TAX - NEW YORK

T-Mobile Northeast, LLC v. DeBellis

Court of Appeals of New York - December 13, 2018 - N.E.3d - 2018 WL 6533281 - 2018 N.Y. Slip Op. 08539

Cellular telephone service provider brought hybrid article 78 proceeding and declaratory judgment action against city and school district, seeking to compel city to determine and approve provider's petitions for property tax refunds for tax paid related to its equipment and antennas housed on rooftops of office buildings within its service area.

The Supreme Court, Westchester County, denied the petition and dismissed the proceeding. Provider appealed. The Supreme Court, Appellate Division, affirmed, and provider was granted leave to appeal.

The Court of Appeals held that provider's equipment was subject to taxation as real property.

Cellular telephone service provider's base transceiver stations and large rectangular antennas mounted to the exterior of buildings were "inclosures for electrical conductors" under the tax statute's definition of real property; the transceiver stations were essentially cabinets that housed cables and other electrical components and provided battery power, and the antennas were part of the transceiver stations.

Various cables in cellular telephone service provider's data transmission installations were "lines" and/or "wires" under the tax statute's definition of real property.

Components of cellular telephone service provider's data transmission installations were "used in connection with the transmission or switching of electromagnetic voice, video and data signals between different entities separated by air, street or other public domain," as required to be subject to taxation as real property; primary function of the equipment installations was to transmit cellular data.

Phrase "for electrical conductors" in statute defining telecommunications equipment taxable as real property modifies only "inclosures," and the provision encompasses, when not owned by a local utility, lines, wires, poles, and supports, regardless of whether they are related to the conduction of electricity, as well as "inclosures for electrical conductors," when those items are used in the transmission of data signals across public domain.

Central office equipment phaseout from taxation related to property located in the "central office" of a telephone company did not encompass cellular telephone service provider's large data transmission installations, which were mounted to the outside of buildings dispersed throughout the

provider’s service area.

“Station connections” exception to statutory definition of telecommunications subject to real property taxation relates to wiring physically connecting customer telephones to telephone poles and does not encompass cellular telephone service provider’s large outdoor installations including fiber optic cables and antennas.

Report: CAFR Is Best Format for Government Financial Data

A new report from the Data Foundation and Workiva makes a case for Comprehensive Annual Financial Reports (CAFR) as the preferred method of publicizing state and local government financial info.

As an increasing number of state and local governments across the country make more of their financial data available to the public online, a new report makes a case for the best way to do that.

The report, dubbed Transparent State and Local Financial Reporting: The Case for an Open Data CAFR, suggests that public agencies should embrace Comprehensive Annual Financial Reports (CAFR), a method that has already been put into place in Florida. Florida has gone as far as to enact legislation that requires the conversion of all local and state government financial reporting to CAFR.

CAFR, for the unfamiliar, is essentially all financial reporting for a state, local or other governmental entity. It’s not exactly a budget, which is essentially a plan for what a state will spend in a fiscal year and how its tax revenue will be allocated. It’s more of a summation of financial activities over some years. As the report notes in its introduction, these days, roughly 30,000 state and local government agencies now publish audited financial statements annual, but not all of them use the “extensive and highly detailed” CAFR format.

Dean Ritz, the senior director for digital reporting at the enterprise software company Workiva, co-authored the report with Jim Harper, former senior fellow and director of information policy studies at the Cato Institute, a libertarian think tank located in Washington, D.C. Ritz said the report was in part an effort to provide guidance to the public sector as efforts to be transparent about funding accelerate. There has been, in recent years, a rise in expectations when it comes to the quality of data that government agencies are publishing, and the authors hope their report can help organizations meet that.

The expectations among residents, businesses, activists and even many public servants themselves is that the public should be able to not only access governmental finances, but also access it in a format that allows for easy searching, unlike basic methods such as PDF.

“We sort of jokingly say PDF is where data goes to die,” Ritz said. “PDF describes the layout of the page, not the information.”

Another benefit of all state and local governments working to embrace CAFR is that it would lead to one standardized format for such finances. If everyone used the same format, the content would then become format neutral, so that a person accessing one town or state’s data would not be at a disadvantage when compared to a person accessing the data of another. Other benefits cited by the authors of the report include a reduced cost of financing; a reduction in reporting burden; increased accountability; and a greater capacity for evidence-based decision-making in government.

Ritz noted that the report does address potential obstacles, including the difficult change processes inherent to government and, as always, initial cost of setting up a new system. Although, Ritz also said that the latter may be changing.

"It's different than it has been historically, but we think the benefits of this have now been realized on the private side," Ritz said, "and there's enough of them that there's now a wide number of technology and solution providers, as well as service providers, that can provide modernization."

There has certainly been an increased commitment to financial transparency in state and local government, if not yet to CAFR itself. Ohio, for example, has launched a website called OhioCheckbook.com, which doesn't adhere to the exact parameters of the CAFR format but does make the state's spending public down to the actual penny. In some cases, users can not only see line items for purchases, but also the actual check that public organizations used to make a purchase with taxpayer money.

Josh Mandel, outgoing Ohio treasurer, led the creation of the site, which launched in 2014 and was at the forefront of state financial transparency efforts.

"We took everything from two bucks for a pack of pencils to millions of dollars for contracts to everything in between," Mandel said, "and gave that information to the taxpayer. One of the best ways to hold politicians feet to the fire is to arm them with financial information."

Mandel said analytics for the site at first were slow. Over time, however, word spread and it has now welcomed more than 1 million searches.

Greg Jordan-Detamore, the Open Cities product lead with the government transparency advocacy group Sunlight Foundation, praised Ohiocheckbook.com and other efforts to bolster the type of financial data released to the public. Jordan-Detamore said that an ideal format for doing this is one like CAFR that enables easy searches and machine reading, unlike PDFs.

The main idea behind the CAFR report is that more governments should emulate Florida's adoption of the format. Indeed, government is without question a sector that shares ideas. Baton Rouge, La., for example, has created its own version of OhioCheckbook.com with Open Checkbook BR, which essentially does the same thing. Time, of course, will tell if the same spread starts to happen with CAFR formatting.

GOVTECH.COM

BY ZACK QUAINTANCE / DECEMBER 21, 2018

Opponents Make Their Case to Halt Bond Issuance for Gulch Project.

City attorneys and Gulch critics sparred in court Friday over a portion of the public financing package for the huge downtown project.

The two sides appeared in Fulton County Superior Court before Judge Robert McBurney during one of several bond validation hearings required by state law before a government body can issue bonds.

While such legal proceedings are typically a routine matter, in the high-profile Gulch case, opponents have seized on the courtroom as another place to halt tax incentives for the project.

The Atlanta City Council in November approved an up to $1.9 billion public financing package to aid in development of the Gulch. The financing comes from two pots of public money – a portion of future sales taxes and property taxes created within the development.

The sales tax revenue will be used to support up to $1.25 billion in bonds for future infrastructure needed at the 40-acre site, where developer CIM Group plans office towers, apartments, hotels and retail. It was about this funding stream that the two sides argued on Friday and during another court hearing earlier this week.

The Gulch area has been deemed as an Enterprise Zone, allowing the developer to fund infrastructure improvements via bonds that are repaid by five cents of the local 8.9-cent sales taxes created within the development zone.

Under the plan, the city, through its Downtown Development Authority, would issue up to $1.25 billion bonds to be repaid by the future sales taxes.

Opponents on Friday pushed back on projections about the amount of tax revenue the project would generate and if that revenue is enough to support the bonds.

"It's highly speculative and no evidence has been brought to bear… to support any of these numbers," testified Julian Bene, a vocal Gulch critic.

The consulting firm Municap drafted a report that projected the future Gulch development could create more than $600 million in future sales tax revenue to fund bonds. The projection was characterized as conservative by a Municap executive earlier in the week.

On Friday, Ralph Dickerson, a city finance executive, was asked by an attorney for developer what happens if projections don't come true.

"That risk falls squarely upon the developer," Dickerson said.

CIM Group would be the purchaser of the bonds, at least initially, meaning the company would be on the hook if the future sales taxes aren't sufficient to pay off the bonds, the city has said.

But the city must prove to the judge the bonds are sound, reasonable and feasible.

While the $600 million-plus estimate is well short of what's needed to finance $1.25 billion in bonds, a city official testified earlier that the city doesn't plan to issue that much in bonds, at least not initially, and only wants the flexibility to issue a higher amount if the development can support it.

The city would only issue bonds according to a set schedule that requires CIM to meet certain verified development thresholds before new bonds are issued. And new sales taxes would have to provide 110 percent coverage on the annual principal and interest charges before they can be issued, Dickerson said.

The court hearing lasted into Friday evening. A hearing regarding the property tax portion of the public financing project is scheduled for January.

The Atlanta Journal-Constitution

By Vanessa McCray & J. Scott Trubey

Dec 21, 2018

MSRB Compliance Corner.

Read about the MSRB's commitment to supporting regulatory compliance, a recent enforcement action related to MSRB Rule G-27, an upcoming Series 54 pilot exam and more in the latest Compliance Corner.

MSRB Establishes Formal Academic Program to Further Support Market Research.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today announced it is establishing a formal Academic Program as part of its mission to support academic and other researchers. The program includes a new Visiting Scholar position and the ongoing provision of multiple municipal market data sets to universities and other research institutions looking to conduct research about the municipal securities market.

To expand municipal securities data research, the MSRB seeks a candidate to join the organization as a Visiting Scholar. The scholar will conduct in-depth analyses on municipal market data collected by the MSRB and from other sources. Learn more about the Visiting Scholar position.

"We are committed to supporting the academic community and its ability to explore municipal market data that may enhance the understanding of trading activity and market transparency," said MSRB President and CEO Lynnette Kelly. "The work of the Visiting Scholar position will help influence additional insight about the municipal securities market."

The MSRB recognizes that the research community is in a position to generate additional insights and conclusions about the municipal securities market. For several years, the MSRB has provided the academic and research community access to several data products from the MSRB, including historical sets of trade data, primary market and continuing disclosures, and information related to variable rate securities. Learn about data sets available from the MSRB and how to make data requests.

Access to municipal market trading data is also available through an agreement with WRDS, a service of the Wharton School of the University of Pennsylvania, which provides financial and economic data to various corporate, academic, government and nonprofit users. The addition of a Visiting Scholar to the MSRB's academic program further enhances support for the academic community.

Date: December 17, 2018

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

SIFMA 2019 Outlook: Trends in the Capital Markets

SUMMARY

Efficient capital markets are essential to a vibrant economy. By driving capital and credit to the best ideas and enterprises, they propel them and our country forward.

The global financial system has adopted an unprecedented volume of new regulations since the crisis, affecting everything from market structure to capital standards. As we look to 2019 and beyond, now is the time to ask, what reforms are working? Which would benefit from harmonization? What new risks have arisen? How do we make sure institutions can provide capital and credit to the economy?

SIFMA convenes hundreds of broker-dealers, investment banks and asset managers, representing one million industry employees across the nation. Together, we are invested in America, serving clients large and small. This report contains our insights into how markets performed, viewpoints on critical policy issues and several helpful resources.

What's Inside

Market Insights:

- Capital Markets Depth and Liquidity
- Market Structure: Efficiency & Resiliency Key to Capital Markets Strength
- Equities Markets: Volatility Picked Up, Volumes Started to Follow
- Capital Formation: Hurdles Continue, or Do They?
- Fixed Income Markets: The Transformation Continues
- Private Wealth Management: Savings and Wealth Creation and The Role of the Financial Advisor
- Opportunities in Fintech and Operations

Policy Viewpoints:

- Cybersecurity Remains Priority One
- Safe Handling of Personally Identifiable Information
- Enhancing Investor Protection with Reg BI
- Protecting Senior Investors
- Fixing the Broken Fee Structure for Market Data
- Looking Across Geographical Borders
- Seeking Recalibration and Global Harmonization of Financial Regulation
- The Two-Track Regime
- A Spider Web of Regulations
- CAT Implementation Moves Ahead

About SIFMA:

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- Key Contacts
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- 2019 US Holiday Schedule
- Terms to Know

GASB Outlook E-Newsletter - Q4 2018

Read the E-Newsletter.

FAF Trustees Reappoint GASAC Chair, Announce New Members and Reappointments.

Read the News Release.

Broad Coalition of Local Government Organizations Applaud Passage of Water Infrastructure Improvement Act.

Coalition Members Include The United States Conference of Mayors, National Association of Counties, National League of Cities, American Public Works Association, National Association of Regional Councils, National Association of Clean Water Agencies

Washington, D.C. – A broad coalition of local government organizations applaud Congress for passage of the Water Infrastructure Improvement Act (H.R. 7279), a much-needed update to the Clean Water Act (CWA).

Cities, counties and public utilities are on the front lines of environmental protection and support clean and safe water. The Water Infrastructure Improvement Act gives much-needed flexibility to local governments, who are currently facing huge unfunded mandates, in meeting the requirements of the CWA more affordably. The legislation codifies the U.S. Environmental Protection Agency (EPA) Integrated Planning framework, which allows communities to negotiate with EPA to better prioritize their most pressing public health and environmental concerns efficiently and cost-effectively. Since water and wastewater systems are paid for by ratepayers, the bill will help stabilize or reduce costs for a substantial number of low- and fixed-income citizens who spend a significant portion of their income on water and wastewater bills.

Cities and counties invest over $123 billion per year to provide safe, reliable, water and sewer services, and maintain a vast physical infrastructure of pipes, pumps, and plants. EPA estimates local governments will have to invest more than $700 billion over the next 20 years, in addition to current spending, to comply with current drinking water and clean water laws. These figures do not include additional spending by local governments, our residents, and businesses to comply with other environmental and non-environmental federal and state unfunded mandates, which further limit the money available for water infrastructure.

Coalition members include: The U.S. Conference of Mayors (USCM), the National Association of

Counties (NACo), the National League of Cities (NLC), the National Association of Regional Councils (NARC), the National Association of Clean Water Agencies (NACWA), and the American Public Works Association (APWA).

This coalition has been working for years with House and Senate members to pass this legislation, which will dramatically help local governments comply with CWA mandates.

The coalition would like to thank key leaders in the House and Senate including: Representatives Bob Gibbs (OH), Grace Napolitano (CA), Bill Shuster (PA), Peter DeFazio (OR), Bob Latta (OH), Steve Chabot (OH), and Senators Deb Fischer (NE), Sherrod Brown (OH), Ben Cardin (MD), John Barrasso (WY), and Tom Carper (DE) for their support.

President Signs Five-Year Farm Bill Reauthorization Containing Several Key Wins for Counties.

KEY TAKEAWAYS

- **NACo applauds Congressional approval of 2018 farm bill, which preserves many key county priorities**
- **Newly-passed farm bill includes several key wins for counties**

On December 20, President Trump signed into law a five-year reauthorization of the farm bill. The president's signature comes after a bipartisan group of legislators worked for months to resolve disagreements between the two farm bills passed by the U.S. House and the U.S. Senate earlier this year. The five-year, $867 billion reauthorization will help support county economies and provide critical investments to rural and underserved communities.

Throughout the farm bill process, NACo helped draft bill text and amendments to preserve and promote key county priorities. Specifically, the final package creates a new Rural Innovation Stronger Economy (RISE) grant program, reinstates the Undersecretary for Rural Development and codifies the interagency Council on Rural Community Innovation and Economic Development.

Additional provisions include language that would allow counties with regional jails to exclude incarcerated individuals from population caps for funding eligibility under USDA Rural Development programs and a provision that allows counties to use USDA broadband loans and grants for middle-mile projects, which is prohibited under current law.

The final package also excluded several provisions that could have adversely impacted county governments, including a provision that would have prevented local governments from enforcing local food product regulations, language to prevent states and local governments from implementing pesticide permit programs and verbiage that would have made some counties ineligible for broadband funding under USDA's Rural Utilities Service programs.

Additionally, the nutrition title of the conferenced farm bill – which accounts for roughly 75 percent of overall spending within the package – did not include proposed cuts to the Supplemental Nutrition Assistance Program (SNAP, formerly known as food stamps), which could have resulted in more than two million individuals losing or seeing a reduction in their SNAP benefits.

NACo applauds the Farm Bill Conference Committee and leadership for their bipartisan commitment to key county priorities in this farm bill and thanks the president for signing the reauthorization

package into law.

Key provisions included in the final farm bill of importance to counties are listed below:

TITLE II – CONSERVATION

- **Sec. 2401. Watershed Protection and Flood Prevention.** The farm bill maintains the current authorization level of the Small Watershed Rehabilitation Program at $85 million through FY 2023. The Small Watershed Rehabilitation Program was created in the 2014 Farm Bill to assist communities with rehabilitating watershed dams.
- **Sec. 2201. Conservation Reserve.** The farm bill increases the acreage limit of the Conservation Reserve Program (CRP) to 27 million by FY 2023. CRP provides annual rental payments to producers to place crops on highly erodible and environmentally sensitive land and with long-term resources-conserving plantings.
- **Sec. 2308. Conservation Stewardship Program (CSP).** The farm bill establishes a new Grassland Conservation Initiative within the Conservation Stewardship Program. The bill requires the USDA to establish this initiative beginning in FY 2019. CSP provides financial and technical assistance to agricultural producers wishing to maintain and improve their existing conservation systems and adopt additional conservation activities to address priority resource concerns.
- **Sec. 2703. Regional Conservation Partnerships Program (RCPP).** The farm bill streamlines the operation of the RCPP to increase program adoption by eligible partners and producers. RCPP furthers conservation, restoration and sustainability efforts on regional or watershed scales, and encourages partners to cooperate with producers in meeting or avoiding regulatory requirements and implementing projects.

TITLE IV – NUTRITION

- **Sec. 4005. Employment and Training for Supplemental Nutrition Assistance Program.** The farm bill conference agreement protects the Supplemental Nutrition Assistance Program (SNAP, formerly known as food stamps) by maintaining existing eligibility and work requirements for SNAP recipients. The farm bill conference agreement contains reforms that encourage and prioritize approaches to job training and other employment-related activities that are proven to be effective by the SNAP Employment and Training (SNAP E&T) pilot programs authorized under the 2014 Farm Bill.
- **Sec. 4011. Interstate Data Matching to Prevent Multiple Issuances.** The farm bill conference agreement would establish a new National Accuracy Clearinghouse, which is designed prevent individuals from simultaneously receiving SNAP benefits in multiple states.
- **Sec. 4013. Quality Control Improvements.** The farm bill conference agreement would eliminate an awards program that gave states up to $48 million a year in federal funding for high performances related to program access and payment accuracy. The projected savings from these changes will be reinvested into food banks and other nutrition assistance programs.

TITLE VI – RURAL DEVELOPMENT

- **Sec. 6101. Combating substance use disorder in rural America.** This section creates a 20 percent set-aside of financial assistance for telemedicine projects aimed at addressing the opioid crisis.
  Sec. 6102. Distance learning and telemedicine. The farm bill increases annual authorizations for the Distance Learning and Telemedicine Program from $75 million a year to $82 million a year.
- **Sec. 6201. Access to broadband telecommunications services in rural areas.** This section expands the federal resources for broadband investments to include grants (in addition to the loan and loan guarantee programs already available).

- **Sec. 6202. Expansion of middle mile infrastructure into rural areas.** This section allows counties to use USDA broadband loans and grants for middle-mile projects – prohibited under current law.
- **Sec. 6214. Rural broadband integration working group.** This section creates a federal advisory committee that is required to work with state, local, tribal and territorial governments, telecommunications companies, utilities, trade associations, philanthropic entities, policy experts and other interested parties to identify, assess and determine possible actions relating to barriers and opportunities for broadband deployment in rural areas.
- **Sec. 6301. Exclusion of Certain Populations from Definition of Rural Area.** This section would allow counties with regional jails to exclude incarcerated individuals from population caps for funding eligibility under USDA Rural Development programs.
- **Sec. 6306. Council on Rural Community Innovation and Economic Development.** Much like the previous administration's White House Rural Council, this section creates a federal interagency council to coordinate the development of policy recommendations, maximize the impact of federal investment on rural communities, promote economic prosperity and quality of life in rural communities and use innovation to resolve local and regional challenges faced by rural communities.
- **Sec. 6401. Strategic economic and community development.** This section of the package expands the Strategic Economic and Community Development program to allow the U.S. Secretary of Agriculture to prioritize funding for projects that support the implementation of a strategic community development plan that encompasses two or more jurisdictions.
- **Sec. 6403. Water, waste disposal and wastewater facility grants.** This section doubles the size of allowable grant awards from $100,000 to $200,000, but cuts the authorization in half from $30 million to $15 million each year.
- **Sec. 6424. Rural innovation stronger economy grant program.** This section creates a new Rural Innovation Stronger Economy (RISE) grant program, which would help counties strengthen local economies through job accelerator partnerships with the private sector and institutions of higher education.
- **Sec. 6507. Cybersecurity and grid security improvements.** This section of the package authorizes the Secretary of Agriculture to make loans or loan guarantees available to communities for cybersecurity and grid security improvements.

TITLE VIII – FORESTRY

- **Sec. 8624. Good Neighbor Authority.** The bill reauthorizes Good Neighbor Authority and expands it to allow counties and tribes to enter into agreements with the U.S. Forest Service to assist in forest restoration activities. Further, the bill ensures that any payments made by the county to the Secretary under a good neighbor agreement are not considered to be funds received from National Forest System land or Bureau of Land Management land, ensuring counties continue to receive their fair share of revenues from forest management activities.
- **Sec. 8702. Resource Advisory Committees.** The bill would reduce the mandatory minimum size of USDA Resource Advisory Committees (RAC) from 15 to 9 and reduce the minimum number of members that must be "representative of community interests" from 5 to 3. The bill also creates a pilot program under which regional foresters, as designated by the Secretary, may approve RAC appointments in certain areas.
- **Sec. 8611. Categorical Exclusions to Expedite Forest Management Activities.** The farm bill would establish new categorical exclusions (CE) for critical forest management activities. The bill would create a new CE of up to 4,500 acres for certain forest management activities for the purpose of protecting, restoring or improving habitat for the greater sage-grouse or mule deer.
- **Sec. 8401. Promoting Cross-Boundary Wildfire Mitigation.** The farm bill authorizes $20 million per year through FY 2023 for cross-boundary hazardous fuel projects. The package also

authorizes grants to state foresters to support hazardous fuels reduction projects that include both federal and non-federal land and authorizes the Secretary to use other related authorities relating to cooperation and technical assistance – including good neighbor authority – to fund and conduct projects. Further, the bill requires state foresters to consult with non-federal land owners for all projects conducted on non-federal land. Lastly, the bill reauthorizes the hazardous fuel reduction on federal land program at $660 million per year through FY 2023.

TITLE XII – MISC.

- **Sec. 12407. Under Secretary for Agriculture and Rural Development.** This section requires the Department of Agriculture to reestablish the position of Under Secretary for Rural Development. The bill outlines a permanent, mandatory position that is not subject to any administrative reorganizations.

National Association of Counties

By Austin Igleheart & Arthur Scott

Dec. 20, 2018

Illinois Must Pay $845 million More to Pension Systems Next Year, Report Finds.

A new report on Illinois underfunded pension systems says the state needs to put more money into the benefits programs before they become unsustainable and consume an even larger share of the state's tax revenue.

The state will be required to contribute $9.39 billion to six pension funds in fiscal 2020, about $845 million more than the previous year, according to the report.

In addition to being underfunded, the state's pension systems are susceptible to a volatile stock market, the report found. Two public finance watchdogs said the report underscores the need for changes moving forward, including some changes that won't be popular.

"It's definitely wonky and often times very difficult for ordinary citizens to understand, but we're talking about hundreds of billions of dollars and how do we actually calculate that and what do we assume when we are coming up with the expectations which have massive implications for Illinois taxpayers in general," Truth In Accounting Research Director Bill Bergman said.

The Illinois Auditor General released its annual State Actuary's Report on Thursday. The report has been required since 2012. The state contracted with Cheiron, an actuarial consulting firm, to serve as the State Actuary to review assumptions, issue reports to pension boards and identify recommended changes.

"The funded ratio of the retirement systems ranged from 47.9 percent to 15.3 percent, based on the actuarial value of assets as a ratio to the actuarial liability," the report said. "If there is a significant market downturn, the unfunded actuarial liability and the required State contribution rate could both increase significantly, putting the sustainability of the systems further into question."

Cheiron also "noted that the systems are, or will be, experiencing negative cash flows which may

impact the interest rate returns that are realized."

The state's Teachers, State Universities and General Assembly retirement systems are already seeing negative cash flows while the State Employee and Judges retirement systems are projected to have negative cash flows in the near future, the report said.

"Contributions should ramp up as quickly as possible to a level that is expected to prevent the unfunded actuarial accrued liability from growing," the report said. "Continuing the practice of underfunding the systems increases the risk of needing even larger contributions in the future that may make the systems unsustainable."

The report should serve as a warning call as it seeks more state money sooner for the growing pension liability, said Ted Dabrowski, president of the financial analysis website Wirepoints.

"If billions more a year have to go into pensions, you're talking about huge cuts to everything else, whether it's education or health care or roads," Dabrowski said. "It creates a real spiral, a death spiral problem because people are already tired of paying taxes. They'd have to pay a ton more."

Dabrowski said he expects to see the state's tax base erode if policymakers only look at increasing taxes. He said the state's continued out-migration with most recent numbers showing people leaving the state at a faster pace over the past five years. The most recent U.S. Census Data showed Illinois lost 45,000 people from 2017 to 2018.

The report deemed the actuary's estimated rate of return on investments "reasonable," but Bergman questioned that conclusion, noting that those assumptions often lead to the state shorting the pension funds and increasing the pension debt.

Bergman said by budgeting pension funding with an assumed rate of return, not a risk-free discount rate, taxpayers are increasingly on the hook to fill the gap if investment returns don't meet the estimates.

The math around the assumed rate of return is not just an issue for the state pensions, Bergman said it also affects local police and fire funds as well.

The report said that on the state's targeted funding goal of 90 percent by 2045 was inadequate.

"This contribution level does not conform to generally accepted actuarial principles and practices," the report said. "Generally accepted actuarial funding methods target the accumulation of assets equal to 100 percent of the actuarial accrued liability, not 90 percent."

Dabrowski said it was refreshing to see that recognition. He also said it's further evidence that a proposal from the Center for Tax and Budget Accountability is the wrong plan.

The Center for Tax and Budget Accountability proposed in May moving the goal posts for funding the state's pensions "from a target of a 90 percent funded ratio in [fiscal year] 2045 to a target of between 70 and 80 percent."

"Those proposals by the [Center for Tax and Budget Accountability] should be dismissed, disregarded and thrown away because I think Chiron was spot on that 100 percent funding is where we need to be headed if we really want these pension funds to be healthy," Dabrowski said.

Earlier this month, credit rating agency Fitch also flagged the Center for Tax and Budget Accountability's plan as a potential concern.

Gov.-elect J.B. Pritzker has advocated for state resources put in up front, somewhat mirroring the center's plan. Pritzker picked a member of the center to serve on his budget transition team.

Dabrowski said the solution is to change the state constitution to reduce the debt owed to state workers.

"The debt is so large that there's no way to just raise taxes or borrow some money," he said. "Those days are over. It's so badly funded and the promises are so large."

He said unions should come to the table to reduce the debt or pensions could become insolvent.

Pritzker, along with other Democrats and union groups, have been opposed to the idea of changing the pension protection clause in the state's constitution. They have mostly advocated for changing the state constitution's flat tax provision to a progressive tax to increase how much the state collects from income taxes.

The Commission on Government Forecasting and Accountability earlier this month pegged the state's five pension funds with a combined $134 billion of unfunded liabilities and an average funded ratio of 40.2 percent. That doesn't include other post-employment benefits, or OPEBs.

Pew Charitable Trusts put out a report this month based off 2016 data that put the total liability of OPEB in Illinois at $53.4 billion with a -0.2 percent funded ratio, the worst in the country. Truth In Accounting pegs the unfunded retiree health care costs at $52.5 billion based on 2017 data. Wirepoints pegs the cost OPEBs at $72.6 billion. That's on top of the $134 billion in pension debt.

Major credit-rating agencies say the state's unfunded liabilities is one of the biggest reasons the state has the worst credit rating in the nation, a notch above junk status with a negative outlook.

By Greg Bishop | Illinois News Network

Save the Crew? Will Do!

The Grateful Dead were noted in their live performances for, among other things, beginning a song and then segueing to one or more other songs before concluding the first song in the thread. Sometimes, the Dead would wait several concerts to complete the original song.

Today we emulate the Grateful Dead by completing a string of posts that began in May about the potential relocation of Major League Soccer's Columbus Crew to Austin, Texas. In our first post, we described the lawsuit brought by then-Ohio Attorney General, and now Governor-Elect, Mike Dewine to apply Ohio's "Art Modell Law" to halt the Crew's departure. We observed in this post that if successful, Ohio's Art Modell Law could serve as a model to other states to prevent the relocation of professional sports franchises that have benefited from publicly financed arenas, stadiums, and other facilities. Our second post reported Major League Soccer's award of an expansion franchise to Cincinnati, which demonstrates that a state's enactment of an Art Modell Law evidently will not dissuade a professional sports league from expanding to that state.

Continue reading.

The Public Finance Tax Blog

By Michael Cullers on December 20, 2018

Squire Patton Boggs

No New Taxes: Cities Seeking New Soccer-Specific Stadiums Exhibit Similar PR, Financial Tactics.

In jockeying for Major League Soccer retention and inclusion, numerous cities in recent weeks have echoed a similar mantra.

No new taxes levied upon the broad general public.

For decades, sports teams have extracted favorable financial deals with host cities because of the basic supply-demand dynamic which exists for professional sports teams who hold the threat of being mobile if unsatisfied.

Namely, if you don't build it, we will leave (or never come in the first place).

And while we shouldn't expect public financing of sports facilities to ever completely dissipate (both for political and legitimate reasons), there is no question it is becoming more difficult for teams to extract the volume of public subsidies they once enjoyed from local, county, and state coffers.

Continue reading.

Forbes

by Patrick Rishe, Contributor

Dec 21, 2018

San Antonio Still Determining New Rating's Effect on Bond Program.

Fitch Ratings downgrades city to AA+ rating, city has $580.5M left to issue

SAN ANTONIO – In the middle of its largest-ever municipal bond program, the City of San Antonio is still calculating how much a downgraded rating will cost it.

After nine years of perfect AAA bond ratings from Fitch Ratings, one of the three major credit rating agencies, the City of San Antonio was downgraded to a AA+ rating. The change would affect the interest rates the city is able to get when borrowing money, including for the lion's share of its current $850 million bond program.

The other two agencies, Moody's and Standard & Poor's Global Ratings, reaffirmed their AAA ratings for the city.

"The city has remaining $580.5 million in bonds left to issue for the 2017 bond program," Chief Financial Officer Ben Gorzell said in in emailed statement. "We will be evaluating and assessing the potential cost impact of this split bond rating on our future bond issues to include what is remaining

to be issued for the 2017 bond program."

The city blamed the rating change on the passage of propositions B and C during the November election. The two changes to the city charter limit the city manager's term and compensation and allow the fire union to call for binding arbitration while negotiating with the city, respectively.

Fitch cited Proposition C in November in its decision to lower the city's bond rating, saying it would affect the city's "expenditure flexibility." And the amendment's effects on the bond ratings may not be over.

"It will depend on exactly what happens when they start using this arbitration power," said Professor David MacPherson, chairman of Trinity University's Department of Economics.

MacPherson believes Proposition B, which concerns the city manager position, could also play a role. Should the pay limits result in lower-quality candidates, the city may not be as well-managed, he said, which could also affect its ratings.

The city is planning on selling $24.5 million worth of General Improvement Refunding Bonds next month to refund an existing loan.

Gorzell said that, in respect to those bonds, "we expect the impact to be minimal, if any, which is primarily due to the small size of the bond issue, its term of 7 years and current financial market conditions."

Even with a split rating, MacPherson said, the downgrade is certain to result in higher interest rates, which will affect normal San Antonians in one of two ways.

"When the city starts paying those higher interest rate payments, they're going to feel it through higher taxes or reduced services — one or the other," MacPherson said. "Some way, that money is going to have to be made up somehow."

Others are anticipating blowback, too. Jenna Saucedo-Herrera, CEO of the San Antonio Economic Development Foundation, said the new rating will affect the group's ability to lure businesses to the Alamo City.

"Because we have been for nine years the largest city that's maintained that AAA bond rating, that's been a significant selling point for us that we'll now have to adjust," she said.

ksat.com

By Garrett Brnger

December 21, 2018

BondLink Partners with Municipal Market Analytics to Deliver Innovative Market Insights for Its Issuer Clients.

MMA's research and analysis will be available in client portals, offering detailed weekly overview of market conditions.

BOSTON, Dec. 20, 2018 /PRNewswire/ — BondLink, the sole provider of investor relations (IR)

software solutions in the $4 trillion municipal bond market, today announced a partnership with Concord, Mass.-based Municipal Market Analytics (MMA) to deliver exclusive bond market research and insights to BondLink issuer clients.

The new MMA Market Conditions Index (MCI) gives issuers a concise read of current conditions in the municipal bond market, providing them valuable perspective during the period they are accessing capital by issuing bonds. The elements comprising the MCI are MMA-curated market factors that have historically influenced bond yield movement and investors' perception of value.

"BondLink was founded to help public sector CFO's and finance directors improve how they issue bonds," said Colin MacNaught, BondLink co-founder and CEO. "We empower them with technology and tools they've never had access to before. Through our new partnership with MMA, they can access valuable insight into key market indicators. I know first-hand the quality of MMA's research, and we are excited to partner with them on this premier resource for the betterment of our issuer clients and the market."

MMA is a leading strategic research firm providing expert municipal sector analysis and commentary. Led by industry veteran and thought leader Tom Doe, MMA is a trusted voice across the municipal market. This partnership will further amplify MMA's voice through BondLink's fast-growing platform.

"MMA knows partnering with BondLink and its clients advances the goal of improving dialogue among market participants when utilizing the capital markets," said Tom Doe, Founder and President of MMA. "Our independent, concise, consistent and key insightful data delivers a strong foundation for enabling these better dialogues."

Because most issuers in the municipal bond market issue bonds infrequently and most finance officers have other responsibilities like budgeting and tax collections, it can be difficult to shift gears as a bond sale approaches to gauge bond market conditions. The Market Conditions Index is intended to make that process much more efficient for finance officers and be another helpful information resource in their dialogue with advisors, bankers and underwriters.

The MCI will be provided on a weekly basis exclusively to issuers who subscribe to BondLink. The proprietary index will include insights on market conditions such as bond prices, new-issue supply, secondary market trading, and investor fund flows, to name a few.

Today's announcement is the latest of recent enhancements to BondLink's IR platform. The Boston-based company last month announced new capabilities to help issuers communicate with investors via digital roadshows; a compliance tool that includes a drag-and-drop upload to the Municipal Securities Rulemaking Board's EMMA® website; and debt management tools including a dynamic investor database.

About BondLink

Led by founders Colin MacNaught, CEO, and Carl Query, CTO, BondLink's cloud-based IR platform provides efficiencies to issuers and investors in the $4 trillion municipal bond market. Since the launch of its first investor platform two years ago, BondLink has expanded its network across more than 25 different states, in addition to the District of Columbia and the U.S. Virgin Islands. Key clients include the State of California, the City of Chicago, and the University of Texas System. Headquartered in Boston, BondLink is backed by top investors, including Franklin Templeton Investments, one of the largest municipal bond fund managers in the country.

About MMA

Municipal Market Analytics is an independent research firm based in Concord, Mass., founded in 1995. MMA's core business is to provide strategic market and credit analysis and commentary on current, historical and quantitative conditions of the US municipal sector. In 2012, MMA introduced the Portfolio Credit Benchmark, an enterprise risk solution for bank portfolios to meet their regulatory needs pertaining to the credit review of municipal bonds. Also in 2012, MMA established its professional consulting division that provides independent analysis on important municipal issues. The division's projects have involved municipal risk and liquidity management, credit risk assessments and default/loss modeling.

Press Contact:

David Lewis, Director of Marketing
617-597-4900 x1019
dave@bondlink.com
www.bondlink.com

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Partners or Pirates? Collaboration and Competition in Local Economic Development.

Abstract

In this report, we explore how and why local governments have turned to cooperation to boost economic development. We synthesize highlights from the literature, explore program features from two regional case studies, and share findings from interviews with local practitioners. Although research on the effectiveness of current practices is limited, we identify themes that can inform cooperative economic development.

Download the Report.

The Urban Institute

by Megan Randall, Kim S. Rueben, Brett Theodos, and Aravind Boddupalli

December 20, 2018

California's New Treasurer Eyes Redo for $10 Billion Bond Issuer.

- **Fiona Ma delayed bond sale until information was produced**
- **Democrat plans outreach to credit raters, boost housing**

Fiona Ma officially assumes her post of California's treasurer in January, but she has already made it

clear that she won’t act as a rubber stamp for an office that sold more than $10 billion of bonds this year.

After Ma, a Democrat elected in November, learned that the office was planning to sell veterans’ housing bonds next month, she demanded information on the program to be funded before allowing it to proceed, according to Ma and Tim Schaefer, deputy treasurer. The sale will now occur in February, Schaefer said.

“I believe in checks and balances, accountability and also being proactive,” Ma said in an interview at Bloomberg’s San Francisco office. She has already reorganized the lines of command under her to improve coordination.

Ma, a certified public accountant, has racked up an array of government experiences: most recently, she was on the state’s tax-oversight agency known as the board of equalization. She has also served in the state Assembly and on the board of supervisors in San Francisco, her hometown. “I have a unique understanding of how government works,” she said.

Here are a few areas that Ma is tackling:

Rating Analyst Outreach

- Ma plans to meet with credit rating companies in January along with key finance officials from the administration of incoming Governor Gavin Newsom, and again in April ahead of the revised budget for the next fiscal year.
- “It’s important that they meet the folks who are at the table and making decisions.”

No More Bankruptcies

- Work is underway on a “heat map” of key financial metrics for the state’s local governments.
- Office would offer services and arrange for expert help to municipalities in need.
- “I don’t want to have any bankruptcies under my watch.”

Marijuana Banks

- Ma plans to revive a bill that would give cannabis businesses access to some banking services.
- Measure had stalled in last legislative session because of Governor Jerry Brown’s opposition, Ma said. She expects it will receive better reception from Newsom, who supported pot legalization for recreational use.

Housing Crisis Relief

- Plans five listening tours around the state in January to get ideas to boost housing development and get feedback on how the treasurer’s office has been doing to promote it
- Existing state agencies could be more aggressive in reaching out to developers, she said.
- Looking to coordinate existing state programs to create opportunity zones for development.

Bloomberg Markets

By Romy Varghese

December 27, 2018, 8:46 AM MST

Georgetown University Plans To Sell 100-Year Bonds (Radio)

MUNIS IN FOCUS: Joe Mysak, Editor for Bloomberg Brief: Municipal Market, discusses whether the fund exodus is over, and universities selling century-bonds. Hosted by Pimm Foxx and Lisa Ambramowicz.

Running time 05:07

Play Episode

Bloomberg Markets

December 21, 2018 — 9:34 AM MST

SEC Bars Ex-UBS Broker in Ohio for Muni Allocation Fraud.

A midwestern UBS Financial Services broker who helped customers pose as retail investors in order to receive new-issue muni bond allocations agreed to an industry bar and payment of $374,000 to regulators, the Securities and Exchange Commission said on Tuesday.

Chris D. Rosenthal, who worked at a UBS retail branch in Pepper Pike, Ohio for more than 17 years, helped the firm's traders obtain new muni bonds when they were not in the distribution syndicate by participating in subterfuge and by establishing "parking" arrangements with the phony retail customers, the regulator said.

Rosenthal, 54, who began his brokerage career in 1990 at Lehman Brothers, did not immediately return a call for comment at his current trading firm, Municipal Portfolio Managers. His website lists him as president and a related video promotes his "amazing leadership skills and collaboration abilities."

From the beginning of 2012 to May 2016, Rosenthal worked with two firms of unregistered brokers to commit the fraud, according to the SEC's settlement order. They exploited order priority rules that give customers higher priority over broker-dealers in the allocation of new issue municipal bonds, and the firms then flipped the bonds in sales to broker-dealers and to UBS traders.

