lavish upon top-level professional sports franchises to keep those franchises in their current cities or to induce them to relocate. Major League Baseball, Major League Soccer, the National Basketball Association, the National Football League, and the National Hockey League each hold a monopoly in the United States on the allocation of top-level professional franchises in their respective sports. As long as these monopolies exist, state and local governments will afford the leagues financial assistance to claim one of the artificially limited number of franchises, regardless of whether tax-exempt bonds can be used to finance the stadiums in which the franchises play.

Is there anything state and local governments can do to ensure that one of these franchises, after having received public benefits and financial assistance, will not relocate? Read on after the jump.

Continue Reading

By Michael Cullers on May 20, 2018

The Public Finance Tax Blog

Squire Patton Boggs

Neighborly Issuer Brief.

Solar Moves Forward in California

The California Energy Commission approved new rules governing residential buildings requiring all residential buildings up to three stories high (including both single-family buildings and condos) to be built with solar panels. The rules go into place in 2020. There will be exceptions for buildings that can't fit panels or are hidden from the sun by vegetation or their urban environment. Solar is already responsible for about 16% of California electricity — these rules are intended to help the state reach its goal of having at least half of electricity come from renewable energy by 2030.

One issue people will have with the new regulations is the estimated $8,000-$12,000 more it will cost to build a new home. The Energy Commission estimates that buyers could see their monthly mortgage go up by $40 every month. Still, this would be offset by an estimated $80 decrease in monthly utility bills. Over time, a family would save $19,000 in today's dollars, adjusted for inflation, over 30 years. Other estimates show higher installation costs offset by greater monthly utility savings. All the estimates we have seen show better than breakeven results for residences installing the panels.

As is the case with so many other environmental issues, California is at the forefront of innovation. Should the regulation work out favorably, this standard could not be adopted by other states as they seek to achieve environmentally beneficial goals.

In addition, should the program work favorably, there's an opportunity for California to use housing finance programs, such as municipal bonds, to assist lower-income homebuyers finance environmentally friendly homes. Bonds could also be used to finance "retrofitting" of existing housing, especially for lower-income homeowners where such a program could generate both cost savings for the homeowner as well as environmental benefit for society as a whole.

Oregon Introduces Sustainability Bonds

Oregon State Treasurer, Tobias Read, recently announced the inaugural sale of Oregon Sustainability Bonds — a new category of state bonds tailored for socially responsible investors and dedicated to projects that will enhance community and sustainability efforts. The first tranche is a $40 million federally taxable issuance to bolster affordable housing construction and home ownership programs.

Proceeds will finance grants for the construction of affordable housing projects via the State's Local Innovation and Fast Track (LIFT) Affordable Housing Program. The projects selected for inclusion in the LIFT program by the Oregon Housing and Community Services Department are in historically underserved communities and designed for households earning at or below 60% of Area Median Income.

These bonds are authorized under the Oregon Sustainability Act, which calls for developing and protecting resources so we can meet current needs while also providing that future generations can meet theirs — from the joint perspective of environmental, economic and community objectives.

The Treasurer's Office also detailed how they intend to address accountability concerns of socially responsible investment interests. There will be annual reporting on the uses and spend-down of the bond proceeds available on the Oregon State Treasurer's website until the funds are spent in full. This is a trend we anticipate will continue across the country as more investors are increasingly mindful about where they put their money.

Infrastructure Dead at the Fed for 2018

The White House acknowledged last week that one of President Donald Trump's central domestic legislative promises – a massive $1 trillion package to fund the construction of new roads, bridges and other infrastructure projects – probably isn't going to happen anytime soon.

As a result, states and localities will remain the leaders in creating, executing and most importantly, funding their infrastructure needs. And this puts more pressure on their existing funding sources and credits as they cope with the lack of a coherent (if promised) funding plan.

Posted 05/17/2018 by Joseph Krist

Neighborly

Chicago Schools Double Bond Sale as Rates Head Higher.

- **Board of Education sold $561 million of G.O. refunding bonds**
- **Demand for yield, rate hike outlook seen as reason for change**

The Chicago Board of Education doubled the size of its bond sale Thursday to $561 million amid signs of strong demand for the junk-rated district's high-yielding securities.

The offering, which was initially planned for next week until officials moved it up, is the first this year for the nation's third-largest school district and was increased from the $260 million initially scheduled. Because of its chronic fiscal strains, the system's uninsured bonds carried yields that were 1.93 percentage point to 2.24 percentage points more than top-rated securities, with debt backed by Assured Guaranty Municipal Corp. offered for as much as 1.35 percentage point over the benchmark, according to a repricing note sent to an investor.

The acceleration of the district's bond sale came after yields rose this week amid concern that the Federal Reserve may raise interest rates more aggressively than previously anticipated.

"There's a consensus that on the horizon there's not a lot of yield coming, and so buyers are certainly putting their money to work," Adam Buchanan, senior vice president of municipal sales and trading at Ziegler Capital Markets Group in Chicago, said in a telephone interview. "For an institution that needs capital in a rising interest rate environment, you want to raise as many dollars as you can at this cost of capital — it could be more expensive down the road."

High-yield bonds have been one of the few bright spots in the municipal market this year, delivering returns of 1.9 percent despite the losses posted by most securities, according to Bloomberg Barclays indexes. Prices on the Chicago district's debt have rallied over the last year, reflecting the significant step-up in state aid for a system that had long been in fiscal crisis largely due to its escalating pension bills.

This month, the most-actively traded Chicago Board of Education debt traded at an average price of $1 at a 4.96 percent yield, compared to 79.6 cents at a 7.3 percent yield in May 2017, according to data compiled by Bloomberg.

In August, lawmakers and Governor Bruce Rauner overhauled Illinois's school funding formula, making the state pick up the normal cost of Chicago's teacher pensions, a major expense for the cash-strapped district. That change, along with a hike in other state aid and property taxes, means Chicago schools have an additional $444 million of revenues, according to bond documents.

The state now covers $221 million of normal pension costs for Chicago schools and provides an additional $93 million in other state funding, according to bond documents. The district also enacted a $130 million property-tax levy for pensions, according to an online presentation to investors.

“CPS is on the hook for a lot less of their pension burden than they have in the past, and there’s a number of other funding sources that are offsetting that risk,” said Dennis Derby, a portfolio manager at Wells Fargo Asset Management, which holds $39 billion of municipal debt, including Chicago school bonds. His firm is considering buying Thursday’s deal. “The market reception is significantly better than it was two years ago because there’s less uncertainty tied to funding going forward.”

It’s a more positive story than a year ago, but still there’s a lot of pension debt to fund, said Dan Solender, head of municipal investments at Lord Abbett & Co., which holds $20 billion of state and local debt, including some issued by district. The Chicago teachers’ pension fund is about 50 percent funded, leaving an unfunded liability of about $10.9 billion, according to bond documents.

“They’re telling an improving story,” Solender said in a telephone interview. “They still have a lot to do to really improve themselves to get out of the below investment grade category.”

Another risk is the board’s reliance on the fiscally-stressed state of Illinois that faces ongoing political squabbles over its budget. Rauner, a Republican who is facing re-election this year, proposed a spending plan in February that ends the state’s pension pickup of CPS’s normal pension costs. Democrats have resisted Rauner’s plan, and it remains to be seen what budget, if any, Illinois leaders will approve for the year that starts July 1.

In April, S&P Global Ratings revised its outlook on the board to positive from stable, citing the jump in state aid, but the board is still rated B, five steps below investment grade, partly due to its “extremely weak liquidity,” according to S&P.

There’s no question that this year is different for the board. Ending the school year early, canceling summer school and slashing school spending were all floated as options for the district in 2017 as it struggled to make its June 30 pension payment.

“A large part of it is the credit outlook for CPS is substantially better than it was even just a year ago,” Derby of Wells said. “And management has done a commendable job in getting their message across to investors.”

Bloomberg

By Elizabeth Campbell

May 17, 2018

S&P: Pension Pressures For Illinois Municipalities Could Become An Imminent Budgetary Challenge Under The State's Revenue Intercept Law.

Invoking a statute designed to compel Illinois municipalities to fund their public safety pension plans according to statutory minimum levels, pension boards in the cities of Harvey (not rated) and North Chicago (A/Stable) recently petitioned the state comptroller to intercept state revenues due to the municipalities.

Continue Reading

May 14, 2018

Chicago Schools Sell Upsized Bond Deal Ahead of Schedule.

CHICAGO, May 17 (Reuters) – The junk-rated Chicago Public Schools (CPS) on Thursday more than doubled a planned bond refinancing issue to $561 million and accelerated its pricing amid rising rates in the U.S. municipal market.

The district had initially sized the issue at $260 million and set a tentative pricing date for next Tuesday through senior underwriter Loop Capital Markets.

"I guess they are taking advantage of the market while rates are increasing," said Daniel Berger, Municipal Market Data's (MMD) senior market strategist.

The 10-year bond yield on MMD's benchmark triple-A scale has climbed 10 basis points since Monday.

There was no immediate comment from CPS on the bond pricing.

Yields in the deal topped out at 4.95 percent for general obligation bonds due in 2035 with a 5 percent coupon, according to a repricing released by underwriters. Insurance by Assured Guaranty Municipal Corp on an additional 2035 maturity produced a lower yield of 4.05 percent.

Spreads over MMD's scale ranged from 193 basis points to 224 basis points for uninsured bonds and were as high as 135 basis points for insured bonds.

Escalating pension payments have led to junk credit ratings, drained reserves and debt dependency for CPS, the country's third-largest public school system.

School officials have touted an improved financial outlook under a new Illinois school funding formula enacted last year that boosted the flow of state funding to CPS by $450 million.

The district still has an "extremely weak cash position," according to S&P Global Markets, which last week rated the bonds at 'B' with a positive outlook.

The sale came a day after the Illinois State Board of Education placed the district's special education services under supervision after finding some CPS policies and practices violated a federal law protecting disabled children's' right to a free and appropriate public education.

(Reporting by Karen Pierog, editing by G Crosse)

WV Governor Announces Bond Sales and Investor Relations Website

Charleston — As the state prepares to put up for sale about $800 million in general obligation bonds for larger projects of the Roads to Prosperity program, Gov. Jim Justice announced the creation of a bond sale and an investor relations site.

Found at investorrelations.wv.gov, the governor said the bonds carry a strong rating by Moody's S&P Global Ratings and Fitch Ratings and have maturities ranging from one to 25 years.

Among the information housed on the site is a list of West Virginia bond offerings, the state's credit ratings and a step-by-step process to purchasing West Virginia bonds.

A frequently asked questions (FAQ) on the site answers such questions as:

What is a State of West Virginia General Obligation bond ("GO bond")?Do GO bonds require voter approval?What is a Revenue Bond?What is a Lease Revenue Bond?What are key factors in pricing municipal securities?What are Credit Ratings?What does it mean when a bond or note is taxable?What is a preliminary official statement (POS)?What is the pricing/sale date?What is the difference between a competitive and negotiated sale?A news release said West Virginia residents can purchase tax-exempt bonds by contacting one of 15 firms in the underwriting syndicate and selling group led by Bank of America Merrill Lynch. Bonds may only be offered through a preliminary official statement and be purchased through a registered broker.

"These bonds are part of a program that will finance over $2 billion in road infrastructure improvements," Justice said in the release. "The projects will rebuild and reconstruct West Virginia's aging roads and bridges as well as starting up several new highways projects. This is your chance as a West Virginian to invest directly in the Mountain State's future, and help move our state forward for generations to come."

By Andrea Lannom

Register-Herald

City of Billings Sued Over Franchise Fees in Utility Bills.

A complaint is filed in Yellowstone County District court claiming franchise fees collected by the City of Billings on water and garbage utility bills are illegal.

The contention comes after the state Supreme Court struck down similar fees in the past.

The 15 page complaint is filed in Yellowstone County Court on the behalf of six Billings Public Works utility customers.

The complaint is seeking class action status which would up the number of plaintiffs from six to over 30,000.

"Billings residents sue the city of over utility franchise fees."

That's the headline in today's edition of the Yellowstone County news.

A copy of the complaint shared with KULR-8 argues that these franchise fees are actually an illegal sales tax.

The franchise fee is listed under current charges standard utility bill.

The City of Billings outlined what the "franchise fees" are for and where they go in the "rules and regulation governing water and waste water services" published in February of 2009

Section 1611 states that the utility shall pay all money collected from franchise fees to the city of billings for use of its rights-of-way to install water/waste water lines. such money shall be deposited in the general fund.

This is where the complaint takes issue.