Rosenthal's customers—Core Performance Management in Boca Raton, Florida and RMR Asset Management Co. in Chula Vista, California—maintained 41 accounts at UBS under fictitious business names, according to the settlement order. "Rosenthal knew that these parties were in the business of flipping new issue municipal bonds," the order said.

In addition to placing more than 1,100 fraudulent retail orders for CPM and RMR with UBS's syndicate desk, Rosenthal placed UBS muni traders' indications of interest for new-issue bonds with the unregistered brokers who would then place retail or institutional customer orders with members of the underwriting group, who would then sell the bonds back to UBS based on Rosenthal's orders, the SEC said.

The SEC in August barred or suspended five employees of CPM, which was dissolved in July 2016, and ordered them to pay disgorgement and/or civil penalties. It reached similar settlements with 11 out of 13 RMR employees.

As part of the fraud, Rosenthal often included incorrect zip codes for his customers to indicate that were residents of the bond issuers' zip codes. He also helped UBS's own traders refill their inventory by repurchasing bonds from CPM and RMR at $1-per-bond above the offering price immediately after they bought them, the SEC said in explaining the "parking" violations.

The SEC ordered the former broker to disgorge $284,080 plus $15,128 of interest to the government and to pay a $75,000 civil penalty, $15,000 of which will be paid to the Municipal Securities Rulemaking Board. The order said he can re-apply to work in the securities industry after five years.

Rosenthal voluntarily resigned from UBS in September 2016 as it was "investigating whether certain clients….obtained allotments during the retail order periods of negotiated new issue municipal offerings to which they may not have been entitled," the firm reported to regulators. Rosenthal has no other disclosures on his BrokerCheck record.

by AdvisorHub Staff

December 18, 2018

SEC Brings Charges Against Ex-UBS Financial Adviser and Senior Vice President Chris D. Rosenthal.

The SEC finds that Rosenthal engaged in fraudulent trading practices that helped unregistered brokers, known in the industry as "flippers".

The United States Securities and Exchange Commission (SEC) today announces that it instituted settled proceedings against Chris D. Rosenthal. From February 1999 to September 2016, Rosenthal, served as a financial adviser and Senior Vice President at UBS, buying and selling securities for his brokerage customers' accounts.

The SEC's order finds that Rosenthal engaged in fraudulent trading practices that helped unregistered brokers, known in the industry as "flippers," deceptively posing as retail investors to obtain municipal bonds in primary offerings.

According to the SEC's order, from 2012 to 2016, Rosenthal engaged in deceptive practices designed to circumvent the priority that is given to retail investors in new issue municipal bond offerings. For instance, the SEC's order found that, when placing orders for unregistered brokers in new issue municipal bond offerings distributed by UBS, Rosenthal falsified zip codes associated with the brokers' accounts. This made it appear as though the orders had been placed by retail clients.

Furthermore, the SEC's order finds that Rosenthal helped UBS municipal bond traders obtain new issue municipal bonds by placing dealer stock orders – which would ordinarily get lower priority in a new issue allocation – through the unregistered brokers, giving the impression that the orders were for customers rather than for UBS's trading inventory. Also, the SEC's order finds that Rosenthal engaged in a parking scheme with the unregistered brokers by arranging for them to purchase new issue bonds in offerings distributed by UBS, with the agreement that they would sell them back to UBS at a prearranged price. The parking scheme made it more likely that UBS traders could obtain new issue bonds for UBS's trading inventory.

Rosenthal has been found to have willfully violated the antifraud provisions of Sections 17(a)(1) and (3) of the Securities Act of 1933, Section 10(b) of the Exchange Act of 1934 and Rule 10b-5

thereunder, as well as disclosure and fair dealing provisions of Rules G-11(b), G-11(k) and G-17 of the Municipal Securities Rulemaking Board. The order also found that he caused the unregistered brokers' violations of Section 15(a)(1) of the Exchange Act.

Rosenthal did not admit or deny the SEC's findings. However, he consented to a cease-and-desist order barring him from association with various regulated entities with the right to apply for reentry after five years. The order also imposes payments of $284,080 in disgorgement, $15,128 in prejudgment interest, and a $75,000 civil penalty.

MBFA & Court Street Group Research Create a Muni 101 Primer.

Read the Primer.

Contact Justin Underwood at justin@munibondsforamerica.org to receive a hard copy.

Municipal Bonds for America

Want to Invest in Opportunity Zones? Think P3.

Public-private partnerships may just be the secret to maximizing the enhanced benefits of this program for investors and local governments.

By now, everyone in commercial real estate have been deluged with notices from lawyers, accountants and consultants explaining the significant benefits of raising funds to invest in opportunity zones under the new tax law. And these notices are quite accurate. The tax benefits are significant, especially for investors with large capital gains or investors with long-time horizons (which basically describes everyone who invests in real estate).

However, many may wonder, after reading all these, how to put together a commercial real estate deal that will appeal to investors and leverage the opportunity zone tax benefits to enhance returns. The answer to this question is complicated and represents the biggest reason why—at least initially—the supply of dollars to invest in opportunity zones will exceed the number of available deals.

Why is this? Simply put, state governments chose opportunity zones for location in areas with chronically low employment rates and incomes. These areas are not traditionally appealing for investment. The basic idea of the major deferrals, reductions and eliminations of capital gains taxes in the new provisions is to get investors to build and create jobs in those zones. However, the practical side of finding real estate deals that can locate well in economically depressed areas remains significant.

SOUND FINANCIALS

This is where public-private partnerships or "P3" arrangements can help facilitate deals. In the U.S., a large number of state and local governments have updated their laws to facilitate P3 deals. At their core, P3 real estate deals combine public and private assets into real estate facilities that serve public and private uses. The kinds of buildings in the P3 space right now include workforce housing,

K-12 schools, higher education teaching and research facilities, government office buildings, sports facilities, public safety buildings and even speculative commercial office buildings that aim to attract private tenants in areas where governments want to see economic growth. Additionally, there is robust deal flow into heavy civil facilities, such as roads, bridges, ports and tolled highway lanes.

In trying to cobble together an economically viable real estate deal in tough geography, partnering with the public sector can be of significant benefit. First, it can ease—and in some cases subsidize—the cost of basic infrastructure that catalyzes growth, such as roads, transit, water/sewer, education and public safety.

Second, public sector users often can locate facilities in areas outside of class-A commercial zones. For example, having a new charter school, 50,000 feet of government office space or a new police precinct on a long-term lease provides a credit tenant that eases the burden of raising capital and attracting private sector users to an area. For more "commercial" government uses—such as research buildings, hotels, convention centers and sports arenas—the advantages are even more significant.

Finally, the opportunity zone law itself provides tax advantages that make private capital more willing to accept lower returns on a long-term lease or build to suit for a government use. Put differently, one of the big obstacles to P3 deal formation using private capital is the higher return it seeks, relative to public revenue or general obligation debt. In this scenario, the opportunity zone tax advantages enhance the return on capital, making rates compare more favorably to the cost of funds from other public sources.

The state and local governments that figure this out first, and put P3 deals on the table in opportunity zones, will be the ones that capture the early advantages from the new law. On the private-sector side, consider public-private partnerships an essential tool to help create an availability of real estate deals that will satisfy the coming demand from investors seeking to benefit from the new law.

Commercial Property Executive

by Brad Alexander

DEC 17, 2018

Brad Alexander, a senior advisor with McGuireWoods Consulting, has extensive knowledge in structuring public-private partnerships and negotiating economic incentives. He is a former congressional and state legislative staffer.

[New Tax Breaks Could Lift Distressed Areas - or Become a Big, Gentrifying Tax Giveaway.]

Jamie Stolpestad is building two apartment buildings in St. Paul's St. Anthony Park neighborhood, right in the heart of an "O-Zone."

Loren Schirber is gearing up for the "O-Zone" on St. Paul's East Side, where he foresees at least two dozen tiny apartments, a dog park, a solar installation and an all-season food truck hall.

They're hoping $100 million in projects will follow, including the massive redevelopment of Ramsey

County's former Government Center West building on Kellogg Boulevard.

So what are "O-Zones," or Opportunity Zones? Distressed areas. Tax shelters. Opportunities for urban — and rural — renewal. The outcroppings of a federal effort to marry philanthropy, private-sector tax avoidance and housing advocacy.

Others might sum them up in a single word: Hope.

Continue reading.

By FREDERICK MELO | fmelo@pioneerpress.com | Pioneer Press

PUBLISHED: December 15, 2018

Opportunity Zone Investors Draw Criticism Over Targets.

WASHINGTON — A real estate investment firm co-founded by President Donald Trump's son-in-law and adviser, Jared Kushner, is betting big on the administration's Opportunity Zone tax breaks.

But New York-based Cadre, in which Kushner still holds at least a $25 million passive stake, made it clear to potential investors in recent marketing materials that it doesn't plan to look for development deals in most of those zones because of their "unfavorable growth prospects."

Instead, Cadre said it will target a "small subset" of zones in such cities as Los Angeles, Seattle and Miami where both populations and incomes are already set to rise faster than the national average.

Cadre is a high-profile example of how early investor interest in the program appears focused on the places that need it the least: zones that qualified for the tax breaks despite already drawing substantial investment or are undergoing gentrification.

Among the examples of such zones is a swath of the Upper East Side of Manhattan that includes the top of Fifth Avenue's Museum Mile, where three-bedroom apartments overlooking Central Park sell for $4 million. Another is Ledroit Park in the nation's capital, which falls mostly in what real estate blog Curbed has anointed Washington's "most gentrified" ZIP code. Yet another Opportunity Zone includes part of The Willows neighborhood of Menlo Park, Calif., less than 2 miles from Stanford's campus, where the tech boom has driven home prices to $1,500 per square foot, 10 times the national average. The Opportunity Zone where Amazon put its New York City headquarters in Queens has a median household income of more than $130,000.

"It's hard to imagine why we should be subsidizing that," said Brett Theodos, a researcher whose Urban Institute analysis found nearly one-third of the nation's more than 8,700 Opportunity Zones are showing signs of pre-existing heavy investment. "These investors are not bad people. They are responding to the incentives."

Such is the major criticism of the Investing in Opportunity Act, which became law last December as part of the Republican-sponsored tax overhaul. Promoted by Trump in a White House event last week, it offers developers potentially millions of dollars in capital-gains tax breaks to invest in zones selected by states on the basis of such factors as high poverty and low income.

While the program highlights an average 32 percent poverty rate in the zones, it includes a wide

range of areas — and allows “contiguous” tracts that might not be low-income but are close enough to distressed areas to qualify.

Cadre said in a statement to The Associated Press that the neighborhoods it is targeting for investment may be poised for growth but still exhibit low median incomes and are “capital deprived.”

“The Opportunity Zone tax benefits only kick in if we succeed for the communities in which we invest,” the statement said.

There’s no evidence the administration sought to include better-off Opportunity Zones in the program. A White House spokesman told the AP last week that the choice of the zones was up to the states. The Treasury Department, which certified the final roster of zones, declined to comment on the presence of gentrified areas in the program.

For some funds, the gentrification of some zones was an explicit selling point, a much safer bet than putting money in distressed areas.

Anthony Scaramucci, the hedge-fund executive who was briefly the White House communications director for Trump, is trying to raise as much as $3 billion for Opportunity Zone projects. On a marketing call last week, he pitched both a warehouse project in Savannah, Ga., and a “swanky” hotel project in Oakland, Calif.

“For those of you who have yet to go to that part of the Bay Area, I can tell you that it is fully gentrifying,” Scaramucci said.

Fundrise, another Opportunity Zone fund that is trying to raise $500 million for investments, is targeting many of the same areas as Cadre, ranking its “Top Ten” targets for Opportunity Zone investing based on which have the fastest-rising housing costs.

One measure of how much the zones overlap with developers’ pre-existing interests is how much they overlap with their current holdings. An AP review of Kushner’s holdings found that he holds stakes in 13 Opportunity Zone properties, all in locations deemed by the Urban Institute to be showing indications of rapid change or full-out gentrification.

An AP investigation found that Kushner and his wife, Ivanka Trump, both helped push for the program and as a couple stand to benefit financially from it. Even though Kushner gave up any management role in Cadre, ethics watchdogs say it is a conflict that arose from their decision to become presidential advisers without divesting from their extensive investments.

Marcy Hart, a Philadelphia real estate tax lawyer who has advised clients on the Opportunity Zone program, says she hasn’t seen much indication that the program is redirecting investment to places that lacked it before.

“There are some projects that have probably come online because they’re in Opportunity Zones,” she said. “But my clients were already investing in these areas.”

Even some of the program’s strongest proponents have acknowledged that not all the Opportunity Zones are equally needy. At a Kemp Foundation gala last month honoring Sean Parker, a San Francisco venture capitalist who helped push for the Opportunity Zones’ creation, Parker himself said that the zones included some “low hanging fruit,” neighborhoods that were already clearly drawing investment.

But the program's incentives are great enough, he said, that after the obvious opportunities are exhausted, investors will eventually turn their attention to needier areas.

"There will be a lot of capital sitting in opportunity funds, and it's going to have to find a place to go," he said.

by JEFF HORWITZ and STEPHEN BRAUN The Associated Press | December 18, 2018.

Information for this article was contributed by Bernard Condon of The Associated Press.

Ranking QOZs: How State And Local Officials Can Make Their Opportunity Zones More Attractive To Developers.

It goes without saying that not all opportunity zones are created equal or present the same investment opportunities.

As the Qualified Opportunity Zone tax program gains national attention from investors looking to deploy billions in capital gains into those areas, sources tell Bisnow the designated areas stand to benefit greatly from opportunity zone-friendly policies enacted at the federal, state and municipal level to further lure investment where it is most needed.

With more than $6 trillion in unrealized capital gains eligible to be deployed in opportunity zones, interested investors who invest those capital gains into an Opportunity Zone fund within 180 days can defer taxes on those gains through 2026. Investors also are eligible to receive tax forgiveness on their opportunity zone investment capital gains if held for at least a decade.

"All OZs are not equal. There are some that are already well underway to being revitalized, and others where it is hard to believe 10 years is enough time for a turnaround," RegentAtlantic Managing Partner and Chief Investment Officer Chris Cordaro said.

Continue reading.

BisNow.com

by Champaign Williams, National Editor

December 19, 2018

Opportunity Zones Can Boost Business Where it's Needed.

A year ago, Republicans and Democrats finally agreed on something: the Opportunity Zones program. Speaker of the House Paul Ryan, a Wisconsin Republican, called it "the critical component of our poverty-fighting agenda," while Cory Booker, a New Jersey Democrat, proclaimed that "this could end up being the greatest economic development initiative in a generation in our country."

OZ investors receive significant tax advantages. If you sell an investment and put what you've made in a qualified Opportunity Fund that finances businesses or real estate projects located in an OZ, then you can defer your capital gains tax until the end of 2026. You also pay no capital gains tax on

new earnings you make through the Opportunity Fund if you stay invested for ten years.

The Economic Innovation Group calculates that $6.1 trillion in unrealized capital gains will be eligible to benefit from this program. But OZs require more than money; they need local leadership and smart strategies. As EIG recently noted, “State and local leaders are responsible for devising the strategies that will take these few new lines of the tax code and turn them into something that unlocks opportunity for local residents and entrepreneurs. Capital alone is not a strategy.”

Other regions are already ahead of southeast Louisiana. Erie, Pennsylvania’ mayor worked with 35 local groups to prioritize projects and created a concierge service to ensure they happen; Birmingham’s mayor secured twice as many OZs as any other city in Alabama and launched an online mapping tool to showcase them; and the mayors of Louisville, Oklahoma City, and South Bend have all unveiled OZ investment prospectuses in the last month.

But we can catch up quickly because our OZ map is, in a word, opportune. Gov. John Bel Edwards designated 150 Louisiana OZs, with 47 in 2 parishes: East Baton Rouge and Orleans. The entirety of downtown Baton Rouge, all of the New Orleans BioDistrict and Central Business District, and properties surrounding both Baton Rouge Metropolitan Airport and Louis Armstrong New Orleans International Airport all qualify. So do areas near Southern University, the Louisiana Tech Park at the Bon Carré Business Center, the Algiers Naval Support Activity and the NASA Michoud Facility.

There are also resources to help Louisiana investors become first movers and market makers, such as LED’s map of Louisiana zones, GNO.zone, which GNO, Inc. created to highlight OZ projects, and OZ Guide, a platform for best practices and breaking news.

Now is the time to take what we have learned about economic growth and resilience across southeast Louisiana — 13 years after Katrina, a decade after Gustav and the Great Recession, eight years after the BP oil spill, and two years after the Baton Rouge floods — and design a comprehensive OZ strategy to spur innovation. Based on that plan, public officials and civic leaders should court OZ funds that catalyze high-growth industries, while developing strategic public-private and philanthropic-private partnerships that create additional incentives for priority projects.

OZs unlock new sources of capital, so we should look for transformation, not simply one-off transactions, when studying the map.

Investments in and around Michoud provide a precedent. Recently, GE located its world-class Technology Center for the Americas there, announcing a major expansion that created 100 new jobs. As center director James Martin explained, “We can handle some of the largest structures on the planet, we’ve got access to a deep water port, and we have relationships with local universities. New Orleans is going through a technology renaissance moment, and it’s attracting a lot of talent.” OZs can bring additional investment to industries and areas where companies like GE have already seen so much promise.

Not only will Baton Rouge and New Orleans benefit, but we should also expect greater investment in the 80 miles between them. The 23 parishes that comprise the southeast Louisiana Super Region (population 2.6 million) contain 87 OZs. By comparison, the 12 counties in the Charlotte region (population 2.5 million) have 46 OZs spanning North Carolina and South Carolina, the 13 counties in the Dallas/Fort Worth region (population 7.4 million) have 50 OZs, and the 30 counties of the Atlanta metropolitan area (population 5.9 million) have 65 OZs.

To reiterate, our region is in a very fortunate position right now.

Funds flowing to OZs could easily exceed previous programs, such as New Markets Tax Credits, Low-Income Housing Tax Credits, or Enterprise Zones. Because of how it is structured — with no caps, no need for annual Congressional approval, and almost no reporting requirements — this program could lead to more investment than all of those programs combined.

Every OZ fund can invest in zones anywhere across America. If we don't distinguish ourselves, other regions will, and investment will go elsewhere. But if we plan for innovation at the outset, while taking a holistic, region-wide approach, we are well positioned to lead the nation in the next decade of economic development through OZs.

Louisiana, opportunity knocks.

The Advocate

by Rob Lalka

DEC 25, 2018 – 6:00 PM

Rob Lalka directs Tulane's Albert Lepage Center for Entrepreneurship and Innovation.

ROB LALKA IS COFOUNDER AND PARTNER AT MEDORA VENTURES, A STRATEGY CONSULTING FIRM, AND PROFESSOR OF PRACTICE AT TULANE'S A.B. FREEMAN SCHOOL OF BUSINESS, WHERE HE IS THE EXECUTIVE DIRECTOR OF THE ALBERT LEPAGE CENTER FOR ENTREPRENEURSHIP AND INNOVATION.

Current Issues in Community Solar Projects.

The community solar business model is still relatively new. The developer of a small utility-scale solar project signs up customers who pay it subscription fees. The electricity goes to the local utility. The customers receive bill credits for the electricity from the utility. Projects are getting financed, but usually in portfolios of multiple projects. Most of the activity to date has been in Colorado, Minnesota and Massachusetts, but the model is expanding to other states.

Three community solar developers and one aggregator of community solar customers talked at the Infocast Community Solar 2.0 conference in New Orleans in November about the how the basic business model is evolving and current issues in the market.

The panelists are Rick Hunter, CEO of Pivot Energy Solutions, Joel Thomas, manager of community solar for independent power developer Community Energy, Inc., Jesse Grossman, CEO of Soltage, and Laura Pagliarulo, senior vice president for community solar and commercial sales at CleanChoice Energy. The moderator is Keith Martin with Norton Rose Fulbright in Washington.

Continue reading.

Norton Rose Fulbright

December 18, 2018 | By Keith Martin in Washington, DC

[Municipal Solid Waste Landfills/Clean Air Act: Federal Court Addresses States of California/New Mexico Action Alleging EPA Failure to Implement Emission Guidelines.]

The United States District Court (Northern District California) ("Court") addressed in a December 21st Order an issue involving the Clean Air Act Municipal Solid Waste ("MSW") Landfill Emission Guidelines. See *State of California, et al., v. United States Environmental Protection Agency*, 2018 WL 6728009.

> The states of California and New Mexico filed an action against the United States Environmental Protection Agency ("EPA") seeking to have the Court:
>
> . . . issue a declaratory judgment that, by failing to implement and enforce the Emission Guidelines, EPA has violated the Clean Air Act; and issue a mandatory injunction compelling EPA to implement and enforce the Emission Guidelines.

As the Court notes, in 2016 EPA promulgated a final rule related to MSW landfills. See Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, 81 Fed. Reg. 59,276 (Aug. 29, 2016) ("Landfill Emission Guidelines"). The rule was promulgated pursuant to Section 7411 of the Clean Air Act in which EPA sets standards of performance for emissions of pollutants from new or modified sources within certain categories. Further, Section 7411 also requires the regulation of existing sources that fall within the same category if such emissions are not already covered by certain other Clean Air programs. The Court notes that the federal statute provides that:

> . . . the Administrator shall prescribe regulations which shall establish a procedure similar to that provided by Section 7410 of this title under which each State shall submit to the Administrator a plan that establishes standards of performance, and provides for the implementation and enforcement of such standards of performance.

The promulgation of this rule is then stated to have required that:

1. States were required to submit implementation plans by a certain date
2. EPA approve or disapprove submitted plans by a certain date
3. If either (i) states to which the guideline pertained did not submit implementation plans, or (ii) EPA disapproved a submitted plan, then EPA was required to promulgate a federal plan by a certain date

California and New Mexico submitted implementation plans. EPA is stated to have neither approved or disapproved the plans nor promulgated a federal plan.

EPA filed a Motion to Dismiss arguing:

1. There has been no unequivocal waiver of sovereign immunity
2. Plaintiffs failed to identify any specific state that should have submitted plans, which would have triggered EPA's duty to promulgate a federal plan under the relevant regulations.

The Court first rejects EPA's argument that dismissal is warranted because the citizen suit provision

of the Clean Air Act does not unequivocally waive the sovereign immunity of the United States for duties imposed by the agency's regulations. It reviews the relevant case law and holds that the phrase "under this chapter" as used in 42 U.S.C. § 7604(a)(2) waives sovereign immunity for EPA's failure to perform nondiscretionary duties mandated by regulations promulgated in furtherance of the Clean Air Act.

As to EPA's argument that the plaintiffs failed to adequately state a claim, it concludes that the federal agency was provided "more than fair notice of the claim and grounds for relief." It rejects the argument that the plaintiffs fall short of the pleading requirements of Rule 8(a)(2) because they did not identify any particular state that failed to submit an implementation plan. The Court states that Rule 8(a)(2) does not require that level of particularity (instead simply requiring a short and plain statement of the claim showing that the pleader is entitled to relief).

Finally, the Court rejected a request by EPA to stay the case pending conclusion of a rulemaking that EPA has initiated. EPA proposed rules that are stated to amend the regulations involved in the litigation. The Court states that:

Even if EPA exercises complete diligence in passing the proposed regulation, that diligence does not eliminate the ordinary uncertainly in the rulemaking process, which creates at least a fair possibility of harm.

A copy of the Order can be found here.

Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

Pennsylvania Pension Commission Flags Upwards of $1 Billion in Investment Costs for One Year.

The sum earned by investment managers from one pension fund exceeded employee contributions for the same period

Pennsylvania officials noted payments of hundreds of millions of dollars to investment managers for the state's pension funds in a report released Thursday that features recommendations for improving the health of the underfunded retirement accounts.

The Public Pension Management and Asset Investment Review Commission, which was tasked with the project under a state pension reform law passed last year, says its 393-page report includes recommendations that could result in estimated savings over three decades ranging from $8.2 billion to $9.9 billion.

In it, the panel notes investment managers for the Pennsylvania Public School Employees' Retirement System earned upwards of $1.03 billion, including estimated "carried interest," in the 2016-2017 fiscal year. The fund's portfolio was about $52 billion during that timeframe.

Continue reading.

Route Fifty

by Bill Lucia

DECEMBER 20, 2018

Audit Finds $549,000 In Improper Spending At Iowa Finance Authority.

State auditors have found the Iowa Finance Authority misspent $549,399 in the roughly two years before former Executive Director Dave Jamison was fired over sexual harassment allegations.

The report released Friday was one of several investigations launched weeks after Gov. Kim Reynolds fired Jamison, a personal friend of hers, on March 24.

The review found Jamison made several decisions "which were not in the taxpayers' best interest."

These include choosing to relocate IFA offices to a building that would be more costly than renovating the current office, delegating spending authority to some staff, and leasing vehicles that cost at least $40,000 more than borrowing state-owned cars.

The auditors also found improper and unsupported credit card purchases of things like meals with no work-related purpose, excessive travel costs, and reimbursement for staying at hotels in Des Moines. The report says Jamison and a few other employees did these things.

The biggest portion of questionable spending went to large pay increases Jamison granted to high-ranking IFA employees. The state report says his actions caused "payroll costs which were not reasonable or necessary for IFA operations."

Auditors found the IFA Board of Directors did not properly carry out its oversight responsibilities and seems to have asked few questions of Jamison and staff, at least in public. The report said board members met in closed committee meetings to avoid having discussions in a public setting.

Overall, the report says, "The culture at IFA illustrates a lack of concern for the use of taxpayer funds."

Although IFA doesn't get state appropriations, the auditor's office says it is still supported by taxpayer dollars and therefore should follow the same rules as other state agencies. IFA has chosen to use certain policies set by the Department of Administrative Services, and the auditor's office made recommendations to help IFA comply with those policies.

The auditor's office is also recommending that the legislature mandate an annual audit of IFA like it does for other state agencies.

In addition, Jamison told auditors he was unaware of the state's rule prohibiting the purchase and consumption of alcohol during work hours. He was found to have purchased drinks while traveling for work, but the audit did not find that he used IFA funds for alcohol.

An IFA representative did not immediately respond Friday to a request for comment.

Two earlier reviews by accounting firm Eide Bailly LLP found no significant financial mismanagement.

The Weinhardt Law Firm also investigated Jamison and IFA, and released a report in September that concluded Jamison committed "egregious" acts of sexual harassment against two employees.

Republican State Auditor Mary Mosiman told lawyers during that investigation that she recused herself from her office's review of IFA because her family is close friends with Jamison and his family. This is likely one of the last reports her office will issue, because Democrat Rob Sand will be sworn in as State Auditor Jan. 2.

IOWA PUBLIC RADIO

By KATARINA SOSTARIC

Towns Move to Build Municipal Broadband Connections.

A New Hampshire town is building the infrastructure to support its own municipal broadband network.

BRISTOL, N.H. (AP) — A New Hampshire town is building the infrastructure to support its own municipal broadband network.

The Concord Monitor reports Bristol residents voted to pass a measure providing nearly $100,000 for a three-mile fiber connection through the town's business district. Officials expect another $33,000 next year along with a grant to complete the project.

Gov. Chris Sununu passed legislation last summer that allows municipalities to post bonds to build broadband connections.

U.S. News & World Report

Dec. 26, 2018, at 4:18 p.m.

- **Ed. Note:** We'll be off next Tuesday, the 25th, for what we hope to be obvious reasons. We'll wrap up (pun!) the year (spoiler alert: mostly sucked) with a final issue on December 31.
- Disclosure Changes: Be Prepared for New SEC Requirements – GFOA Webinar
- 2019 FINRA/MSRB/SEC Municipal Advisor Outreach Program.
- P3 Industry Gets an Early Holiday Present in IRS Guidance on Interest Deduction: Nossaman
- This 'Insanity' May Be the Muni-Bond Market's Next Big Thing.
- Looking To Invest In Qualified Opportunity Zones? These Resources May Help.
- And finally, BCB's Department of Critical Distinctions is brought to us this week by *Howard v. Crumlin*, in which the court referred to a man who was killed after "jumping, falling, or being pushed off" roof of apartment building. While the end remains irrevocable, the means just might have been of interest to this particular gravity-afflicted fellow. Humpty Dumpty sat on a wall. Humpty Dumpty had a great jump/fall/push. Cracks the rhyme scheme.

EMINENT DOMAIN - ARKANSAS

Watts v. Entergy Arkansas, Inc.

Court of Appeals of Arkansas, Division IV - November 7, 2018 - S.W.3d - 2018 Ark. App. 539

- 2018 WL 5815533

Property owners filed motion for dismissal of utility company's application for condemnation of lands and for immediate possession thereto.

The Circuit Court denied motion, and, following jury trial, entered $1,995 judgment for just compensation. Property owners appealed.

The Court of Appeals, Brandon held that:

- Property owners received personal notice of condemnation proceeding, and therefore subsequent taking of land did not violate due process;
- Notice of condemnation proceeding satisfied ten-day notice requirement of eminent domain statute; and
- Substantial evidence supported jury's conclusion that property owners suffered no severance damages.

Property owners received personal notice of condemnation proceeding initiated by utility company, and therefore subsequent taking of land by utility company did not violate property owners' due process rights, although order of possession was obtained ex parte and was entered before property owners received any notice, court heard property owners' arguments during several pretrial hearings, and property owners were permitted jury trial during which they presented evidence on why they were not being justly compensated for taking.

Notice of utility company's condemnation proceeding received by property owners satisfied ten-day notice requirement of eminent domain statute, although utility company could not provide notice of trial date to property owners when it initially served property owners because trial date had not yet been scheduled, property owners knew about utility company's petition more than ten days before jury trial convened, and, trial was held more than two years after utility company had filed its initial petition.

Substantial evidence supported jury's conclusion that property owners suffered no severance damages for land that was severed from property by easement, where utility company's appraiser testified that he considered, but did not apply, severance damages to southern portion of property during his appraisal, that southern portion of property severed by easement was not damaged because property owners used southern portion as timber property, and that it could continue to be used as timber property, and that primary residential potential of acreage was home, which was on north end of property.

CONTRACTS - CALIFORNIA

John Russo Industrial Sheetmetal, Inc. v. City of Los Angeles Department of Airports

Court of Appeal, First District, Division 5, California - November 26, 2018 - Cal.Rptr.3d - 29 Cal.App.5th 378 - 2018 WL 6168139

Manufacturer of aircraft rescue and firefighting vehicles sued city department of airports for breach of contract, alleging department breached contract under which manufacturer agreed to provide department with specialized airport firefighting trucks. Department sued manufacturer for breach of contract and for breach of the California False Claims Act (CFCA) with respect to the sale of the

trucks, and the actions were consolidated.

Following jury trial, the Superior Court awarded department $1 in contract damages, found in favor of manufacturer on department's CFCA claim, found in favor of department on manufacturer's contract claim, awarded department costs as prevailing party on contract claims, and awarded manufacturer attorney fees on CFCA claim, finding claim frivolous and harassing. Department appealed, challenging fee award.

The Court of Appeal held that:

- Term "action" in CFCA attorney fee provision referred specifically to the CFCA cause of action without regard to other causes of action brought in same lawsuit;
- Fact that CFCA claim survived preverdict motions did not demonstrate that claim was not frivolous and harassing; and
- Department failed to meet its burden on appeal to show that trial court erred in finding that CFCA claim was frivolous and harassing.

Term "action" in California False Claims Act (CFCA) provision providing for award of attorney fees to defendant against political subdivision if defendant prevails in the action and court finds that claim was clearly frivolous refers specifically to the CFCA cause of action without regard to other causes of action brought in the same lawsuit, and thus court may award defendant fees for prevailing on CFCA claims found to be frivolous, even if political subdivision prevails in the action as a whole under statute providing for costs to prevailing party; CFCA does not prevent CFCA causes of action from being joined with other causes of action in a single lawsuit, and permitting award of fees comports with purpose of attorney fee provision to deter bringing lawsuits without foundation.

Fact that California False Claims Act (CFCA) claim filed by city department of airports against manufacturer of specialized airport firefighting trucks with respect to sale of trucks to the department survived preverdict motions did not demonstrate that CFCA claim was not frivolous and harassing, and thus manufacturer was not precluded from recovering attorney fees as prevailing party on CFCA claim on such basis; that trial court allowed CFCA claim to go to the jury did not relieve department of responsibility to litigate a factually-grounded claim.

City department of airports failed to meet its burden on appeal to show that trial court erred in finding that California False Claims Act (CFCA) claim filed against manufacturer of specialized airport firefighting trucks related to sale of trucks to department was frivolous and harassing, supporting award of attorney fees to manufacturer as prevailing party on CFCA claim, where department failed to discuss all relevant evidence.

BANKRUPTCY - CALIFORNIA

In re City of Stockton, California

United States Court of Appeals, Ninth Circuit - December 10, 2018 - F.3d - 2018 WL 6442104 - 18 Cal. Daily Op. Serv. 11, 603

Claimant objected to confirmation of city's proposed Chapter 9 plan.

The United States Bankruptcy Court for the Eastern District of California entered order overruling objection and confirming plan, and claimant sought leave to appeal directly to the Court of Appeals, which was granted.

The Court of Appeals held that:

- Appeal from unstayed Chapter 9 plan confirmation order had to be dismissed as equitably moot, and
- Claim which originally arose out of taking of land, but which, following claimant's withdrawal of proposed compensation amount and construction of road, was limited to claim for greater compensation, could be adjusted.

Appeal from unstayed Chapter 9 plan confirmation order had to be dismissed as equitably moot, where appellant had not sought stay from bankruptcy or bankruptcy appellate court, where city's plan had been substantially consummated by the wire transfer of payment to institutional creditors, by transfer of property, and by mailing of checks to former city employees to resolve pension claims, and where relief that appellant sought, the vacation of plan confirmation order based on plan's failure to provide for alleged property-based claim purportedly protected by the Takings Clause, a claim for more than $1 million, would completely knock the props out from under plan and undermine settlements negotiated with unions, pension plan participants and retirees, bond creditors, and capital market creditors, all of which were built into city's reorganization plan.

Claim which originally arose out of taking of land belonging to claimant's father for use as public road, but which, following claimant's withdrawal of proposed compensation amount and construction of road, was limited to claim for greater compensation, was not tethered to any actual property interest that claimant had when city's Chapter 9 petition was filed, and was correctly categorized as unsecured and adjusted as such, despite claimant's contention that the Fifth Amendment precluded any adjustment of his claim.

PUBLIC PENSIONS - ILLINOIS

Carmichael v. Laborers' & Retirement Board Employees' Annuity & Benefit Fund of Chicago

Supreme Court of Illinois - November 29, 2018 - N.E.3d - 2018 IL 122793 - 2018 WL 6257483

Participants in public pension funds brought action challenging constitutionality of statutory amendments that modified calculation of annuities.

The Circuit Court granted in part and denied in part competing motions for summary judgment. State and participants appealed directly to the Supreme Court, and appeals were consolidated.

The Supreme Court of Illinois held that:

- Amendments eliminating union service credit for leaves of absence violated state Constitution's pension-protection clause, and
- Amendments providing that only public salaries could be used in calculating highest annual average salary violated pension-protection clause.

Statute eliminating union service credit for leaves of absence violated state Constitution's pension-protection clause to extent that it eliminated as a pension benefit for current participants the ability to earn union service credit previously bestowed by legislature.

Under provisions of Pension Code in effect prior to amendment, employees had right to use union salary from leave of absence to calculate the highest average annual salary, and thus amendments

providing that only public salaries could be used in calculating highest annual average salary violated state Constitution's pension-protection clause.

IMMUNITY - MARYLAND

Howard v. Crumlin

Court of Special Appeals of Maryland - November 28, 2018 - A.3d - 2018 WL 6191359

Mother of 911 caller, who was killed after jumping, falling, or being pushed off roof of apartment building, brought action, individually and on behalf of caller's estate, against county police officer and county police chief for negligence and wrongful death, alleging failure to investigate 911 call, failure to make contact with caller, and failure to maintain proper policies and procedures for responding to 911 calls.

The Circuit Court granted defendants' motion to dismiss. Mother appealed.

The Court of Special Appeals held that:

- Mother failed to adequately allege that special relationship existed between caller and officer, for purposes of public duty doctrine's exception for special relationships;
- Mother failed to allege that police chief owed any duty to caller specifically, as opposed to the public at large;
- Officer's alleged failure to investigate further when he found that entry to apartment building was locked involved discretionary act, not ministerial act, and thus officer was entitled to public official immunity;
- Police chief's development of policies and procedures for responding to 911 calls and for training police officer were discretionary, not ministerial, activities, and thus police chief was entitled to public official immunity; and
- Mother failed to allege gross negligence, as exception to public official immunity, on part of police chief and police officer.

IMMUNITY - NEW YORK

Martin v. City of New York

Supreme Court, Appellate Division, First Department, New York - November 20, 2018 - 86 N.Y.S.3d 434 - 2018 N.Y. Slip Op. 07946

Softball league member brought action against city, seeking to recover for injuries allegedly sustained due to trip and fall in park.

The Supreme Court, New York County, granted city's motion for summary judgment. Member appealed.

The Supreme Court, Appellate Division, held that:

- Genuine issue of material fact existed as to whether city had notice of defect in softball field;
- Genuine issue of material fact existed as to whether city negligently or improperly repaired defect;
- Genuine issue of material fact existed as to whether softball field was safe as it appeared to be;
- Genuine issue of material fact existed as to whether alleged injury was consequence of condition or

practice common to the sport; and
- Genuine issue of material fact existed as to whether member assumed risk of playing on field.

PUBLIC UTILITIES - OHIO

In re Ohio Power Company

Supreme Court of Ohio - November 27, 2018 - N.E.3d - 2018 WL 6332903 - 2018 -Ohio-4697

Office of Ohio Consumers' Counsel and manufacturers' association sought judicial review of a decision of the Public Utilities Commission approving an electric-security plan (ESP).

The Supreme Court of Ohio held that:

- Office failed to demonstrate actual harm or prejudice to ratepayers, as required for reversal;
- Court would decline to consider claims of imminent or future harm to ratepayers;
- Association failed to show harm to ratepayers; and
- Association failed to show prejudice to its appellate rights.

Office of Ohio Consumers' Counsel failed to demonstrate that ratepayers suffered actual harm or prejudice from Public Utilities Commission's decision to approve an electric-security plan (ESP), as basis for seeking reversal of the order; Office failed to explain how the Commission's consideration of costs and benefits of a power purchase agreement (PPA) rider would have compelled the Commission to reject the ESP under statutory test for evaluating such plans, any harm caused by Commission's alleged failure to consider the impact of the rider in ESP proceeding was cured by Commission's consideration of rider's impact in separate proceeding regarding the rider, and Office did not explain how consumers were necessarily harmed by the rider, even if it was an unlawful charge.

Supreme Court would decline to consider a contention asserted by Office of Ohio Consumers' Counsel and manufacturers' association, that consumers were at risk of imminent or future harm from Public Utilities Commission's decision to approve an electric-security plan (ESP), as basis for seeking reversal of the order, where Office and association were able to assert claims of actual harm or prejudice in a separate appeal from the Commission's grant of electric utility's request to recover its costs under a related power purchase agreement (PPA) rider.

Manufacturers' association failed to show harm to ratepayers, as basis for seeking reversal of a decision of the Public Utilities Commission, as result of the establishment of a placeholder power purchase agreement (PPA) rider in Commission's order approving an electric-security plan (ESP), where the rider approved in the ESP order did not allow electric utility to recover costs from customers.

Manufacturers' association failed to show prejudice, as basis for seeking reversal of a decision of the Public Utilities Commission, to its appellate rights as result of Commission's delay in ruling on association's application for rehearing of an order approving an electric-security plan (ESP) until after Commission approved cost recovery through a power purchase agreement (PPA) rider, where no evidence existed that Commission intentionally refused to rule promptly, and association made no argument that the delay was unreasonable or unjustified.