The plaintiffs argue the city's "franchise fees" are not reasonably related to the city's cost of providing water, sewer, and garbage disposal services.

This is because the general fund is used to support the general administrative costs of the city and other services provided by the city, including but not limited to public safety, municipal court, parks, recreation and public lands, and city finance costs.

The complaint asks the court to prevent the city from collecting future franchise fees and repay customers who have paid the fee over the last eight years.

That could be a hefty fee for the city in the neighborhood of $15 million.

Breaking that number down, the average customer could see roughly $30 returned to them after court costs are assessed.

Now again all that is only comes if a judge grants class action status in this case.

We did reach out to the city for comment.

City Administrator Bruce McCandless couldn't comment on the complaint as he has not been served with it yet.

However, he did say that this past march council members did request the franchise fee be removed from utility bills during the next fiscal year.

By Mary Jane Belleza

May 17, 2018

KULR

The Big Wager is On Who'll Win the Fight For the Sports Betting Jackpot.

Gambling is as woven into the fabric of American life and history as stars and stripes are woven into the pattern of an American flag.

From the neighborhood poker game to state lotteries to office March Madness pools to giant casino complexes, from fully legal to completely unsanctioned, gambling is everywhere and most of us participate.

So it might seem there's little room to ratchet up even further the pervasiveness of gambling as entertainment, as an industry and as a tool of public finance in this country.

You ain't seen nothin' yet.

What’s coming is not a wave of more casino construction — while there are projects in development, including a handful in Washington, that segment of the gambling (sorry, “gaming”) industry looks to be nearing saturation. Nor is there interest in putting slot machines or similar devices in every bar, restaurant store and convenience store.

Instead, the jackpot everyone is dreaming of hitting will be found in sports betting.

The U.S. Supreme Court last week struck down the Professional and Amateur Sports Protection Act, a 1992 federal law that prevented all but a handful of states from allowing betting on sporting events and contests. Stripped of legalese, the court’s decision basically told Congress “butt out, this is none of your business.”

That is glorious news to states that, in their never-ending quest for more tax revenue, have long and longingly eyed the millions they knew Americans were wagering on sports, never mind the laws and rules forbidding such recreation.

They weren’t wrong to surmise Americans were spending sums just on sports betting that might be small individually but that amounted to millions, or more, in the aggregate.

True confession time: Your columnist, working years ago in a part of the country known for enthusiasm for both sports and gambling, used to pitch a quarter into the pool for the weekly pick-10-games card during football season. It was organized by teachers at the local high school.

That was long before the days when office copiers worked overtime to print basketball tournament brackets and the office-pool winner was likely someone who made selections according to school colors and nicknames. Participants in those low-stakes affairs might not have seen themselves as part of the sports-wagering complex, but government did, along with bookies, offshore betting services, legal Vegas sports books and the like, and dreamed of getting a slice of the action.

Now it can.

What’s fascinating about the decision is not so much the ruling itself. Given the general shift in societal attitudes toward what were once regarded as vices (hello, marijuana), the outcome seemed inevitable. When recently has some of the gambling toothpaste been shoved back into the tube?

The dramatic change has come in sports organizations’ attitudes, especially for the professional leagues. Where once they decried the idea of sanctioned gambling on their contests, out of professed fear for point shaving and tampering with outcomes, now they too are getting comfortable with the notion, especially if they too get a cut of the action.

The motivation behind that shift might be less a matter of its inevitability, or that the leagues were never going to stamp out gambling. They, like government, are always on the hunt for money. But the leagues are looking at forecasts for the once bounteous revenue streams from television and not liking what they’re seeing. Gambling could be the answer.

The huge question now is how legal sports betting is to be structured. The Supreme Court didn’t legalize sports betting; it merely said it’s up to the states to regulate.

A few states are poised to go. Oregon was one of the handful of states grandfathered in by the federal law, and has run sports-related contests through its lottery before. It’s already discussing new games.

Washington is well behind, and the Legislature isn’t due back in Olympia until January. Even that gap, though, might not provide enough time for all the negotiating that must be done.

What kind of betting, for example, would be allowed, and who would run it? The teams themselves? Would they outfit their stadiums and arenas with betting parlors — or make it possible to make a wager via wireless device from your seat? How about horse-racing tracks, which have long offered betting not only on their own contests but also on races at other venues?

Maybe we'll have independent bookies. Or, since this region fancies itself a hub of the online world, the next big company will be a web-based sports-wagering operation. Then there are the Indian tribes and casinos — think they might want in? And how does the state get involved? How much of a cut does it take?

Gambling has a history of disappointment, and that goes for government entities and others counting on big rewards from sports wagering. The official, professionally run sports-betting venue will attract big bettors. Will the once-a-year office-pool participants make the switch, and will the system work if they don't?

We're about to spin the wheel to find out.

THE NEWS TRIBUNE

BY BILL VIRGIN

May 19, 2018

Bill Virgin is editor and publisher of Washington Manufacturing Alert and Pacific Northwest Rail News. He can be reached at bill.virgin@yahoo.com.

The Early Results of States' Opportunity Zones are Promising, But There's Still Room for Improvement.

Eighteen states have submitted their selections of local neighborhoods that will qualify as "Opportunity Zones" under a new tax incentive created by Congress in last year's tax bill. These selections—and the characteristics of the neighborhoods themselves—will be important determinants of the ultimate success of the program. As I wrote in February just before the state selections were due, poor choices by states could turn a program meant to benefit residents of poor neighborhoods into a tax break for developers investing in already-gentrifying areas. With information in hand from 18 states, I describe the characteristics of neighborhoods that have been selected so far. (That information is also available in this file (.xls) for the remaining 32 states who have yet to select their Opportunity Zones).

Looking at the 18 states that have submitted, the good news is that most states designated deeply impoverished places for the new subsidy, with Georgia and California standing out for allocating most of their picks to their most distressed neighborhoods. Nevertheless, 22 percent of selections were for areas with relatively low poverty rates (below 20 percent) and an additional 19 percent were in already-gentrifying areas (areas with the highest rates of home price appreciation).

Opportunity Zones (hereafter referred to as OZs) offer favorable capital gains treatment for taxpayers who invest in designated low-income neighborhoods. States were given a list of eligible neighborhoods produced according to the law by the Department of Treasury—a broad list that actually includes 57 percent of all neighborhoods in America, not all of which are distressed—and were allowed to select one in four of them to be Opportunity Zones.

Continue reading.

The Brookings Institute

Adam Looney

Wednesday, April 18, 2018

Download the data
Download the tables and figures

The Curious Case of Hartford: How Can a State Rescue a Debt-trapped City?

The common misconception with local government debt was that all the debt issued by the local government was backed by its full tax authority; so, if there is ever a loss in revenue or general fund deficit, the municipality will simply increase the taxes to fill that deficit. Then, Detroit, MI and Stockton, CA happened, delivering a rude awakening for many investors who simply thought local governments can never go bankrupt. For Detroit and Stockton, there was little to no state intervention to help their municipalities and it eventually led to two of the biggest municipal bankruptcies in the history of the United States. However, there have been other examples, like Atlantic City, NJ, where the City has been under major financial strain to meet even its short-term obligations and the state (New Jersey) intervened to provide the much-needed help to prevent bankruptcy.

Recently, investors and municipal debt markets witnessed something quite similar: the State of Connecticut's intervention into its capital city, Hartford, and its finances to provide much-needed financial relief. This eventually led to a four-notch credit rating boost for Hartford City debt from CCC (junk) to A (investment grade).

In this article, we will take a closer look at the State of Connecticut's intervention, its short- and long-term impacts, and what it means for other municipality General Obligations (GOs) in a similar situation.

Continue reading.

municipalbonds.com

by Jayden Sangha

May 17, 2018

Municipal Bonds Weekly Market Report: Fed Chair John Williams Using Neutral Rate as Guidance.

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 increased this week.
- Muni bond funds saw its second week of inflows.
- Be sure to review our previous week's report to track the changing market conditions.

Continue reading.

municipalbonds.com

Brian Mathews

May 22, 2018

Amazon's Fight with Seattle over Head Tax Foreshadows Battles to Come in Other Cities.

SAN FRANCISCO — If Seattle's bitter public fight with Amazon over a new tax on employees is a sign of the future for cities vying to become the company's next headquarters, there's a take-home message: You can push Amazon, but you have to be prepared for it to push back — hard.

On Monday, Seattle's city council unanimously passed a measure that will require companies with revenues of more than $20 million a year pay an annual $275 tax per employee despite strong pushback from Amazon — the city's largest employer — and other large businesses including Starbucks.

The vote came after weeks of hearings, demonstrations, heated public meetings and a threat by Amazon to stop construction of its newest Seattle tower and to pull out of leasing another.

The dispute ended in something of a draw Monday. For Seattle, the initial result should be another $45 million in the city's coffers each year to build low-cost housing and to aid the homeless — problems many in the city feel have been exacerbated by the influx of thousands of highly-paid tech workers at Amazon who have driven up rents and pushed out lower income residents.

Though it passed, in many ways the final vote was a victory for Amazon. The original proposal had called for a $500 a head tax on all Seattle businesses with more than $20 million a year in gross revenue. The tax passed by the council was a compromise at slightly more than half that, though at $275 per employee it is still the largest head tax in U.S. history.

The company minced no words when the council voted.

"We are disappointed by today's City Council decision," Amazon vice president Drew Herdener said in a statement. "We remain very apprehensive about the future created by the council's hostile approach and rhetoric toward larger businesses, which forces us to question our growth here."

At the same time, it backed away from its previous threats to pull out of its most recent building project in Seattle, a 17-story office tower that will have 1 million square feet of office space and will house as many as 8,000 new employees.

It also said it would continue plans to lease the Rainier Square skyscraper, which will have 720,000 square feet of office space and be the Pacific Northwest's second-tallest building when it is completed in 2020.

There had been concerns Amazon might scale back its hiring plans for Seattle, but that doesn't seem to be happening. According to the Seattle Times, in the two weeks since Amazon said it was going to stop its buildup in Seattle because of the tax, it's actually posted new ads for 547 new Seattle-based jobs. Currently, Amazon has 5,700 jobs open in Seattle, up from 4,000 a few months ago.

The showdown is one familiar to residents in the San Francisco Bay Area, where public anger has risen over who should pay for the civic woes that can result from fast growth, high salaries, too-little housing and rising income inequality. Tech firms especially, because they have fewer working class and blue collar positions compared to their highly-paid technical staffs, have been a lightning rod for these concerns.

For the 20 cities on Amazon's finalist list for its second headquarters — a prize worth more than $5 billion and 50,000 white-collar jobs — their first response should be to run to the phone, said Thomas Cooke, a professor at Georgetown University's McDonough School of Business who writes on tax ethics and liability.

"Anybody who's on the wait list should be communicating with Amazon to say, 'That's not our style. Something like this has never been proposed in our city,' " he said.

Others think seeing Amazon's hardball tactics might give those eager cities pause.

"This is brinksmanship at its best, and this is a tension that really could impact how positive the relationship will be with the city ultimately selected," said William Riggs, a planning strategist and professor at the University of San Francisco.

While housing shortages and income inequality are common across the nation, Seattle is in a very different position from other cities where its HQ2 might go.

In Washington state, neither state or local government are allowed to tax income. In addition, state law caps real estate tax increases to no more than 1% a year.

"It's a very challenging environment in which to raise revenues. So from that unique perspective, the proposed tax on workers seems like the best available to Seattle right now," said Matthew Gardner, a senior fellow at the Institute on Taxation and Economic Policy, a Washington D.C.-based, non-partisan non-profit, focused on federal, state and local tax reform issues.

At the same time, Amazon has a well-deserved reputation for aggressively avoiding taxes. In fact, it chose Washington state as its home in part because of its small population, allowing the company to make most of its sales where it had no physical presence and therefore wasn't required to pay sales tax.

"Amazon appears to have built its business plan from day one on avoiding taxes," Gardner said.

Whether other cities will be as deeply affected by Amazon's arrival as Seattle is not clear. An analysis by Fitch Ratings published two weeks ago found that most large metropolitan areas being considered for HQ2 probably wouldn't see much real estate impact.

Most of the finalists have "large populations, well-developed infrastructure and sufficient housing supply to support the needs of Amazon's workers. We do not expect HQ2 to have much, if any, impact and only in the long term," said Amy Laskey, managing director for U.S. public finance with Fitch Ratings

Only in the smaller cities, such as Raleigh, N.C., Indianapolis, Ind. and Columbus, Ohio could any change be significant enough to affect demand on housing and infrastructure, she said.

USA TODAY

by Elizabeth Weise

May 16, 2018

Congress Was Just Handed a Blueprint for Solving Puerto Rico's Debt Crisis.