PUBLIC RECORDS - VIRGINIA

Bergano v. City of Virginia Beach

Supreme Court of Virginia - December 6, 2018 - S.E.2d - 2018 WL 6380709

Requester filed petition for writ of mandamus, seeking to compel city to limit scope of redaction regarding documents that requester sought under Virginia Freedom of Information Act (VFOIA) regarding legal fees and expert invoices relating to all of the city's expenses in litigating against requester in federal court.

The Circuit Court denied petition. Requester appealed.

The Supreme Court of Virginia held that:

- Entry in billing records of city's attorney for trial preparation and document review on a certain date did not fall within attorney-client and work-product exceptions to disclosure under VFOIA, and
- Entry in billing records of city's attorney for attendance at trial on certain date did not fall within attorney-client and work-product exceptions to disclosure under VFOIA.

P3 Industry Gets an Early Holiday Present in IRS Guidance on Interest Deduction: Nossaman

Contractors and investors in P3s can continue taking a full tax deduction for interest on debt under recent IRS guidance (Revenue Procedure 2018-59, issued November 26). Many P3s are highly leveraged, and the interest deduction is a valuable tax benefit for developers. Were this deduction restricted, P3 developers' (and by extension governments') costs would rise; potential investors would demand higher rates of return; and infrastructure projects would be more costly. Without this guidance, the 2017 tax law would otherwise severely restrict the interest deduction for businesses.[1] The IRS' position is welcome (and a relief) and caps an intense letter-writing campaign by industry groups – including the Design-Build Institute of America, Associated General Contractors of America, Performance Based Building Coalition, and Association for the Improvement of American Infrastructure – to the IRS and Treasury.[1]

The deduction restriction (new section 163(j)) emerged from last year's Tax Cuts and Jobs Act ("TCJA") and generally caps a business' interest deductions at 30% of "adjusted taxable income" (which is similar to, but not the same as, EBITDA or EBIT).[2] "Real property trades or businesses" can elect out of these new deduction limits, but at the price of less-generous depreciation for their buildings and other improvements. The actual section 163(j) language is a good deal more complicated, and the Treasury proposed regulations accompanying the IRS guidance consist of 400-plus pages trying to explain everything.[3]

Revenue Procedure 2018-59 provides a safe harbor – which most P3s should meet – under which a P3 will be a "real property trade or business."[4] As a result, companies and investors in a P3 can elect out of the restricted interest deduction rules – and, because the tax-exempt government agency in a P3 usually owns the improvements which otherwise give rise to depreciation deductions, giving up the more generous depreciation treatment usually is not an issue. Because Revenue Procedure 2018-59 is an administrative promulgation and not a regulation, it is effective immediately and not subject to the comment period and other delays with the accompanying Treasury proposed section

163(j) regulations.

Revenue Procedure 2018-59 follows a trend of mostly favorable treatment for infrastructure by the IRS and Congress, including continuing to allow an exemption for interest on private activity bonds used to funds P3s[5] and proposed regulations issued in June clarifying that investment of bond proceeds in infrastructure projects will not trigger rebates to the government under the Code's exempt bond arbitrage provisions.[6]

[1] The letter can be viewed here.

[2] The text of Code section 163(j) is available here. The text of the TCJA and accompanying Congressional reports, can be viewed here.

[3] The proposed regulations (REG-106089-18) are available here.

[4] Revenue Procedure 2018-59 is available here.

[5] Earlier drafts of the TCJA would have ended this tax exemption (see our prior post (November 10, 2017) but the final bill kept it.

[6] The proposed regulations (REG-106977-18) are available here.

Nossaman Infra Insight Blog

By Douglas Schwartz on December 11, 2018

Disclosure Changes: Be Prepared for New SEC Requirements - GFOA Webinar

Date and Time: Jan 9 2019 – 2:00pm to 4:00pm EST

Member Price:
$25.00

Non-Member Price:
$95.00

Speakers:

- Emily S. Brock – Director, GFOA
- Peg Henry – Deputy General Counsel, Stifel Financial Corp.
- Alexandra M. MacLennan – Partner, Squire Patton Boggs LLP

Who Will Benefit:
All GFOA members and members of the public interested in gaining knowledge of the of industry best practices in regard to the new amendments governing the disclosure requirements associated with municipal securities.

Program Description:
The new Amendments to SEC Rule 15c2-12, effective February 27, 2019, are an effort to provide additional financial information to investors where an issuer may have material financial obligations that could impact bond holders. Governments will have to state in continuing disclosure agreements

entered on or after the effective date that they will disclose to the market any new and material financial obligations and notify the market when an outstanding or new financial obligation reflects material financial difficulties. Throughout this course, instructors will discuss GFOA and industry best practices to ensure issuers are prepared for the new requirements.

Seminar Objectives:
Those who successfully complete this seminar should be able to:

- interpret the new amendments
- understand the industry professionals' function and recommendations for implementation
- explore improved policies and procedures to ensure effective implementation

Download Registration Form.

Register Online.

Looking To Invest In Qualified Opportunity Zones? These Resources May Help.

As investors across the nation seek to deploy billions of dollars in capital gains into Qualified Opportunity Zones, they are actively seeking guidance about the program and on the hunt for resources to help identify neighborhoods, assets and available land within opportunity zones most ripe for investment.

The program, created through the passing of the Tax Cuts and Jobs Act last year, aims to incentivize private investment in underserved and otherwise blighted communities across the U.S. in exchange for a hefty tax break.

More than 8,700 census tracts have been classified as opportunity zones and numerous opportunity zones funds have already launched to take advantage of the program — with an estimated $6 trillion in unrealized capital gains eligible to be deployed into opportunity zones, according to a study conducted by Real Capital Analytics.

In response to high demand from firms and high net worth individuals interested in the opportunity zones program, a number of tools have come to market to help potential investors understand how the program works, identify neighborhoods that qualify for it and locate assets within the designated areas in need of investment.

"Opportunity zones have brought national attention to areas of the country that have been too often looked over for investment. Unlike traditional community development institutions, knowledge and understanding about these communities is quite limited," Smart Growth Americas Vice President of Land Use and Development Christopher Coes told *Bisnow*. Coes is also director of national real estate developer and investor network LOCUS.

"The structure of the opportunity zones tax incentive places the onus on the investor to identify and conduct due diligence … which requires an understanding of not only the project but also the place. Because of this demand, we're seeing a lot of tools [come to market] to help assist investors and policymakers."

Bisnow has assembled a list of some of these resources below.

CRE Models Opportunity Zones One-Stop Shop

St. Petersburg, Florida-based real estate data and analysis company CREModels' Opportunity Zones Resource Center is fit with an interactive map that allows users to search by address to identify neighborhoods and assets within opportunity zones, downloadable documents and links to other opportunity zones portals. When using the map, users can find granular information for specific tracts, including population size and density, number of households, household sizes, total housing units and other occupancy figures such as vacant units, owner-occupied units and occupied rental units.

"High-net worth investors are sitting on an extraordinary amount of capital gains. Our Qualified Opportunity Zones Resource Center gives developers and real estate investment fund managers the tools and resources they need as they work with such investors on acquisitions and development projects in these low-income areas," CREModels Managing Director Mike Harris said in a statement.

Economic Innovation Center Opportunity Zones Resources

Economic Innovation Center, an economic public policy organization founded in 2013, has created a resource page on its site that links to state-by-state opportunity zone updates. Each state on an interactive map of the U.S. links to a profile PDF that provides a complete overview of the state's opportunity zones program, including how many tracts were designated as opportunity zones, the number of residents in each zone and the number of jobs and businesses in each zone. It is not clear how often this page is updated.

Enterprise Community Partners Opportunity Zones Eligibility Tool

Opportunity360, a subsidiary of Enterprise Community Partners — a nonprofit that works to make housing more affordable and sustainable nationwide — has created an Opportunity Zones Explorer tool to help potential investors identify which tracts in their states qualify for the Opportunity Zones program. This tool also identifies if those tracts qualify for any other federal place-based programs.

"In addition, users can filter tracts using the Opportunity360 Outcome Indices to see how people living in these tracts are faring across our five outcome dimensions and explore tracts that were eligible but not designated by the states as Opportunity Zones," the organization wrote on its site.

Novogradac OZ Mapping Tool

National professional services provider Novogradac & Co. has created a resource center dedicated to opportunity zones. The dominant resource on this page is an Opportunity Zones Mapping Tool that users can search for Qualified Opportunity Zones by address or zooming into an interactive map. The map also reveals how many public housing developments are underway in those tracts.

Reonomy Opportunity Zones Search Tool

New York-based real estate data provider Reonomy unveiled a new search tool in October that allows its clients to gather multiple layers of information about properties and building owners in opportunity zones in rural, urban and metropolitan areas. Using various filters, users can search by location, asset type, sales and debt. Since creating this search feature, Reonomy has identified about 6.75 million commercial properties that fall within opportunity zones, Reonomy Director of Product Patrick Rafferty said.

"I think there's going to be a substantial uptick in demand for those properties [located in opportunity zones]. I think owners of those properties can expect there is going to be a renewed or

elevated interest in those properties and … people acting on that now will have a first mover advantage. Our product helps offer that," Rafferty said.

Smart Growth America-LOCUS Opportunity Zones Navigator

LOCUS, a national network of real estate developers and investors spearheaded by Smart Growth America, has created an Opportunity Zone Navigator that allows users to search within opportunity zones for transit, environmental, economic, housing and affordability information. The map is interactive and users can use filters to advance their search to identify opportunity zones with brownfields, or how many commercial and industrial jobs are within each tract, for example.

"LOCUS created the Opportunity Zones Navigator to provide real estate professionals and locals [with] a centralized, user-friendly tool to identify opportunity zones that are ideal for creating new vibrant and walkable neighborhoods," Smart Growth Americas' Coes said. "Our goal [is that] the tool can facilitate investments that will achieve the greatest economic and social impact."

Yardi Matrix Opportunity Zones Search Tool

Commercial real estate software company Yardi Matrix has created a "Quick Search" and "Property Type Advanced" search tool that allows its subscribers to locate multifamily, self-storage and office assets within opportunity zones.

bisnow.com

Champaign Williams, National Editor

December 9, 2018

Trump to Steer More Money to 'Opportunity Zones'

WASHINGTON — President Trump directed federal agencies on Wednesday to steer spending toward certain distressed communities across the country — part of his administration's push to turn a tax break included in last year's $1.5 trillion tax package into a broader effort to combat poverty and geographic inequality.

Mr. Trump signed an executive order at the White House to push federal resources to so-called opportunity zones — a small but lucrative provision tucked into his signature tax cut that in recent months has vaulted to prominence among real estate developers and other investors.

Mr. Trump told attendees at the meeting that the zones would receive "massive incentives" for private-sector investment. He said the goal of the order was to help "draw investment into neglected and underserved communities of America so that all Americans regardless of ZIP code have access to the American dream."

Continue reading.

The New York Times

By Jim Tankersley

Dec. 12, 2018

Opportunity Zones Have Accelerated Investment, But Not In The Neighborhoods That Need It.

It has been nearly a year since Qualified Opportunity Zones became law, and the early numbers suggest they may not be working as intended.

The program is meant to encourage private investment in destitute or underserved communities by allowing investors to defer capital gains tax on income invested in those zones. A new report from Real Capital Analytics shows that on average, land prices in census tracts designated as opportunity zones are not significantly lower than outside of them.

Since the Tax Cuts and Jobs Act was passed, transaction volume for land purchases have grown in every quarter, with Q3 seeing a year-over-year increase of over 50%. Deal volume outside of opportunity zones have remained stagnant over the same period, according to RCA. Though investors have responded to the new tax break, they haven't changed their behavior meaningfully, RCA Senior Vice President Jim Costello said.

Continue reading.

Bisnow

by Matthew Rothstein

December 5, 2018

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Chicago Mayor Pushes Bond Sale, Constitutional Change to Aid Pensions.

CHICAGO — Mayor Rahm Emanuel laid out a multi-pronged plan on Wednesday to tackle Chicago's huge pension burden, urging the city council to approve the issuance of $10 billion of bonds to boost funding for the city's four retirement systems.

Emanuel, who leaves office in May after declining to run for a third term as mayor, also called for changing the Illinois Constitution and earmarking new revenue from a possible casino and legalized marijuana for pensions.

"Issuing these bonds and depositing the proceeds directly into our pension funds would immediately increase the health of our pension funds to levels not seen in at least a decade before asking more of Chicago's hard-pressed taxpayers," the mayor said in a speech to the city council.

Chicago's big unfunded pension liability, which stood at $27.6 billion in 2017, along with years of structural budget deficits, led to downgrades of the city's general obligation credit ratings and higher borrowing costs.

Even after raising fees and taxes in recent years to save the retirement funds from becoming insolvent, the third-largest U.S. city faces pension contributions that will grow to $2.13 billion in 2023 from $1.02 billion this year.

With the bond proceeds, the retirement systems' low funded ratio of just 26 percent would jump to 50 percent, while city contributions to the funds would decline, saving taxpayers nearly $7 billion over 50 years, Emanuel said.

Emanuel introduced an ordinance to securitize state-collected revenue due the city, including income taxes, to back $7.7 billion of the debt, which would be issued through a new Dedicated Tax Securitization Corporation.

Chicago has already employed a similar bond structure to refund low-rated outstanding debt through a securitization of sales tax revenue with a statutory lien for investors that resulted in higher credit ratings and lower borrowing costs.

The remaining $2.3 billion of bonds would be backed by a water and sewer excise tax enacted in 2016 for the city's municipal retirement fund.

An economic adviser to Emanuel first introduced the idea of the bond plan at a city investors' conference in August. However, the plan was put on hold earlier this fall in the wake of Emanuel's September decision not to run again and surging interest rates.

S&P Global Ratings in October cautioned the city that the move comes with risk and could have negative rating implications depending on how the bonds are structured and other factors.

Emanuel said even higher taxes would pose a risk to Chicago's economy, while inaction on pensions risks more credit downgrades. He urged the 50-member council to act on the bonds, warning that interest rates are heading up and the market window for doing the deal will close.

It was unclear if aldermen would move forward with the bond plan before a new mayor takes office. Scott Waguespack, chairman of the city council's progressive reform caucus, said the plan should be "vetted when the next mayor comes into office."

One of the 21 candidates vying for mayor, Paul Vallas, a former Chicago budget director, said on Wednesday the bond plan "is just kicking the can down the road."

There was immediate pushback from labor unions against Emanuel's proposal to amend protections for public worker retirement benefits in the Illinois Constitution to lower a costly 3 percent annual compounded cost of living adjustment given to city retirees.

Leaders of the Chicago Federation of Labor and the Illinois AFL-CIO issued a joint statement that said: "Those pushing to repeal the Illinois Constitution's pension clause ignore the real problem, which is not the cost of benefits but the decades-long habitual failure of politicians to pay the employer's share."

Citing the clause, the Illinois Supreme Court rejected past attempts by the state and the city to reduce retirement benefits.

The Democratic-controlled Illinois General Assembly would have to approve the placement of an amendment on an upcoming state-wide ballot, as well as pass bills authorizing a Chicago casino and legalizing marijuana to complete Emanuel's proposal.

By Reuters

Dec. 12, 2018

(Reporting by Karen Pierog in Chicago; Editing by Matthew Lewis)

This 'Insanity' May Be the Muni-Bond Market's Next Big Thing.

- **City bets investment profits from bonds will fund health care**
- **Tactic has been used widely for pensions, with mixed results**

It's a "considerable risk," a "bad idea," or, as one expert put it, "insanity." And it may be the next big pitch Wall Street bond underwriters make to states and cities desperate to cover ballooning health-care costs.

Dearborn, Michigan, the 94,000-resident city that's home to Ford Motor Co., tested the waters this week by selling $35 million of bonds to chip away at the $161 million it needs to cover the medical bills of workers who will retire in the years ahead. The city is betting that by investing the proceeds it will earn more than it will pay in interest, with the profits helping to cover health-care expenses.

Many states and cities have used the same strategy for their pensions, and Chicago Mayor Rahm Emanuel Wednesday proposed a $10 billion debt sale for the city's ailing retirement system. Some have came out ahead. Others were burned by stock market losses or because the temporary boost allowed governments to cut their annual pension payments. Illinois, New Jersey and Puerto Rico borrowed billions only to see the large shortfalls reappear.

Continue reading.

Bloomberg Markets

By Amanda Albright

December 13, 2018

Fitch Updates U.S. State Housing Finance Agencies: Pooled Multifamily Housing Bonds Rating Criteria

Fitch Ratings-New York-14 December 2018: Fitch Ratings has published an updated criteria report titled 'U.S. State Housing Finance Agencies: Pooled Multifamily Housing Bonds Rating Criteria.' The report replaces Fitch's 'U.S. Pooled Multifamily Housing Bonds Rating Criteria' dated Dec. 13, 2017. No changes to the ratings of existing transactions are anticipated as a result of the application of the updated rating criteria.

The full report is available at www.fitchratings.com.

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

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

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

Additional information is available on www.fitchratings.com

Rahm Emanuel Shouldn't Gamble on Chicago's Pensions.

Selling debt is a short-term fix that could exacerbate a challenging long-term problem.

Mayor Rahm Emanuel of Chicago, a former investment banker, should understand why issuing debt to fund pensions is a risky idea.

Emanuel, who is leaving office in May, told city council members on Wednesday that he would set in motion a plan for Chicago to sell what he branded as "fund stabilization bonds." Officials have floated the prospect of an offering as large as $10 billion, which would be the largest-ever for a locality. Even that wouldn't even completely solve the problem: Chicago's four pension systems are underfunded by a combined $28 billion. Even with the sale, the funding status of the systems would rise to just 50 percent, still well below what any observer would consider healthy.

The city would essentially be gambling that its retirement plans could earn a long-term return greater than the interest rate it pays on the taxable securities. Say that's 5 percent. Sure, the plans' projected rate of return is about 7.5 percent, but does anyone really think that's a surefire target in the years to come? Among those who are skeptical about future returns is Ray Dalio, founder of

Bridgewater Associates, which has made the most money for investors in the history of the hedge fund industry.

Continue reading.

Bloomberg Opinion

By Brian Chappatta

December 12, 2018, 1:48 PM MST

Emanuel Makes Strong Pitch for $10B in Pension Bonds.

Arguing that the window of opportunity may soon close, Mayor Rahm Emanuel urged the City Council on Wednesday to sign off on a $10 billion pension borrowing to save beleaguered Chicago taxpayers "as much as $200 million" in his successor's first budget.

Standard & Poor's has warned that pension obligation bonds "in environments of fiscal distress or as a mechanism for short-term budget relief" could threaten Chicago's BBB+ bond rating.

Mayoral candidate Paul Vallas has portrayed the pension borrowing as a financial "straight-jacket" that will tie the next mayor's hands.

Municipal finance experts have also raised concerns, pointing to pension-bond defaults in Detroit, California and Puerto Rico.

They wonder what would happen if the market tanks and what specific city revenue would be used to back the bonds, now that Emanuel has isolated sales tax revenue in a special fund and used that "securitization" structure to refinance $3 billion in city debt.

But Emanuel argued Wednesday that not issuing pension obligation bonds was equally risky and, in fact, a missed opportunity to minimize the pain from another punishing round of post-election tax increases.

He's so convinced of that argument, the mayor introduced an ordinance at Wednesday's Council meeting setting up the structure for issuing up to $10 billion in pension obligation bonds in the event that aldermen decide to follow his lead.

"We can refinance a portion of that debt at lower rates, locking in savings of as much as 2.5 percent over 40 years. Now, that works out to between $6 billion and $7 billion in savings for Chicago taxpayers," Emanuel said.

"It is not more debt. It is the same amount of debt, but at a much lower and cheaper cost to taxpayers and the city . . . We would decrease the amount of projected new revenue that will be required over the next 50 years just to fund pensions by almost $7 billion. We would save Chicago taxpayers as much as $200 million in the city's next budget, without creating any more total debt than we have today."

Although robust debate should follow introduction of the mayor's ordinance setting up a borrowing structure for pension stabilization bonds, Emanuel argued that there is "not an endless amount of time."

Interest rates are going up. The fed chairman "has indicated they will hold steady, but we do not know for how long," Emanuel said.

"There is a window in the market today for this to work. At some point, that window will close," the mayor said.

"I know this plan has risk. The truth is, there is risk in every choice and there is a risk if you do nothing. The question is, which calculated risk is worth taking for the benefit gained?"

Although the state issued pension bonds in 2003, billions of dollars of the proceeds were used to "plug operating holes" in the state budget, the mayor said. He called it a classic "bait-and-switch."

His plan is different. It has safeguards.

"Under this structure, all proceeds must go directly, immediately into a lockbox for the city's pension funds to be invested. Nowhere else," the mayor said.

"Unlike the state's pension bonds, this is part of a broader plan with specific dedicated revenue sources backing up the bonds. The state bonds were not backed up by any specific revenue for the pensions. [And] it is based on realistic projections. Through ups and downs in the market, there has never been a 30-year period when pensions have not earned at least an 8 percent return on their investments."

Chicago taxpayers have already endured a $2 billion avalanche of tax increases just to begin to solve the city's daunting pension crisis. But the boom will be lowered again shortly after the new mayor and City Council are sworn in.

After a five-year ramp to actuarial funding ends, Chicago taxpayers will be on the hook to keep city employee pension funds on the road to 90 percent funding.

By 2023, the city's contribution to all four funds will nearly double, from $1.2 billion this year to $2.1 billion, according to the city's annual financial analysis.

The obligation will smack the next mayor and City Council in the face. In 2020, the city will need another $276 million in new revenue to pay for higher police and fire contributions.

In 2022, new revenue for the Municipal and Laborers pension funds is projected to increase by $310 million.

Arguing that the "mantle of progressivity must not just be more taxes on the wealthy," Emanuel talked about a few alternative revenue sources already popular with the crowded field of mayoral candidates vying to replace him.

If the Illinois General Assembly legalizes recreational marijuana and ends Chicago's elusive quest for a land-based casino, any revenue derived from both should be devoted exclusively to pensions, the mayor said.

But he also acknowledged that he is not 100 percent sold on recreational pot , which Gov.-elect J.B. Pritzker has vowed to lead the charge to legalize.

"I believe recreational marijuana has social costs that must be considered. And like a casino, revenue would take time to be realized," the mayor said.

"But if the state goes down that path, those resources can and should be used to further solidify our pensions without asking more of Chicago taxpayers. If we take all of these steps — from a consideration model to amending the constitution to issuing bonds to a casino to recreational marijuana, we will dramatically reduce what is asked of our taxpayers."

When Emanuel ended what will likely be his last major policy speech to the City Council, aldermen responded with mild applause. It was hardly a rousing endorsement.

The Chicago Sun-Times

By Fran Spielman

12/12/2018

Emanuel to Push for Constitutional Amendment to Solve Pension Crisis.

Mayor Rahm Emanuel on Wednesday will put his waning — but still formidable — political muscle behind a constitutional amendment to ease a $1 billion spike in pension payments that will confront his successor.

Sources said Emanuel will also urge the City Council to start debate on his stalled plan to borrow $10 billion to fund pensions — by setting up the legal structure that will allow bonds to be sold if aldermen decide the move could minimize the need for another punishing round of post-election tax increases.

Mayoral candidate Paul Vallas has portrayed the pension borrowing as a financial "straight jacket" that will expose taxpayers to even greater risk.

Standard & Poor's has warned that pension obligation bonds "in environments of fiscal distress or as a mechanism for short-term budget relief" could threaten Chicago's BBB+ bond rating.

"There's a lot of volatility and uncertainty on investment returns. … If you borrow at 5 percent and only earn 3, you've made the problem bigger," a municipal finance expert, who asked to remain anonymous, said Tuesday.

"The massive number would also impact the city's ability to borrow for routine infrastructure needs," the expert said.

The Illinois Constitution's pension protection clause states those benefits "shall not be diminished or impaired." It's why the Illinois Supreme Court overturned Emanuel's plan to save two of four city employee pension funds.

Mayoral candidate Bill Daley has already argued that it's high time to amend the state constitution.

On Wednesday, Emanuel will join him.

"What kind of progressive, sustainable system guarantees retirees 3 percent annual compounded pay increases when inflation has been at basically zero and current employees have, at times, been furloughed, laid off or received 1 percent raises?" Emanuel was prepared to ask, according to excerpts of his speech released by the mayor's office.

“A 3 percent compounded COLA in an era of low inflation is not progressive and not sustainable. It made sense in 1970 when we had more workers than retirees and high inflation. But it does not make sense today.”

Arguing that the “mantle of progressivity must not just be more taxes on the wealthy,” sources said Emanuel will suggest a few alternative revenue sources already popular with the crowded field of candidates vying to replace him.

If the Illinois General Assembly legalizes recreational marijuana and ends Chicago’s elusive quest for a land-based casino, any revenue derived from both should be devoted exclusively to pensions, the mayor will say. Emanuel has supported a Chicago casino since 2011.

But, he will not “push” the General Assembly to legalize recreational pot, well aware that Gov.-elect J.B. Pritzker has vowed to lead the charge. The mayor will also argue that recreational pot and a Chicago casino are “not solutions in and unto themselves,” sources said.

“Amending the state constitution to allow for both a progressive income tax and new agreements with labor is an important step towards fiscal stability and progressivity,” the mayor was prepared to say.

“Coming at this challenge from both sides — reform and revenue — is the clearest path out of this challenge … and the fairest. I said that when we started our discussions with labor almost eight years ago. I believed it then. And I believe it today.“

Chicago taxpayers have already endured a $2 billion avalanche of tax increases just to begin to solve the city’s daunting pension crisis. But the boom will be lowered again after the election.

That’s because, when a five-year ramp to actuarial funding ends, Chicago taxpayers will be on the hook to keep city employee pension funds on the road to 90 percent funding.

By 2023, the city’s contribution to all four funds will nearly double, from $1.2 billion this year to $2.1 billion, according to the city’s annual financial analysis.

“In 2020, just around the corner, the city will need another $276 million in new revenue to pay for higher police and fire contributions. In 2022, new revenue for the Municipal and Laborers pension funds is projected to increase by $310 million. These contributions must be made,” Emanuel is prepared to say.

“Whatever the results of the coming election, we cannot afford to return to the politics of the past … where promises are made without the means to fulfill them. We cannot allow the boulder we pushed up the hill to roll back down.”

Ald. Pat O’Connor (40th), the mayor’s City Council floor leader, said it makes sense for Emanuel to frame the pension debate with a call for a constitutional amendment.

“That was an idea that both the city and many of our partners in labor had embraced during the course of the negotiations previously,” O’Connor said Tuesday.

“Many unions saw that as a necessary evil to preserve the pension structure. … It was acceptable then, and, if there’s a chance that those pensions could go away if these things aren’t corrected, it would probably be a route forward-thinking people would accept.”

To get on the ballot, a constitutional amendment needs a three-fifths vote from the Illinois General

Assembly. A constitutional convention “shall be called if approved by three-fifths of those voting on the question or a majority of those voting in the election,” the constitution states.

Civic Federation President Laurence Msall said he can only hope the mayor’s plan is “comprehensive and sustainable” and “does not simply push payments into the future.”

“The city should identify specific revenues and avoid gimmicks or on-paper savings,” Msall wrote in an email to the Sun-Times.

“It needs to be a plan that city officials revisit on a regular basis. It should not be a `one-and-done’ plan. The city should also publicly release an actuarial analysis of any plan, with stress testing. The Civic Federation remains concerned that pension obligation bonds could be a part of the forthcoming plan.”

The Chicago Sun-Times

By Fran Spielman

12/11/2018

CUSIP Request Volume Mixed in November, Suggesting Possible Divergence in Corporate and Municipal Issuance Activity over Next Quarter.

NEW YORK, NY, December 11, 2018 – CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for November 2018. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity over the next quarter, found monthly increases in domestic corporate issuance, while requests for municipal and international identifiers declined in November. This is suggestive of a possible slowdown in the pace of new issuance activity in the first quarter of the New Year.

Read Report.

State and Local Investment Gets Lift From Rising Revenues.

Now that coffers are brimming again, infrastructure spending is back on the agenda

State and local government investment in roads, bridges, buildings and other infrastructure hasn’t returned to its previous peak, but it is now showing signs—deep into the expansion—of a real recovery.

Since the 2007-09 recession, slow economic growth and rising expenditures on Medicaid and pensions crowded out infrastructure investment. Spending on school buildings, hospitals and public safety languished.

Now, bigger state and local tax collections, propelled in part by an acceleration in sales-tax receipts from consumer spending, is boosting capital projects and driving a municipal borrowing boom.

Continue reading.

The Wall Street Journal

By Sarah Chaney and Heather Gillers

Dec. 15, 2018

TAX - MISSISSIPPI

NRG Wholesale Generation LP v. Kerr

Supreme Court of Mississippi - December 6, 2018 - So.3d - 2018 WL 6381152

Taxpayer appealed from county board of supervisor's calculation of the true value of taxpayer's power plant for purposes of computing ad valorem tax.

The Circuit Court entered judgment in favor of county, awarding county $533,827.80 together with eight percent interest per year. Taxpayer appealed.

The Supreme Court of Mississippi held that:

- The trial court did not err in excluding taxpayer's proffered expert testimony on the true value of its industrial power plant, and
- The trial court did not abuse its discretion by denying taxpayer's motion for a change of venue.

On appeal from the county board of supervisor's calculation of the true value of taxpayer's power plant for purposes of computing ad valorem tax, trial court, in a trial de novo, did not err in excluding taxpayer's proffered expert testimony on the true value of its industrial power plant, when expert failed to use the underlying statutorily mandated historical cost-less-depreciation approach for calculating the true value

On appeal to the circuit court from county board of supervisor's calculation of the true value of taxpayer's industrial power plant for purposes of computing ad valorem tax, the circuit court did not abuse its discretion by denying taxpayer's motion for a change of venue, even though a majority of the 91-person venire knew the county tax assessor and the board; during voir dire, the court struck every juror that said he or she could not be fair and impartial, and every juror taxpayer challenged for cause was dismissed by the court.

TAX - LOUISIANA

Smith v. Robinson

Supreme Court of Louisiana - December 5, 2018 - So.3d - 2018 WL 6382118 - 2018-0728 (La. 12/5/18)

Taxpayers, Louisiana residents and owners of several limited liability companies (LLC) and Subchapter S corporations that transacted business in Texas, Arkansas, and Louisiana, brought action seeking recovery of income taxes paid under protest.

The District Court found that Act amending State income tax statute violated the dormant Commerce Clause. The Department of Revenue appealed.

The Supreme Court of Louisiana held that:

- Taxpayers' payment of a Texas franchise tax constituted a net income tax imposed by and paid to another State for purposes of entitlement to resident income tax credit;
- Statute governing entitlements to resident income tax credits for income taxes paid to another State failed the fair apportionment test for determining the validity of a state tax under the dormant Commerce Clause; and
- Statute governing entitlements to resident income tax credits for income taxes paid to another State impermissibly discriminated against interstate commerce, in violation of the dormant Commerce Clause.

Payment of a Texas franchise tax by taxpayers, Louisiana residents who were owners and members of several limited liability companies (LLC) and S corporations, pass-through entities that transacted business in Texas, Arkansas, and Louisiana, constituted a "net income tax" imposed by and paid to another State for purposes of entitlement to resident income tax credit in Louisiana; the Texas franchise tax was essentially imposed on an income basis, the payment of the tax was made by pass-through entities doing business in Texas, but the credit was being claimed by individual shareholders and members.

Statute governing entitlements to resident income tax credits for income taxes paid to another State failed the fair apportionment test for determining the validity of a state tax under the dormant Commerce Clause; the statute, as amended, failed to fairly apportion the tax according to each state's relation to the income since no credit was given with respect to taxes paid on income earned from sources in Texas, which created the potential for multiple taxation of the same income.

Statute governing entitlements to resident income tax credits for income taxes paid to another State, which failed to give credit to resident taxpayers with respect to taxes paid by pass-through entities on income from sources in Texas, impermissibly discriminated against interstate commerce, in violation of the dormant Commerce Clause; the statute, as amended, resulted in the double taxation of interstate income as compared with the taxation of intrastate income, which created an incentive for taxpayers to opt for intrastate, rather than, interstate economic activity.

The Week in Public Finance: With Revenues Soaring, States Are Spending More. But on What?

The bulk of the funding boosts are going toward education and rainy day savings.

SPEED READ:

- State revenues are rising, largely because of the strong economy and federal tax reform.
- A total of 40 states beat their revenue projections in fiscal 2018, the highest number to do so since 2006, according to a survey by the National Association of State Budget Officers.
- As a result, states increased their total spending by 4.3 percent to $874.6 billion in fiscal 2019.

A year ago, state budget directors were pumping the breaks on spending amid uncertainty over the economy and how the federal tax overhaul would hit state finances. But after 12 months of revenue growth that has surpassed just about anyone's expectations, states are planning on some of the biggest spending increases since before the Great Recession.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | DECEMBER 14, 2018

[Pension Politics: Should States Be Investing in Controversial Companies?]

It's an increasingly divisive question. If the goal is to affect change — from gun control to climate change — some argue that to divest is the best, while others believe pensions would have more power keeping their financial stake.

Earlier this year, even before a gunman killed 12 patrons at a bar in Thousand Oaks, there was a groundswell of calls for California's two largest pension funds to sell off their investments in gun retailers. But Jason Perez, a Southern California cop, balked. As a protest against "politically correct" investing, he decided to run for a seat on the California Public Employee Retirement System's board of directors. And it wasn't just any seat; it was the one held by CalPERS Board President Priya Mathur.

Mathur had been on the board for 15 years. She is a globally recognized leader in the sustainable investment community and holds a seat on the board of the United Nations-supported Principles for Responsible Investment, a network of international investors working to create and promote standards for sustainable investing. She's worked to apply those standards to CalPERS.

Perez and his union, the Corona Police Officers Association, have routinely criticized the board for spending too much time on environmental and social investment programs. Association members regularly attended CalPERS meetings 430 miles away in Sacramento to urge pension officials to focus instead on making money for the $360 billion pension fund. During his campaign, Perez painted a picture of an investment strategy overrun by politics and emotion, particularly proposals before the board to divest the portfolio of gun manufacturers and retailers and to drop the controversial Dakota Access Pipeline.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | DECEMBER 2018

[Ruppersberger Announces Stivers as New Co-Chair of Bipartisan Municipal Finance Caucus.]

Today, Rep. Dutch Ruppersberger (D-MD) announced Congressman Steve Stivers (R-OH) will co-chair the Municipal Finance Caucus. Rep. Ruppersberger is an original founder of the caucus, along with outgoing co-chair Rep. Randy Hultgren (R-IL). You can view the statement released by Rep. Ruppersberger here. The MBFA Coalition looks forward to working with Rep. Stivers and his staff in the ongoing effort to preserve that tax-exempt status of municipal bonds.

Members of the MBFA Coalition released a statement on Rep. Stivers joining the caucus that can be read here.

Municipal Bond for America

December 10, 2018

CDFA Provides Financing Strategies for Riverwalk in Oregon City, OR.

Read the Press Release.

Schumer Wants Infrastructure Bill to Have 'Green' Elements.

After the flurry of post-election talk from Republicans and Democrats about infrastructure legislation in the new Congress, Senate Minority Leader Charles Schumer (D-N.Y.) is staking out a position. Schumer is underscoring what Democrats see as a “must” to include in that bill: major environmental components.

Schumer said in a Dec. 6 letter to President Trump that “any infrastructure package considered in 2019 must include policies and funding to transition to a clean energy economy and mitigate the risks that the United States is already facing due to climate change.”

Schumer said the package should including a list of provisions, including investing in “resilient transportation, water, waste and sewer infrastructure.” To pay for such work, he proposes “a new resilient communities revolving loan fund.”

Some of Schumer’s green provisions could gain bipartisan support, such as building in disaster-resilient features and tackling the large maintenance backlog in national parks. But others may well run into opposition from Trump and his Capitol Hill supporters, such as cutting methane emissions from energy production.

An infrastructure bill faces big challenges, especially how to pay for a program that could total hundreds of billions of dollars and reconciling the GOP’s desire for private-sector funding and Democrats’ focus on federal spending. Brian Deery, senior director of the Associated General Contractors of America’s highway and transportation division, says of Schumer’s statement, “I think it does complicate the debate on infrastructure.”

Still, Deery is optimistic about chances for the legislation. “Both sides have a stake in being successful in this,” he says. Deery notes that an infrastructure program was a Trump campaign promise and Democrats, for their part, will want to “demonstrate that they can govern,” particularly as they assume the majority in the House in the new Congress.

Schumer’s green infrastructure outline is an opening move in a lengthy debate and negotiations with the GOP.

The Engineering News-Record

by Tom Ichniowski

December 12, 2018

State Revolving Loan Fund Gains Momentum in Congress.

Representative explains why supporting flood mitigation is a bipartisan and national concern

Representatives Charlie Crist (D-FL) and Roger Williams (R-TX) introduced legislation in October to create a partnership between the federal government and states to reduce flood risk and save lives. The bill – the State Flood Mitigation Revolving Loan Fund Act of 2018 (H.R. 7037) – would provide low-interest loans to help communities, businesses, schools, and families prepare for floods.

The House bill is a companion to a Senate measure, S. 1507, that Senators Jack Reed (D-RI), John Kennedy (R-LA), and Bob Menendez (D-NJ) introduced in June 2017. The state revolving loan program is supported by more than 100 national and local groups from South Carolina to California.

Pew asked Rep. Crist why this new piece of legislation could be a game changer for communities.

Q: What can be achieved by a loan fund program for flood mitigation?

A: Flooding is the most costly and common natural disaster across the U.S., causing more than $750 billion in losses since 2000 according to the National Oceanic and Atmospheric Administration (NOAA). States need a stable source of funding for more flood mitigation and a state revolving loan program can serve this purpose, enabling more communities to take action. Research shows that these risk-reduction measures are cost-effective, with a return on investment of $6 for every $1 spent. Ultimately, this loan fund proposal would be the first mitigation program on a national scale that truly pays for itself. It would help break the cycle of paying to rebuild properties that flood repeatedly.

Q: How would the program work?

A: This proposal creates a partnership between the Federal Emergency Management Agency (FEMA) and the states. Each state, territory, or tribal government that chooses to participate would establish a revolving loan fund to give low-interest loans, and in some cases grants, for a range of activities proven to reduce flood risk. Projects to be chosen by the states could involve a variety of flood mitigation efforts, including elevating or floodproofing homes and businesses; conserving and protecting wetlands, dunes, and other natural areas that can absorb floodwaters; purchasing flood-prone properties; and larger-scale projects such as improving stormwater management in neighborhoods and towns.

Each state fund would be seeded with dollars from FEMA and a contribution from the state itself. States would manage their funds under general principles established by FEMA but tailored to the state's flood risks and priorities. As payments on outstanding loans are returned to the state fund, these flood mitigation dollars would "revolve," becoming available for additional projects. Once established, this program would allow each state to be proactive and prepared. Rather than waiting for congressional appropriations or disaster assistance, state officials could make plans and set priorities around a more predictable flow of money to a pipeline of flood mitigation projects. This way, even a modest initial federal expenditure can lead to a larger return on investment. It's how we can foster an enduring commitment to prepare communities before floods strike.

Q: Why should this approach appeal to all members of Congress?

A: Storms and floods are not confined to any one state or region. Every state in the nation has

suffered flood losses at some level, and we all share an interest in the collective safety of our citizens and protecting taxpayer dollars. The state revolving loan program will save lives and dollars by supporting projects to lower flood risk, making flood risk reduction common practice in building and growing local communities. Flood insurance policyholders will benefit from lower insurance premiums as their risks are reduced, and communities will avoid the loss of business and other economic disruptions associated with flooding. These are benefits everyone can get behind.

Q: Why start a loan fund for mitigation when federal grants already exist for this purpose?

A: Current programs fall short of our needs. Two key federal grant programs support projects aimed at reducing risk: the Hazard Mitigation Grant Program and the Pre-Disaster Mitigation Grant Program. The first is available only after disaster strikes, and the second has never been funded adequately. Taken together, these existing programs have not been enough to close the nation's flood preparedness gap. The federal government has spent at least $280 billion on disaster assistance in recent years, but far less has gone toward mitigation.

In addition, the revolving loan fund program is a tested model that many states and municipalities have experience using. These programs have been applied to affordable housing, renewable energy, clean water, energy efficiency, and other community interests. For example, the Clean Water State Revolving Fund program finances improvements to wastewater infrastructure. Since its inception in 1987, the program has leveraged $42 billion in federal funds for $126 billion worth of clean water infrastructure. Such a program would offer similar benefits for flood mitigation. While a new flood mitigation fund would likely start with a modest amount of federal funding, the value of those dollars would grow as they are matched by state shares, private investments, and revolving loan payments.

This new program can help stem the increasing pressure of federal disaster spending – not by denying communities help after floods but by helping them to build stronger before disaster strikes and, in turn, making their residents safer.

The Pew Charitable Trusts

December 12, 2018

[New Jersey Pension Funding: State Actions Reverberate At The Local Level]

New Jersey municipalities and counties find themselves in an uncertain position. They could face a large hike in pension costs should the state not follow the current schedule of increasing pension contributions.

[Continue Reading]

Dec. 12, 2018

[Here are Three Ways to Pay for New Investments in Infrastructure and End Partisan Gridlock.]

Optimism that America will finally address its massive infrastructure problem is on the rise – and

understandably so. The Trump Administration is still attempting to fulfill their infrastructure campaign pledge and Democrats have long supported rebuilding the country's crumbling infrastructure. However, a bipartisan infrastructure overhaul is likely stuck in neutral for the reason we've been in gridlock for decades: how to pay for it.

There are three ways to pay for new infrastructure investment: raise revenue, borrow, or pretend (gimmicks that mask borrowing as being paid for). Infrastructure is generally funded by user fees: the gas tax pays for roads. In the past this has had broad political support. People understand that freeways aren't free and that revenue paid by users for infrastructure are different than generic taxes. Republicans embraced the small 'c' conservative idea that people who used public assets ought to pay for them. Democrats overcame objections regarding the inherently regressive nature of flat consumption taxes and the budgetary policy of segregating infrastructure revenue streams from other general revenue to support this system.

Continue reading.

The Brookings Institute

by Aaron Klein
Fellow – Economic Studies Policy Director – Center on Regulation and Markets

December 12, 2018

Vacation Rental and Shared Housing Tax Surcharge.

The enactment in October of a shared housing surcharge in Chicago and a new tax on online bookings in Pennsylvania both will have an impact on the hotel industry.

Chicago's Shared Housing Surcharge
The City of Chicago has enacted a new surcharge targeting one of the hotel industry's biggest competitors: the vacation rental and shared housing industry. Section 3-24-030(C) of the Chicago Municipal Code imposes a new surcharge (the "shared housing surcharge") on the rental or lease of any vacation rental or shared housing unit in the City. Effective December 1, 2018, the shared housing surcharge is 2%, plus the 4% surcharge already in place under Section 3-24-030(B), for a total surcharge of 6% of the gross rental or leasing charge.

The shared housing surcharge is also in addition to the City's 4.5% hotel accommodations tax. Thus, effective December 1, 2018, the total City tax rate on vacation rentals and shared housing units will be 10.5% (compared to 4.5% for most hotels). As with the hotel accommodations tax, operators are responsible for collection and remittance of the shared housing surcharge.
A vacation rental is defined in §4-6-300 as a dwelling unit that contains six or fewer sleeping rooms that are available for rent or for hire for transient occupancy by guests. Likewise, a shared housing unit is a dwelling unit with six or fewer sleeping rooms that is rented in whole or in part for transient occupancy by guests. City Code §4-14-010.

The surcharge does not apply to temporary accommodations provided by a hospital or the rental of an accommodation which is considered a permanent residence of the person who occupies it.

Pennsylvania's New Tax on Online Travel Agencies
Also in October, Pennsylvania enacted Act 109, a new law increasing the tax payable by online travel

agencies for hotel room bookings in the state. This new tax will apply to online travel agencies.

The new law eliminates a loophole that allowed online booking websites to charge the hotel occupancy tax only on room rates as negotiated with the hotel, rather than on the final amount paid by the guest. Under the new law, which is expected to take effect February 1, 2019, online booking agents will also be required to pay tax on accommodation fees and other charges included in the booking price. Guests will pay tax on the same base whether they book through online booking agents or directly through the hotel.

The goal of the new law was to level the playing field for hotel bookings and to raise funds for tourism for the state of Pennsylvania.

Akerman – SALT Insights

SEC Enforcement by the Numbers.

The merits of the SEC Enforcement program cannot be assessed by numbers and statistics chronicling events like how many cases were filed or the total amount of dollars ordered in judgments. At least that is the claim frequently repeated by the agency and the Division of Enforcement. Yet various sources publish numbers about Division of Enforcement ranging from the newly minted Annual Report (started last fiscal year) of the Division to various consulting firms and universities. Many who practice in the area, or closely follow the agency, discuss metrics and numbers tied to the work of the Enforcement Division. The question thus becomes "What, if anything, do SEC Enforcement statistics tell us?"

The New York University Pollack Center for Law and Business is one source of statistics about the work of SEC Enforcement that is outside the agency. The Center teams with Cornerstone Research to publish its data. The most recent compilation from this team is: Cornerstone Research, SEC Enforcement Activity: Public Companies and Subsidiaries (December 2018), available here (Cornerstone Report).

Number of Enforcement cases: Many of the metrics highlighted in the Report are familiar, echoing the earlier Enforcement Annual Report, published in October 2018 (here). The top line key metric is always the number of cases filed by the Division. Both reports agree that 490 standalone enforcement actions were filed FY 2018. The Division likes to add an asterisk to the number, noting that the MCDC (Municipalities Continuing Disclosure Cooperation initiative) skews the trend analysis over time. The Cornerstone Report faithfully footnotes the claim (here). The Division offers little explanation for this claim. The Cornerstone Report offers none. While there is no doubt that MCDC added a number of cases to the totals, the same might be said of the current Enforcement efforts regarding the share class selection initiative which is not mentioned.

Perhaps the most significant point about the 490 FY 2018 total is not whether an asterisk is added by but how the Division was able to file that many cases. In the first half of FY 2018 the Division only filed 159 standalone cases. In the second half of the year over twice as many cases were brought – 331. The tables included in the Cornerstone Report demonstrate that this is the largest number of actions brought in any six-month period in the last several years with or without the asterisk. While it is typical to see the numbers go up in the waning months of the fiscal year as the Division empties its pipeline and looks to enhance its year end statistics for the fall Congressional budget hearings, more than doubling the first half output is a significant achievement. That number becomes even

more remarkable in view of the Cornerstone Report's statement that 44% of the FY 2018 independent SEC actions were filed in the fourth quarter. Unfortunately there is no discussion regarding these achievements in the Cornerstone Report or the Division's Annual Report.

Public company cases: The focus of Cornerstone Report is cases involving public companies and/or their subsidiaries. Here the numbers can be difficult to square with those from the Enforcement Annual Report. For example, according to the Cornerstone Report the SEC filed 71 new enforcement actions against public companies and subsidiaries in FY 2018. The bulk of those cases – 46 – were filed in the last quarter of the fiscal year. That number represents a record for this decade.

Again, there is no discussion of the numbers revealing how the Division accomplished this feat. Perhaps more importantly, the numbers here do not precisely track those from the Enforcement Annual Report. The Division's Annual Report says that 16% of its cases involved issuer reporting, accounting and auditing issues. That calculates to 78 cases (the number is not in the report). Whether the category described by the SEC is the same as that used by Cornerstone is unclear. Neither report offers definitions which could clarify the question.

Venue selection: Venue selection is another key question about SEC Enforcement as reflected in the series of cases that resulted in the Supreme Court's decision in *Lucia v. SEC*, 138 U.S. 2044 (2018) which held that SEC ALJs are not properly appointed in accord with the Constitution's Appointments Clause (which of course has nothing to do with the real question raised by the case which was venue selection – federal court or administrative proceeding). The statistics here are even murkier. The Cornerstone Report states that 85% of the public company and subsidiary actions were filed as administrative proceedings. A year by year chart that traces back to 2010 reflects this point. It also shows slightly fewer administrative proceedings being filed last year compared to the prior three years but far more that in any year from 2010 through 2014.

The meaning of the venue statistics is unclear. The Cornerstone Report does not disclose the percentage of those cases were settled. Most public companies and their subsidiaries settle actions at the time of filing, a fact not mentioned in the Cornerstone Report. If, for example, all or almost all of the cases filed as administrative proceeding have been settled by the time of filing the number could suggest that SEC Enforcement is no longer shifting its contested enforcement actions to the administrative forum rather than bringing them in federal district court – the trend that spawned Lucia.

Statistics presented at the December 5, 2018 Fifth Annual Dorsey Federal Enforcement Forum by Urska Velikorja, a professor at Georgetown Law School who specializes in SEC Enforcement (here), demonstrate that virtually all of those cases were settled. Indeed, Professor Velikorja noted that every SEC enforcement action filed as an administrative proceeding since May 2018 has been settled. Whether this is a new, but unannounced enforcement policy, or just the by-product of the glut of cases on the administrative docket following Lucia as the Commission sought to implement the Court's mandate is unclear.

Monetary sanctions: Similar difficulties arise regarding two other key metrics – dollars in judgments and case selection. In FY 2018 a record setting $2.4 billion is reflected in the settlements from 89% of the actions according to the Cornerstone Report. This is another milestone number that traces back to the beginning of the decade.

The Cornerstone Report also notes that the percentage of firms cooperating with the staff investigations was about 61%, relatively consist with other years. Juxtaposing the two numbers, the question becomes what if anything the cooperators got for their efforts? Stated differently, did the

large amount dollar amount result from giving less credit for cooperation? The Cornerstone Report does not specify if the dollars are disgorgement, prejudgment interest or penalties, which is important since SEC Enforcement tends to reward cooperation by discounting penalties but not disgorgement.

The only discussion of the monetary sanctions is a sentence stating that 74% of the total came from one huge, record setting settlement of $1.8 billion in an FCPA case. Since portions of those dollars go to other actions as the Cornerstone Report states, just how much cash the SEC garnered from enforcement is unclear. And, it cannot be determined how the total in the Cornerstone Report squares with that in the Division's Annual Report which puts the total at $3.945 billion without touting the amount as a record.

Case type: Finally, the Cornerstone Report and the Enforcement Annual Report both present statistics regarding the types of cases brought in FY 2018. The Cornerstone Report claims the top category is issuer reporting at 34% followed by broker-dealers at 27%. In contrast the Enforcement Annual Report states that the largest category of cases was offerings at 25% while 22% involved investment advisers and investment companies. Issuer reporting and disclosure cases accounted for 16% of the total number of cases (or 78 cases compared to 122). As in other parts of the two reports there are no definitions to aid the user. There is little to no discussion to elucidate the statistics.

Some clarity is added by the numbers presented at the Dorsey Federal Enforcement program cited above. There it was noted that in the fourth quarter of FY 2018 over 50 actions were brought against investment advisers, a total which seems to support the statistics offered by the staff in its Annual Report.

Conclusion: One point which is clear from considering the Cornerstone Report and the Enforcement Annual Report: SEC Enforcement brought 490 standalone enforcement actions in F 2018, a significant number of cases. It is also clear that large sums of money were included in the settlements.

Finally, there is also a suggestion that the Enforcement Division may be moving away from the pre-Lucia days of bringing contested actions as administrative proceeds – at least for now. Perhaps in the future Cornerstone Research and the Division of Enforcement will shed additional sunlight these trends.

Dorsey & Whitney LLP

by Thomas Gorman

December 17, 2018

Federal Watchdog Offers Gloomy Outlook for State and Local Budgets.

U.S. Government Accountability Office estimates show mounting fiscal pressures over the next 50 years.

State and local government spending is likely to increasingly outpace revenues over the next half-century, based on projections a federal watchdog issued on Thursday.

Health care costs, in particular Medicaid, which is the health insurance program for poor Americans,

along with benefits for public retirees and employees, will be major contributors to the rise in expenditures, according to the Government Accountability Office.

The GAO's findings are based on simulations it has published for about a decade now looking at long-term state and local fiscal trends.

Past reports have also shown that the sector is poised to face budget-related stress over the long term.

Continue reading.

Route Fifty

by Bill Lucia

DECEMBER 13, 2018

Data Show Sluggish Economic Output in Smaller Counties.

For the first time, the Bureau of Economic Analysis has released GDP figures for all of the nation's counties.

Counties with fewer than 100,000 residents were more likely than their larger peers to have seen declines in economic output between two recent years featured in a new federal data set.

The U.S. Bureau of Economic Analysis for the first time last week released gross domestic product, or GDP, data for all of the nation's 3,113 counties. The statistics only cover 2012 through 2015. That makes them somewhat dated. But the share of small counties with falling GDP numbers in 2015 is one aspect of the statistics that stands out.

BEA describes the figures as "prototype" statistics, and says it's planning a release with more timely data next December.

In an overview of the data, the bureau breaks counties into three categories, "small," "medium," and "large," based on population.

Continue reading.

Route Fifty

By Bill Lucia,
Senior Reporter

DECEMBER 16, 2018

Farm Bill Expands Rural Broadband Funding.

But some remain concerned that the money will not get to many places that need it to

expand access.

The farm bill passed by Congress this week would grant the U.S. Department of Agriculture more authority to create grants and provide loans for local rural broadband projects.

The compromise legislation, which has been worked on for months and was agreed to by House and Senate negotiators on Monday, is expected to be signed by President Trump.

The Agriculture Improvement Act of 2018 makes $350 million a year available for improving broadband access in rural communities, but Community Connect Grant Program money is limited to areas where service speeds are less than 10 Mbps for downloads and 1 Mbps for uploads. That's a lower broadband standard than the Federal Communications Commission's 25 Mbps for downloads and 3 Mbps for uploads.

One advocate of expanding access said the standards might be reasonable in the abstract, but maybe not in practice. That's because many believe the FCC's maps about people's current access fail to accurately capture speeds at households across the country.

"We're concerned about that because of the inaccuracy of the data and the maps," Deb Socia, executive director of Next Century Cities, told Route Fifty. "Ninety percent of a community could have less than 10 Mbps and still be ineligible for funds; that's a pretty significant number of people."

USDA launched an e-Connectivity pilot project Thursday that will see an additional $600 million of 2018 omnibus spending money go toward spurring private investment in rural broadband, but that too uses the 10-1 definition.

The farm bill does, however, direct grant funding more toward places with low population densities, while using loans for those with higher densities—a win for rural areas that limits providers' ability to reserve service for more populated communities.

"Existing federal policy has failed to get broadband in rural America," said Jim Matheson, CEO of the National Rural Electric Cooperative Association.

Instead, the farm bill will enable co-ops to both modernize the electric grid and offer retail broadband to consumers, Matheson said. Successful broadband rollouts by co-ops could see more federal funding flow their way in future legislation, he added.

Unfortunately, 20 states still inhibit local communities and, in some cases, co-ops from building out broadband networks, Socia said.

Socia would also like to see more broadband funding for communities where slower digital subscriber line, or DSL, internet service is degrading, but she was pleased to see that the new legislation filled a need for greater precision farming connectivity.

Reliable broadband access in rural America enables precision farming technologies to reduce water, fuel and fertilizer use with the help of sensors and drones.

Moving forward, lawmakers need to be cognizant that attempts to avoid broadband overbuilding may be counterproductive in areas where FCC maps currently overestimate service, Socia said.

"Branding overbuilding as a wasteful thing isn't really helpful, in part because the data is so bad," she said. "They have access but we know the map isn't really accurate, so I don't think we want to be so bold."

Route Fifty

By Dave Nyczepir
News Editor

DECEMBER 13, 2018

First BUILD Grants Emphasize Rail & Rural Infrastructure Needs.

BUILD grants are for multi-modal, multi-jurisdictional surface transportation infrastructure projects and fund railway, roadway and transit improvements.

This year, the U.S. Department of Transportation (DOT) replaced the Transportation Investment Generating Economic Recovery (TIGER) grants program with the Better Utilizing Investments to Leverage Development BUILD program and is beginning to release a projected $1.5 billion in discretionary grant funding.

BUILD requires that at least 30 percent of funds be awarded to projects located in rural areas and that funding to a single state through the program cannot exceed $150 million, according to Railway Track & Structures (RT&S Magazine). Individual project awards also max out at $25 million.

The publication called it a "good day for railroaders and contractors." Bridges and rail infrastructure across five states were notified of funding — Oregon, Missouri, Illinois, Pennsylvania, Vermont while Indiana, Ohio and others announced roadway-related infrastructure funding:

Continue reading.

efficientgov.com

by Andrea Fox

December 10, 2018

Municipal Request Volume Declines while Corporate Volume Increases on Month-to-Month Basis.

"Uncertainty over the future of interest rates is clearly starting to show up in the CUSIP data set, particularly as we start to see some volatility in the monthly activity," said Gerard Faulkner, Director of Operations for CUSIP Global Services. " While the Fed has signaled that it will raise rates again in December, it is not yet clear what's in store for 2019, so we expect to continue to see a fair amount of volatility in our monthly CUSIP request volumes."

Read Press Release.

[BlackRock Is Bullish on Muni Bonds Heading Into 2019.]

- **Shrinking market, Fed pause may boost returns, strategist says**
- **Demand may get a boost from new limit on tax deductions**

The world's biggest asset manager is a big bull on the $3.8 trillion municipal-bond market.

Sean Carney, managing director and head of state and local government debt strategy at BlackRock Inc., said in an interview that he expects the securities to return as much as 4 or 5 percent in 2019 if the Federal Reserve moves closer to pausing on interest-rate hikes. That compares with a 0.7 percent return this year, when rising rates weighed on bond prices, according to Bloomberg Barclays indexes.

If Fed policy makers next week tweak their outlooks such that their median estimate is for two hikes in 2019, rather than the three they currently project — a scenario Carney sees as a "strong likelihood" — it will also help support returns, he said.

"Fixed-income returns have the potential to both reap the benefit of price return and coupon return," he said. "Or, if price return is flat, you receive all the coupon return. We could have returns, in a good environment, of 4 to 5 percent."

BlackRock is joining other firms that are forecasting that municipal-bond performance will improve next year. Oppenheimer & Co. said it expects state and local debt to deliver "modest" returns in the single digits in 2019, while JPMorgan Chase & Co. is predicting average total returns of 2 percent.

Carney said the municipal market will benefit from other factors, such as increased demand from investors looking for tax havens after they see the impact of the new limit on the state and local tax deductions. And more bonds may be paid off — either because they mature or are called back early — than are sold next year, he said.

"You have an environment where your market is shrinking," he said. "That's a strong technical and it should help aid performance in 2019."

Bloomberg Markets

By Amanda Albright

December 12, 2018

— With assistance by Michelle Kaske

[Snow Doesn't Stop the Post Office, But It Stopped a Bond Payment.]

A school district in upstate New York missed a bond payment last month because of a snow day.

The Hartford Central School District said in a [regulatory filing] that it was late making principal and interest payments due Nov. 16. on a $335,000 bond anticipation notes issued a year earlier because the district was closed for inclement weather. The payment was made Nov. 20, and the district said there were no financial consequences.

While outright defaults are extremely rare, such missteps are more common than one would think in

the $3.8 trillion municipal-bond market, where even tiny, remote towns and schools turn to borrow money.

Municipalities inadvertently missed or were late to make payments to investors at least 119 times in 2017 through the first half of this year, according to public records.

Bloomberg Markets

By Danielle Moran

December 13, 2018

Houston Firefighters, Police Battle Over City's Limited Budget.

HOUSTON (CN) – The Houston Police Department won't have the manpower to investigate home burglaries and car wrecks if the cash-strapped city is forced to lay off hundreds of officers to help finance a voter-approved pay raise for firefighters, the police chief testified Friday.

Harris County Judge Randy Wilson on Friday declined Houston firefighters' request to lift a temporary restraining order against a recently enacted charter amendment that mandates pay raises for firefighters so they make as much as police of similar rank.

In the weeks before 59 percent of voters approved Proposition B on Nov. 6, Houston Mayor Sylvester Turner warned it would force hundreds of layoffs of municipal employees, firefighters and police.

The city's first responders are now battling over Proposition B in court.

The Houston Police Officers Union won a temporary restraining order against the amendment Nov. 30 after suing the city and the Houston Professional Firefighters Union.

Houston has sided with the police. City finance managers estimate Proposition B will cost the city $100 million per year and Mayor Turner says Houston simply cannot afford it.

Each fiscal year, Houston must cut expenses to close a $120 to $130 million budget gap thanks to a law voters approved in 2004 that caps the city's property tax revenue at $1.1 billion annually, its finance director Tantri Erlinawati-Emo testified during a three-hour hearing Friday.

Houston Police Chief Art Acevedo said on the witness stand the police department is already stretched thin with around 5,100 officers for a city of 627-square miles, due to budget constraints imposed by the revenue cap.

"There are 300 fewer Houston police than 20 years ago and 500,000 more residents," he said. Houston is the nation's fourth-largest city by population with 2.3 million people.

Chicago, the third-most populous U.S. city, covers 234-square miles and has more than 12,200 police officers.

Clean-cut on the stand in his crisp black service uniform, Acevedo said that city staff asked the police department to prepare a plan for Proposition B and it determined, because personnel costs account for 94 to 95 percent of its budget, it will have to lay off 600-800 police and police cadets and

shut down its police academy.

“We will not be responding to residential burglaries,” he said. “We won’t be responding to auto accidents unless they are blocking traffic. We won’t be responding to unverified home alarm notifications if we don’t know something is going on. We will have to prioritize violent crimes in progress.”

Baker Botts attorney Travis Sales, counsel for the firefighters’ union, told Judge Wilson that voters approved Proposition B despite the “parade of horribles” Mayor Turner cited in TV and newspaper ads and at several town hall meetings he hosted ahead of the vote, warning voters of the amendment’s potential consequences.

Echoing Turner’s concerns, city attorneys claimed at the hearing and in court filings it has met the burden of proving it will suffer irreparable harm without an injunction.

Layoffs of police and firefighters will result in delayed emergency response times, fire permit and building inspection fees will go up and the city’s credit rating, which dictates the interest rate it pays on loans, will be downgraded, the city claims in a Dec. 10 brief seeking a stay of Proposition B.

Fitch Ratings, one of three major credit-rating agencies in the U.S., cited Proposition B’s passage when it downgraded Houston’s credit outlook from “stable” to “negative” last month.

The Houston Police Officers Union’s attorney Kelly Sandill, with the law firm Hunton Andrews Kurth, told Judge Wilson that Proposition B suffers from two fundamental flaws.

She said it conflicts with a Texas law that Houston voters implemented in 2004 under which Houston firefighters’ pay must be based on, or comparable to, similarly situated private-sector employees, not public employees like police officers.

She also said it violates the provision in state law requiring a city’s police and firefighters to have separate collective bargaining negotiators.

“When Houston voters passed legislation forcibly tying the two groups together, that violates Texas public policy. Bargaining agents are to be separate unless they agree to be put together,” she said.

Attorneys for the city said firefighters will get a free ride without having to negotiate new labor contracts.

“The Pay-Parity Amendment effectively eliminates collective bargaining between the city and its firefighters. Whenever a police officer receives a pay increase or a new benefit, the allegedly comparable firefighter receives the same increase and the same benefit with no collective bargaining whatsoever,” the city states in a brief.

But Sales, the firefighter union’s attorney, said the city has admitted it does not base its firefighters’ pay on private-sector salaries because there are no private-sector employees comparable to firefighters.

Siding with the city’s interpretation that private-sector pay dictates firefighters’ salaries, Judge Wilson posed a hypothetical to Sales.

“If a probationary police officer receives $100 per day under Proposition B, then a probationary firefighter gets $100 per day. Suppose comparable pay [for the firefighter] in the private sector is $80. How do you harmonize that?” he asked.

Sales said, "It has to be substantially equal, not identical, and you can harmonize it through collective bargaining."

Wilson kept the temporary restraining order against in place, but said he will issue a ruling on whether to block the amendment with a preliminary injunction next week.

"Hold on a minute!" Wilson shouted, as the 40 people in the courtroom packed up their stuff to leave. He said the hearing was his last on the bench for the 157th Harris County District Court and thanked the attorneys for presenting good arguments.

Wilson, a Republican who has presided over the court since January 2011, lost his re-election bid in November to Democrat Tanya Garrison. She will take over the case in January.

COURTHOUSE NEWS SERVICE

CAMERON LANGFORD

December 14, 2018

- **Correction:** IRS PLR 201847001 – referenced last week – is not in fact the described DFW airport ruling. The correct ruling was obtained by Ed Oswald and John Stanley of Orrick. Read the summary prepared by these two gents here. Shout out to Ed for: a) obtaining the ruling; b) preparing the summary; and 3) setting us straight.
- MSRB Announces Upcoming Changes to EMMA Website and Webinar about SEC Rule 15c2-12 Amendments.
- The Four Letters Transforming The Municipal Bond Market And Government Finance.
- Fitch USPF Credit Outlooks 2019.
- Negotiating and Implementing Relief Event Programs in P3 Projects.
- Moody's Webinar: 2019 US Local Governments and Municipal Utilities Outlooks
- And finally, Bedside Manner – Law Enforcement Division is brought to us this week by *Arista v. County of Riverside*, in which Christyna Arista called the county sheriff's department to report that her husband had not returned from a mountain bike ride. A kindly officer responded and the following ensued, "Lieutenant Hall said the victim was likely having an affair, implying that the victim was not missing but was with his girlfriend." Despite Lieutenant Hall's comforting words, Andres Marin was in fact, uh, dying of hypothermia. No word yet on the mistress.

LIABILITY - CALIFORNIA

Arista v. County of Riverside

Court of Appeal, Fourth District, Division 2, California - November 20, 2018 - Cal.Rptr.3d - 2018 WL 6065089

Family of bicyclist filed complaint against county for wrongful death, negligence, negligent infliction of emotional distress (NIED), and deprivation of constitutional rights under § 1983, stemming from county sheriff department's decision to delay search for missing bicyclist, who died of hypothermia.

Following hearing, the Superior Court sustained county's demurrer to the complaint without leave to amend. Family appealed.

The Court of Appeal held that:

- County sheriff's department had duty to exercise due care in performing rescue;
- Complaint sufficiently alleged that county induced reliance on its rescue efforts; but
- Family failed to allege facts supporting finding of deliberate indifference, and thus failed to state a cause of action for deprivation of constitutional rights; and
- Trial court did not abuse its discretion by sustaining demurrer without leave to amend as to claim for deprivation of constitutional rights.

County sheriff's department had a duty to exercise due care in performing rescue of injured bicyclist, as would support claims for wrongful death and negligence asserted against county by family of bicyclist, stemming from department's decision to delay search for bicyclist, who died of hypothermia, since department undertook responsibility for rescuing bicyclist; department was actively involved in all aspects of locating bicyclist, and department signaled it was taking control of the rescue by appointing incident commander.

Complaint for wrongful death filed against county by family of bicyclist, stemming from county sheriff department's decision to delay search for bicyclist, who subsequently died of hypothermia, sufficiently alleged that county induced reliance on its rescue efforts, as would support liability determination against county; complaint alleged that bicyclist's wife did not organize her own search team until after learning that county was delaying its efforts.

Family of bicyclist failed to alleged facts supporting a finding that search and rescue policy was instituted or maintained by county due to deliberate indifference to the rights of citizens, and thus family failed to state a cause of action against county for deprivation of constitutional rights under § 1983, stemming from county sheriff department's decision to delay search for injured bicyclist, who died of hypothermia; although family's allegation reflected that there was a report calling for search and rescue training for deputies warning of relying on a mixture of volunteer groups to conduct searches, family failed to allege any problems with prior searches and rescues conducted in county.

Trial court did not abuse its discretion by sustaining county's demurrer without leave to amend as to claim filed by family of bicyclist for deprivation of constitutional rights under § 1983, stemming from county sheriff department's decision to delay search for missing bicyclist, who died of hypothermia; problems with claim were factual, and family failed to explain how they would amend complaint to reflect that search and rescue policy was instituted or maintained by county due to deliberate indifference to the rights of citizens.

STATE MANDATES - CALIFORNIA

County of San Diego v. Commission on State Mandates

Supreme Court of California - November 19, 2018 - P.3d - 2018 WL 6037872 - 18 Cal. Daily Op. Serv. 10, 887

Counties filed a petition for writ of administrative mandamus and complaint for declaratory relief challenging Commission on State Mandates decision that costs associated with eight activities required of local governments by the Sexually Violent Predator Act (SVPA) under the Proposition 83, The Sexual Predator Punishment and Control Act: Jessica's Law were not eligible for reimbursement.

The Superior Court denied petition. Counties appealed, and the Court of Appeal reversed and remanded with directions. The Supreme Court granted review.

The Supreme Court of California held that:

- Where a statutory provision was only technically reenacted as part of other changes made by a voter initiative and the Legislature has retained the power to amend the provision through the ordinary legislative process, the provision cannot fairly be considered "expressly included in a ballot measure" within the meaning of statute exempting state from reimbursing local governments for costs incurred in connection with duties included in such a ballot measure; disapproving *Shaw v. People ex rel. Chiang*, 175 Cal.App.4th 577, 96 Cal.Rptr.3d 379;
- SVPA provisions technically restated as part enactment of Proposition 83 were not expressly included in a ballot measure approved by the voters within the meaning of statute exempting state from reimbursing local governments for costs; and
- Commission was required to consider whether the expanded sexually violent predator definition in Proposition 83 transformed the subject statutes as a whole into a voter-imposed mandate or, alternatively, did so to the extent the expanded definition incrementally imposed new, additional duties on counties.

EMINENT DOMAIN - INDIANA

Town of Ellettsville v. DeSpirito

Supreme Court of Indiana - November 29, 2018 - N.E.3d - 2018 WL 6257491

Neighboring dominant estate owner filed petition for judicial review of town plan commission's approval of servient estate owner's request to relocate sewer line easement which served neighboring property order for servient estate to be redeveloped.

The Circuit Court granted dominant estate owner's motion for summary judgment. Transfer was granted.

The Supreme Court of Indiana held that once an easement's location is fixed, neither the servient nor dominant estate-holder can relocate or modify the easement without the other's consent.

MUNICIPAL ORDINANCE - MARYLAND

Baddock v. Baltimore County

Court of Special Appeals of Maryland - November 28, 2018 - A.3d - 2018 WL 6187574

Hookah lounge operator and landlord sought judicial review of the decision of the county board of appeals upholding the constitutionality of an ordinance requiring hookah lounges to close between midnight and 6:00 a.m.

The Circuit Court affirmed. Operator and landlord appealed.

The Court of Special Appeals held that:

- Ordinance was an exercise of charter county's police power and not a zoning law, and thus county did not act ultra vires by enacting time restrictions in a zoning regulation;
- Ordinance did not render hookah lounge a nonconforming use;
- Ordinance was rationally related to protecting public health and safety and thus did not violate substantive due process; and

- Ordinance requiring midnight closure for hookah lounges but not for other late-night establishments, including cigar bars and liquor-licensed establishments, was not an arbitrary distinction that rose to the level of an equal protection violation.

BRIDGES - NEW YORK

Town of Aurora v. Village of East Aurora

Court of Appeals of New York - November 20, 2018 - N.E.3d - 2018 WL 6047999 - 2018 N.Y. Slip Op. 07923

Town brought action seeking declaratory judgment that village was responsible for repair costs for bridge. Village asserted counterclaim seeking declaratory judgment that town was responsible for such costs.

The Supreme Court, Erie County, declared that town was responsible for repair costs. Town appealed. The Supreme Court, Appellate Division, reversed. Village appealed.

The Court of Appeals held that:

- Town was responsible for repair costs for bridge, but
- Village was not entitled to declaration with respect to repair costs for any other bridge.

Town, rather than village, was responsible for repair costs for bridge, even though village board of trustees had approved construction and financing of bridge in connection with development of residential subdivision over 40 years ago, since default rule was that towns were responsible for bridges within their boundaries, village could only assume control through adoption of resolution by its board of trustees or express agreement with town, both of which were subject to permissive referendums, and village had never entered into any express agreement with town and did not undertake procedures for any permissive referendum in connection with its approval to construct and finance bridge.

Village was not entitled to declaration on appeal with respect to whether village or town was responsible for repair costs beyond those for specified bridge, even if matter of other bridges was properly raised before trial court, since facts pertaining to other bridges were not before the Court of Appeals.

ZONING & PLANNING - UTAH

Baker v. Carlson

Supreme Court of Utah - November 28, 2018 - P.3d - 2018 WL 6239919 - 2018 UT 59

Challengers filed petition for extraordinary relief, seeking to prevent appearance on ballot of resolution adopting developer’s proposal to amend site development master plan (SDMP) and resolution approving developer’s proposal to amend agreement for development of land (ADL).

The Third District Court entered summary judgment for city in part and for challengers in part. Parties appealed.

The Supreme Court of Utah held that:

- Resolution approving developer's proposal to amend SDMP was referable, but
- Resolution approving developer's proposal to amend ADL was not referable.

Resolution approving developer's proposal to amend site development master plan (SDMP) was generally applicable, as required for resolution to be referable; SDMP applied to all present and future parties that met its terms, and any developer could have developed land under already-approved SDMP if developer could also execute required ADL with city.

Resolution approving developer's proposal to amend agreement for development of land (ADL) was administrative in nature and was thus not referable; ADL was simply a contract between four parties setting forth obligations of those parties, and city did not weigh broad, competing policy considerations in approving ADL.

BALLOT INITIATIVES - WASHINGTON

Protect Public Health v. Freed

Supreme Court of Washington - December 6, 2018 - P.3d - 2018 WL 6380671

Nonprofit organization consisting of public health professionals and community members sought declaratory and injunctive relief, seeking to preclude county from placing on the ballot proposed initiative that would have banned public funding for community health engagement location sites.

The Superior Court enjoined initiative from ballot. Sponsor of initiative appealed.

The Supreme Court of Washington held that proposed initiative fell outside scope of local initiative power.

Proposed initiative that would have banned public funding for community health engagement location sites, also known as "safe injection sites," fell outside scope of local initiative power; restrictions improperly interfered with legislative authority of county council to set budgets and appropriate money for public health work.

MSRB Announces Upcoming Changes to EMMA Website and Webinar about SEC Rule 15c2-12 Amendments.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today announced it will update its Electronic Municipal Market Access (EMMA®) website to accept and display two new required municipal securities disclosure types under amended U.S. Securities and Exchange Commission (SEC) Rule 15c2-12. As of February 27, 2019, municipal bond issuers will be able to use the EMMA website to comply with the additional obligation. These obligations will require issuers to disclose the incurrence of, or amendment to, financial obligations, if material and the occurrence of certain events reflecting financial difficulties related to an existing financial obligation. Read the SEC's adopting release amending Rule 15c2-12.

"An effective municipal securities market is enhanced by robust and complete disclosure by municipal bond issuers," said MSRB President and CEO Lynnette Kelly. "We are committed to supporting the issuer community and its ability to comply with ongoing disclosure requirements." Read about submitting disclosures to EMMA.

To provide the issuer community with additional information about the upcoming amendments to Rule 15c2-12 and discuss related changes to the EMMA system, representatives of the MSRB, along with the SEC, National Association of Bond Lawyers (NABL) and Government Finance Officers Association (GFOA) will be hosting a free webinar on January 17, 2019, at 3:00 p.m. EST. The webinar will also be available on-demand. To submit questions in advance of the webinar, email MSRBEvents@msrb.org no later than January 7, 2019. Register to attend the webinar.

Currently most issuers of municipal securities are contractually obligated to make financial and other disclosures throughout the life of an issuance, including the bond issuer's latest annual financial and operating information, as well as certain current financial events, including bond calls, rating changes or bankruptcy, among others. When amendments to Rule 15c2-12 take effect late February, issuers of new municipal bonds may be required to agree to disclose to investors significant information about the incurrence of bank loans and similar borrowings, as well as events reflecting financial difficulties related to its existing financial obligations. The new disclosure requirements will apply if a community issues a bond on or after February 27, 2019, for which it enters into a new continuing disclosure agreement.

Date: December 4, 2018

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

Fitch USPF Credit Outlooks 2019.

Our annual Credit Outlooks are now available. We're producing reports, video, webinars, and commentary across all sectors and regions to give you in-depth insight into credit in 2019 and beyond.

View Credit Outlooks 2019 for USPF

GFOA: Getting the Most for Your Asset Management Money with Lifecycle Costing.

Read the GFOA Publication.

Author: Shayne Kavanagh

Date Published: June 2018

Corporate Tax Breaks Cost U.S. Schools Billions of Lost Revenue: Report

(Reuters) – Corporate tax subsidies, in the spotlight again after Amazon.com Inc's secretive quest to find a site for its second headquarters, are costing American public schools big money, according to a report issued on Tuesday.

In fiscal 2017, U.S. public schools lost $1.8 billion across 28 states through corporate tax incentives over which most schools themselves had little or no control.

The 10 most affected states could hire more than 28,000 new teachers if they were able to use the lost revenues, according to the report released by Good Jobs First, a left-leaning Washington think tank.

The report comes amid increased taxpayer scrutiny of such deals following Amazon’s nationwide, yearlong search for its “HQ2” site.

Amazon decided last month to build two new headquarters at $5 billion each in New York City and Arlington, Virginia, saying it will hire up to 50,000 people altogether.

Though conducted mostly in secret, the search was still a public spectacle, pitting state against state in a bidding war and raising questions about transparency and the need for such subsidies for a company run by Jeff Bezos, the richest man in the world.

States and cities have long used abatements, subsidies and other tax incentives to lure companies, keep them from leaving or encourage them to expand.

Such deals are meant to boost development and investment, and proponents say the lost tax revenue is worth it because they grow local economies.

But it can be hard to know whether the benefits outweigh the burdens. And until recently it has been difficult to discern how much one entity may have lost because of another entity’s tax breaks.

However, a governmental accounting rule issued in August 2015 now requires local U.S. governments to report how much money they lose on corporate tax breaks for development projects – their own, or another nearby governmental entity.

Good Jobs examined the first full year of reporting for most of the school districts, which are particularly affected because most of their revenue comes from property taxes – yet they typically have little influence over subsidies granted by the cities or counties where they are located.

“Cities say they care about economic development, but then they end up granting subsidies in a way that cuts out control by school boards, parents and others,” said Good Jobs’ Scott Klinger, who authored the report.

Good Jobs reviewed financial reports from fiscal 2017 for more than 5,600 of the nation’s 13,500 independent school districts.

Of the five districts that lost the most, three are in Louisiana. Together, they lost more than $158 million, or at least $2,500 for each student enrolled.

More than half of the districts did not report any such losses, in many cases because the new accounting rule appeared to have been “simply ignored,” the report said.

In Oregon’s Washington County, Intel Corp and Genentech, the U.S. biotech arm of Swiss drugmaker Roche, have both been getting a property tax exemption on capital projects for years. Its Hillsboro School District lost nearly $97 million in fiscal 2017, more than any district in the country, the report found.

Nathan Buehler, spokesman for Oregon’s economic development agency, declined to comment

because he had not had “an opportunity to review the study, its findings, and the context to the data going in to it.”

Intel spokesman William Moss declined to comment on the report but noted that “with nearly 20,000 employees in the Hillsboro area, Intel is an anchor of the local economy.”

Genentech did not comment on the report but noted its $17 million it has donated to science education across U.S. cities in the last four years. It also said it had promised in 2006 to create 250 new jobs in Hillsboro but now has more than 450 full-time employees.

“We strongly believe in stable funding for local municipalities and tie our company’s success to a well-educated and well-compensated workforce,” Genentech said.

In Pennsylvania, the School District of Philadelphia, which only last year regained control from state officials after climbing out of a deep fiscal crisis, lost the second most revenue at $62 million.

While the Philadelphia district clearly “bears one of the largest burdens in the country of the upfront costs … this study only looks at one side of the ledger, so it is impossible to comment on the net impact of these incentives,” spokesman H. Lee Whack Jr. said in an email.

City spokesman Mike Dunn said the study does not appear to factor in “the value of enhanced development resulting from the incentives.” It had already commissioned a new study of tax credits.

“We remain committed to further discussions with our colleagues on City Council about the future of the abatement, including proposals that would see it modified,” Dunn said.