A recent report concludes that the factors that contributed to Puerto Rico's debt crisis were inadequate management and oversight practices by the government. This included poor policy decisions by government leaders with regards to public debt financing and public pension funding, and a prolonged economic contraction, which has cut across all economic sectors in the island. Puerto Rico has an estimated $70 billion in public debt and close to 50 billion in unfunded liabilities.

In summary, General Accountability Office (GAO) report recommendations released May 9 include:

- modifying the federal tax exempt status for Puerto Rico municipal debt
- applying federal investor protection laws to Puerto Rico
- modifying the Securities and Exchange Commission's (SEC) authority over municipal bond disclosure requirements

From a practical point of view these recommendations may seem untimely. The government of Puerto Rico is currently under the jurisdiction of a congressionally mandated oversight board and in bankruptcy-like proceedings in the Federal District Court. The government also will not have access to the municipal bond markets for the foreseeable future,.

It should be noted that Rep. Nydia Velázquez (D-N.Y.) recently presented H.R. 1366 to amend the Investment Company Act of 1940 to protect mutual fund investors in Puerto Rico as other American citizens in the mainland. The House approved the bill with bipartisan support. In the previous Congress, the bill had also been approved by the House, but was blocked by the Senate.

This report comes on the heels of a series of pronouncements made in the last few weeks by various congressional members on Puerto Rico's financial crisis and political future.

Just last week Rep. Rob Bishop (R-Utah) as chairman of the House Energy and Natural Resources Committee, declared that he favored statehood for Puerto Rico. Sen. Bill Nelson (D-Fla.), who is up for reelection in the 2018 midterm elections, declared he would favor statehood if Puerto Ricans asked for it, apparently ignoring that in the last two local plebiscites the statehood alternative won.

Florida's Republican Gov. Rick Scott, who is running against Nelson for the Senate seat, also declared that he favors statehood for Puerto Rico. As a political commentator ironically noted, it would appear that the next elected Florida senator will also represent Puerto Rico.

On the other hand, both Sens. Marco Rubio (R-Fla.) and Lisa Murkowski (R-Alaska) have argued that statehood for Puerto Rico is not currently on the discussion table, and that economic and financial recovery are the main concerns. Of course, statehood and economic and financial recovery are not mutually exclusive, and it is possible to address both simultaneously.

In fact, GAO'S recommendations on modifying the federal tax exemption enjoyed by Puerto Rico municipal bonds silently underlines the status question. It is precisely because Puerto Rico is an unincorporated territory — belonging to, but not a part of the United States.

As a matter of constitutional law, any other stateside municipal bond which hypothetically enjoyed a federal tax exemption would run afoul of the Uniformity Clause. This is the same issue that was raised by the December 2017 amendments to the Federal Tax Code, which classified Puerto Rico as a foreign jurisdiction for purposes of imposing a 20 percent taxation rate on American Controlled Foreign Corporations earnings at the time of entering the United States.

The GAO report is correct in pointing out that Puerto Rico's current fiscal and economic woes are due to the mismanagement by elected officials in Puerto Rico throughout the years.

Puerto Rico's government addiction to public debt financing, concurrent with a private sector dependent on federal and territorial tax incentives, has until recently benefited the financial goals of investors, manufacturers, and certain political sectors in Puerto Rico at the expense of long-term stability and growth.

As to be expected, the GAO report studiously avoids making any political or constitutional recommendation. Historically speaking Congress shoulders some of the responsibility by statutorily facilitating this state of affairs. In this context, PROMESA is a belated recognition by Congress that the unincorporated territorial model for Puerto Rico is spent.

Only when the political underpinnings of the current relationship between Puerto Rico and the United States are addressed can real progress be achieved on the social and economic fronts. Congress should act on GAO's recommendation as a step in the right direction, formally incorporating the territory of Puerto Rico, and treating in all matters it as any other state jurisdiction.

THE HILL

BY ANDRÉS L. CÓRDOVA, OPINION CONTRIBUTOR — 05/14/18

Andrés L. Córdova is a law professor at Inter American University of Puerto Rico,. where he teaches contracts and property courses. He is also an occasional columnist on legal and political issues at the Spanish daily El Vocero de Puerto Rico.

Seattle Wanted to Break Up With Wells Fargo. Then It Committed to Three More Years.

Breaking up is hard — especially if you're a city trying to break up with a bank.

Especially if the other banks aren't all that interested in dating you.

That's more or less why Seattle just signed a three year extension to keep banking with Wells Fargo, even though officials voted a year ago to cut ties with the bank because of its role in funding the

Dakota Access Pipeline.

The city council resolved to find a new financial institution before ending the Wells Fargo contract at the end of 2018. But this week, City Finance Director Glen Lee gave them an update on the search for a bank.

“The reality is, none wanted to participate and bid for our services, and given the time it takes to shift to a new service, we felt it was prudent for the city to move forward,” Lee said.

Lee said some banks offered to run certain services, but none applied to handle the city’s lending and deposits. Wells Fargo provides lending and deposit services for the city, processing about five-billion dollars a year in city finances.

Since no other bank applied, Seattle will bank with Wells Fargo for three more years.

In the meantime, city staff are studying the idea of a municipal bank, which Lee said Mayor Jenny Durkan supports. That idea was proposed at the state level in the past, but never gathered steam. City staff want to hire a consultant, possibly in conjunction with other Washington cities, to set up a public bank.

Cities such as San Francisco and L.A. have also considered municipal banking, but only North Dakota and Native American tribes currently have their own banks.

Environmental activists and Native American leaders in the region celebrated last year’s decision by the Seattle City Council. Under the ordinance approved last year, the city of Seattle will not work with any business that engages in unethical business practices.

The council voted to stop banking with Wells Fargo because it’s a lender for the Dakota Access Pipeline — and because of a scandal last year in which accounts were set up for clients without their knowledge. More than a dozen banks are connected to the pipeline, including CitiBank, I-N-G, Chase and Bank of America.

KUOW

By PAIGE BROWNING | MAY 14, 2018

NFMA Submits Amicus Brief Concerning Puerto Rico Highway Revenue Bond Ruling by U.S. District Court.