The Hillsboro district did not reply to a request for comment.

Reuters

Dec. 4, 2018

(Reporting by Hilary Russ in New York; Editing by Lisa Shumaker and Bill Berkrot)

U.S. Conference of Mayors & NYU Launch the Mayors Leadership Institute on Smart Cities.

Washington, DC — In the face of rapidly changing technologies that could potentially accelerate progress for American cities, the United States Conference of Mayors (USCM) in collaboration with the New York University’s Robert F. Wagner Graduate School of Public Service, has launched the ***Mayors Leadership Institute on Smart Cities*** (SCI). The goal of the Institute is to provide participating mayors with a clear path forward for a major initiative, a framework for approaching smart city opportunities, and a set of guiding principles to improve their relationships with vendors and future tech partners. The Institute will convene twice a year.

Currently, no fully developed smart city exists anywhere in the country and there are no clear standards or financing strategies for their formation. In an effort to help mayors make sense of the vast array of new technology tools that could address potential issues such as affordable housing, crime, public transit, and citizen engagement, the SCI will provide practical skills, resources and best practices in a peer-to-peer setting. The Institute will flip the current industry-led dynamic,

positioning municipal leaders to define priorities and build a model that fast-tracks growth and efficiency for cities across the country.

“The drive to make cities ‘smarter’ is all about harnessing data and digital technology to meet the challenge of doing more with less. Technology alone can’t solve every urban problem, but it’s a powerful and cost-effective tool for helping cities accelerate progress. As natural incubators of innovation, cities have an opportunity to step up and lead at this critical time. Ultimately, the Institute is about empowering mayors to be better leaders,” says USCM President Columbia (SC) Mayor Steve Benjamin.

“NYU Wagner is proud to partner with the US Conference of Mayors on this Institute,” says Sherry Glied, the school’s dean. “NYU and universities as whole play an important role in helping cities address today’s critical public service challenges. As a recognized leader in the urban space, we are excited to collaborate with mayors here in New York City—one of the world’s most vibrant urban epicenters—on their efforts to create ‘smarter’ cities.”

The inaugural meeting of the Institute will take place on December 5 – 7, 2018. Ten mayors from across the country will convene in New York City for three days of closed-door working sessions. Featured experts will include renowned scholars, industry professionals, data officers and public officials widely recognized as leaders in the field. Mayors will construct plans tailored to their specific priorities that can then be practically implemented.

The Mayors Leadership Institute on Smart Cities is supported by Verizon, The Knight Foundation and Parsons.

Fitch Ratings Revises U.S. Higher Education Sector Outlook to Negative for 2019.

Fitch Ratings-Chicago-06 December 2018: Various industry challenges are increasingly pressuring U.S. colleges and universities, widening the credit gap in the sector and prompting Fitch Ratings to revise its higher education sector outlook for 2019 to negative, as detailed in the rating agency’s outlook report.

Perhaps most prominent are operating and revenue pressures, which stem from increasing constraints on tuition growth and more challenging demographic and competitive markets than seen in prior years. “Increasing competition for students and heightened scrutiny over the value of a college education have suppressed overall tuition growth since the recession,” said Director Emily Wadhwani.

The regulatory environment is not likely to add much clarity. The Higher Education Act (HEA) is still in limbo, and the newly elected Congress is not likely to consider reauthorization. “Unexpected policy decisions that constrain access to student loans, Pell grants, or to research funding could create pressures across the sector,” said Wadhwani.

Consolidation is likely to accelerate in 2019 and beyond, which may take multiple forms. Smaller private institutions remain most susceptible to consolidation either through a merger, affiliation with another larger institution or in the most serious scenario, outright closure.

Substantial headwinds aside, the higher education sector as a whole still retains key fundamental strengths including significant flexibility and fortitude in the face of operating and financial

pressure. Many institutions maintain sufficient liquidity, and have been proactive and agile with regard to strategic management, targeted revenue growth and diversity, expense management, and pursuing partnerships for mutual benefit. The Outlook on ratings in the Fitch portfolio remains Stable.

'Fitch Ratings 2019 Outlook: U.S. Public Finance Colleges and Universities' is available at 'www.fitchratings.com'.

Contact:

Emily Wadhwani
Director
+1-312-368-3347
Fitch Ratings, Inc.
70 W. Madison Street
Chicago, IL 60602

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

Additional information is available on www.fitchratings.com

Fitch Ratings: U.S. Local Governments Largely Downturn-Ready Headed into 2019

Fitch Ratings-New York-04 December 2018: U.S. local governments are heading into next year by and large well-prepared fiscally for the next economic downturn whenever it comes, according to Fitch Ratings in its 2019 outlook report.

'The most prepared local governments have ample reserves and sound budgetary flexibility,' said Fitch Managing Director Amy Laskey. Local governments that rely primarily on property taxes will generally see at least some revenue growth given continued increases in home values. The sector is not without its outliers; some communities are still trying to regain fiscal resilience lost during the last economic downturn. 'The biggest struggles for some challenged local governments remain continual pension pressures and lack of revenue control.'

As such, the ability to curb expenditure growth will be a priority for local governments in order to stem the tide of slowing revenues, wage pressures and increasing pension and other benefit costs. Expenditure pressures are particularly stark for school districts. 'Expenditure cuts remain a likely solution, but avoiding an impact on the classroom is becoming more challenging,' said Laskey.

Expenditure pressures will make finding funds to address infrastructure needs even more difficult headed into 2019. Infrastructure needs continue to weigh negatively on local budgets. A federal infrastructure program would help address at least some of the growing unfunded needs and may become more likely with the upcoming change in Congress.

Outliers notwithstanding, Fitch expects continued stability for local government financial operations in 2019. Ratings in this sector remain high and concentrated largely within 'AAA'/'AA' territory, reflecting core sector strengths.

‘Fitch Ratings 2019 Outlook: U.S. Local Governments’ is available at ‘www.fitchratings.com’.

Contact:

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

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

Additional information is available on www.fitchratings.com

It’s a Natural Gas Giant vs. School Kids in Arkansas Tax Fight.

- **Southwestern Energy is contesting how it’s taxed in the state**
- **Amid dispute, local school hasn’t enough money for books**

A $2.7 billion company is contesting its local tax bills in Arkansas. Seven hundred students in the tiny town of Pangburn are paying the price.

Houston-based Southwestern Energy Co. has filed lawsuits in six Arkansas counties disputing the way its taxes are calculated and isn’t paying some as the cases are decided. That’s left the Pangburn School District, which counts on Southwestern as its largest taxpayer, without enough money for library books, computer lab upgrades, or new teachers.

The district’s troubles show what happens when a locality relies too much on a single company or industry. That’s what sent Detroit spiraling into bankruptcy as auto-industry jobs disappeared, and it forced New Jersey to rescue junk-rated Atlantic City as casinos shuttered. Now it’s Arkansas’s turn as declining natural gas prices and production threaten a key source of revenue for some municipalities.

“It’s just filtered through our whole system,” said Stacy Hopkins, business manager for the school district, which is located 64 miles (103 kilometers) from Little Rock. “At the end of the day, our main objective is to educate these kids. We’re doing our best to cut in other areas that don’t affect our students.”

In Dispute

Southwestern was the first company to pull natural gas from the Fayetteville Shale in 2004, and went on to become a top producer in the state. Now, production out of Arkansas, after growing rapidly between 2007 and 2010, has plummeted. Southwestern said earlier this year that it would sell its Fayetteville exploration and production business to focus on “higher margin” assets in other regions of the country.

In court, Southwestern is arguing the counties calculate taxes using an industry metric of natural gas prices that is averaged over three years, which has resulted in the company paying levies based

on higher prices than what it earns in the market. The company is also arguing that the amount it is allowed to deduct in lease operating expenses, or what it costs to get gas out of the ground, is too low, which drives up the tax bill.

In Cleburne County, Southwestern has been overcharged by about $2 million a year, company spokeswoman Christina Fowler said.

“Southwestern Energy recognizes the uncertainty that this tax issue is creating for local school districts and county governments,” Fowler in an emailed statement. “That is why we have been working with the state regulatory authority and county governments to find an equitable resolution.”

Natural gas futures have since popped to multi-year highs in November.

If the fiscal problems at some of the districts worsen, the state may need to step in since it guarantees debt issued by school districts.

“It’s like a perfect storm,” said Mark Whitmore, a lawyer representing Conway County, one of the counties that Southwestern has sued. “The fact that they’re not paying has left these schools in duress.”

The lawsuits add to the pressure communities in the Fayetteville Shale face. The lower prices and falling production has caused dramatic drops in assessed property value, which is what determines property taxes they can collect, the Arkansas Assessment Coordination Department said in a report.

In Van Buren County, the assessed value has plummeted 25 percent since 2014 to $145 million in 2016, according to the report. That’s a hard hit to rural areas in a state that has already seen half its mining and logging jobs disappear in the last decade, according to the U.S. Bureau of Labor Statistics.

In Pangburn, Hopkins said she’s concerned that if Southwestern wins, it will spur other companies and individuals to contest their tax bills too.

“It’s not just an oil and gas issue — any company can do this,” she said. “Any taxpayer can do this if they’ve got the money.”

Bloomberg Business

By Amanda Albright

December 8, 2018, 4:00 AM MST

Negotiating and Implementing Relief Event Programs in P3 Projects.

The primary vehicle for allocating design and construction risk in a public private partnership (P3) using the design-build-finance-operate (DBFOM) P3 model is the Relief or Supervening Event regime in the public private agreement.1 A Supervening Event entitles the private partner to some financial or schedule relief from the public authority under the public private agreement (PPA).

The PPA will be consummated in a competitive request for proposal process including input from the public partner, private partner, and impacted participants including developers/equity providers, lenders, design-builders, and operation and maintenance service providers. This article focuses on

the Supervening Events that can have an impact on these participants during the construction phase of the PPA. The Supervening Event issues addressed in this article include:

- Voluntary changes or breaches by the public sector
- Right of way/land access
- Permits, environmental conditions, endangered species, archeological conditions and hazardous materials
- Weather
- Changes in law
- Labor shortages or strikes
- Other force majeure events
- Differing site conditions
- Utility delays

Before we get into the case law and sample contract terms for these issues, it is worth pausing to reflect on how the financial markets view these risks in terms of rating the financial risks associated with a P3 transaction. Moody's has published a wide variety of risk and rating data based on P3 transactions and financing risks. Here is Moody's risk factor summary from a P3 rating article published in 2016:

Continue reading.

Faegre Baker Daniels

December 7, 2018

TAX - GEORGIA

Love v. Fulton County Board of Tax Assessors

Court of Appeals of Georgia - December 3, 2018 - S.E.2d - 2018 WL 6288099

Citizens, who own real property and pay ad valorem taxes in the county, filed petition for writ of mandamus and other relief against county board of tax assessors, individual tax board members, and board's chief appraiser, alleging the board failed to exercise its duty to diligently investigate and determine whether stadium lessee was subject to ad valorem property taxation, and seeking temporary and permanent injunctive relief, to enjoin defendants from recognizing stadium property as tax exempt, and a declaration that taxable leasehold interest had been transferred to lessee, rather than a non-taxable usufruct.

The trial court granted defendants' motion to dismiss for failure to state a claim, and then dismissed other pending motions as moot. Citizens appealed.

The Court of Appeals held that:

- Citizens failed to rebut the presumption that the trial court followed the law and limited its consideration to the amended petition and attached exhibits in ruling on defendants' motion to dismiss for failing to state a claim on which relief could be granted;
- Citizens failed to allege that county board of tax appraisers and other defendants failed entirely to conduct an investigation and reach a decision regarding the ad valorem tax status of stadium lessee's interest in new football stadium, as required to state a mandamus claim;
- Sovereign immunity clearly barred the plaintiffs' declaratory and injunctive relief claims against

- the board and other defendants in their official capacities; but
- The doctrine of official immunity did not operate to bar suits for declaratory or injunctive relief against county officers in their individual capacities.

The Four Letters Transforming The Municipal Bond Market And Government Finance.

While at a public finance conference recently, a colleague from another firm gave me some good-natured chiding about my comments regarding the need for standardized digital disclosure for the municipal bond market.

She mentioned what many others have: the muni bond market is just too disorganized with too many distinct borrowers, sectors, unique terms and security structures to ever have anything about it standardized. I quipped back that if science can digitally map the human genome, I was fairly confident municipal bond financial disclosures could be digitally mapped as well.

In fact, there are other securities exchanges far more complex than the municipal bond market that transitioned to standardized digital reporting to assure more fair, efficient and transparent capital markets. In the U.S., from the New York Stock Exchange to Nasdaq, there are roughly 4,300 exchange-listed public companies—each tagged with one or more of the 1,057 North American Industry Classifications—with a total market capitalization of around $30 trillion. These companies file annual, quarterly and other disclosures using standardized digital templates.

Continue reading.

Forbes

by Barnet Sherman

Dec 4, 2018

Wells Fargo's Stratford Shields Is Out as Public Finance Head.

Wells Fargo & Co.’s head of public finance, Stratford Shields, is no longer leading the department after about a year on the job, according to a person familiar with the matter.

It’s the latest in a series of personnel changes within the public finance business. Earlier this year, Shields hired bankers from Morgan Stanley while others left for competitors or were dismissed. AnnMarie McDonald, a spokeswoman for Wells Fargo, declined to comment on his status as an employee.

Shields, who was previously a managing director at RBC Capital Markets, joined Wells Fargo in November 2017 as the company’s public finance business was dealing with fallout from the bank’s fake accounts scandal. Some municipalities and states halted work with Wells Fargo, putting pressure on the department as debt sales dropped and underwriting fees stay stagnant.

Continue reading.

Bloomberg Markets

By Amanda Albright

December 4, 2018, 4:48 PM MST Updated on December 5, 2018, 6:18 AM MST

[This Small New England City Was on the Verge of Bankruptcy. Now It's a Turnaround Success Story.]

Springfield, Mass., is in the best shape it's been in a generation.

Successful cities nearly all have something in common: leadership that can figure out where the community needs to go and can execute a plan to take it there. Fifteen years ago, it seemed inconceivable that Springfield, Mass., could be described in such terms. But after almost collapsing into bankruptcy, Massachusetts' third-largest city is in the best shape it's seen for more than a generation.

Heading into the 21st century, financial mismanagement wasn't just a problem in Springfield, but a perennial habit. The city kept its property tax records on filing cards and budgeted as if it could collect 100 percent of the revenues that were owed, even though it continually fell millions of dollars short. As a result, Springfield ran deficits for 18 unbroken years. By the time a state control board took over in 2004, the cumulative deficit was, in fact, twice as big as city officials themselves realized — $41 million, not the $20 million estimated.

Springfield's finances were too big a mess even to qualify it for junk bond status. The credit rating agencies couldn't get enough information out of the city to be able to rate it, so they gave up. "A deficit that was twice as high as they thought — what does that tell us about the condition of the city at the time?" asks Stephen Lisauskas, who served as executive director of the state control board.

City officials knew very little about what was happening under their own roof. They were unsure how many employees they had or the extent of their health-care costs. Timesheets were done on paper, using an honor system that was barely honored.

During its five years in charge of Springfield, the control board restructured city departments, laid off employees and ran a rigorous performance measurement program, using data to keep track of what was going on. Mayor Domenic Sarno, who was first elected in 2007, has helped put in place real-time accounting systems that allow agencies to respond promptly when changes are called for. "If you manage your people costs, you're freeing up money for all the other investments needed in the city," says T.J. Plante, the city's finance director.

Springfield now has real-time crime analysis that takes advantage of cameras all over the city, including newly negotiated body cameras worn by the police. The schools have improved: High school graduation rates are up 56 percent over the past five years, and the dropout rate has been cut in half. After a tornado ripped through town in 2011, city officials used federal funds strategically, melding their own investments and infrastructure planning with economic development projects. Previously, public and private investment had rarely been knitted into coherent long-range plans. A big downtown casino and a rail car manufacturing plant are now starting to have spinoff effects, with a total of $3 billion worth of public and private development projects at various stages of construction and planning.

Springfield is not a renewed paradise. Nearly 1 in 4 residents lives in poverty, and more than half of schoolchildren qualify for free or reduced meals. It has not been able to overcome the larger economic forces that have kept Boston booming while Western Massachusetts keeps slipping behind. City pension plans are still sorely underfunded. But Springfield's credit rating is now the highest it's ever been. Housing prices have been perking up after decades in the doldrums, showing that people are willing to invest in a city that has finally figured out the proper ways to invest in itself.

GOVERNING.COM

BY ALAN GREENBLATT | DECEMBER 2018

The Week in Public Finance: Kansas City Suburb Headed Toward Default

Platte County, Mo., is being punished for its resistance to bailing out a retail center that opened during the recession and has struggled to make bond payments.

Platte County, Mo., home to Kansas City, may default as early as tomorrow if it fails to make a bond payment on a long-struggling shopping development.

County officials are questioning the value of covering the $1 million shortfall that's due Dec. 1, noting that they are not legally obligated to help out the beleaguered Zona Rosa retail center.

But that resistance has come at a cost. Credit agencies have already punished the county just for considering not stepping in, with multiple downgrades into junk bond status.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | NOVEMBER 30, 2018

CDFA Supports Rep. Stivers, New Co-Chair of Muni Caucus.

Read the Press Release.

Municipal Bonds for America | Dec. 4

New York's Agreement with Amazon.

We are continuing our series on the details of the Amazon HQ2 incentive agreements with Virginia, New York, and Tennessee. This article examines the terms of New York's memorandum of understanding pertaining to $1.7 billion in incentives from the Excelsior Jobs Program (tax credits) and Empire State Development (capital grant).

What is incentivized

- The Excelsior Jobs Program offers up to $1.2 billion in refundable tax credits over 10 years. The credit is based on actual wages of net new jobs and qualifying capital investments per year. The maximum credits allowable per year are specified, along with job and investment commitments. To obtain the full amount, Amazon must employ 25,000 net new full-time employees and invest $2.3 billion by 2028.
  Amazon would also be eligible by-right for the NYS Investment Tax and Employment Incentive. However, it may not take this incentive if it takes the Excelsior Jobs Program credit. Amazon can choose which incentive it prefers.
- The Empire State Development grant offers up to $505 million over 15 years to reimburse Amazon for capital costs associated with office buildout, site preparation, and infrastructure improvements. To obtain the full amount, Amazon would need to employ 40,000 by 2034 and jobs must be maintained through 2037.
- Full-time, permanent employees include employees on the payroll who work at the location at least 35 hours per week for at least 4 consecutive weeks and receive benefits. The definition also includes 2 part-time, permanent, private sector employees who work at the location for a combined minimum of 35 hours per week.
- It also appears that full-time contract employees who are not on the payroll but work exclusively for Amazon at the location for last least 35 hours per week in a year-round position will qualify for the incentive.
- The agreement specifies that qualifying positions can't be transferred from another location within the state.

Process

- To claim the Excelsior Jobs Program tax credit, Amazon must submit evidence in an annual performance report that it satisfies job, investment and other eligibility requirements. If the evidence is found sufficient, Amazon will receive a Certificate of Tax Credit.
- Funds for the Empire State Development grant are disbursed annually in arrears each year for the 15 year term as specified investment milestones are achieved. Amazon must make the full investment for each project year and achieve 85% of the specified cumulative net new jobs. Funds may be withheld until disbursement criteria are met.
- If cumulative job numbers fall below the specified level from either of two preceding years, the state can recapture disbursed funds.
- However, if Amazon meets the jobs criteria for years 5, 10 and 15, the state agrees to make the full grant disbursement for those years and any disbursements the may have been previously withheld or recaptured.
  Amazon agrees to pay a 1% ($5 million) commitment fee to Empire State Development once the the Grant Disbursement Agreement is executed.
- The company also agrees to a good faith effort to achieve Minority- and Women-Owned Business Enterprise participation of 30% of the grant amount.

Reporting and Transparency

- Amazon agrees to allow the Department of Taxation and Finance to share tax information with Empire State Development.
- The company also authorizes the Commissioner of Labor to disclose to Empire State Development all unemployment insurance reports and contributions for the purposes of compliance monitoring and performance review.
- The MOU does not address public disclosure or public records.

Smart Incentives

by Ellen D. Harpel | Dec 2, 2018 | Incentive programs

Fitch Ratings: Struggles Continue for U.S. NFP Hospitals in 2019

Fitch Ratings-Austin-05 December 2018: Not-for-profit hospitals will continue struggling to adapt to the paradigm shift in the broader health care sector into next year, according to Fitch Ratings 2019 not-for-profit hospital and health systems outlook report.

Fitch maintains a negative sector outlook for not-for-profit hospitals for 2019 due largely to ongoing operational weaknesses, which have evolved from an ongoing trend into a real fundamental shift in the sector. "Hospitals now have to continuously focus on operational, clinical and transformational initiatives to offset compressed commercial rate increases and little, if any, net rate increases from governmental sources," said Senior Director Kevin Holloran. Countering operational pressures for hospitals is the fact that balance sheets are stronger than they have been in over a decade.

It's this balance sheet flexibility that will benefit larger hospital systems most as they plan to cut billions from their expense bases in order to become profitable on Medicare rates. Lower rated hospitals, in contrast, are less able to trim expenses, and as such are more likely to be price takers than price makers when negotiating commercial rates.

Consolidation of hospital systems through M&A and alignment activity is also likely to continue in 2019. "Size and scale alone do not necessarily result in success, though further consolidation is a logical outcome given current industry pressures," said Holloran.

Operating pressures notwithstanding, Fitch maintains its stable outlook for not-for-profit hospitals next year. "Most hospitals will be able to offset short-term operational pressures with their absolute levels of cash and investments," said Holloran.

"Fitch 2019 Outlook: U.S. Not-for-Profit Hospital and Health Systems" is available at www.fitchratings.com.

Contact:

Kevin Holloran
Senior Director
+1-512-813-5700
Fitch Ratings, Inc.
111 Congress Avenue, Suite 2010
Austin, TX 78701

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

Additional information is available on www.fitchratings.com

Fitch Ratings: 2019 Fiscal Decisions Key for Illinois

Fitch Ratings-New York-03 December 2018: Illinois faces important fiscal policy choices in its upcoming legislative session that will go a long way toward determining the direction of its credit rating and Outlook, according to Fitch Ratings in a new report.

Illinois' governor-elect has some rather daunting tasks ahead, among them filling sizable mid-year gaps in the 2019 budget, addressing a significant structural gap in the fiscal 2020 budget and taking steps to set the state's pensions on a more sustainable path. "A proposal to use pension obligation bond proceeds to finance near-term contribution increases as part of a re-amortization of the state's pension liability, even as the state lowers its already inadequate statutory funding target, would be a credit negative," said Director Eric Kim.

Illinois will return to single-party control in January when the Democratic governor-elect takes office. However, this is not a panacea for Illinois nor does it mean the end of the state's credit challenges. "Decisions may be made more quickly but not necessarily more prudently," said Kim. Proof of this took place between 2003 and 2014 when the state's credit quality deteriorated considerably even with two different Democratic governors and sizable Democratic majorities in the General Assembly.

In fact, Illinois is still trying to rectify some of those poor fiscal decisions made particularly over the past decade, many of which revolved around liabilities including an unusually large accounts payable balance and severely underfunded state pensions. Deferring bill payments has been a common budgetary-balancing tactic for the state, resulting in unpaid bills that peaked at nearly $17 billion, or almost half of general funds revenues, by last November. After a debt-supported pay-down last year, the bills backlog is at risk of climbing once again.

Retiree benefit demands loom large with Illinois' combined debt and net pension liabilities ($200 billion) representing nearly 30% of the state's personal income. The state's challenging pension burden is the legacy of a decades-long practice of making inadequate pension contributions, a situation which has yet to be rectified. Illinois is one of the few states where courts have imposed legal constraints around the state's ability to modify OPEB benefits for current employees and retirees.

Illinois' 'BBB' Issuer Default Rating reflects ongoing weak operating performance and irresolute fiscal decision-making while the state's Negative Rating Outlook reflects the likelihood of fiscal pressures accelerating in the near term. Countering those credit pressures are Illinois' revenue framework, expenditure framework and long-term liability burden, all of which are strong enough for a state with an 'A' rating. Illinois also retains wide revenue-raising ability over a deep economic base that includes Chicago, the economic epicenter of the Midwest.

'Illinois: What Happens Next' is available at 'www.fitchratings.com'

Contact:

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

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

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

Additional information is available on www.fitchratings.com

Fitch Ratings: Medicaid, Infrastructure Among Key Focuses for U.S. States

Fitch Ratings-New York-04 December 2018: U.S. state governments are up against numerous potential headwinds heading into next year, though revenues should continue to grow so long as the broader economy continues its upward trajectory, according to Fitch Ratings in its 2019 outlook report.

Fitch has a stable outlook for U.S. state government ratings for 2019 thanks largely to the sector's overall strengths – broad economies and tax bases and substantial control over revenue raising and spending. The debate in most states will be around whether to allocate additional revenues to spending priorities or tax reductions. That said, developments in some states could affect their rating performance in the coming year. Fitch's states to watch in 2019 are Alaska, California, Connecticut, and Illinois, and the Rating Outlooks on Hawaii (Positive) and Pennsylvania (Negative) also indicate an elevated likelihood of change this year.

Federal government action remains the biggest risk for U.S. state government ratings, though a House/Senate split following the recent midterm elections has alleviated some concern. Medicaid spending will remain one of the largest fiscal hurdles of state budgets despite an expected near-term respite from congressional attempts to fundamentally restructure the program.

While Medicaid is likely at or near the top of the priority list of items state governments will be focused on, the inadequacy of current transportation funding remains a concern for state policymakers. Interestingly, infrastructure funding seems a potential area of bipartisan agreement on the federal level at a time of divided government.

Most states will be debating budgets next year, at a time of many new governors and state revenues that have become more difficult to forecast. Fitch rates to fundamentals rather than the political cycle, though a material change in fiscal policy could become a credit issue, particularly if economic conditions deteriorate notably.

Fitch's '2019 Outlook: U.S. States' report is available at www.fitchratings.com.

Contact:

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

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

Additional information is available on www.fitchratings.com

Moody's Webinar: 2019 US Local Governments and Municipal Utilities Outlooks

Thursday, 13-Dec-2018 | 2:00 PM EST / 11:00 AM PST

Moody’s Investors Service will host a webinar on Thursday, December 13, 2018 to discuss our recently published 2019 US Local Governments and US Water and Sewer Utilities outlooks. Learn our view of these sectors over the next 12-18 months as local governments and municipal utilities overall continue to demonstrate stability.

Discussion Topics

• Local government revenue growth expectations
• Challenges for local governments, including rising pension costs, cuts in state aid, exposure to federal policy shifts, climate shocks, and changing demographics
• Challenges for local governments, including rising pension costs, cuts in state aid, exposure to federal policy shifts, climate shocks, and changing demographics
Growing revenue expectations for municipal utilities
• Outlooks for municipal utilities’ rate of capital investment in infrastructure

Speakers

• Leonard Jones, Managing Director, US Local Governments (Moderator)
• Sam Feldman-Crough, Analyst, US Local Governments
• Ryan Patton, Associate Lead Analyst 1, US Local Governments

This discussion will last approximately 60 minutes and will include a Q&A session.

Register.

Democrat Bond Plan To Fund Infrastructure Is A Win-Win (Bloomberg Radio)

MUNIS IN FOCUS: Joe Mysak, Editor for Bloomberg Brief: Municipal Market, discusses: a Democrat pushing a $300 billion bond plan for infrastructure; higher gas tax needed to restore highways. Hosted by Pimm Foxx and Lisa Ambramowicz.

Running time 05:26

Listen to audio.

December 7, 2018 — 9:35 AM MST

Bond Rally Eases Detroit's Return to Muni Market.

- **Once-bankrupt city sells $135 million of municipal debt**
- **City was able to increase size of offering from $111 million**

Luck was on Detroit's side when it returned to the municipal bond market.

A Treasury market rally, low supply and strong demand for high-yielding securities greeted the city when it sold $135 million of debt Tuesday, the first sale of bonds backed only by the city's promise to repay since it filed a record-setting bankrupt five years ago. The conditions allowed Detroit to secure lower interest rates than initially expected, leaving it paying even less than some borrowers that haven't reneged on their debts.

Bonds were priced with yields ranging from 3.36 percent on a 2020 maturity to 4.95 on those due in 2038 — tighter than what was first offered. The city also was able to increase the size of the deal from $111 million to $135 million, an indication of strong demand.

"It's a perfect recipe to come to market," said Kathleen McNamara, senior municipal bond strategist at UBS Wealth Management. "They should be very, very happy."

Detroit filed for bankruptcy in 2013 to escape from debts it couldn't afford after the population tumbled, tax collections slid and the automobile-industry's decline left the economy reeling. The bankruptcy, like Puerto Rico's which followed, unsettled the municipal bond market and raised the specter that governments would be punished by the market when they returned to borrow again.

But the penalty wasn't that large. Last week, Chicago's junk-rated school system sold 5-year bonds for a yield of 4.16 percent, or 1.95 percentage points more than what top-rated borrowers pay. Detroit's 5-year bonds sold Tuesday for a yield of 3.91 percent, about 1.81 percentage points above the benchmark.

"From our perspective the bankruptcy penalty is pretty small to none," said Dora Lee vice president at Belle Haven Investments, "I think that people just want yield right now and they're hoping that they will get that with Detroit."

"Investors obviously have short memory when they see a 5 percent yield," McNamara said.

Bloomberg Markets

By Danielle Moran

December 4, 2018, 1:09 PM MST

How the 2018 Elections Reshaped State and Local Governments' Fiscal Policy Space.

State and local fiscal policy was not the mobilizing force behind the historic voter turnout of the 2018 elections. Yet policy questions related to public budgets were on state and local ballots across the country, and by showing up in November, voters made decisions that will shape the policymaking landscape of their governments for years to come.

As we have previously described, government revenue structures, and the constraints they operate within, play a crucial role in governments' ability to provide basic services to constituents and respond to new policy challenges. States that do not levy personal or corporate income taxes, such as Nevada and Texas, or cities that operate under extreme state-imposed limitations on expenditures, such as Denver or Tucson, have less "fiscal policy space" to innovate and govern.

In this light, state and local ballot measures in the 2018 election can be placed into one of two broad categories: those that expand state or local fiscal policy space (which we call "expansionary measures"), and those that restrict state or local fiscal policy space (which we call "restricting measures"). By tracking the results of dozens of state measures and over one hundred local measures in the country's 100 largest cities, this analysis seeks to understand where voters sought to expand public services, and where they sought to check government spending.

Continue reading.

The Brookings Institute

by Nathan Arnosti and Michael A. Pagano

November 21, 2018

How States Can Balance Saving for a Rainy Day and Other Priorities.

Budget stabilization funds can help states manage revenue volatility by allowing them to set aside money that can be used during difficult financial times. Policymakers use the funds to smooth budgets over multiple years and across difference phases of the business cycle. That ensures governments have the resources needed to fund important priorities, no matter how the economy turns.

Undeniably, setting aside money for future needs requires trade-offs. In many states, leaders have emphasized the need to rebuild savings in the years following the Great Recession, but each dollar directed to reserves is a dollar that cannot be spent on public programs, tax reductions, paying down debt, or unfunded retirement costs. Policymakers often struggle with decisions about when to make deposits and how large they should be.

At the same time, the various savings strategies provide differing benefits, with some more effective than others. For instance, one of the most common triggers is a budget surplus, which allows states to set aside money when there is extra at the end of the fiscal year. This method may be straightforward, but the contributions are often the last—and frequently the lowest—priority in the budget process because of their timing. In addition, surpluses occur for multiple reasons, sometimes clouding whether the time is right to save. The debate in Ohio over funding the state's rainy day fund illustrates common challenges.

Continue reading.

Route Fifty

By Mary Murphy, Airlie Loiaconi and Steve Bailey

Dec 9, 2018

P/C Insurers Shifting Investments Out of Municipal Bond Market: Best

Property/casualty insurers are shifting investments out of the municipal bond market due to corporate tax reform, but will need to monitor continuing Federal Reserve rate hikes for their impact on their investment portfolios, according to a new report by A.M. Best Co. Inc.

Historically, municipal bonds have been an "integral part" of the property/casualty segment's investment portfolio due to low default rates and attractive tax-equivalent yields, the Oldwick, New Jersey-based ratings agency said in a report released on Monday. The segment held $428.1 billion in municipal bonds at year-end 2016, but that figure declined to $413.0 billion at year-end 2017.

"Insurers are beginning to shift away from these assets now that the tax-equivalent yield has become less attractive," the report stated. "A.M. Best expects this trend to continue over the next several years, as bond holdings come to maturity and the proceeds are reinvested in government bonds and high-quality corporates, which are now offering more attractive after-tax yields. However, municipal bonds will always have a place in an insurer's fixed-income portfolio, given their diversification, high credit ratings and low historical default levels."

The property/casualty's total invested asset base in 2017 was $1.7 trillion – a $299 billion increase during the preceding 5-year period – consisting of about 58.0% bonds, 19.1% stocks, 6.7% cash and short-term investments, 11.2% affiliated investments and 5.0% in all other investments, according to Best.

Net investment income of $51.1 billion, accounting for a 3.1% investment yield, more than offset a segment-wide underwriting loss of $24.9 billion, driven by a significant rise in the frequency and severity of natural catastrophes, according to Best. The segment operating ratio, meaning its combined ratio minus the net investment ratio, increased to 94.6% in 2017 from 91.7% in 2016 owing to substantial underwriting losses, according to Best.

But U.S. property/casualty insurers "may need to re-examine their investment policies to maximize their returns while continuing to service their liabilities to policyholders" amid expectations that growth will moderate in 2019 as the effects of the tax cuts on consumer spending dissipate, according to Best. In addition, government spending, the other recent driver of economic growth, is set to end September 2019, when the agreement between the White House and Congress to increase spending caps ends, Best noted. The International Monetary Fund is projecting 2.5% GDP growth for the United States in 2019, down from the projected 2.9% growth in 2018.

Property/casualty insurers "will need to keep an eye on moves by the Fed" as the frequency of rate hikes increased in 2018 compared with 2017, with the Federal Reserve expected to raise rates a fourth time in December 2018, Best stated in the report. In addition, the European Central Bank is expected to end its 3-year €2.4 trillion bond buying program at its next meeting in December.

"As monetary policy tightens, conditions for global economic growth are tilted to the downside and include the potential for an escalation in U.S. trade policies with both the EU and China, volatile geopolitical tensions, and high levels of debt for consumers, governments and corporations," Best said. "Globally, market observers expect yields to rise across the curve. Changes in market conditions could lead to insurers re-examining portfolio metrics such as asset allocations, credit quality and durations. With yields back on the rise, insurers will also have to balance the risk/reward tradeoffs with their equity allocations, particularly in a market in which valuations have been stretched from historic norms."

Business Insurance

by Gloria Gonzalez

12/3/2018

Not-for-Profit Hospital Expenses will Continue to Outpace Revenue in 2019.

Moody's Investors Service expects not-for profit hospitals will continue on their course in 2019 with expenses continuing to outpace revenue, according to its new report.

Moody's maintained its negative outlook on the sector as weak volume trends, reimbursement compression, more Medicare patients and growing bad debt loads will limit revenue growth, analysts projected in its 2019 outlook released Monday.

Operating cash flow will be flat or slightly decline, hinging on providers' ability to further cut expenses, according to the report.

"The margins are at some of the lowest levels that we have seen in a while, but that's more a function of expenses outpacing revenue," Lisa Goldstein, associate managing director for Moody's public finance group, told Modern Healthcare in September.

This week, my colleagues and I are attending AdvaMed's annual MedTech Conference. Participants will hear about the latest innovations, such as new digital products that incorporate the latest advances in wireless technology and increasingly powerful computing capabilities for generating clinical and economic insights.
Read more >

Hospitals are doing a better job of limiting expenses by cutting staff, boosting productivity and squeezing supply costs, according to the report. Salaries and supplies expense growth fell to 6% and 5.9% in 2017 from 7.7% and 8.2% in 2016, respectively. Overall drug price growth will likely continue to slow, which will also help.

Total expense growth is expected to drop slightly to 4% to 5% in 2019 from 5.7% in 2017. But that will still eclipse projected revenue growth of 3% to 4%.

Inpatient admission will remain very weak, following 2017's median admission growth of 1%, according to the report.

Outpatient visit growth will also remain soft, highlighted by median growth declining for the first time in five years to 2.2% in 2017 as the number of outpatient surgeries significantly dropped. More competition coupled with the ongoing shift to outpatient services will suppress margins. Value-based pay models and higher out-of-pocket expenses will are poised to drag utilization.

Meanwhile, demand for temporary nurses, continued recruitment of employed physicians, wage increases associated with lower unemployment, innovative specialty drugs and expanded use of medical devices will drive up expenses.

"The not-for-profit healthcare outlook remains negative amid some glimmers of stability," Diana Lee, a Moody's vice president, said in a statement.

Medicare as a percentage of gross revenue rose to 45.6% in 2017 from 43.7% in 2013, according to Moody's data. Overall reimbursement rate increases will continue to be in the low-single-digit range. This combined with growing bad debt levels will strain not-for-profits' balance sheets, according to the report.

Bad debt levels are projected to grow in the 8% to 9% range as commercial insurers will continue to limit coverage and raise copays and deductibles.

Medicare inpatient base rates will grow about 3% in fiscal 2019, a bit higher than in prior years. However, the CMS estimates that about 80% of hospitals will incur readmission penalties of up to 3% of their diagnosis-related group. Site-neutral payments and capping 340B drug discount rates would also hurt not-for-profit hospitals.

The uncertain state of work requirements for Medicaid eligibility and a looming reduction in Medicaid disproportionate share funding would acutely impact not-for-profit providers, according to the report.

Meanwhile, commercial insurers' negotiating leverage will rise as more Medicare and Medicaid beneficiaries are covered by managed-care programs, which feature lower rate increases and higher denial rates. Certain hospitals will face additional margin constraints as budget-strapped states seek to reduce spending on their employee health benefit plans, analysts said.

Not-for-profit hospitals will still seek scale to alleviate financial pressures, according to the report. But the jury is still out on long-term savings for larger systems that acquire struggling, Goldstein said.

"Day 1 integration is key to making these deals work," she said. "We've seen mergers go very smoothly; we've seen mergers over the years that have been wobbly coming out, and some have been very difficult."

Modern Healthcare

By Alex Kacik | December 3, 2018

The Bond That Could Be Wiped Out by California's Wildfires.

A $200 million security, designed specifically for fire, dives 95% as PG&E is probed over disaster cause

The deadliest blaze in California's history is threatening to cause losses for investors who purchased the first catastrophe bond designed specifically to cover wildfire risk.

San Francisco utility giant PG&E Corp. PCG -0.06% sold the $200 million bond in August to insure against liability from future infernos. Three months later the Camp Fire in Northern California burned more than 18,800 structures and killed at least 85 people.

Investors will suffer significant losses if state investigators determine that PG&E was responsible for the November conflagration. PG&E said in a Nov. 13 filing that it has $1.4 billion in liability coverage, including the catastrophe bond, and expects to use all of it if found liable for the Camp Fire. A PG&E spokesman said the utility is participating in the investigation into the fire's cause.

Continue reading.

The Wall Street Journal

By Nicole Friedman

Dec. 5, 2018 5:30 a.m. ET

Detroit Sees Big Demand in Muni Market Return.

For the first time since its bankruptcy, the Motor City issues stand-alone general obligation bond

Investors embraced Detroit's first stand-alone bond sale since its historic bankruptcy, a sign many remain willing to lend to the city despite the lingering pain of losses from its restructuring.

The lure of higher yields from the below-investment grade debt outstripped concerns about the city's troubled financial history, analysts said. Investors suffered losses on Detroit debt when it became the biggest U.S. city to ever file for bankruptcy in 2013.

The sale Tuesday marked the first time since bankruptcy more than five years ago that the city issued stand-alone general obligation bonds—those backed by its own full faith and credit. Those bonds hit investors with losses during Detroit's restructuring, raising questions about the risks of what many had considered the safest form of state and local debt.

Continue reading.

The Wall Street Journal

By Gunjan Banerji

Updated Dec. 4, 2018 5:40 p.m. ET

Post-Bankruptcy Detroit Returns to Yield-Hungry Muni Bond Market.

CHICAGO — Detroit on Tuesday sold its first standalone bonds since exiting bankruptcy four years ago to U.S. municipal market investors, who snapped up the debt albeit at hefty yields.

The unlimited-tax general obligation bond issue sold solely under the city's junk-rated credit was increased to $135 million from nearly $111 million due to strong investor demand and "attractive borrowing costs," according to John Hill, Detroit's chief financial officer.

He attributed the deal's success to a combination of market conditions and the city's message of how far it has come since it ended what was then the biggest-ever U.S. municipal bankruptcy in December 2014.

"This shows we're back in the market now on our own credit. It's quite a milestone," Hill said.

The deal also sends a message to other financially distressed issuers that a bond default or bankruptcy may not lock them out of the $3.8 trillion muni market for that long, according to Nicholos Venditti, a portfolio manager at Thornburg Investment Management.

“My goodness, this is a pretty quick turnaround from bankruptcy to selling debt in a very short amount of time,” he said.

Detroit’s bonds were sold amid a muni market price rally that lowered yields on Municipal Market Data’s (MMD) benchmark scale as much as 8 basis points, while U.S. Treasury yields also fell and U.S. stock indexes suffered steep drops.

Yields topped out at 4.95 percent for bonds due in 2038 with a 5 percent coupon. Spreads over MMD’s triple-A yield scale ranged from 183 basis points in 2023 to 200 basis points in 2033 and 190 basis points in 2038.

Daniel Berger, MMD’s senior market strategist, said investors “were willing to give (Detroit) a fresh start, but at a high-yield price.” He said spreads in the city’s deal were comparable to those in last week’s junk-rated Chicago Board of Education GO bond sale.

Venditti said the bonds’ pricing had less to do with Detroit’s post-bankruptcy story and more with market dynamics.”Yield is still very, very difficult to find and hey here’s some yield,” he said.

The bonds were rated three to four notches below investment grade at Ba3 by Moody’s Investors Service and B-plus by S&P Global Ratings. Detroit tapped voter-approved authority that dates back to 2004 and 2009 for the bonds, which will fund capital projects.

Ahead of the sale, Detroit officials touted improvements in the city’s financial management, budget, and services as well as increased economic development. The bankruptcy, which was eclipsed by Puerto Rico’s 2017 filing, allowed the city to shed about $7 billion of its $18 billion of debt and obligations.

Michigan’s largest city was able to terminate active post-bankruptcy oversight of its finances in April after concluding three straight fiscal years with balanced budgets.

By Reuters

Dec. 4, 2018

(Reporting by Karen Pierog in Chicago; Editing by Matthew Lewis)

Detroit Sells $135 Million In Bonds With Its Own Credit.

- City sells $135 million in general obligation bonds
- Its the first bond sale solely using the city’s credit in more than 20 years
- Bonds to fund land assemblage for economic development, other projects

The city of Detroit completed a sale Tuesday of $135 million in general obligation bonds, the first time in more than 20 years that Michigan’s largest city has tapped the municipal bond market on the back of its own credit — and without the need for expensive layers of insurance for bondholders.

The 4.8 percent interest rate Mayor Mike Duggan’s administration was able to secure on the bonds

allowed city officials to increase the borrowing from $110 million to $135 million, said John Hill, Detroit's outgoing chief financial officer.

"We got back in the markets for the first time in quite a long time on our credit," Hill told Crain's.

In the years leading up to Detroit's July 2013 bankruptcy filing, the city could only borrow money with the backing of the state of Michigan or with costly insurance layered atop of the debt, which proved complicated to untangle in the bankruptcy.

About 30 institutional investors bought Detroit's new debt, Hill said.

"The (bond) market is really good today. But, as you know, it can change tomorrow," Hill said on a day the Dow Jones Industrial Average plunged 799 points, while the S&P 500 and NASDAQ indexes fell sharply.

The bond sale was completed a week short of the four-year anniversary of Detroit's emergence from a Chapter 9 bankruptcy restructuring that left some past bondholders and insurers with as little as 10 cents on the dollar for past debt deals.

Detroit's new unlimited tax general obligation bonds will be used to finance a series of capital improvement projects at the Detroit Department of Transportation Coolidge bus terminal, neighborhood parks, the Charles H. Wright Museum of African American History and Aretha Franklin Park (formerly Chene Park), according to a memo sent Oct. 22 to City Council members.

The Duggan administration also plans to use a portion of the funds for buying out property owners in areas where officials are trying assemble large tracts of land for potential real estate and economic development opportunities, Hill said.

"This has money in it that would allow the city to assemble larger parcels of land," Hill said.

The mayor's office also is budgeting money from the bond proceeds for transportation infrastructure improvements and capital expenses for public safety facilities and vehicles, according to Hill.

In recent years, the city has been restricted to using budget surpluses to pay for capital expenditures.

"These bonds help take pressure off the city's general fund to support its capital needs," Hill said.

The city will have immediate access to the proceeds of the tax-exempt bond, but plans to spread out the capital projects over a period of two years, Hill said.

Moody's Investors Service assigned a Ba3 credit rating to the bonds, which is still deemed noninvestment grade or junk bonds in the eyes of investors.

CRAIN'S CHICAGO BUSINESS

CHAD LIVENGOOD

December 05, 2018 09:39 AM

[Muni Bond Dangers You Should Look Out For.]

Muni bond defaults are rare.

To the tune of less than one-tenth of one percent.

But you're probably careful when you walk under scaffolding even though the risk of a construction worker falling on top of your head is slight too.

There are a number of things you and the Securities and Exchange Commission and muni bond issuers can do to protect yourself against the possibility of losing significant amounts of money on the municipal bonds you buy and hold.

The safeguards you can take, and dangers surfaced at an SEC roundtable on muni bond disclosures Thursday.

Municipal bond prospectuses can be too lengthy, ponderous and yes, boring, to read in full.

Like with any lengthy financial document, such as an SEC filing, there are nuggets you can find quickly by doing key word searches.

SEC Commissioner Robert Jackson suggested looking up "repayment," which will tell you where the city, state or other local government is getting to repay the money you are lending it through a muni bond purchase and "unfunded liabilities,"—other demands on the governmental unit on the pot of money it is using to pay bondholders.

The biggest danger a retail investor who owns munis can avoid is to sell them immediately when bad news comes out because things inevitably get better, advised Jim Spiotto, managing partner of Chapman Strategic Partners.

One of the reasons problems with a muni bond issuer quickly improve, said Spiotto, is just as doctors bury their mistakes, finance officers finance theirs.

Spiotto's firm is an outgrowth of Chapman and Cutler one of the top law firms in the municipal bond arena for over half of a century.

Speaking to the potential for a wave of new muni bonds hitting the market if Congress passes a major infrastructure bill, Spiotto acknowledged when anyone (including local governments) does anything fast, it is important short cuts aren't taken.

"When muni bond issuers make multiple issues in a short period of time, they will have to make sure tax revenues to support the bonds are sustainable and affordable," the consultant said.

At the same time, Spiotto said infrastructure improvements could ease the financial stress on muni bond issuers because they stimulate local economies.

The expert said if a muni bond issuer tells one investor about changes in their financial condition to tell all.

"Disclosure allows all to understand the situation including those who would constructively help if they knew the accurate situation," said Spiotto.

He added issuers who expand disclosures can be better market credibility and better credit ratings.

When it comes to developments have put an issuer under financial distress, Spiotto said investor panic can be reduced or eliminated by full and prompt disclosure of the evolving situation.

Retail investors need better and faster information from muni bond government creators to help make better buy and hold decisions, SEC Chair Jay Clayton told the gathering.

“Without it, it is challenging to evaluate the condition of issuers,” said Clayton.

He complained some issuers don’t release their financial statements until significantly after the end of their fiscal years.

He noted mom and pop investors hold about $2.66 trillion in muni bonds directly or indirectly, two-thirds of the entire value of the market.

With the heavy reliance of retail investors on muni bonds and of society as a whole since they account for two-thirds of the infrastructure in the country, Clayton said there should be a close regulatory focus on the municipal bond market.

He said the SEC and the Municipal Securities Rulemaking Board are studying ideas to improve the speed and completeness of muni bond disclosures.

Timeliness needs to be improved, asserted SEC Investor Advocate Rick Fleming.

“Financials are stale by the time they are disclosed, that has been an investor issue for a long time,” said Fleming.

Democratic SEC Commissioner Kara Stein added her voice to the calls for better information for muni bond issuers to investors: “More work needs to be done on disclosures.”

She added there are no shortage of issues that need to be looked at for their potential impact on muni bonds including public pension shortages and interest rate changes.

Republican Hester Peirce said she is all in favor of clear English in muni bond disclosures because while retail investors might not read them, third parties that distill the highlights and feed them to individual investors do.

She explained the disclosures can be important in muni bond pricing.

In terms of what information the SEC should mandate from the issuers, Peirce said: “I don’t want to give people a sense there is a lower bar for materiality than there is.”

Fidelity Research Analyst Amy Johonnett protested disclosure is inconsistent everywhere in municipal securities.

With the calls for more disclosures, there are worries they could further strain the budgets of already financially strapped local governments, said SEC Office of Municipal Securities Attorney-Advisor Adam Windell.

During the session, S&P Global Ratings Managing Director Robin Prunty called the 2019 economic forecast for state and local governments “troubling.”

“There will be a much more strained budget climate,” she said.

She added, though, economists are not predicting a recession and many state and local governments

are in good financial shape.

Forbes

by Ted Knutson

Dec 7, 2018

Ted Knutson is one of the most experienced financial regulatory reporters in Washington. For years, he has covered the SEC, CFTC, the bank regulators and the key Congressional committees.

- GASB Proposes New Implementation Guidance to Assist Stakeholders With Application of its Pronouncements.
- Dealers See Need For More Benchmark Transparency.
- Year-End Update To S&P Global Ratings' U.S. And Canadian Not-For-Profit Transportation Infrastructure Enterprises Criteria Implementation.
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- How IRS Ruling Will Impact Airport Projects.
- Tax Advantages and Imperfect Competition in Auctions for Municipal Bonds.
- And finally, I Don't Know You Naughty Boy, I've Never Interplayed is brought to us this week by *Baltimore City Detention Center v. Foy*, in which the court stated, with apparent relish "In particular, we must evaluate the interplay between §§ 10-910(b)(1) and 10-910(b)(6)." Some go to law school with dreams of championing civil rights. Others, to save the environment. But blessed be those who aspire to evaluate the interplay between §§ 10-910(b)(1) and 10-910(b)(6).

IMMUNITY - ALABAMA

Barnhart v. Ingalls

Supreme Court of Alabama - November 21, 2018 - So.3d - 2018 WL 6074918

Former employees of the Space Science Exhibit Commission brought putative class action against Commission's officers in officers' official capacities in which employees sought a declaratory judgment that the Commission's existing policies and compensation plan did not comply with the plain terms of state statutes on holiday and longevity pay, an injunction requiring the Commission's officers to henceforth comply with the statutes, and an award of all moneys previously earned but not paid because of the failure to comply with the statutes, and employees asserted negligence/wantonness and breach-of-fiduciary-duty claims against the Commission's officers in officers' individual capacities.

The Circuit Court certified a class for all claims except the claim for an injunction. Commission's officers petitioned for a writ of mandamus.

The Supreme Court of Alabama held that:

- The Court would exercise its discretion and treat the mandamus petition as a notice of appeal;
- State immunity did not bar claim for an award of all moneys previously earned but not paid due to Commission's officers' alleged failure to comply with state statutes at issue;

- State sovereign immunity barred claims against officers in their individual capacities, overruling *Ex parte Bronner*, 171 So.3d 614;
- Trial court did not exceed its discretion in concluding that the commonality requirement for class actions was met;
- Trial court did not exceed its discretion in concluding that the typicality requirement for class actions was met; and
- Named plaintiffs could adequately protect the interest of entire class as to claim for a declaration that the Commission's existing policies and compensation plan did not comply with the plain terms of state statutes at issue.

REFERENDA - ARIZONA

Hoffman v. Reagan

Supreme Court of Arizona - November 1, 2018 - 429 P.3d 70 - 803 Ariz. Adv. Rep. 10

Drafter of the Citizens Clean Election Act who was a former member of Citizens Clean Elections Commission and Commission member acting in her individual capacity filed suit requesting trial court to enjoin Secretary of State from placing legislatively referred referendum which would amend Act on the ballot, arguing that it violated constitutional single-subject rule.

The Superior Court dismissed the action. Challengers filed an expedited appeal.

The Supreme Court of Arizona held that:

- Lawsuit was not premature;
- When the legislature refers a measure to the voters for their consideration, that action involves enacting or passing a bill, and such a legislative "act" must satisfy constitutional single-subject rule; and
- Referendum satisfied constitutional single-subject rule.

ANNEXATION - ILLINOIS

Doyle v. Village of Tinley Park

Appellate Court of Illinois, First District, Second Division - September 28, 2018 - N.E.3d - 2018 IL App (1st) 170357 - 2018 WL 4698897

Homeowners brought negligence suit against developer of their subdivision and village, alleging that developer failed to install a properly working storm drain system, in breach of annexation agreement entered into by developer and village, and that the damage was exacerbated by village's delay in addressing the drainage problem.

The Circuit Court dismissed claims against developer and granted summary judgment to village, and homeowners appealed.

The Appellate Court held that:

- Homeowners lacked standing to bring action against subdivision developer for breach of annexation agreement;
- Homeowners were not third-party intended beneficiaries of annexation agreement; and
- Village was entitled to discretionary tort immunity with respect to homeowners' negligence suit.

Homeowners, as the purchasers of individual lot within subdivision, lacked standing, as successor owners of property, to bring action against subdivision developer for breach of annexation agreement entered into by developer and village, pertaining to storm drainage system; annexation agreement defined the "subject property" as 828-acre parcel of land contiguous with village, i.e., the entire subdivision, and if drafters of agreement had intended to confer successor status upon each and every purchaser of lot within the subdivision, agreement would have said successor owners of record of the subject property or any portion thereof, and annexation statute referred to successor owners of record of land which was the subject of agreement and made no reference to those who had purchased only small portion of that land.

Even if homeowners, as the purchasers of individual lot within subdivision, could be considered successor owners of the property, they would succeed to subdivision developer's interest in the annexation agreement between developer and village, not to the village's, and as such, homeowners could not sue developer, in whose shoes they would be standing, for breach of annexation agreement, pertaining to storm drainage system.

Homeowners, who purchased individual lot within subdivision, were not third-party intended beneficiaries of annexation agreement entered into by subdivision developer and village, and thus, homeowners lacked standing, as third-party beneficiaries, to enforce annexation agreement pertaining to storm drainage system; individual homeowners were not successor owners of record of the subject property within meaning of annexation agreement, and thus, there was no expressed intent to benefit such individual homeowners, and although parties were aware that the storm drainage system would benefit homeowners, this was insufficient to afford individual homeowners intended third-party beneficiary status.

Village employed discretion at every step of the repair process for sinkhole, from the first work crew that visited homeowners' house and had to decide what to do about sinkhole, to the village manager who decided to approve street pipe repair, and thus, village was entitled to discretionary tort immunity with respect to homeowners' negligence suit; fixing pipe was not merely execution of a set task, but, rather, required exercise of personal deliberation and judgment by village officials, village officials were engaged in ongoing policy determinations regarding allocation of village funds and resources, and deciding how best to spend limited resources was a policy determination.

EMPLOYMENT - MARYLAND

Baltimore City Detention Center v. Foy

Court of Appeals of Maryland - November 19, 2018 - A.3d - 2018 WL 6039293

City employee filed action for judicial review of decision of commissioner of city division of pretrial detention and services terminating employee's employment at city jail following allegation of excessive force against an inmate.

The Circuit Court remanded to commissioner to conduct penalty increase meeting. Employee appealed. The Court of Special Appeals affirmed in part, reversed in part, and remanded. City detention center petitioned for writ of certiorari.

The Court of Appeals held that:

- The 30-day window contained in Correctional Officers' Bill of Rights (COBR) for commissioner to conduct penalty-increase meeting began to run upon commissioner's receipt of recommendation of

hearing board;
- Commissioner was required to comply with all of procedural steps enumerated in COBR before conducting a penalty-increase meeting and issuing a penalty increase;
- Post hoc memorandum by the commissioner was insufficient to satisfy the requirement that a penalty-increase meeting be conducted on the record; and
- Commissioner’s failure to hold meeting “on the record” did not prejudice officer, and thus, remand warranted to allow the commissioner to conduct another meeting with a properly operating recording device.

UTILITIES - NEW HAMPSHIRE

Appeal of Lakes Region Water Company, Inc. (New Hampshire Public Utilities Commission)

Supreme Court of New Hampshire - November 28, 2018 - A.3d - 2018 WL 6186133

Water utility appealed an order of Public Utilities Commission, which required utility to refund a second base charge it had imposed on customer and prohibited it from imposing such charges unless and until they were included in utility’s tariff.

The Supreme Court of New Hampshire held that:

- Utility could not charge customer second base rate;
- Utility’s second charge was a violation of law;
- Commission was not required to explain why utility’s contrary arguments were unpersuasive; and
- Utility had notice that Commission would decide issue of whether utility could require customer to install separate service.

Water utility could not unilaterally adjust its charges and charge customer second base rate, after customer tapped into primary residence’s service connection to supply water to newly constructed garage with bunkhouse; utility’s remedy for its claim that customer’s action resulted in free or discounted service was to propose revisions to its tariff, rather than to charge fee to customer different from rates scheduled in its tariff, and individual, rather than physical structures, was “customer” under utility’s tariff as written, such that connecting bunkhouse to water line did not service second customer.

Water utility charging customer second base rate, after customer tapped into primary residence’s service connection to supply water to newly constructed garage with bunkhouse, was a violation of law, which met customer’s burden of proof in complaint before Public Utilities Commission, despite contention that such charge was, at most, unauthorized by utility’s tariff; second base rate was not in utility’s tariff, and deviation from tariffed rate was violation of law.

Public Utilities Commission, in concluding that water utility was unable to charge customer second base rate for customer’s newly constructed garage and bunkhouse, was not required to explain why utility’s contrary arguments were unpersuasive; Commission’s essential finding of fact was that utility’s tariff did not specifically address situation presented, which was sufficient to support legal ruling that there was no basis for utility to require second base charge under terms of tariff.

Water utility had notice that Public Utilities Commission would decide issue of whether utility could require customer to install separate service to his newly constructed garage with bunkhouse, and thus Commission did not err in failing to reconsider issue; Commission notified parties by letter that, because its rules did not specifically address situation, Commission believed that hearing would be

useful in determining whether separate base charge should be implemented "and/or a separate meter installed," and in an order Commission noted that thrust of customer's complaint was that utility was not permitted to charge him separate base charge "and/or install a separate meter" under terms of utility's tariff.

EMINENT DOMAIN - NEW YORK

National Fuel Gas Supply Corporation v. Schueckler

Supreme Court, Appellate Division, Fourth Department, New York - November 9, 2018 - N.Y.S.3d - 2018 WL 5875456 - 2018 N.Y. Slip Op. 07550

After Federal Energy Regulatory Commission (FERC) granted natural gas company's application for certificate of public convenience and necessity to construct and operate natural gas pipeline, company brought condemnation petition pursuant to Eminent Domain Procedure Law (EDPL) to acquire easements over landowners' real property, alleging that FERC certificate exempted company from EDPL's normal public hearing and findings requirements.

Landowners answered, alleging that New York State Department of Environmental Conservation had denied company's application for Clean Water Act (CWA) water quality certification (WQC) and that company therefore no longer held valid and operative FERC certificate. The Supreme Court, Allegany County, granted company's petition in its entirety. Landowners appealed.

The Supreme Court, Appellate Division, held that company did not hold qualifying federal permit for purposes of statute exempting holder of such permit from standard condemnation hearing and findings procedures, and thus company was not entitled to exemption.

Natural gas company, which sought to acquire by eminent domain easements for construction of natural gas pipeline, did not hold qualifying federal permit for purposes of New York statute exempting holder of federal permit authorizing construction of public project from standard condemnation hearing and findings procedures, and thus company was not entitled to exemption, even though Federal Energy Regulatory Commission (FERC) had granted company Natural Gas Act (NGA) certificate of public convenience and necessity, since certificate was subject to various conditions, including company's obtention of Clean Water Act water quality certification (WQC), but New York State Department of Environmental Conservation denied company's WQC application, thus invaliding company's FERC certificate.

REVENUE BONDS - OKLAHOMA

Matter of Oklahoma Turnpike Authority

Supreme Court of Oklahoma - November 14, 2018 - P.3d - 2018 WL 5961663 - 2018 OK 88

Turnpike Authority filed application seeking approval of issuance of revenue bonds.

The Supreme Court of Oklahoma held that approval of issuance of revenue bonds by Turnpike Authority was warranted, where there were no protestants and it did not appear that Authority exceeded its authority as authorized by law or that bonds appeared to facially violate the law.

UTILITIES - WEST VIRGINIA

Jefferson County Citizens for Economic Preservation v. Public Service Commission of West Virginia

Supreme Court of Appeals of West Virginia - November 2, 2018 - S.E.2d - 2018 WL 5780248

Petitioners including group of citizens and public sewage corporation sought review of Public Service Commission's order that county public service district could indefinitely delay a project to upgrade its sewer service.

The Supreme Court of Appeals held that:

- District's failure to upgrade service in sewer system did not equate to a failure to meet its customers' needs;
- Adequate evidence supported Commission's findings that improvements to area of wastewater collection were slated to move forward, thus supporting Commission's decision authorizing delay; and
- Commission's decision was not substantively improper.

A certificate of public convenience and necessity merely authorized, rather than mandated, a public utility to construct a sewer facility and, thus, county public service district's failure to upgrade service in sewer system in connection to which certificate was issued did not equate to a failure to meet its customers' needs.

Adequate evidence supported Public Service Commission's findings that improvements to area of wastewater collection were slated to move forward, thus supporting Commission's decision authorizing delay of county public service district's project to upgrade sewer service; district, county commission, and city's utility board stated that they would cooperate to provide the planned sewer improvements and evidence showed that district had taken steps to preserve funding sources for the project and that board had consulted with an engineering firm as to the most efficient way to move forward with the planned sewer improvements.

Public Service Commission's decision to allow time for public service district, county commission, and city's utility board to combine sewer improvements was not substantively improper; efforts by district, county commission, and board to keep up with growing customer demand was inefficient when they operated separate sewer systems, original plan for sewer improvements contained inefficiencies and received more than 35 objections, and engineering firm reported that combining the sewer improvements was feasible, would increase efficiency of services, and would not diminish the scope of improvements and that the cost would likely go from $6,900,000 to $5,415,000.

GASB Proposes New Implementation Guidance to Assist Stakeholders With Application of its Pronouncements.

Norwalk, CT, November 27, 2018 — The Governmental Accounting Standards Board (GASB) today proposed implementation guidance containing questions and answers intended to clarify, explain, or elaborate on certain GASB pronouncements.

The Exposure Draft, *Implementation Guidance Update—2019*, proposes new questions and answers to address application of the Board's standards on cash flows reporting, postemployment benefits,

derivative instruments, irrevocable split-interest agreements, tax abatement disclosures, and other topics. The Exposure Draft also proposes amendments to previously issued implementation guidance.

Stakeholders are encouraged to review the proposal and provide comments by January 31, 2019.

Year-End Update To S&P Global Ratings' U.S. And Canadian Not-For-Profit Transportation Infrastructure Enterprises Criteria Implementation.

Since publishing its updated criteria, “U.S. And Canadian Not-For-Profit Transportation Infrastructure Enterprises,” on March 12, 2018, S&P Global Ratings has been assigning ratings and reviewing its existing ones in the sector.

Continue Reading

Nov. 28, 2018

State + Local Tax Insights: Fall Issue 2018 - Top Ten Best Audit Practices

Benjamin Franklin famously said that nothing in this world is certain except death and taxes. And the certainty of taxes leads to the inevitability of audits. Whether you are preparing for your first State tax audit or your thousandth, keeping in mind the following ten best practices will help ensure that the audit goes as smoothly as possible.

NO. 1: IDENTIFY POTENTIAL ISSUES –

The best offense is a good defense – true in both sports and tax. When you are preparing the tax returns, consider any issues that an auditor may focus on. Some items that might attract an auditor’s attention include instant unity for combined reporting states, characterization of income as business or nonbusiness income, sourcing of services for apportionment purposes and, unsurprisingly, any item that has a large tax effect. By preserving the necessary records to support your company’s filing positions in the beginning, you will decrease your work later.

Please see full Issue below for more information.

Morrison & Foerster LLP

November 27, 2018

Yield Curve Inversion Risk.

Investors often hear the term “yield curve” and how certain forces in financial markets and political decision-making may affect the shape of the yield curve – indirectly impacting their fixed-income and equity holdings.

In recent times, the yield curve has been the main talking point for many financial gurus and their commentary on the effects of interest rate hikes by the Federal Reserve. As short-term interest rates have been on the rise, the possibility of the yield curve inversion has also taken center stage in many discussions amongst policymakers and investors. A yield curve inversion happens when the short-term rates on government debt pass the interest rates on long-term debt.

In this article, we will take a closer look at the flattening of the yield curve as the short- and long-term rates are getting closer and closer, and the potential impacts of an inversion on fixed-income financial markets.

Be sure to click here to learn more about the yield curve and the implications for municipal bond valuations.

Continue reading.

municipalbonds.com

Jayden Sangha

Nov 28, 2018

The Fiscal Need to Find a 'Second Life' for Underutilized Parking Lots.

Revenue streams from parking lots and garages are expected to be undermined as autonomous vehicle technology improves and is more widely adopted.

General Motors' announcement this week to shutter production at a handful of assembly plants and layoff thousands of factory and white-collar jobs as part of a larger North American restructuring is a clear signal of difficult economic waters U.S. automakers are currently navigating.

One of the biggest challenges automakers are facing is both a simple and complex one: There are fewer people buying cars, especially among younger generations who are eschewing personal automobiles for other modes of transportation, including using public transit and ride-booking apps through companies like Uber and Lyft.

"This isn't just a GM issue. People aren't buying cars" like they once did, Lordstown, Ohio Mayor Arno Hill, whose village near Youngstown is home to one of the GM assembly plants slated to be "unallocated" in 2019, said during a press conference on Monday.

Continue reading.

Route Fifty

by Michael Grass

NOVEMBER 27, 2018

States Rush to Collect Online Sales Tax.

The process will be more of a struggle in some states than others.

State and local governments, responding to a June U.S. Supreme Court decision, have begun to collect sales taxes from out-of-state retailers. But depending on tax systems already in place, the process will go much more smoothly in some states than in others.

Analysts expect new rules being drafted around the country in response to the *South Dakota v. Wayfair* Inc. decision to deliver billions of dollars annually to state coffers. They will also force retailers to navigate an untested patchwork system stretched across the nation's 12,000 state and local taxing districts.

The high court decision was meant to level a playing field, where for decades sales tax laws that applied to brick-and-mortar stores often didn't apply to online retailers. State and local governments saw an end to years of lost revenue from the booming online retail sector. Offline retailers celebrated the ruling as an overdue corrective.

Continue reading.

Route Fifty

By John Tomasic,
Special to Route Fifty

NOVEMBER 28, 2018

Dealers See Need For More Benchmark Transparency.

WASHINGTON — The transparency of some market benchmarks used to price new municipal bonds needs improvement, dealer groups told the Municipal Securities Rulemaking Board this week.

The Securities Industry and Financial Markets Association and the Bond Dealers of America made that point to the board in responses to a previous MSRB request for information on how market participants use curves and benchmarks.

"Some of the benchmarks used in our market are sufficiently transparent, but not all," wrote Michael Decker, a managing director and co-head of munis at SIFMA.

"For the most widely used benchmark, the MMD scale, the market is missing some key information," he said, referring to a curve produced by Municipal Market Data. "For example, while we know that MMD uses some third-party information in calculating their scale, we do not know how much data come from third parties, what is the nature of that information, who the third-party providers are, whether those providers may have conflicts of interest with respect to the scale, how those data are used in the calculation, and other key information. Greater transparency would help market participants better understand how MMD is calculated and how MMD behaves under different market conditions."

BDA CEO Mike Nicholas told the MSRB that all member firms who responded reported that benchmarks were used for new issue pricing, and that a majority used them for block-size dealer

bids and for institutional investor bids and offers in the secondary market. Retail use was less common, Nicholas said.

BDA members were in some disagreement about transparency, Nicholas told the board.

“Some members believe that the benchmarks currently available in the municipal market are sufficiently transparent,” he wrote. “One member noted that unique disclosures and credit ratings make it challenging for transparency benchmarks and can render them not viable for a one size fits all approach. Having better access to EMMA data could be a solution for better transparency.”

The MSRB has been studying the methodologies, mechanics and functions of market indices, yield curves and other benchmarks since 2012, and began making some available on its EMMA website for free in July 2017. Such indices provide information about muni bond interest rates, potentially allowing investors and issuers to make more informed decisions on investments and issuances. The MSRB said when it made the request for comment in August that it was primarily informational in nature.

Decker said that there may be an opportunity to provide input to providers of market benchmarks.

“Talking with some of our market’s benchmark sponsors, there may be interest in forming a diverse, market-wide advisory group of stakeholders to provide feedback and advice to municipal benchmark providers on their methodologies and processes,” Decker wrote.

The groups were mixed on the MSRB’s question regarding whether the International Organization of Securities Commissions’ Principles for Financial Benchmarks are appropriate for benchmarks in the municipal securities market. IOSCO describes itself as “the international body that brings together the world’s securities regulators and is recognized as the global standard setter for the securities sector.”

Decker told the board that many of the IOSCO principles make sense for the muni market, such as the recommendation that benchmark administrators establish and publish guidelines regarding the sources of data and information they use.

“There were differing opinions across membership on whether IOSCO Principles are appropriate for benchmarks in the municipal securities market,” Nicholas wrote. “Some agreed that they are appropriate while others were unfamiliar and cautious of the efficacy of an international benchmark application to the US municipal securities market.”

While the MSRB has indicated that its request for information was more informational than a prelude to rulemaking, Decker told The Bond Buyer that it was appropriate for the MSRB to raise these questions and that the board doing so might hopefully spur additional transparency from benchmark providers.

By Kyle Glazier

BY SOURCEMEDIA | MUNICIPAL | 11/28/18 07:00 PM EST

How IRS Ruling Will Impact Airport Projects.

WASHINGTON – Airport authorities will have an easier time signing leases at their bond-financed

terminals for prohibited uses such as retailers specializing in the sale of regional wines under a new Internal Revenue Service private letter ruling.

The ruling publicly released Friday allows floating private equity to be used for a prohibited use for a tax-exempt bond-financed airport terminal renovation.

Floating private equity refers to money that is not the proceeds of a bond sale that can be moved around as needed, rather than dedicated to a specific location. Prohibited uses include stores specializing in the sale of alcohol for offsite consumption, health clubs and gambling facilities such those featuring slot machines.

The ruling applies to exempt facility bonds, the same concept the IRS used in a 2015 rule that allows floating private equity to be applied to private use in a government bond financed project.

Ed Oswald, a former Treasury official who is a partner at Orrick Herrington & Sutcliffe in Washington, joined with John Stanley, an associate at Orrick's San Francisco office, in making the request to the IRS on behalf of an unnamed client.'

The IRS letter ruling did not identify the airport owner, but did say the terminal complex "includes boarding areas, which have a wide variety of retail shops, bars, restaurants, coffee shops, and similar passenger amenities" operated by third parties under leases.

The airport, according to the IRS, is in the process of making "substantial renovations to portions of the terminal complex" that include "the complete demolition and reconstruction of the boarding area" and will finance part of the costs of the renovations with the proceeds of a bond issuance.

The request to the IRS indicated that private money other than the funds from the tax-exempt bond sale will be set aside for non-qualified uses. Oswald said in an interview the ruling allows airports to more easily move prohibited use facilities to other parts of their terminals with the application of the floating private equity.

"We can borrow from the thinking from the 2015 private use regulations regarding private activity bonds and adopt a similar theme and allow equity to flow to these prohibited facilities," Oswald said.

"Although duty-free shops have long sold bottled alcohol, those shops generally offer a wide range of other products for sale," Oswald and Stanley wrote in their summary of the ruling. "This newer trend in airport concessions is towards smaller spaces that primarily or exclusively sell bottled alcohol, particularly in wine-growing regions."

Charles Almond at Bracewell in Houston described the IRS letter ruling as "not surprising, but helpful."

"Big airports are in some respects almost like big cities," Almond said. "There's lots of stuff going on there. There are tens of thousands of people going through an airport and you see the types of retail have developed into a pretty wide variety."

Almond said the ruling is an extension of the 2015 rule for government bonds issued under section 141, applying the same principle to qualified use bonds issued under section 142.

"I think large airports would be wise to use this to avoid pitfalls where a kind of prohibited use sneaks up on you," Almond said. "I think it's a positive development."

Almond said there have been workarounds to allow prohibited uses in bond-financed airport

terminals “if you were constantly vigilant about the types of retail that were going into your facility and had great communication between the finance people are the airport and the people who were doing the retail leasing and planning.’’

Going forward, Almond said, “You can allocate those prohibited uses to that equity wherever they are located and avoid those sort of uh-oh moments.”

The Bond Buyer

By Brian Tumulty

November 26, 2018, 2:58pm EST

IRS PLR: Airport Permitted to Allocate Bond Proceeds to Qualified and Non-Qualified Uses.

The IRS ruled for Dallas-Fort Worth Airport, holding that a major airport could treat its inter-terminal-building transportation facilities (a bus system on the “non-secure” side of the terminal buildings and a train system on the “secure side” of the buildings) as discrete facilities, separate from the terminal buildings, that qualify for governmental (“non-AMT”) financing.

Read IRS Private Letter Ruling 201847001.

Charles L. Almond of Bracewell LLP represented Dallas-Fort Worth Airport in this matter.

Tax Advantages and Imperfect Competition in Auctions for Municipal Bonds.

State and local governments finance multi-year expenditures by issuing municipal bonds. To reduce the borrowing costs of state and local governments, municipal bond income is excluded from federal and, in most cases, state taxation. This tax advantage creates a tax expenditure for the federal and state governments, which is forecast to cost the federal government alone more than $500 billion over the coming decade. It has been rising over time, and is mainly enjoyed by top-income individuals. Not surprisingly, the tax advantage of municipal bonds has been the subject of a controversial policy debate.

This paper contributes to this debate by showing that the interaction between tax advantages and the structure of municipal bond issuance market, plays a crucial role in determining the effect of tax advantages on borrowing rates and the efficiency of this subsidy. Specifically, the authors analyze a novel dataset on over 14,000 new issuances of municipal bonds sold at auction between 2008 and 2015. The authors exploit within-state changes in taxes over time to show that tax advantages have large effects on the borrowing costs of state and local governments. They then develop an empirical auction model that clarifies the economic mechanisms in this market. Finally, they use the estimated model to evaluate recent proposals by the Obama and Trump administrations, as well as parts of the Tax Cuts and Jobs Act of 2017 (TCJA17) that affect the tax advantages of municipal bonds. By highlighting the interactions between taxes and imperfect competition, their results suggest a fundamental reassessment of the mechanism through which tax subsidies reduce borrowing costs, and provide new evidence suggesting that tax subsidies may be more efficient at subsidizing local

borrowing costs than previously thought.

The rest of the paper is organized as follows. The authors describe the institutional context and their data in Section 2. Section 3 describes reduced-form relationships between tax advantages, borrowing costs, and imperfect competition in auctions for municipal bonds. In Section 4, the authors develop an auction model for municipal debt with tax advantages. Section 5 describes the estimation procedure and results of this model, and Section 6 explores the mechanisms through which taxes influence municipal borrowing costs. The authors simulate the effects of policy counterfactuals in Section 7. Section 8 concludes.

Read the full paper here.

The Brookings Institute

by Daniel Garrett, Andrey Ordin, James W. Roberts, and Juan Carlos Suárez Serrato

November 30, 2018

Hilliard Lyons agrees to join Baird.

LOUISVILLE, Ky. — HL Financial Services, LLC (the parent company of Hilliard Lyons and Hilliard Lyons Trust Company) announced today that it has signed a definitive agreement to allow Hilliard Lyons and Hilliard Lyons Trust Company to join Baird. The agreement has also been approved by Houchens Industries, Inc., the majority shareholder of HL Financial Services, LLC.

Hilliard Lyons, an independent wealth management firm, and Hilliard Lyons Trust Company are headquartered in Louisville, Ky., and Baird is headquartered in Milwaukee, Wi. Baird is an international, employee-owned wealth management, capital markets, private equity and asset management firm with more than $200 billion in client assets. Terms of the deal, which is subject to regulatory approvals, were not disclosed. The transaction is expected to close in the first half of 2019.

Established in 1854, Hilliard Lyons is one of the nation’s oldest investment firms and has nearly 1,000 employees, including more than 380 financial advisors, operating in more than 70 offices in 11 states. Along with its sister company Hilliard Lyons Trust Company, the firm offers wealth management, trust, and estate planning services, as well as investment banking, municipal finance, and asset management services. It has over $50 billion in client assets and had more than $280 million in revenue for its fiscal year ended September 30, 2018. Baird, established in 1919, has more than 3,450 associates, including 890 financial advisors, working from 97 locations in 30 states.

“On every level, Baird is a great fit for our clients and for the Hilliard Lyons team,” said Jim Allen, chairman and CEO of Hilliard Lyons. “We are especially pleased to return to our roots and rejoin an employee-owned firm. Baird’s culture, values and business model align seamlessly with ours, and its reputation as a best place to work is unsurpassed in the industry.”

“Joining forces will accelerate the success of both firms and the success of our clients,” said Baird Chairman Paul Purcell. “We have a close relationship with Hilliard Lyons that goes back more than two decades, and we couldn’t be happier to have Jim Allen and the rest of the Hilliard Lyons team join Baird.”

Steve Booth, president and CEO of Baird, stated, "Hilliard has an excellent reputation and similarities to Baird including a strong, client-centric culture and business model, a commitment to being a great place to work and a long history of giving back to the community."

"It has been an honor for Houchens Industries to be the major shareholder of Hilliard for almost 11 years," said Spencer Coates, president, and Jimmie Gipson, chairman of Houchens. They continued by saying, "We are very pleased with the merger of Hilliard and Baird. This union of great firms will allow Hilliard to continue to expand, grow, and bring additional value-added services to both existing and new clients."

Jim Allen also expressed his sincere appreciation and respect for Houchens. "Houchens has been a tremendous partner for more than 10 years. Their support and commitment to our growth and development clearly puts us in a position of strength as we pursue this exciting next chapter with Baird. We will be forever grateful to Jimmie, Spencer, and the entire Houchens team. Of course, our strong relationship and friendship will endure."

Hilliard Lyons top leadership – Chairman & CEO Allen, President Tom Kessinger III, and Alan Newman, executive vice president and director, Private Wealth – will continue in their roles, working closely with Baird's Private Wealth Management (PWM) Leadership to ensure a smooth transition for the firm and its clients. When the merger is completed, likely in the second half of 2019, Allen will serve as a vice chairman of Baird and a member of Baird's executive committee out of Louisville; Kessinger will serve in a PWM Leadership role in Lexington, Ky., while continuing to serve his wealth management clients; and Newman will serve in a PWM Leadership role in Evansville, In. All will remain active in their respective communities as leaders at Baird.

The combined firm will have approximately 1,300 financial advisors serving clients from nearly 170 locations in 34 states. That will include maintaining a significant presence in the Louisville community.

Hilliard Lyons and Baird share a longstanding tradition of giving back to the communities in which their associates live and work. Both firms and their associates support a variety of service, cultural, health, and education-related organizations. In 2017, Baird Foundation provided more than $3.1 million in support to charitable organizations.

Wyatt, Tarrant & Combs served as legal counsel to HL Financial Services, LLC and JP Morgan Securities, LLC, served as exclusive financial advisor and provided a fairness opinion to the Board of HL Financial Services, LLC.

November 27, 2018

GFOA Files Response to Proposed LIBOR Fallback Language.