The National Federation of Municipal Analysts announced today that it has filed an amicus curiae brief with the United States Court of Appeals for the First Circuit in support of the appeal filed by Assured Guaranty, Financial Guaranty Insurance Company and National Public Financial Guarantee Corporation of a decision of the United District Court for the District of Puerto Rico (the “District Court”) involving Puerto Rico Highway and Transportation Authority bonds.

Click here to read the press release.

Click here to read the amicus brief.

Puerto Rico Bondholders Pitch $10 Billion Debt-Cutting Deal.

Proposed sales-tax agreement rejected by Puerto Rico's federal overseers

Major Puerto Rico creditors agreed how to split up sales-tax collections and cut $10 billion in public debt but were rebuffed by the U.S. territory's federal financial supervisors.

The settlement framework unveiled Monday concerns future sales-tax revenue collections that Puerto Rico transferred to a public corporation to raise $18 billion in securitization bonds known as Cofinas. Competing creditors have tried to free up that money in Puerto Rico's court-supervised bankruptcy proceeding to pay down other government debts.

The federal board overseeing Puerto Rico's finances would need to approve any settlement for it to take effect. An oversight board spokesman said the proposed terms were crafted without its input "and are completely unaffordable."

The proposed deal swings the pledged taxes to a new lockbox which would distribute securities to participating debtholders at a discount to their claims, providing Cofina bondholders 64.5 cents on the dollar.

Creditors holding general obligation debt backed by Puerto Rico's full faith and credit would receive 58.6 cents on the dollar, according to settlement documents.

The oversight board approved a fiscal plan that includes a $6.7 billion surplus over six years from which creditors could be repaid, provided a host of other fiscal and structural reforms are enacted.

An agent for Cofina bondholder interests appointed by the oversight board supports the proposed division of sales-tax monies, settlement papers said. The agent appointed to attack the Cofina structure on behalf of unsecured creditors "did not support any portion."

The judge presiding over Puerto Rico's bankruptcy heard arguments last month on ownership of the sales tax collections, a dispute that has dominated the proceedings since they began more than a year ago. She hasn't yet issued a ruling or decided whether to punt the matter to Puerto Rico's highest local court.

Mutual funds with large holdings of subordinated Cofina debt including OppenheimerFunds Inc. weren't signatories to the proposal.

How the dispute is resolved will reverberate throughout the U.S. municipal marketplace as investors gauge the safety of Cofina-like investments backed by specific revenue streams. Discussions around an alternative settlement proposal with Puerto Rico's public pensioners are ongoing, according to a spokesman for hedge funds holding Cofina debt.

The Wall Street Journal

By Andrew Scurria

May 14, 2018

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

Fitch: Seattle's Head Tax Unlikely to Affect Credit.

Fitch Ratings-San Francisco-18 May 2018: The city of Seattle, WA's employee tax announced yesterday on select large companies will not materially affect the city's 'AAA' rating and Stable Outlook, according to Fitch Ratings.

This week, Seattle's city council unanimously adopted a measure to impose a $275 per employee tax on companies that gross over $20 million annually. The ordinance is expected to be signed by the mayor and will go into effect Jan. 1, 2019 and expire Dec. 31, 2023. The city estimates it will generate roughly $47 million per year to address homelessness and housing affordability issues though its ultimate use will be determined along with the 2019 budget.

The estimated increase to revenues totals about 3.4% of 2017 revenues and is expected to increase at roughly the pace of employment (about 3% in recent years). Fitch views the city's revenue growth prospects as very strong, and as such, this change does not affect that assessment.

Fitch expects any impact to the city's strong economic growth as a result of the new tax to be limited, given the relatively modest amount of the tax and other considerations related to corporate locations. Seattle is attractive to employers because of the pool of qualified employees in the city and broader region. The city's proportion of working age population is 9% higher than the county and 17% higher than the nation, and the proportion with a bachelor or advanced degree is 23% higher than the county and twice as high as the nation. The city is also the cultural center of a large metropolitan region with many public amenities including sports, entertainment, transit, and nearby airport, and seaport facilities. The unemployment rate in the city has been below 4% since 2015 and trends below the county rate and the national rate.

The city's revenue framework and overall credit quality could be affected longer term if the tax increase leads corporations to decide to move out of or not to locate in the city. However, any impact would be felt marginally over many years and would thus be difficult to distinguish from other rationales for corporate decisions.

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Behind Seattle's Amazon Tax: Seething Tensions, Livid Neighbors, and Rising Rents.

As a tech boom drives up home prices, lawmakers ask: "Can cities grow too fast?"

It was, as the local public radio station said, the day "Seattle Nice" died. On May 2, the residents of Seattle were hit with a one-two punch. For months, the city council had been debating a new tax on large employers to raise $75 million for new affordable housing and services for the homeless, whose growing population had burst out of shelters and into tents around the city.

In the late morning, just before a council hearing, a columnist for the Seattle Times broke the news that Amazon.com Inc., the city's largest employer, was playing hardball. The typically hermetic company said it paused expansion plans for buildings that would house about 7,000 employees pending the outcome of the upcoming tax vote.

Later that night, hundreds of residents packed a Methodist church in the gentrifying Ballard neighborhood, turning what was supposed to be a civil town hall discussion into a scrum that exposed deep division in the city.

Homeowners shouted down the council members and each other—decrying how growth and homeless encampments were encroaching into neighborhoods. Some opposed the tax, shivering at the thought of risking jobs at the city's largest employer and furious about giving more money to a municipal government that already seemed inept at addressing housing issues. "It's refreshing to see ordinary citizens revolting against this lousy city council," one man said to cheers.

Others supported the measure, enraged by what they saw as lack of compassion by their neighbors and struggling to understand why lefty Seattle should feel subservient to one of the largest corporations in the world. One supporter, taking the floor at the front of the church, suggested it could take $5 billion to build enough affordable housing to meet demand. "That's a pretty conservative estimate," he said. "Five billion is how much Jeff Bezos made in 10 minutes when Amazon announced they bought Whole Foods."

The debate raged on for two weeks, culminating on Monday when the city council levied a scaled-back version of the tax, voting 9-0 to raise about $50 million. Under the new law, companies bringing in more than $20 million in revenue a year would be required to pay $275 per employee every year. Amazon has more than 40,000 employees at its headquarters in Seattle, meaning the tax could cost the e-commerce giant more than $10 million annually. The council came out so strongly for the bill that it was protected against a mayoral veto.

In a statement, Amazon Vice President Drew Herdener said Amazon was "disappointed" in the vote and that the company remains "very apprehensive about the future created by the council's hostile approach and rhetoric toward larger businesses, which forces us to question our growth here."

The showdown demonstrates how politics and economics have shifted in Seattle, where the pressure to address the city's growing pains has surpassed the conventional wisdom that attracting new jobs is the top civic priority. Council member Mike O'Brien, a co-sponsor of the legislation, said in an interview last week that he doubts the tax would slow expansion. But even if it did, he added, that may not be such a bad thing. "We're not really supposed to say that," he said, but "I think it's actually a question we probably should be asking: Can cities grow too fast?"

For years, Seattle has been one of the fastest growing metros in the country. The city's unemployment rate is now down to 3.5 percent, and the boom has put unprecedented stress on the housing market in this city hemmed in by a bay, lakes, and mountains.

“The dynamics we see in Seattle are an extreme example of dynamics we see in other very successful labor markets,” said Enrico Moretti, an economics professor at University of California, Berkeley, whose book “The New Geography of Jobs” explores the divergent paths of manufacturing hubs and technology cities. “These cities have a very good problem in terms of employment, and wages in particular.”

Moretti found that each new tech job creates four to five non-tech jobs over the next decade. Roughly 40 percent of the non-tech work is for professionals—think lawyers, doctors, architects—and the remaining 60 percent are non-professional, like Uber drivers, store clerks, or restaurant servers. “The labor market is a tide that lifts most boats, with one big issue,” Moretti paused, “the cost of living, of course.”

That’s because while there are more jobs across the spectrum, and generally rising wages, the supply of housing doesn’t keep up. Rather than slowing down Amazon and its ilk with a tax on jobs, Moretti said, cities should “accommodate as many housing units as possible, especially with transit.” Economically, he said, that makes the most sense. Whether it can pass political muster is another question.

As bad as the housing crunch is in Seattle—home prices have soared more than 14 percent in the past year—it is still adding more new units than other boom towns like San Francisco, said Jed Kolko, chief economist at Indeed. “More than any of the large metros, Seattle is building upwards rather than sprawling out,” Kolko said. The city has channeled new density and construction into to core areas, which are called “urban villages,” like parts of Ballard, where the town hall was held. But single-family zones, which account for a large portion of the city—have largely been sacrosanct.

“Normally, higher prices would induce more construction, but zoning laws prevent that,” Glenn Kelman, CEO of Redfin Corp. wrote in a blog post on Tuesday. The Seattle-based real estate company did not sign on to a widely circulated petition opposing the tax, but Kelman did argue that it would ultimately fall short. “The amount of housing the city can build with a head tax, or any tax, is nominal,” he wrote.

While homelessness is driven by many factors, including the nationwide opioid epidemic and the state’s meager mental health resources, new research indicates the city’s rising housing costs corresponds to increases in the number of people without shelter. A pro bono report that McKinsey & Co. produced for the Seattle Metropolitan Chamber of Commerce found a “96 percent statistical correlation between the region’s rent increases and the increase in homelessness,” according to the Seattle Times.

And despite the city spending more than $50 million a year in services, the local homeless population has been growing. “The city does not have a revenue problem–it has a spending efficiency problem,” Amazon’s Herdener said. A count last year found King County’s homeless population had reached more than 11,000 people, and the city’s database tracking unauthorized encampments now contains more than 400 unique locations, with people living in tents under freeways and in parks, atop graves at a cemetery and in medians across the street from houses. The McKinsey report estimated the county would have to spend between $360 million and $410 million to build the number of affordable units and services needed.

“It becomes pretty clear to me that there’s no way we solve the scale of the crisis we’re in … without additional resources on the housing side,” said council member O’Brien. “We just have to have more housing." O'Brien said he's particularly hamstrung in finding funding because the state constitution forbids an income tax, making the government dependent on property and sales taxes. By some measures, the City of Seattle has the most regressive tax scheme in the most regressive tax state in the county.

In their hunt for tax revenue, politicians saw fertile ground in large companies—Amazon chief among them—that have built Seattle into an established tech hub. Amazon grew its employee base off the tech community developed by Microsoft Corp., which in turn worked off the engineering community developed by Boeing Co. and the University of Washington. The effect was to solidify Seattle's place on the industry's map. Google and Facebook now also have large outposts in the city. "Here is what is really cool about what's going on right now," said Michael Schutzler, CEO of the Washington Technology Industry Association, which counts Amazon a member. "Amazon completely changed the world of tech roughly 10 years ago when they made the cloud a reality. More so than another other company in the world, they have radically changed machine learning, which is now being called AI."

That clustering effect has leading other large tech companies to set up major outposts in Seattle. That core talent for artificial intelligence is in Seattle, Schutzler said, "nowhere else, not in the Valley, not in Boston. Now they are recruiting from all over the country to move people here." The day after Amazon's threat over the head tax, Facebook announced a new AI lab in the city, which will be led by a professor at the University of Washington.

As the industry booms, will Seattle lawmakers say no to Amazon and other tech companies, or to homeowners resisting changing the fabric of their city? "Good question," O'Brien said. "I would say neither of those are particularly easy." Homeowners have been fighting rezoning for years. "The Amazon vocal-ness," he said of the company's reprisals, "has just come out in the last week."

In the end, the council tried to thread the needle, at least a little. In a concession to the homeowners, the council forced itself to evaluate the success of the spending if it wants to renew the tax after five years, and Amazon, despite its dismay at the outcome, said it's restarting construction planning on one of the offices it had paused. But the council also recommended spending most of the funding to build affordable housing, starting to chip away at the deficit. Ultimately the council stared down opposition from its biggest employers and, unanimously, opted to tax them anyway. Later this year the council will consider rezoning for more housing density, and the big question will be whether it gives change-averse homeowners the same treatment.

Bloomberg

By Karen Weise

May 15, 2018

Puerto Rico Bonds Rally as Rival Creditors Float Settlement.

- **Senior sales-tax bonds soar to 71 cents on the dollar**
- **While plan rejected, it moves toward settling major conflict**

Puerto Rico bonds rallied after a group of investment firms and insurers reached agreement on a restructuring plan that would allow them to receive larger-than-expected recoveries on their defaulted debt, marking a first step toward resolving a key clash between creditors who have been fighting in bankruptcy court.

The gains, which pushed some securities up by as much as 22 percent Monday, came despite the plan's rejection by Puerto Rico's federal financial overseers, who said it would leave the government facing budget shortfalls for years and was put together without their input.