As a member of the Alternative Reference Rates Committee of the Federal Reserve Bank of New York, GFOA has strong interest in ensuring that governmental issuers have comprehensive guidance as protocol as you are presented with choices as the market nears the end of LIBOR and transitions to SOFR. This exercise is especially important in the public markets where we promote transparency to ensure that investors have appropriate material information about municipal securities.

This week, GFOA filed comments in response to the ARRC consultation for fallback language for floating rate notes ("FRN"). GFOA supports efforts to ensure that robust fallback provisions are in

place and are accessible to all issuers in preparation for the cessation of LIBOR in 2021. Our evaluation is based on the premise that the market will prefer as much clarity at the time of issuance of any new LIBOR based FRN as possible.

Download GFOA Response

November 28, 2018

Puerto Rico Completes Its First Debt Restructuring Deal.

SAN JUAN, Puerto Rico — The U.S. territory of Puerto Rico said Thursday that it has completed its first debt-restructuring deal since the government announced it was bankrupt more than three years ago, giving creditors overall $550 in new bonds for each $1,000 they had held.

The agreement was finalized with creditors holding more than $4 billion in debt issued by the now-defunct Government Development Bank. The bank once issued loans and oversaw the island's debt transactions but ceased operations in March amid a 12-year recession.

"The closing of the GDB debt restructuring is a historic milestone in Puerto Rico's road to economic recovery," said Gov. Ricardo Rossello. "It is clear evidence that Puerto Rico has the credibility and resolve necessary to resolve its fiscal challenges."

It's not clear, however, how much the agreement will affect some $70 billion in other debt still outstanding. Much of that is being addressed in court rather than in voluntary agreements.

The government said its Debt Recovery Authority will soon issue nearly $2.6 billion in bonds to the creditors.

However, some economists are wary of the agreement, uncertain if the payments can be sustained because of the fragility of Puerto Rico's finances and the ongoing crisis that was caused in part by previous administrations borrowing millions of dollars to cover ballooning deficits.

"A lot of us economists are concerned that these deals are temporary and don't guarantee that Puerto Rico won't fall into another debt crisis," economist Jose Caraballo said by phone.

However, he praised the way the deal gives different treatment to different sorts of bondholders. One group, made up largely of hedge funds, will be paid first but at a lower percentage of their original investments. A second group, which includes local investors, will get paid later but receive a larger percentage.

But Caraballo warned another crisis may hit the island before the second group gets paid, and he said the deal does not end Puerto Rico's financial troubles because the accord isn't based on the government's long-term ability to pay.

"These agreements are not sustainable," he said. "It's not the end of the story. It's a comma in the middle of this crisis."

Another economist, Vicente Feliciano, noted that the deal depends on municipalities continuing to make payments out of the property tax they collect. Property values have been hit by large-scale migration off the island due to economic woes and last year's devastating Hurricane Maria, which

caused estimated damage of more than $100 billion.

“There’s always a risk that at some point the municipalities may have challenges meeting their obligations,” he said in a phone interview.

Overall, Puerto Rico agencies still hold roughly $70 billion in public debt and are trying to restructure a portion of it via court and mutual agreements with creditors. A federal control board appointed by Congress is overseeing the bankruptcy-like process as well as Puerto Rico’s finances.

In January, a federal judge is expected to rule on a billion-dollar debt restructuring deal involving bonds backed by a sales tax.

By The Associated Press

Nov. 29, 2018

Westchester County Loses Triple-A Rating From S&P.

The county incurred a deficit in 2017 and is forecast to end this year with an almost $40 million deficit

One of the richest U.S. counties, Westchester, lost its triple-A rating Tuesday.

S&P Global Inc. downgraded the suburban county north of New York City to a double-A plus rating from the highest grade, triple-A.

Analysts at S&P cited Westchester’s thin reserves and inability to balance expenses and revenues. The county incurred a deficit in 2017 and is forecast to end this year with an almost $40 million deficit, partly driven by retroactive salary increases to union workers.

“As we have said these past few months, the county is in serious financial stress,” said George Latimer, Westchester’s county executive, in a statement.

Westchester’s costs continue to swell because of such salary costs, the S&P analysts said, though it has turned to its wealthy tax base to help its budget. The county’s financial plan for this year and next includes property tax increases of 2%, one of the biggest sources of municipal income, according to S&P.

Westchester is one of the richest counties in the nation based on income per person, according to S&P. Almost a million people reside in Westchester, which benefits from its proximity to New York City, with more than a third of its residents commuting to the city.

Some of the county’s prior tactics to help finances may not work in the future, the analysts said. Westchester previously tapped one-time measures, like selling property and privatizing the county’s assets, to balance its budget, they said.

The analysts at S&P warned that there is a chance Westchester’s rating could be lowered further in the next two years, if county officials aren’t able shore up its reserves and finances continue to deteriorate.

Westchester lost its triple-A rating in 2013 from Moody’s , which also has a negative outlook on the

county, indicating its credit could be further downgraded.

The Wall Street Journal

By Gunjan Banerji

Nov. 27, 2018 6:53 p.m. ET

Audio for Select Sessions Now Available – BDA's 10th Annual National Fixed Income Conference – Washington, DC

A detailed summary of our conference is below. Please reach out with any questions or comments. We need your feedback to ensure we continue building a tangibly beneficial conference with the right topics and speakers — all focused on the U.S. fixed income markets.

On October 25th & 26th, the BDA held its 10th Annual National Fixed Income Conference at the Four Seasons Hotel in Washington, D.C.

Continue reading.

Bond Dealers of America

November 26, 2018

Big Bet Made on Largest Municipal-Bond ETF After Powell Speech

- **BlackRock's muni ETF saw $149 million purchase on Wednesday**
- **Purchase pushed trading in the fund to the most on record**

Federal Reserve Chairman Jerome Powell's dovish comments appear to have led one investor to make a big bet on the largest municipal-bond exchange traded fund.

Around 1:30 p.m. on Wednesday, shortly after Powell's speech raised speculation that the central bank is closer than previously thought to pausing its cycle of interest rate hikes, an investor bought $149 million worth of shares of BlackRock's $10.3 billion iShares National Muni Bond ETF. State and local debt, like the rest of the bond market, is highly linked to the direction of interest rates, and went on to gain after the central banker's comments.

The purchase caused the fund, which is the largest municipal ETF, to see the most share turnover on record, with $313.9 million worth of them traded, according to data compiled by Bloomberg. It also recorded an inflow of $107.6 million on Wednesday, part of a spate of inflows this month that comes as state and local debt heads for its best performance since May, according to Bloomberg Barclays indexes.

Other funds tracking muni bonds also saw heated trading yesterday. The second-largest muni ETF, the $3.7 billion SPDR Nuveen Bloomberg Barclays Short Term Municipal Bond ETF, absorbed close to $82 million worth of trading, more than triple the average daily turnover for the past year. Investors have added bets to the fund for the past three consecutive days, marking the longest

streak of inflows since February.

Meanwhile, other investors may be feeling more bearish about the direction of interest rates and the $3.9 trillion municipal-bond market. Traders have boosted their short positions against the BlackRock ETF, which trades off the ticker MUB, during the first half of the month. And Deutsche Bank and RBC Capital Markets warned that the reaction to Powell's comments on Wednesday may have been overdone.

Bloomberg Markets

By Amanda Albright

November 29, 2018, 9:59 AM MST

— With assistance by Carolina Wilson

Texas Airport Plans $11 Billion Bond Gusher as Growth Surges.

- **Half to fund capital improvements, half for refunding**
- **Much of the debt will be taxable to attract foreign buyers**

For Wall Street bankers and investors prospecting for municipal-bond deals at a conference in Texas, Michael Phemister promised them a gusher.

The vice president for treasury management at Dallas Fort Worth International Airport said he was planning on selling between $10 billion and $11 billion in municipal bonds over the next five to seven years to add more capacity to an airport that serves one of the fastest-growing areas of the nation.

"Our airfield is in pretty good shape, but we're out of gates again," Phemister said at a Bond Buyer conference in Dallas.

Dallas Fort Worth International will join a surge of U.S. airports that have issued debt this year. In an arms race to expand and improve terminals, municipal-bond sales issued by airports are up more than 30 percent this year to $13.7 billion, including those in Denver, New York, Los Angeles, San Francisco and Salt Lake City. The increase stands in contrast to the rest of the municipal-bond market, where debt sales dropped this year after interest rates rose and the federal tax-overhaul pulled subsidies from a key type of refinancing.

Half of the Dallas airport bonds will be for airfield and terminal improvements, with the rest going to refund existing debt, Phemister said. The first refinancing issue is tentatively planned for the summer of 2019 to take out $1.3 billion of higher-cost debt. The airport has the option to call about $5.2 billion through 2023. He also detailed that a large portion of the debt was going to be subject to federal income taxes, instead of tax-exempt or alternative minimum tax bonds.

"The difference in yields between AMT and taxable we believe to be marginal and they're just going to get tighter," he said.

By issuing the bonds as taxable securities, the airport hopes to draw interest from international buyers, who are looking abroad for high-grade bonds because debt yields across much of Europe and Asia are well below those in the U.S. Foreign investment in municipal debt has been increasing,

giving overseas buyers a small but growing segment of the market.

Phemister said he met with over 25 investors during a two-week trip to court foreign buyers in Europe and Asia, making stops in London, Paris, Seoul and Taipei "to talk to them about the U.S. airport credit and how we have never defaulted." The airport aims to get about 20 percent in international participation in the first-issued taxable deal.

A 10-year capital plan is currently being negotiated with the airlines, including American Airlines, which has a major presence at the Dallas airport, according to 2017 financial statements. Proposed projects include a $2.5 billion terminal and $1.5 billion for airfield improvements.

The airport is also considering a multi-billion dollar sale of short-term debt to help finance its operations.

"$1 billion will get you noticed," Phemister said of such commercial paper sales. "We hope to bring $1 billion deals once a year over the next four to five years.

Bloomberg Markets

By Danielle Moran

November 30, 2018, 7:48 AM MST

Why 2019 Could Bring 'Positive Performance' to Muni Market.

Lyle Fitterer, head of municipal securities at Wells Capital Management, looks ahead to 2019 in the municipal bond market. He speaks with Bloomberg's Taylor Riggs in this week's "Muni Moment" on "Bloomberg Markets."

Watch video.

Bloomberg MarketsTV Shows

November 28th, 2018, 9:14 AM MST

Banks Post Longest Retreat From Munis Since 1996 on Tax Cuts.

- **Big banks reduced exposure by $3 billon during third quarter**
- **JPMorgan, Wells Fargo, Morgan Stanley see largest declines**

Some of the biggest U.S. banks have continued to reduce their exposure to state and local government debt, slashing such holdings by $3 billion during the third quarter, after the federal corporate tax cut weakened the appeal of the securities.

The latest reduction was led by JPMorgan Chase & Co. and Bank of America Corp., which together accounted for more than half of the decline in the three months ended in September, according to quarterly filings with the Securities and Exchange Commission. State Street Corp., Citigroup Inc., First Republic Bank, Bank of New York Mellon Corp. and Morgan Stanley also reduced their

holdings in the third quarter.

The figures from the big banks suggest that U.S. lenders are on track to pare their investments in tax-exempt bonds for a third straight quarter, which would be their longest-running retreat from the $3.9 trillion market since 1996, according to Federal Reserve Board figures. That has added headwinds to the market because U.S. banks are one of the biggest buyers of municipal securities.

Continue reading.

Bloomberg Markets

By Michelle Kaske

November 29, 2018, 5:55 AM MST

TAX - KENTUCKY

Scalise v. Sewell-Scheuermann

Supreme Court of Kentucky - November 1, 2018 - S.W.3d - 2018 WL 5732156

Taxpayer brought action against mayor for violation of the Kentucky Constitution, seeking to recover surplus sanitation assessment revenue that was not devoted to trash collection and recycling.

Mayor filed a motion to dismiss, which the Circuit Court granted. Taxpayer appealed and the Court of Appeals reversed the Circuit Court and remanded. Mayor sought discretionary review, which the Supreme Court granted.

The Supreme Court of Kentucky held that:

- Sanitation assessment was not a user fee;
- Excess revenue generated by sanitation assessment was a tax;
- Repeal of state statute on cities' use of excess revenues did not indicate Legislature's intent to hold city officials strictly liable for using revenues collected for one purpose on another lawful purpose; and
- Recognition of an offset defense for mayor was not unwarranted, overruling *City of Newport v. Rawlings*, 289 Ky. 203, and *City of Newport v. McLane*, 256 Ky. 803.

Sanitation assessment imposed by city ordinance was not a user fee and could be considered a tax, and thus taxpayer could establish action against mayor based on allegedly unconstitutional use of excess revenues collected under the ordinance for general city purposes, where excess fees had historically been treated as taxes by the Supreme Court.

Excess revenue generated by city's sanitation assessment, which was diverted to a general fund for other city expenditures, was a tax, and thus taxpayer could bring action against city's mayor based on constitutional prohibition against collecting taxes for one purpose and spending them for another; when the annual sanitation assessment ordinance was passed and monies were collected, it was abundantly clear that excess funds would be generated, such that the predictable excess regularly devoted to general city expenditures took the form of a tax.

Repeal of state statute on cities' use of excess tax revenues did not indicate intent by Legislature to hold city officials strictly liable for collecting tax revenues for one purpose and then using them for

different lawful purposes, and thus mayor could invoke an offset defense in action brought by taxpayer based on city's use of excess revenues from a sanitation assessment for general city purposes; the statute in question did not create the offset defense and its repeal therefore did not eliminate the defense, in that the statute was simply a repackaging of an older statute which already provided for offset, and subsequent statutes on city tax assessments made no effort to prohibit offset in plain and unmistakable language.

Recognition of an offset defense for mayor in an action brought by taxpayer based on city's use of excess revenues from a sanitation assessment for general city purposes was not unwarranted and did not render city taxation statutes limiting the use of revenues meaningless; the offset defense shielded city officials acting in good faith from shouldering significant personal liability for using excess funds on municipal obligations that benefited all taxpayers, but it also placed a burden on these officials to account for excess funds and imposed personal liability for any expenditures not made for valid municipal obligations, such that the offset defense did not relieve city officials from having to defend their actions in a court of law.

TAX - OHIO

Harrah's Ohio Acquisition Company, L.L.C. v. Cuyahoga County Board of Revision

Supreme Court of Ohio - October 30, 2018 - N.E.3d - 2018 WL 5778882 - 2018 -Ohio- 4370

School board sought judicial review of a decision of the Board of Tax Appeals adopting a value for a horse-racing facility provided by owner's appraisal.

The Supreme Court of Ohio held that:

- Adjustment of comparable sales to account for value of potential video-lottery-terminal (VLT) licenses was proper;
- Reduction of facility's market value to account for value of owner's VLT license was proper;
- Board was required to consider appraisal of facility as if generating income under hypothetical lease;
- Board properly denied motion for judicial notice that some casinos operated on leased real estate; and
- Facility's sale price in bankruptcy proceeding was not relevant evidence of facility's minimum value.

Appraiser's reduction, as part of his sales-comparison analysis, of real-property values of his comparable sales by allocating 50 to 60% of the comparable-sales prices to the value of racing and potential video-lottery-terminal (VLT) licenses was not contrary to law, in proceeding before the Board of Tax Appeals regarding the real-property valuation of a horse-racing facility; appraiser simply placed value on an intangible asset, namely, the opportunity to acquire valuable licenses.

Appraiser's reduction, as part of his income-capitalization analysis, of $50 million from the market value of a horse-racing facility, representing the value of a video-lottery-terminal (VLT) license, was not contrary to law, in proceeding before the Board of Tax Appeals regarding the real-property valuation of the facility; that there were territorial restrictions on the conduct of VLT licensees did not make their licenses part of the real property on which the licensees operated, and non-transferability of a VLT license did not render such license part of the real property.

Board of Tax Appeals was required to consider an appraisal of an owner-occupied horse-racing facility as if it were leased, in proceeding regarding the real-property valuation of the facility; a property owner could realize the value of its property by encumbering it with a lease, so that an appraiser could take that possibility into account when valuing it, and appraising the facility as if generating income under a hypothetical lease was consistent with real-estate valuation statute's directive to determine "the true value of the fee simple estate, as if unencumbered," so long as the appraisal assumed a lease that reflected the relevant real-estate market.

Board of Tax Appeals properly denied school board's motion for judicial notice that some casinos operated on leased real estate or, alternatively, to allow introduction of evidence supporting the assertion three months after hearing before the Board closed, in proceeding regarding the real-property valuation of a horse-racing facility; rule permitting judicial notice did not override general rule requiring parties to present their evidence before the hearing record closed, school board's new evidence existed at the time of the hearing, and board did not show that it was prevented from timely presenting the evidence.

Sale price of a horse-racing facility and related assets in a bankruptcy proceeding was not relevant evidence of the facility's minimum value, in proceeding before the Board of Tax Appeals regarding the real-property valuation of the facility.

TAX - MASSACHUSETTS

Cichocki v. Town of Rehoboth

Supreme Judicial Court of Massachusetts - November 15, 2018 - 110 N.E.3d 1195

Homeowners sought extraordinary relief from decision upholding town's foreclosure on their home. A single justice of the Supreme Judicial Court denied relief. Homeowners appealed.

The Supreme Judicial Court of Massachusetts held that homeowners were not entitled to relief under Supreme Judicial Court's power of general superintendence over inferior courts or in nature of mandamus.

S&P: Rising U.S. States' OPEB Liabilities Signal Higher Costs Ahead.

Other postemployment benefit (OPEB) liabilities, which consist primarily of retiree health care plans, are a growing concern for certain states' credit quality and require attention to control higher future costs. Total unfunded state OPEB liabilities have increased significantly for the third year in a row, according to S&P Global Ratings' latest survey of U.S. states. Overall, total unfunded lia…

Continue Reading

Nov. 28, 2018

Will 'Opportunity Zones' Work? We May Never Know. Here's Why.

As America grapples with widening inequality and deepening political polarization, a group of wonks

in Washington is quietly embarking on a new national experiment to rehabilitate the country's most distressed regions. Tucked into the 2017 Republican tax law, Opportunity Zones, as the program is called, offer huge tax incentives for financiers who invest in downtrodden communities.

The promising idea has one potentially huge flaw, however: As the Treasury Department finalizes the program's rules in preparation for its launch in 2019, researchers and economists are increasingly worried that the agency is leaving out critical requirements to track the law's effects—and as a result, we may never know if Opportunity Zones actually work.

The new law has attracted attention in policy circles because it's the most specific thing the Trump administration has done to help "left behind" areas, and could cost more than $1 billion a year, at least initially.

But it's far from a sure thing. Earlier versions of the idea have been tried, with an unproven track record. The Opportunity Zones provision was originally drafted with a requirement for the Treasury Department to provide detailed information on the distressed regions and the impact of investments, but that dropped out when the tax bill was finalized. And when the Treasury Department released its proposed rules for the program last month, it didn't require investors to disclose much detailed information.

Without better reporting requirements in this version, critics say, it's hard to know if the law will have any effect besides saving investors money and draining federal tax revenues.

"There's never going to be a really rigorous evaluation of this program," said Tim Bartik, an economist at the Upjohn Institute. "There will always be questions."

Federal programs often pass Congress without any evidence they work, in part because it's so difficult to collect data on the impact of broad policies. But Opportunity Zones are a trackable scheme, operating in the data-rich field of finance, where investments and returns are all carefully measured by the financial players involved. It appears, however, they won't need to report those results to Washington.

"The regulations, as they are right now, don't include any of the data fields we were hoping for," said Nick Fritz, an official at the Sorenson Impact Center at the University of Utah, which focuses on improving the social impact of investing. Fritz is optimistic about Opportunity Zones but worries that the lack of data will make it hard to know whether the program actually succeeds.

Tax incentives for investing in distressed areas first gained traction in the 1980s, when they were pushed by NFL-player-turned-congressman Jack Kemp as a free-market solution to regional poverty. They were expanded during the Clinton administration, which liked to back ideas that were politically centrist and didn't sound like "welfare."

But despite billions of dollars targeted toward communities—through both direct spending and the tax code—policymakers know little about the results. In numerous studies over the years, some have found small positive gains, others small negative ones. Two major studies, conducted by the Government Accountability Office in 2006 and 2010, concluded that there simply wasn't enough data to evaluate.

As a result, many economists are skeptical that Opportunity Zones will do what they promise, helping lift up impoverished areas. Instead, they argue, money will be funneled to areas that are on the cusp of a development boom and don't need the extra help. Since the zones were designated by state governments—which could designate up to 25 percent of their low-income communities as

Opportunity Zones—they also worry that political considerations and lobbying efforts influenced the states' selection process.

"The places that got picked got picked for a reason, and the ones that got passed over got passed over for a reason," said Adam Looney, a senior fellow at the Brookings Institution who has been closely tracking Opportunity Zones. That initial design choice, he said, will make it difficult to fairly compare the results of the program without deeper information on the areas that actually received the investments.

The program is built on the fact that investors nationwide are sitting on $6 trillion in unrealized capital gains—money that they've made in the stock market and other investments but haven't put to new use because doing so would trigger a tax payment. The new law will allow investors to defer those taxes by rolling that money into "Opportunity Funds," new vehicles that invest primarily in distressed areas. If they hold that investment for 10 years, any new returns are tax-free. (They do eventually have to pay taxes on the deferred capital gains.)

Supporters believe the law will result in a flood of new investor money into those areas. But it comes at a cost to the government: The Joint Committee on Taxation projects that the tax break will cost $7.7 billion during the first five years, falling to $1.6 billion over a decade as investors pay their deferred capital gains.

Given the disagreements over the potential for the program, experts on both sides agree that good data is essential. The original bill, introduced by Sens. Tim Scott (R-S.C.) and Cory Booker (D-N.J.) in February 2017, required Treasury to submit an annual report to Congress, starting five years after enactment, with detailed information about how the tax incentive was affecting Opportunity Zones, including which communities and projects actually received investment.

That section was dropped from the bill when it was inserted into the GOP tax package, however, because the Republican Congress passed the tax law through budget reconciliation—a process that, by Congress' rules, can include reforms that only affect taxes or spending. The reporting requirement fell outside that boundary.

That's left Treasury with broad authority to collect information about the program—or not. The agency's initial proposal and an accompanying proposed IRS form require Opportunity Funds to provide basic information, such as the name of the fund, and aggregate investment numbers. Those numbers are used to prove to the IRS that investors are actually investing their money in Opportunity Zones, but they don't provide the granular, transaction-level data that would show which specific tracts and types of projects received money. The omission has left even supporters concerned that limited data will make it harder to grow political support for the program.

"It's the crux of really realizing the power and potential of this incredibly exciting bill," said Tracy Palandjian, CEO of Social Finance. "Without an intentional framework about how to think about how to measure the payment over time … we're going to be back to the old tales that these things are ineffective."

Not everyone is so concerned. John Lettieri, president of the Economic Innovation Group, a leading proponent of the program, dismissed the skeptics' concerns that states designated less-needy tracts for investment. He pointed to recent research from the Urban Institute, which found just 3 percent of the selected areas were experiencing substantial socioeconomic improvement. As a result, he said, researchers will be able to analyze the program's impact, even without the additional data.

Lettieri agreed that additional reporting requirements would be helpful and was optimistic that they

would be added in the future. But he added that the agency had to craft such requirements so they don't impose a heavy burden on investors or, worse, require them to turn over proprietary information.

"You want to avoid implicitly restricting or inhibiting the very things the incentive was designed to do," Lettieri said, adding, "[The] right balance needs to be struck."

A spokesperson for the Treasury Department said the agency hasn't written off the idea and is "considering whether the initiative could benefit from a more robust data collection effort in future tax years."

"We believe we can spend some time to get this right and still have enough data to analyze its effectiveness," said the spokesperson. "Our current focus is on ensuring that the tax incentives of [Opportunity] Zones best serve communities and benefit investors."

If the Treasury Department does add new requirements going forward, it won't be a huge surprise. The agency had a tight timeline for drafting rules and launching the program, forcing it to prioritize some elements of the rollout over others. If reporting requirements are added, researchers will breathe a sigh of relief. Given the long-term nature of the investments—the tax benefits rise substantially as investors hold their investments for longer—a retrospective requirement could be enough to answer their questions about whether it works.

But, said Fritz, the researcher at Sorenson Impact, the real challenge with later reporting is the effectiveness of the funds themselves. The longer Treasury takes to collect and analyze data, the less investors will know about what types of projects have the greatest impact on low-income communities. "This limits the ability of municipalities and funds to learn from others' best practices and make sound, impactful investments," Fritz added.

Even with the best economic data, debates over the effectiveness of public policies are never settled. Despite decades of evidence on minimum wage increases, for instance, researchers are still sharply divided on its impact. In other words, experts suggested, even if Treasury imposes significant reporting requirements on Opportunity Funds, disagreements over such place-based policies will continue—but that's not a reason to not collect the data at all.

"Will we be able to evaluate the efficacy of this tax expenditure and, in particular, who it's benefiting?" said Laurel Blatchford, president of Enterprise Community Partners and a former senior official at the Department of Housing and Urban Development. "There's a lot of excitement and a lot of questions."

THE AGENDA

By DANNY VINIK

11/20/2018

Danny Vinik is a student at the Georgetown University Law Center and former assistant editor of The Agenda. He can be reached @DannyVinik and dvinik2@gmail.com.

Opportunity Zone Investment Prospectus Guide.

A HOW-TO FOR OPPORTUNITY ZONES

OVERVIEW
The Tax Cuts and Jobs Act of 2017 provides a new incentive—centered around the deferral, reduction, and elimination of capital gains taxes—to spur private investments in low-income areas designated by states as Opportunity Zones. This provision is based heavily on the Investing in Opportunity Act (S. 1639) introduced by Senator Cory Booker (D-NJ) and Senator Tim Scott (R-SC). Given the significant interest among investors, it is possible that this new tax incentive could attract hundreds of billions of dollars in private capital, making this one of the largest economic development initiatives in U.S. history.

The broad objective of this new tax incentive—expanding economic opportunities for places and people left behind—cannot be achieved by the market and outside investors alone. Cities in the broadest sense—local governments for sure but also universities, philanthropies, employers, local financial institutions and community development organizations—will need to act with deliberate agency and purpose if Opportunity Zones are to spur growth that is inclusive, sustainable and truly transformative for each city's economy.

To enable such intentional action, Accelerator for America engaged New Localism Advisors to create a replicable product—an Investment Prospectus—to enable cities, counties and states to communicate their competitive advantages, trigger local partnerships and identify sound projects that are ready for public, private and civic capital. Our aim was to help communities and investors get smarter and more precise about the broad range of investment possibilities that exist in Opportunity Zones and, literally, help make and shape markets where there were none.

To date, mayors in five cities—Joe Schember in Erie, Greg Fischer in Louisville, David Holt in Oklahoma City, Pete Buttigieg in South Bend and Michael Tubbs in Stockton—have led multi-sector efforts to design and release the first versions of an Investment Prospectus. The five cities have deliberately followed a common template and routinized format in order to enhance the potential for replicability across multiple cities.

We have created this Opportunity Zone Investment Prospectus Guide to speed the process by which a broad group of cities adopt this market tool and build Investment Prospectuses that are customized to local assets and advantages and scalable across cities by asset classes and product types. Our ambitions are large: to grow the number of cities with Investment Prospectuses from our original five cities to fifty communities by March 2019 and unveil them at an Investors Summit at Stanford University.

Using the Louisville effort as a base, this document walks through each core element of the Investment Prospectus unveiling, where appropriate, information about the source of data, why the data was chosen, and what cities should do with it. Accelerator for America and New Localism Advisors have partnered with the Nowak Metro Finance Lab at Drexel University and identified institutions like PolicyMap to ease the replication process and codify best practices.

Continue reading.

Drexel University Lindy Institute for Urban Innovation

What the Climate Change Report Means for Investors, According to

BlackRock’s Brian Deese.

Climate change has long been one of the factors driving the growth in sustainable investing. Disturbing new assessments about global warming, including the National Climate Assessment and a new United Nations progress report, will keep investors focused on climate-related risks.

We checked in with Brian Deese, the global head of sustainability for BlackRock , about how investors should think about the new reports. Deese, 40, joined BlackRock last year, after serving as deputy director of the Office of Management & Budget and as a senior advisor to former President Barack Obama, overseeing climate, conservation, and energy policy. Helped by Deese, BlackRock’s iShares united recently rolled out its first full suite of sustainable core ETFs, as well as new tools for sustainable investors, including so-called ESG (environmental, social and governance) and carbon intensity metrics. Assets in the full suite have grown 10% in the month since it was launched.

Barron’s: What do the California wildfires, weather disasters, and new reports about global warming mean for investors?

Continue reading.

Barron’s

By Leslie P. Norton

Nov. 29, 2018

NYSERDA’s Municipal Solar Procurement Toolkit Promotes The Development Of Solar Projects On Brownfields And Landfills.

What is the toolkit? The Municipal Solar Procurement Toolkit provides guidance and resources for communities seeking to develop solar projects on underutilized properties such as landfills and brownfields. It is part of a comprehensive resource prepared by the New York State Energy Research and Development Authority (“NYSERDA”), the New York Solar Guidebook for Local Governments to help municipal officials engage in informed decision making about the potential benefits, effects, and impacts on the community from solar energy projects.

What does the toolkit do?

Municipalities can use the new Municipal Solar Procurement Toolkit as a guide to converting underutilized municipal property, such as landfills and brownfields into revenue producers through leases to solar energy developers.

What are the components of the toolkit?

The toolkit consists of:

(a) an overview guide to municipal procurement; the Guide notes some of the rules governing municipal leases and in particular County leases, and how to address them;

(b) step-by-step instructions;

(c) information about solar project permitting, inspection, property taxes, land leases; and

(d) ready-to-use templates for a land lease agreement as well as a request for proposals.

As a corollary to the toolkit, NYSERDA makes free technical assistance available to help municipalities implement policies and practices in order to become solar-ready communities.

Effect of relaxed SEQRA regulations: the toolkit complements a set of updated rules adopted by the Department of Environmental Conservation ("DEC") intended to streamline the State Environmental Quality Review Act ("SEQRA") process to encourage sustainable, renewable energy development.

Starting January 1, 2019, the updated regulations expand the number of actions not subject to further review under SEQRA, known as Type II actions, modify thresholds for actions deemed more likely to require the preparation of an environmental impact statement ("EIS"), and require scoping of an EIS. Type II actions include installation of solar arrays on closed landfills, cleaned up brownfield sites, wastewater treatment facilities, sites zoned for industrial use, solar canopies on residential and commercial parking facilities, and the installation of solar arrays on an existing structure not listed on the National or State Register of Historic Places.

With the DEC streamlining the SEQRA regulations, contractors will no longer have to prepare a formal assessment of the environmental impacts of solar projects on brownfields and landfills. Elimination of this step greatly expedites what used to be a lengthy and long drawn out SEQRA review process. Given the already disturbed nature of these sites, the regulations recognize the minimal need for environmental review, and will encourage alternative use of these sites.

Impact: Earlier this year, NYSERDA established higher incentives for solar projects that are built on brownfields and landfills through the Governor's NY-Sun Megawatt Block initiative, which is a $1 billion public-private initiative to expand solar energy. The toolkit provides a pathway to take advantage of the revised SEQRA regulations and increased incentives:

– dead space of a brownfield or landfill can not only be revived but transformed into a renewable energy resource, thereby making that land/site productive once again;

– consumer energy bills will be lowered;

– clean, emission free energy can be produced with no harmful impact upon the environment;

– economic development will be spurred by creating solar industry jobs and generating revenue for the municipalities through the leasing of these sites;

– by virtue of a community solar project, greater access to solar energy is provided; and

– the state's capacity to harness solar power will be expanded, thereby supporting the Governor's mandate that 50% of the state's electricity come from renewable resources by the year 2030.

Streamlined SEQRA regulations, NYSERDA's toolkit, and the financial incentives under the megawatt block program are this state's triple booster shot aimed at propelling the Governor's 50% renewable energy goals by 2030 to combat climate change.

A link to the Guidebook with the newly-added Municipal Solar Procurement Toolkit chapter is available here.

Hodgson Russ LLP

November 28, 2018

U.S. Regulators Require Banks And Bank Affiliates To Amend Contracts With Utilities.

New rules adopted by federal banking regulators will affect many electric power, natural gas, and other contracts between banks or their affiliates and their utility counterparties, including public power, cooperative, and investor-owned utilities. While the regulations are complex and cover a variety of arrangements and scenarios, this Alert highlights those regulations that are likely relevant to most U.S. utilities.

Key regulations affecting bank-counterparty contracts include:

- Requiring contract amendments to incorporate Dodd-Frank legislation enacted in 2010, which blocked the exercise of contract termination and related rights if the bank or bank affiliate faces insolvency at a time when U.S. regulators deem it a global systemically important banking institution (G-SIB) and thus put the bank's insolvency in a special bankruptcy proceeding.
- Extending regulations beyond Dodd-Frank to block a counterparty (e.g., a utility) from exercising certain cross-default rights when an affiliate of the contracting party (i.e., bank or bank affiliate) enters into ordinary bankruptcy proceedings.

Utility contracts affected include:

- Qualified Financial Contracts (QFCs) with a bank or an affiliate of a bank regulated by the Federal Reserve, the Federal Deposit Insurance Corporation (FDIC), or the Comptroller of the Currency.
- QFCs as defined under Dodd-Frank, which includes but is not limited to forward contracts (e.g., ISDAs, EEIs, NAESBs power purchase agreements) and certain swaps, hedges, and commodity contracts that allow termination, liquidation, etc., upon insolvency.

Contract amendment deadlines and obligations include:

- Counterparties must amend contracts by January 1, 2019 (the first compliance date), if they want to enter into new transactions with the bank or bank affiliate after that date.
- Otherwise, affected banks and their affiliates are expected to contact nonfinancial counterparties, such as utilities, to obtain amendments prior to January 1, 2020 (the later compliance date).

Because it is possible that affected banks and their affiliates may inadvertently overlook some contracts or fail to persuade some counterparties to amend their QFCs, regulators have set up other provisions.

- If regulators determine after the compliance deadlines that the levels of noncompliant QFCs held by banks continue to pose a risk to the financial system, they have suggested that they may consider additional rules to address those remaining QFCs.

To amend contracts, regulators have set forth two methods: (1) Send $500 and a letter to ISDA acknowledging adherence to the ISDA Stay Protocol, which is capable of amending any type of QFC (whether it was an ISDA document or not), or (2) Bilaterally amend the actual QFC. The first method is easiest and may offer other advantages over amending bilaterally.

McCarter & English, LLP

November 28, 2018

Report: Since Recession, 10 States, Including Illinois, Operate at Structural Deficits.

A new report by Pew Trusts points to economic improvement for states overall, but highlights ten – including Illinois – whose expenses still exceed their revenues ten years after the Great Recession.

Continue reading.

Watchdog.org

November 30, 2018

Emanuel Gets His TIF Bill.

Illinois lawmakers hand the mayor a victory and defer immediate action on regulating car-sharing firms, as the end of the fall veto session approaches.

Mayor Rahm Emanuel scored a victory on the development front, and a truce was called in a battle over how to regulate car-sharing firms in separate developments late yesterday in the General Assembly's fall veto session.

In the first action, the Senate followed the lead of the House and voted to authorize the City Council to extend by 13 years the life of four city tax-increment financing districts, most notably the Goose Island TIF adjacent to the proposed River North development.

Details of exactly how those TIFs will be used and how much money they will provide have not been released. But according to city officials, tens of millions of dollars likely are headed to infrastructure and related needs in the districts.

Meanwhile, an effort to regulate car-sharing firms such as Turo in the same manner as car rental firms such as Enterprise and Hertz stalled when sponsors of a bill that would have done that failed to call it for an override of a veto by Gov. Bruce Rauner.

The issue had sparked a massive lobbying campaign on both sides, with substantial campaign cash beginning to flow. Sponsors claimed they had the votes, but I'm told they agreed to talk peace after House Speaker Mike Madigan sent word that he'd prefer not to proceed with an override now. Beyond that, a couple of key lawmakers who favored an override were not able to attend this week's session, I'm told.

In a statement, bill sponsors and the American Car Rental Association said they are "encouraged" that both sides have agreed to come to the bargaining table.

"We welcome peer-to-peer car rental platforms to join us to ensure greater consistency, fairness and safety on behalf of the entire industry," said Greg Scott, government relations representative for the association.

The override previously had cleared the Senate. Details were not available on when a compromise might emerge, but it now won't be until at least next year, since lawmakers are scheduled to adjourn for the year later today.

CRAIN'S CHICAGO BUSINESS

BY GREG HINZ

November 29, 2018 06:00 AM

Chicago Mayoral Candidate Wants to Settle City Debts by Taxing the Neighbors.

"… Candidate Bill Daley, son of former Mayor Richard J. Dailey, brother of former Mayor Richard M. Daley, and Emanuel's successor as President Barack Obama's chief of staff (can Chicago's political dynasty get any more incestuous?), is proposing a commuter tax to try to get more money from suburbanites who work in the city of Chicago. … adding to the pension crisis via a new city bureaucracy and then trying to get even more money from a reduced population seems remarkably irresponsible."

Read the full article on: Reason

Scott Shackford | December 3, 2018

New Incubation Program Opens to Help Social Impact Orgs Ready for Opportunity Zone Funds.

Kresge grant to Calvert Impact Capital will send cohort of five potential fund managers through exploratory program

The Kresge Foundation announced today a $390,000 grant to Calvert Impact Capital that will support the Opportunity Zones Incubator, a technical assistance program for social impact entities that are interested in or exploring taking a Qualified Opportunity Fund to market.

Kresge selected five mission-aligned organizations that are exploring ways to direct capital to Opportunity Zones to enter the incubation program, where they will receive technical assistance around potential fund structures as well as assistance related to legal, tax and accounting considerations. Holland and Knight and Plante Moran will both assist Calvert Impact Capital with providing support to the organizations.

The Opportunity Zone legislation in the Jobs and Tax Act of 2018 provides tax forgiveness to investors who invest in more than 8,000 designated, low-income Census tracts across the U.S.

Kresge, in partnership with The Rockefeller Foundation, released a call in the summer of 2018 for letters of inquiry from potential Opportunity Zone fund managers, drawing more than 141 responses. From those applications, Kresge has selected a dozen to move forward through either this technical assistance incubator program or into a due diligence process for impact investments.

Over the coming months, The Rockefeller Foundation intends to select additional fund managers to participate in the technical assistance program alongside Kresge.

The five organizations that are exploring starting an Opportunity Zone Fund through this incubation program are:

- Craft3, a regional nonprofit that makes loans in Oregon and Washington to strengthen the resilience of businesses, families and nonprofits.
- New Orleans Startup Fund, a nonprofit venture fund, established by Greater New Orleans business and community leaders, that provides seed capital and technical assistance to early-stage firms that demonstrate significant growth potential.
- Gulf Coast Housing Partnership. which works in the Gulf Coast region to promote community and economic development through various programs implemented to deliver effective and meaningful results.
- **Renaissance HBCU Opportunity Fund**, a partnership between Renaissance Equity Partners and an affiliate of the HBCU Community Development Corporation to invest in value-added and opportunistic real estate on or near the campuses of Historically Black Colleges and Universities.
- Fifth Ward Community Redevelopment Corporation, which seeks to enhance quality of life for individuals and families living in Houston's fifth ward, eliminate blight, attract investment and resources, encourage commercial and business development, coordinate government and public service, and offer a sense of destination and creative placemaking.

The Opportunity Zones initiative takes a free-market approach unmatched by any federal spending guarantees, which means that designation as an Opportunity Zone doesn't mean that a community will receive money for schools, health care or other public services, or even that they'll receive any money at all.

"These five organizations understand deeply what it takes to invest in low-income communities," said Rip Rapson, Kresge's President and CEO. "We hope through this incubation program they can prepare impact funds that will test whether the Opportunity Zones legislation will support impact investing methods, in which social impact outcomes are weighted heavily. We hope this sets this new market on a trajectory more likely to serve low-income communities well."

Kresge's Social Investment Practice sees Opportunity Zones as a potential benefit to low-income communities, but only if early market movers prioritize community impact and measure and report on their outcomes.