But the framework hashed out by the owners of sales-tax-backed debt and general-obligation bonds shows progress toward resolving their disagreement over who has the highest claim to Puerto Rico's cash — an issue at the heart of the government's record bankruptcy. It also offers a baseline that investors could use to estimate what they stand to recover, which has been difficult given the divergent outcomes of previous bankruptcies and the toll on the island caused by Hurricane Maria in September.

"The big argument that everyone is waiting for is who gets the sales-tax money — who has control of that money," said Dan Solender, head of municipal investments at Lord Abbett & Co., which holds $20 billion of state and local debt, including some Puerto Rico debt.

"That a good number of the bondholders have reached an agreement is pushing this forward," he said. "It's the first positive movement in that direction in a long time."

The plan received support from those who insure or hold about $11 billion of Puerto Rico bonds, including Aurelius Capital Management, Monarch Alternative Capital, Fir Tree Partners and GoldenTree Asset Management. It also includes a group that represents residents who hold sales-tax debt.

The proposal calls for owners of sales-tax bonds, known as Cofinas, with the most senior claim on the revenue to recoup as much as 95 percent of their investments. Owners of subordinate Cofinas would get up to 43 percent, while general-obligation bondholders would receive almost 59 percent, according to a summary circulated by the group.

The rally was led by Puerto Rico's senior sales-tax debt, which was the most actively traded municipal security Monday, though general-obligations also gained. Senior sales-tax bonds due in 2040 climbed to as much as 72.5 cents on the dollar from 59.5 cents Friday, only to pare those gains by dropping to an average of 68.7 cents later in the day. General obligations due in 2035 rose to an average of 44.5 cents from 41.4 cents Friday.

Some investors expressed skepticism about the run up given that the plan was dismissed by the oversight board set up to oversee Puerto Rico's fiscal recovery. In a statement Monday, the panel said that the restructuring proposal was "completely unaffordable" and out of step with the government's latest fiscal plan because it would still leave Puerto Rico spending more than it brings in. The creditors said it would reduce the government's debt by $10 billion.

Dora Lee, vice president at Belle Haven Investments, which holds insured Puerto Rico bonds among its $7 billion of municipal-debt holdings, said the creditor proposal isn't a viable one for the island.

"It wasn't a sustainable recovery plan," she said. "It neglected the fact that the revenue has to come from a viable economic base. That core issue hasn't been addressed."

"Whenever there's a glimmer of good news, the bonds trade up, reality sets in and people realize that again, we're back at square one," she said. "Whenever there's good news out of Puerto Rico you need to take a deep breath and remind yourself you're dealing with Puerto Rico."

The rally pushed the price of the general-obligation bonds to the highest since early October. The bonds traded for as little as 21 cents in December, before Governor Ricardo Rossello began offering more optimistic assessments of the island's recovery from the hurricane.

The island's government and general-obligation bondholders have been allied against Cofina bondholders, who say sales-tax revenue should be used to repay them before it's spent for other purposes. The commonwealth and the general-obligation owners want U.S. District Court Judge Laura Taylor Swain to throw out a law that transfers the sales taxes to a governmental agency, known as Cofina, whose only responsibility is to use the cash to pay its bondholders.

"Any kind of progress toward resolutions should translate into prices in some way," said Matt Fabian, a partner at Municipal Market Analytics Inc. "It at least gives a theoretical anchor at which bond prices can trade."

Bloomberg Markets

By William Selway and Danielle Moran

May 14, 2018

— With assistance by Martin Z Braun, and Steven Church

S&P: Puerto Rico Bondholders' Proposed Settlement May Resolve Conflict But Leaves Treatment Of Tax Revenues Unclear.

DALLAS (S&P Global Ratings) May 16, 2018—S&P Global Ratings believes a proposed settlement announced by a group of Puerto Rico bondholders on Monday could, if executed, lay to rest the conflict over the allocation of pledged general obligation (GO) and Puerto Rico Sales Tax Financing Corp.

Continue Reading

May 16, 2018

Fitch Updates Public Sector Counterparty Obligations in PPP Transactions Rating Criteria.

Fitch Ratings-New York-17 May 2018: Fitch Ratings has updated its criteria for rating public sector counterparty obligations in public private partnership (PPP) transactions, including several minor clarifications in the scope of the criteria. The new criteria replace the previous version published on Dec. 13, 2017. There will be no rating changes as a result of the updated criteria.

The changes to the criteria include:

- Clarification of the distinction between international scale and national scale ratings;
- Guidance that PPP counterparty obligations for U.S. public sector enterprises such as a public college or university or a utility enterprise are assessed using the Issuer Default Ratings (or equivalents) of the entities as determined under relevant sector-specific or master criteria;

- References to Fitch's Government-Related Entities Rating Criteria replace prior references to Public-Sector Entities Rating Criteria.

The criteria report is available at www.fitchratings.com.

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Between A Budget And A Hard Place: The Risks Of Deferring Maintenance For U.S. Infrastructure.

As the world's fifth-largest economy, California enjoys a strong 'AA-' credit rating on its general obligation (GO) debt. Just seven years ago, California's 'A-' GO rating was S&P Global Ratings' lowest for any state. Better budget management that began in 2011 combined with an increase in personal income taxes–which drive much of the state's revenues–have led to a gradual recovery in California

Continue Reading

May 15, 2018

Report: Facing $1 Trillion in Water Infrastructure Costs, States Aren't Leveraging Federal Dollars to Weather Coming Storms.

With water infrastructure costs expected to exceed $1 trillion, a new report shows that only a few states are adequately leveraging federal dollars to shrink the infrastructure funding gap. The new report released today by the Natural Resources Defense Council (NRDC), "Going Back to the Well" highlights cutting-edge financing strategies for states to better fund the water infrastructure serving millions of Americans.

"Despite the looming funding gap, states aren't thinking about how to meet that future need and are essentially funding water infrastructure the way you or I would manage our checking account," said Rob Moore, Director of NRDC's Water & Climate Team. "Each year, they just add up how much EPA gives them, plus a small state match, and that's the amount of assistance they plan provide to help communities fix their drinking water and sewer systems. That's not going to cut it."

"Using more creative financial tools, like issuing bonds and using their SRFs to issue loan guarantees could greatly expand infrastructure funding. Those increased funds could determine which states are prepared to weather the coming storms," said Moore.

Continue reading.

May 15, 2018