"The goal of this effort is to strengthen these fund managers' investment concepts through high-quality advisory services," said Kimberlee Cornett, Kresge's managing director of the Social Investment Practice. "Through partnership with Calvert Impact Capital, these managers will be better prepared to approach investors and further develop their programmatic thesis for future investment considerations."

Calvert Impact Capital has been working in low-income communities across the U.S. for nearly 25 years and is committed to ensuring that the Opportunity Zone tax incentive is leveraged in a way that provides inclusive economic opportunity and growth for people living and working in designated zones.

"We want to fill gaps to more efficiently move money into these communities," said Beth Bafford, vice president of Syndications and Strategy at Calvert Impact Capital. "This is an incentive that defers heavily to the market in its implementation, and early movers will define it. We want to show investors what good can look like."

November 29, 2018

How Municipal Bonds Withstood California's Inferno - So Far.

The California fires haven't sparked a sell-off in the secondary markets in a sampling of muni bonds in devastated areas.

"Muni investors are either unconcerned or do not fully understand the extent of the fire damage and its impact upon these bonds," said Daniel Berger, a senior market analyst with TM3/MMD and Refinitiv, the financial and risk business of Thomson Reuters (TRI).

Berger took a look at trading for the Paradise Redevelopment Agency, Santa Monica-Malibu Unified School District and Butte Glenn Community College District.

In the three major fires burning in the state, Paradise has been most affected as roughly 90% of the town has burned, according to fire officials.

The $1.47 million in Paradise RDA debt issued in 2016 has been thinly traded, Berger said.

After the fire, S&P Global Ratings placed the Paradise Unified School District on CreditWatch with negative implications. The school district's only direct debt was certificates of participation that have since been defeased, according to information on the Municipal Securities Rulemaking Board's EMMA website.

On Nov. 6, voters in the Paradise school district passed a $61 million general obligation bond measure. The devastation throughout the community and its tax base will complicate any plans to use the authorization.

The California Teachers Association said the Camp Fire destroyed at least five of the nine schools in Paradise and that many educators lost their homes. Paradise USD had an estimated 3,165 students in fiscal 2017.

Santa Monica-Malibu-Unified School District issued $120 million in general obligation bonds in September, but there does not appear to be an elevated level of concern there based on trading, Berger said.

"We used the MMD Trade Tracker and did not see any blocks of more than $1 million trade since November 1," Berger said.

Malibu's four schools were evacuated as the Woosley Fire that started Nov. 8 in Ventura County spread south to Malibu. The California Department of Forestry and Fire Protection reported that three lives were lost and 1,500 buildings were destroyed by the fire that burned 97,000 acres. That fire was 97% contained as of Tuesday morning.

Malibu's three elementary schools are in "good condition," with some landscaping damage to Malibu High School, according to news reports.

Malibu had 5,589 households with a medium value of $1.8 million, according to U.S. Census as of July 1, 2017. Santa Monica has 46,463 households and homes with a medium value of $1.08 million.

The joint school district agreed to a plan to split into two in March with a 50-year revenue sharing

plan. More than 80% of the students in the joint district resided in Santa Monica. Malibu has 1700 students enrolled in its four schools.

None of the Butte-Glenn Community College District campuses are in the fire zone, but the loss of homes in Butte County, which has a population close to 230,000, could affect assessed value — particularly if homeowners don't decide to rebuild. The county had 85,000 households as of the July 1, 2017, census.

The community college district is located south of the Camp Fire, the state's most destructive historically and a fire that has resulted in 79 deaths, destroyed roughly 17,000 homes and businesses and consumed 151,373 acres. That fire was 70% contained as of Tuesday morning, according to CalFire.

Berger also used the MMD Trade Tracker to look at three series of bonds issued by the Butte-Glenn Community College District and said he found that the bonds were trading better than MMD's Triple A scale.

News of the fires has prompted investors to question issuers on California deals that have priced since fire began to ravage areas of the state, particularly since most syndicates and sales desk are New York-based, but pricing has appeared to be more relative to the individual credits, according to one banker. The California deals that priced last week were in areas that have not been affected by fire.

By Keeley Webster

BY SOURCEMEDIA | MUNICIPAL | 11/21/18 07:03 PM EST

Fitch Warns of Negative Credit Effects on Reinsurance from California Wildfires.

The "downside credit risks" from the California wildfires are the most pronounced for investor-owned utilities, which could face large liabilities if IOU equipment is found to have ignited the fires.

And negative credit implications could emerge for the reinsurance industry and the U.S. public finance sector, given the potential for a state-wide economic slowdown, damaged infrastructure and associated environmental issues, according to a report from Fitch Ratings released on Wednesday.

The utilities sector is the most directly exposed to credit risk from the wildfires, with Pacific Gas and Electric's (PG&E:BBB-/RWN) and Southern California Edison (BBB+/Stable) experiencing downgrades earlier this year due to potential outsized liabilities from wildfires, Fitch says.

"The increased frequency of wildfires and sheer magnitude of potential exposure, coupled with an uncertain path to recovery, meaningfully expands business risk for electric utilities operating in California," the ratings agency said.

Industry data provider CoreLogic this week reported total losses from the wildfires in Northern and Southern California could reach from $15 billion to $19 billion.

A report that PG&E filed with regulators on Tuesday shows that in the days before the Camp Fire, California's deadliest wildfire, erupted near a PG&E Corp. power line during a windstorm, the

company kept a close eye on the weather, warned customers it might shut off electricity in the area, and finally decided conditions weren't bad enough to warrant it.

Fitch estimates that PG&E's financial exposure for the 2017 wildfires could be roughly $15 billion, "with large incremental liability possible" if it is found that PG&E equipment was involved in ignition of the 2017 Tubbs and 2018 Camp wildfires. PG&E common stock has lost more than half of its value and spreads have widened significantly.

A new data analysis from BuildFax released on Wednesday shows construction performed on properties in Butte County, where the Camp Fire burned, rose 8.57 percent year to date compared to January through October 2017.

"This suggests carriers may not have accurate assessments of the wildfire's true damage on their books, which could pose challenges in the recovery phase," the BuildFax analysis states.

The Fitch report shows that credit implications for other U.S. corporate sectors, including homebuilding, oil and gas, metals and mining, transportation, healthcare, retail, and agriculture, should be minimal.

"Insurance will partially cover losses with operational disruptions likely temporary and not prolonged enough to negatively affect individual credit profiles," the report states. "Moreover, many issuers including those mentioned above along with lodging and leisure and media and entertainment are either diversified geographically or by type of business properties."

According to Fitch, the recent California wildfires mark a second consecutive year of major wildfire losses for reinsurers as the industry incurred $11.5 billion of insured losses in 2017.

Prior to this year's fires, California wildfires in July 2018 resulted in $845 million of direct-insured losses.

"Insured losses, while certainly significant, are expected to remain within the estimated ranges used by insurance industry when pricing catastrophe risk into premiums," Fitch stated. "Furthermore, insurance companies with exposure to the California wildfires are generally the larger, more capitalized national carriers that, as a group, have high insurer financial strength ratings."

Insurance Journal

November 28, 2018

Kroll Bond Rating Agency Affirms Assured Guaranty Corp.'s AA Financial Strength Rating with Stable Outlook.

NEW YORK–(BUSINESS WIRE)–Kroll Bond Rating Agency (KBRA) affirmed its insurance financial strength rating of AA, with a Stable Outlook, for Assured Guaranty Corp. (AGC), a financial guaranty subsidiary of Assured Guaranty Ltd. (together with its subsidiaries, Assured Guaranty)(NYSE:AGO) on November 30, 2018.

In the report, KBRA noted that "AGC's financial position is strong" and cited the following key strengths to support its rating conclusion:

- AGC demonstrates the "ability to withstand KBRA's conservative stress case loss assumptions across AGC's insured portfolio."
- AGC's "substantial and continuing runoff in higher risk components of the Company's portfolio."
- AGC's "experienced management which operates with a mature and high-functioning operating platform supported by strong governance and risk management systems."
- The **Stable Outlook** for AGC reflects "KBRA's stress case loss analysis which incorporates significant deterioration in the distressed sectors of AGC's portfolio from current performance, which should contribute to stability if ultimate losses do not approach or exceed these modeled levels."
- Additionally, although it acknowledged that some recent developments may signal a more positive path forward for Puerto Rico, KBRA's analysis incorporated high severity loss assumptions applicable to AGC's Puerto Rico exposure and also determined that Puerto Rico ultimate loss recoveries would have to approach zero to place downward pressure on AGC's rating.

"Once again, KBRA recognized the strength of AGC's financial position, affirming AGC's AA stable rating. KBRA also conducted a detailed analysis of AGC's corporate governance, credit and risk management processes and consider them reflective of the industry's best practices," said Dominic Frederico, President and CEO of Assured Guaranty, adding: "KBRA also noted that our leverage ratios remain at historic lows."

AGC is part of Assured Guaranty, the leading provider of financial guaranty insurance. Including AGC and its affiliates, the group has $12 billion of claims-paying resources. Assured Guaranty generates approximately $400 million of annual investment income from its high-quality, fixed-income investment portfolio. On average, $2 billion of municipal bonds insured by Assured Guaranty companies trade each week.

AGC affiliates Assured Guaranty Municipal Corp. (AGM) and Municipal Assurance Corp. (MAC) are both rated AA+, Stable Outlook, by KBRA. Additionally, AGC, AGM and MAC are all rated AA with Stable Outlooks by S&P.

- Fitch Ratings: Driverless Cars Leave Parking Assets at Risk
- S&P Credit FAQ: Criteria Considerations For Mass Transit Agency Ratings
- Fighting Fires With "Forest Resilience" Bonds.
- When a Local Government is 'Unwilling' to Cover Debt Costs.
- Renewable Energy: Leveraging the Opportunity Zones Tax Incentive to Improve Returns on Renewables, Storage Plus, and Standalone Storage.
- After the Retail Apocalypse, Prepare for the Property Tax Meltdown.
- S&P U.S. Public Finance State & Local Government Credit Forum, New York
- And finally, Practice Tip of the Week – Tax Division is brought to us this week by *Thompson v. Molde*, in which delinquent taxpayer's arguments included the following clever, clever gambits (among many, many others): "All bills are obligations of the United States as per U.S.C. TITLE 18 > PART I > CHAPTER I > Sec. 1. > Sec. 8. -Obligation or other security of the United States defined"; "It is true that a woman cannot sue or be sued under the common law unless under the doctrine of 'Coverage' or 'Coverature'"; "Cancelled stamps are legal tender for all debts, public and private as well as all other obligations of the United States"; and "The NDCC is null and void. It is Roman Civil Law. It is also a combination of Socialism, such as Marxism, Communism, and National Socialism, (Nazism)." The Supreme Court of North Dakota remained unpersuaded. Please feel free to mock the benighted Thompsons. We're quite sure they aren't heavily armed.

FCC Could Slash County Franchise Fees.

Counties would stand to lose millions of dollars if cable TV franchise fees are cut under a deregulation proposal being considered by the FCC

Cable TV franchise fees paid to counties and other local governments could be slashed under a deregulation proposal being considered by the Federal Communications Commission, according to the National Association of Telecommunications Officers and Advisors (NATOA).

How much could counties lose? It could be in the millions of dollars, according to Nancy Werner, general counsel for NATAO. “Lawyers I have talked to have said 30 [percent] to 40 percent and others have guessed at 100 percent,” she said.

There’s room for a considerable amount of debate because the FCC is proposing to allow cable companies to deduct the fair market value for a wide range of public benefits from their franchise fee obligations, namely public, educational, and government (PEG) channel capacity and transmission. “The fair market value of say a channel in a small town is going to be more valuable than say a channel in a large urban area,” Werner said.

These channels “are a way for a community to have a voice,” she said.

In Montgomery County, Md., Mitsuko Herrera, a director in the county’s technology services department, said that “cable operators have passed through the cost to construct and operate these cable channels to subscribers over the past 15-25 years, and now the FCC would allow cable operators to collect again the value of these channels.”

In some smaller jurisdictions, Herrera noted, the “value” of the cable channel may be more (because value is not capped by the FCC) than what the jurisdiction receives in franchise fees. “So effectively, the FCC is inviting cable operators to force smaller jurisdictions, where there is already limited newspaper and almost no television news, to pick between operating cable channels that provide the public with access to board meetings and community information, or receiving any funding from franchise fees,” she said.

In September, the FCC voted to confirm that a local franchise authority’s ability to regulate cable service does not extend to broadband and other non-cable TV services and that in-kind commitments those authorities get from providers as part of franchise agreements count toward the 5 percent franchise fee cap, with the exception of providing public, educational and government channels. The Commission is considering applying the proposed new rules to state-level franchising actions as well, not just local franchising.

A group of 11 senators, led by Sen. Ed Markey (D-Mass.), have written to FCC chair Ajit Pai asking him to rethink the proposal: “Currently, towns and cities across the country are permitted to require as part of cable franchise agreements that cable operators meet demonstrated community needs by setting aside channels for public, educational or governmental stations,” they wrote.

“However, the commission’s proposal would permit cable companies to assign a value to these channels, and then substract that amount, and the value they place on any other in-kind contributions, from the franchise fees the cable operator pays the local community,” they said.

The senators noted that “our constituents watch PEG channels to monitor local government proceedings, hear the latest news from nearby college campuses and consumer other locally

produced programming including emergency alerts and directives. We fear this proposal will result in a dire drop in resources for PEG channels throughout the nation."

There are more than 1,500 public, educational, and governmental studios/operations and an estimated 3,000 PEG channels in America. Religious programming represents 30 percent of local access programming. Tens of thousands of hours of programming is produced by veterans, seniors, the disabled and ethnic, minority and second language groups.

Other senators signing the letter include Senators Tammy Baldwin (D-Wisc.), Maggie Hassan (D-N.H.), Ben Cardin (D-Md.), Jeff Merkley (D-Ore.), Bernie Sanders (I-Vt.), Gary Peters (D-Mich.), Ron Wyden (D-Ore.), Pat Leahy (D-Vt.), Richard Blumenthal (D-Conn.), and Elizabeth Warren (D-Mass).

National Association of Counties

By Mary Ann Barton

Nov. 12, 2018

Fitch Ratings Updates U.S. Public Finance Prerefunded Bonds Rating Criteria.

Fitch Ratings-New York-20 November 2018: Fitch Ratings has published an updated criteria report titled 'U.S. Public Finance Prerefunded Bonds Rating Criteria.' The report replaces Fitch's criteria report of the same title dated Nov. 21, 2017. No changes to the ratings of existing transactions are anticipated as a result of the application of the updated rating criteria.

The full report is available at www.fitchratings.com

Joseph Staffa
Senior Director
+1-212-908-0829
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

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

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

Additional information is available on www.fitchratings.com

Fitch Ratings: Driverless Cars Leave Parking Assets at Risk

Fitch Ratings-New York-26 November 2018: The advent of autonomous vehicles could negatively affect parking assets over time, according to a new report from Fitch Ratings.

With autonomous vehicles likely to operate through ride-sharing and accessing cheaper parking locations, revenues will be adversely affected for not just standalone parking facilities in urban areas, but for those housed in airports and universities. Where this is most likely to play out is among younger generations that are moving to large cities in greater numbers. ‘Millennials and Generation Z are most likely to embrace autonomous vehicles since they are already frequent users of ride sharing and are far less likely to obtain a driver’s license,’ said Senior Director Chad Lewis.

Standalone urban parking assets stand to be most susceptible to the effects of driverless cars as they become more commonplace. Once the technology is standardized enough for autonomous vehicles to drop off individuals and travel to cheaper parking spaces further away from the urban centers instead of clogging the facility looking for parking, revenues will decline. Likely to stand in the way of more widespread use of driverless cars, however, are several high profile accidents involving these vehicles of late. Additionally, the public will have to endure inevitable teething problems as the technology is perfected.

Some airports are already seeing their revenue streams significantly disrupted from transportation network companies like Uber and Lyft. In response, these airports are now charging fees for these companies to pick up and drop off passengers while others have started parking clubs that provide guaranteed spaces within close proximity to the terminal for its members. Driverless cars will have less of an effect on university parking until they capture a large share of the market. That said, younger students are already relying on ride sharing and public transportation to greater degrees while professors and other university staff are not likely to shift from their current mode of transportation anytime soon.

Ratings implications are highly unlikely in the near future for the seven Fitch-rated parking facilities since autonomous vehicle technology is still very much in development and will keep driverless cars from widespread use for at least for the next decade. ‘For highly leveraged transactions, especially those with bullet debt, structural features such as cash sweep triggers and management strategy to timely delever and maintain high coverage ratios in outer years will mitigate longer-term risk. Parking facilities under public ownership with amortizing structures should be able to pay down debt with relative ease,’ said Lewis.

Longer term, underutilized parking assets could have a second life. ‘Some existing car parks are already developing additional revenue streams including car cleaning areas, valet parking services and EV charging points,’ said Lewis.

‘The Effect of Autonomous Vehicles on Parking Assets’ is available at ‘www.fitchratings.com’

Contact:

Anne Tricerri
Associate Director
+1 646 582-4676
Fitch Ratings, Inc.,
33 Whitehall Street
New York, NY 10004

Chad Lewis
Senior Director
+1 212 908-0886

Media Relations: Sandro Scenga, New York, Tel: +1 212 908 0278, Email:

sandro.scenga@thefitchgroup.com

Additional information is available on www.fitchratings.com

Smaller Utilities Most Exposed to California Wildfire Risk: S&P

- **New report identifies which areas at heightened risk**
- **Isolated towns will struggle after fires when people resettle**

After major natural disasters in the state, utilities are typically required to front the costs of repairs and are only reimbursed by the Federal Emergency Management Agency and state government afterward. Utilities in towns that are small or poor, on the edge of flammable wilderness, or far from a major city will have particular trouble in paying for those costs upfront or reestablishing service quickly so they can resume collecting revenue, according to the report by credit analyst Tim Tung.

California has been rocked by deadly and destructive fires that burned across the state in recent weeks. The most severe, the Camp Fire, destroyed thousands of homes and other structures, killed 79 people with about 700 still missing, and burned over 151,000 acres in the northern part of the state.

California's fire season is set to get longer and more severe, the report states, if recent research on California's climate holds true. The report warned that "in the future, the state will experience shorter, more concentrated rain seasons" as well as "longer dry periods during which fires may threaten."

Continue reading.

Bloomberg Markets

By William Green

November 20, 2018, 1:28 PM MST

S&P Credit FAQ: Criteria Considerations For Mass Transit Agency Ratings

In most cases, the obligor or related entity is also the issuer. However, in others–for instance, when the issuer is primarily a vehicle for issuing and servicing debt or has relatively little control over pledged revenues apart from payment of debt service–we may exercise analytic judgment to identify the obligor or related entity in evaluating the operating linkage.

Continue Reading

Nov. 14, 2018

Fighting Fires With "Forest Resilience" Bonds.

The rocky Yuba River meanders in a remote corner of California. It's here that insurers, environmentalists and venture capital firms are joining forces to create a "Forest Resilience Bond" aimed at solving a multibillion-dollar problem plaguing the wildfire-ravaged state.

Nearly 100 people have died and 1,000 are unaccounted for from the two most recent mega-fires, both of which remain active. And in what the Association of International Fire Chiefs now calls "a year-round fire season" for this and other tinderbox states, more destructive blazes are all but a certainty.

One major factor behind the fires: an overabundance of dry brush from a seven-year drought and millions of dead trees from an influx of bark beetles – none of which is cleared away until a campfire spark or downed power line ignites these fuel-rich forests. Meanwhile, the money budgeted for forestry conservation or to hire more firefighters often pays instead for paramilitary equipment, such as airplanes and helicopters.

Funding for forests

Enter Blue Forest Conservation. The startup, launched by University of California, Berkeley business school graduates and backed by the World Resources Institute, works to raise money to save the forest through a public-private partnership. To do so, it created the first "Forest Resilience Bond."

"There are 58 million acres of forest at high risk of wildfire in the U.S.," said Linc Walworth, vice president of investments for CSAA Insurance Group, one of the bond's backers. "If the concept works, there will be lots of opportunity for forest restoration bonds, and they could become a permanent source of financing for our forests."

A $4 million bond is small relative to the massive economic losses caused by infernos such as the "Camp Fire" in Northern California and the "Woolsey Fire" around Los Angeles, but it could be seed money for what is to come. Blue Forest's goal is to shift the financial burden of preventing fires from the state's overtaxed fire and forestry services to private industry. The California fire agency has already exhausted its $443 million budget and needs another $234 million to continue the fight.

The bond works by tapping private capital to maximize forest restoration without stressing the already overtaxed state budget. CSAA, along with an investment firm and two foundations, will fund the investment. The National Forest Foundation will use the bond to hire private contractors to "thin" the forests by cutting down trees, perform "controlled burns" and trim brush that could fuel fires in the 15,000-acre Tahoe Forest above the Yuba River.

The money will be repaid over five years by the Yuba Water Agency, a public utility, and though a grant from California. The utility benefits from cleaner water. Its hillsides, ravaged by fire erosion, are also prone to flooding because scorched soil lets water flow downhill unimpeded. The state benefits because the work will be done in less than half the time it would take the state forest service to do it.

Forest resilience bonds could also amount to a good deal for investors. CSAA will provide $1 million, while The Rockefeller Foundation, the Gordon and Betty Moore Foundation, and a unit of Calvert Investments (a fund known for so-called responsible investing), will contribute the rest. They will realize a 4 percent return on their investment, better than the 3 percent from an average bond.

Getting insurers on board

As an American Automobile Association insurer, in theory CSAA will get an additional bonus: fewer payouts on property claims from fire damage.

Insurers will have to pay an estimated $13 billion this year to repair and replace homes and businesses burned in the California fires. As a result, Walworth said it makes sense for big property insurers to get involved once they see that the small pilot program works. “If a market develops for these types of bonds, we think other insurers will see the benefit in making similar investments,” he said.

In 2017, California set a state record, with more than 9,000 fires torching 1.4 million acres, burning down 10,000 homes and killing 47 people. This year will be much worse, topping all previous statewide disaster costs.

President Donald Trump, who visited the fire-ravaged state on Saturday, has been critical of its forest management, even threatening to withhold federal funds. “They should take a lesson from Finland, where they do a lot of raking and cleaning… and they don’t have this problem,” he said in visiting Paradise, California, a town devastated by the Camp Fire.

So does it make sense for big insurers like Allstate, Geico and State Farm, which have billions invested in California, to help underwrite bonds or other investments meant to fund the protection of forests? As of year-end 2017, the property casualty insurance industry’s “policyholders’ surplus” – the amount of money available to pay claims – reached an all-time high of $752.5 billion, up more than $50 billion from the year earlier and at its strongest level in history.

“The industry is extremely well capitalized and financially able to pay very large-scale losses in 2018 and beyond,” according to a statement by the Insurance Information Institute, which represents the industry.

Or, as Blue Forest suggests, it could join forces with other private investors and – just possibly – cut those losses.

CBS MONEYWATCH

by ED LEEFELDT

November 20, 2018, 6:51 AM

CalSavers: A Pathway to Secure Retirement for 7.5 Million Californians

Hollywood has created a popular image most Americans have of California, where we all live in a sunny paradise with homes lining the beach or in lush suburbs. With a state brimming with cutting-edge companies, a highly skilled workforce, and the world’s fifth-largest economy, there’s no argument that, for some of us, this picture can be somewhat accurate. But there’s another, darker image of California — of workers, young and old, struggling to make ends meet, with each generation on track to retire poorer than the last. While our state has reached new heights of wealth and prosperity, still, today, 75 percent of low- and middle-income retirees rely solely on Social Security for their livelihood, and nearly half of California workers are projected to retire into economic hardship.

Demographic trends portend an even more dire outcome. The State Department of Finance has

found that Californians over 65 are the fastest-growing segment of the population — expected to more than double over the next 40 years. This means even higher rates of poverty and homelessness among older Californians, which will inevitably put an even greater strain on publicly funded health and human services.

At the same time, many younger Californians, including thousands working in the gig economy, lack access to retirement savings plans, like 401(k)'s at their job, and are on track to have little to nothing saved for retirement.

Add to this, crushing housing costs, a shortage of college-educated workers, and depressed conditions in much of Inland California, and it's not hard to envision a bleak scenario for the Golden State.

That is why State Senator Kevin de León and I have created a bold new program to secure a brighter financial future for 7.5 million hard-working Californians — over 40 percent of the state's workforce. Later this month, we will begin to roll out CalSavers, a state-run program that will help workers — from Generation Z to baby boomers — save for their retirement. CalSavers will help facilitate the most ambitious expansion of retirement security since the passage of Social Security more than 80 years ago. CalSavers will first launch a pilot with a small group of employers to fine tune the program before launching statewide in 2019.

CalSavers will give employees access to a completely voluntary, low-cost, portable retirement savings vehicle, with professionally managed investments, overseen by a public and transparent board of directors, for which I have the privilege of serving as chairman. In addition, the program is fully sustained by competitive participant fees, which will be reduced further as the program grows. There is no taxpayer cost; similarly, there are no fees for employers.

Following the pilot, and beginning in mid-2019, the program will open fully for statewide enrollment. Eligible employers of any size will be able to register at any time, but eligible employers with 100 or more employees, who choose not to offer a retirement plan, will have no more than one year from the full program launch date to register. Employers with 50 or more employees will be required to register within no more than two years, and those with five or more employees in no more than three years.

In 2012, California was the first state to enact legislation aimed at remedying the personal financial crisis faced by millions of working people here and across the country. We were the first to enact legislation establishing a board and program, providing a model for other states, including Oregon and Illinois, which have followed our lead and done a great job of leading on implementation.

Securing California's economic future requires a range of bold initiatives that address multiple challenges. That's why I have joined with leaders in government, business, nonprofit, and labor who are stepping up, through legislation and other actions, to address critical issues such as housing, homelessness, and support for seniors and veterans.

We cannot measure success by the wealth we create for our most privileged citizens. Indeed, we are only as successful as our ability to significantly improve the lives of all Californians. This means affordable housing, good jobs, and access to quality education and health care. And, just as importantly, it means creating an easy path to retirement security for all working Californians. That is the mission of CalSavers and the reason why we are fervently committed to its success.

BY CALIFORNIA STATE TREASURER JOHN CHIANG

NOVEMBER 20, 2018

[Clearing The Smoke: Which California Municipal Utilities Are Most Exposed To Potential Severe Or Catastrophic Wildfire Damage?]

While many of the California utility issuers that S&P Global Ratings rates are exposed to some level of natural disaster risk, the incidence of catastrophic damage is extremely rare. In the past, we have typically observed wildfires that have damaged only a minor portion of an overall service area or disasters in which the severity of damage was manageable such that utility operations were restore…

Continue Reading

Nov. 20, 2018

When a Local Government is 'Unwilling' to Cover Debt Costs.

Lawmakers in Platte County, Missouri are hesitant to assist in picking up the tab for bonds related to a retail project.

With a payment deadline looming at the end of the week, there's little question Platte County, Missouri has the cash to help cover debt service costs for bonds linked to a struggling retail shopping center.

But commissioners there have voiced opposition to doing so—at least until there is a new plan in place for how the debt will be paid going forward. The county is also taking action in court, seeking a ruling that confirms it has no legal obligation to assist in paying off the bonds.

Credit ratings agencies have taken notice of the situation, and characterize it as a "willingness to pay" issue. They've responded by whacking the bonds and the county with ratings downgrades and have warned a default could be on the horizon for the bonds.

With about 101,000 residents, Platte County encompasses an area that sprawls north from Kansas City, along Missouri's border with Kansas.

Census Bureau data show that the county is more affluent than the city itself, with a median household income between 2012 and 2016 of $70,879, compared to $47,489 in the city, and a poverty rate estimated to be just 6.1 percent, versus Kansas City's 18.3 percent.

Todd Graves, an attorney for the county, said by phone last Tuesday that the three-member board of commissioners hasn't decided how to handle its possible share of the debt payment associated with the local shopping center development, known as Zona Rosa.

By making the payment, the county would help to offset sales tax revenue shortfalls in a pair of special taxing districts.

"They haven't told me what their decision is," Graves said, "and I don't know when they'll make that decision."

“The nature of the lawsuit,” he added, is to get a court ruling “so the county can make its decision with a clearer understanding of the law.”

There’s been at least a dozen or so instances dating back to the early 2000s where similar debt deals have turned sour, but the problem is not of epidemic proportions, said Al Medioli, a senior vice president with the credit ratings agency Moody’s Investors Service.

One example is an arrangement in Buena Vista, Virginia where the city ended up in court, and at risk of losing its city hall, after a default on bonds issued in 2005 for a golf course.

Another occurred in Moberly, Missouri and involved debt issued for an artificial sweetener plant project, which failed, with the former CEO of the company, Mamtek, US, Inc., sentenced to prison for theft and fraud.

“We’re seeing a number of instances in recent years where communities have issued this kind of debt for projects that they thought would be self-sufficient and then when they weren’t self sufficient, they were like, ‘oh, we don’t want to pay,’” Medioli said.

“Some of these have been very wealthy suburban districts, or suburban cities, that clearly have the ability to pay,” he added, noting that “there’s always a story to these things.”

Route Fifty

By Bill Lucia,
Senior Reporter

NOVEMBER 25, 2018

State Revenue Volatility and Optimal Reserve Size Are Directly Linked.

Comparison of states provides insight into their ability to weather an economic downturn

The amount of money a state takes in fluctuates from year to year, with a range of factors influencing this volatility. Those factors can include specific tax revenue sources, the state’s economic profile, federal budget changes, and unforeseen events such as natural disasters. Although each state’s revenue swings may be unique, all face the challenges associated with managing these ups and downs.

Policymakers can use reserves to help offset revenue declines during down periods, such as recessions. But how much a state should hold in its reserves—its savings target—can vary as well, and for many reasons. For example, leaders in one state might have a higher risk tolerance than their peers, meaning they are more willing to save less than enough for the next downturn. Some may more routinely use other budget tools, such as raising revenue or cutting spending, to close a budget gap. These alternative approaches can reduce reliance on reserves.

However, revenue volatility remains a primary factor influencing optimal reserve size. In general, states with greater revenue volatility need to save relatively more than do those with less fluctuation. High revenue volatility means that tax collections tend to drop more dramatically during economic downturns.

Continue reading.

Route Fifty

By Mary Murphy and Steve Bailey

NOVEMBER 20, 2018

Demographic Destiny: The Impact of an Aging, Moving Population on Municipals.

An aging, increasingly urban population will create revenue challenges for municipalities while increasing demand for hospital and other infrastructure bonds.

Every sector of municipal finance will face new opportunities and risks posed by this demographic shift as the last of the baby boomers retire and millennials begin to buy houses and settle down, according to a report issued by Moody's Investors Service last week.

The primary drivers of this demographic challenge for state and local finances are population growth and an aging labor force, Moody's said.

"The population of the U.S. has been steadily aging over the last decade and will continue to do so through 2055," the report says, adding that in another shift, people have been moving to cities from rural areas. Over the last 100 years, the percent of the U.S. population residing in an urban area has steadily risen and the shift – from rural to urban – is expected to continue.

"The working-age population is growing at a pace similar to overall growth of the total population," the report said. "Approximately 63% of the U.S. population is working age (ages 15 to 64), and we expect that number, as well as the age at which people retire, to continue to rise. Millennials represent the largest portion with the most rapid growth, at 56 million working age in 2017."

Henry Cisneros, former U.S. secretary of Housing and Urban Development and former San Antonio mayor, said he sees dramatic contrasts between places and their economic prospects and their ability to fix and to expand their economies.

"We can look at the problems through two templates," said Cisneros, now a partner at Siebert Cisneros Shank & Co. "In the first, we can look at some of the basic trends — an aging of some the traditional populations, which is very dramatic, where those over 65 will be doubling, while those over 85 years will be tripling in the next 18 years."

Boomers will be earning less, requiring more services, drawing Social Security checks and moving to downsized housing with property accessorized for older residents, Cisneros said.

And the new younger populations will be much more diverse than the rest of the county. They will create educational needs and new schools along with new forms of technology and computer literacy. The upcoming population will also have to face new problems, arising from outsourcing, part-time work, as well as the continuing effects of changing technology, such as artificial intelligence and what that may mean for many jobs.

Another way to look at the scope of the changes is to view the regions across the U.S., where some

are growing dramatically while others are seeing slower job creation and population growth, Cisneros said. Some areas in the growing regions will have to tap into public finance to support economic progress.

"The traditional Sun Belt, bicoastal areas, Boston and Washington and along the West Coast from Washington to Arizona will require more schools, better roads, expanded water systems along with airport development, seaports, rail, logistics such as warehouses and freight systems, and new communication systems to support growth in those areas."

In contrast, he said other stressed areas — such as some of those in the Midwest — will have to oversee a process where managing decline becomes the priority. This is where slow growth combines with a contracting population, where there is an outmigration of younger people while leaving an older population along with aging infrastructure like bridges and water systems.

"It's very clear that public authorities within the growth areas will have to access public debt," Cisneros said. "But that won't be enough — we can't do it all with public debt — many states and localities have debt caps and other restraints."

He said America need to address new forms of financing, deploying private capital into public works. "The country needs to be more imaginative and creative with private and institutional capital."

Other places that are managing decline — such as those in the Midwest — will have to face some hard decisions, such as consolidating services and closing schools. And aging demographics can translate into an inability to generate the revenue to preserve existing infrastructure.

These are the diverse forces across the country, which have profound implications for public finance, he said.

"Moody's put out a brilliant report and it is critical that public officials read it and understand it, not only at the local level, but at the national level," Cisneros said.

He stressed that a discussion about a national infrastructure plan was both timely and urgent. "After these elections," he said, "I am hopeful there can be a bipartisan consensus that infrastructure needs to be at the top of the priorities for the nation. We need to bring up the level of the need — and do it in a national template — not just empowering localities but also finding a national role to fill in the gaps."

Other also looked at patterns of change in migration.

"Shifting demographics are important, but of at least equal concern is the migration flow in and/or out of cities and states, and what impact those changes have on tax revenues for states and cities," said Stephen Taddie, managing partner at Stellar Capital Management. "The analysis cannot be ignored by state and local leaders, but sadly, in some cases, officials kick the can down the road for someone else to deal with. We see the results in a number of old Rust Belt cities, where infrastructure is crumbling, social and community services are lacking, and debt levels are spiraling out of control. Forecasting population flows is important in forecasting tax revenue, for if people are fleeing the ship, those remaining split an ever growing liability fewer ways, until the system breaks down."

"It's a situation that seems to be the same as we have seen in our latest State of the States report," said Paul Mansour, managing director and head of municipal credit research at Conning. "We don't see any dramatic changes over the short term. Rather, there is a gradual change in the population over the long term."

He said that outside of states and cities with out-migration, like Illinois and Chicago, the population shift was more important to local governments. He said they would continue to be looking at housing stock and prices in the years ahead to determine the effect that these shifts will have.

The aging population may buoy the municipal bond market into the future, said Anthony Tanner, senior vice president at Aquila Investment Management.

“It is likely to support munis because there will be a significant demand — and there will be a plentiful supply of capital to upgrade infrastructure projects that are needed all across the country,” said Tanner, lead portfolio manager of Aquila’s Tax-Free Trust of Arizona.

He also said shifts could be seen in certain sectors, especially health and hospitals, citing his own experiences in Maricopa County.

“I’ve lived here for 15 years and I’ve seen multiple hospitals expand their facilities,” he said, adding that with an aging population it also bodes well for bonds that back senior living and continuing care facilities. “It will be good for those type of bonds,” he said.

Tanner also noted that it is vital for portfolio managers to have a local presence, so that they could monitor changing demographic trends more effectively.

“A local presence can make a significant difference,” he said. “You can observe nuanced changes in localities just by being on the ground there — such as growth in infrastructure. It’s easier to determine the impact when you’re local.”

Changing trends have also captured the attention of the Federal Reserve.

Late last year, Federal Reserve Bank of Cleveland President Loretta Mester said that demographics will be a challenge for policymakers, who will have to constantly evaluate and adapt. “Demographic change will result in a slower-growing and older population,” Mester said. “This transition will likely put downward pressure on the growth rate of potential output, the natural rate of unemployment and the long-term equilibrium interest rate.”

At a separate public finance conference held at Moody’s (MCO) headquarters at 7 World Trade Center in Manhattan last week, panelists looked at the credit implications.

“Demographics — they are destiny. It’s very hard to change demographic trends,” Mark Zandi, managing director at Moody’s Analytics, said in an address at the conference.

“If we have a demographic headwind, which I think we do, that means slower growth, that means less personal income, that means less corporate earnings, that means slower equity price growths, that means less house price growth, that means fewer retail sales — all the things that are necessary to generate revenue,” he said.

Zandi said that top of the list on demographic trends was the aging of the workforce. He cited statistics showing that 10 years ago 3% of workers were over the age of 65; today it’s over 6% and in 15 to 20 years it will be between 9% and 10% of the workforce.

Another big change was immigration, he said, stressing that this was one area where policy change could make a difference. Zandi said that over the next 25 years “the biggest problem will not be unemployment, it will be a screaming lack of labor. We are not going to be able to fill open positions.”

Zandi said that if there was one policy step that the government should take that would be a game changer, it's immigration reform. "This dynamic is so powerful that at some point we will get reform," he said.

By Chip Barnett

BY SOURCEMEDIA | MUNICIPAL | 11/19/18 07:03 PM EST

U.S. Pension Funds Turn to Riskier Real-Estate Bets.

Large public retirement systems hope to close funding gaps by embracing so-called opportunistic investments

U.S. public pension funds are taking on more real estate, and at times some of the riskiest types of property investments, as they try to close their funding gaps.

American public plans with more than 20,000 members had an average 7% of their assets in real-estate investments at the end of 2017, according to a Wall Street Journal analysis of Boston College's Public Plans Data, which contains the most recent numbers available. That is up from 4% in 2006, representing more than $120 billion in additional pension money flowing into real estate.

Some of this increase is due to the construction of new properties designed to be sold later for a profit. These so-called opportunistic investments by pensions grew nearly sixfold between 2006 and 2016 even as allocations to "core" existing properties remained flat, according to an analysis by CEM Benchmarking.

Continue reading.

The Wall Street Journal

By Heather Gillers

Nov. 26, 2018 7:00 a.m. ET

Local Government Investment in Public Water and Sewer Hits a Record $123.7 Billion in 2016.

Long-term infrastructure investment commitment to clean water and sewer/stormwater management tops $1.99 Trillion from 1993 to 2016

Public spending on water and sewer/stormwater management continues to set new nominal dollar highs according to recently released local government Census data for 2016. Overall there was a 4 percent increase in spending from 2015 to 2016, and a 2 percent growth in revenues. Expenditures for water and sewer follow similar trajectories with some important distinctions, (Chart 1). For example, local governments consistently spend between $5 Billion to $15 Billion more on water than on sewer/stormwater management.

Read More

United States Conference of Mayors

By Rich Anderson

Why States Hoping for Online Holiday Sales to Boost Budgets May Not Get Their Wish.

This is the first holiday season since the U.S. Supreme Court allowed states to tax online shopping.

Retail experts are anticipating that the Thanksgiving shopping weekend will once again be record-breaking, particularly for online sales. Last year, the Monday after Thanksgiving — nicknamed Cyber Monday — saw a record $6.6 billion in sales, up 16.8 percent from the previous year.

But if states are hoping for a revenue windfall in the aftermath of the U.S. Supreme Court ruling this year that allowed them to collect online sales taxes — not so fast. “Ultimately, I think there will be a nice little bump to states,” says Brian Kirkell, a principal at the tax consulting firm RSM, “but it’s not going to change much.”

That’s because there are still a lot of unknowns when it comes to how much the ruling will affect revenues.

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GOVERNING.COM

BY LIZ FARMER | NOVEMBER 21, 2018

New Report Strengthens Economic Case for Flood-Prepared Infrastructure.

Mitigation projects yield positive return on investment in coastal, inland states

From elevating roadways in Nebraska to moving wastewater treatment plants away from flood plains in Iowa, proactive measures before flooding can provide a major return on investment, according to a new report from the National Institute of Building Sciences (NIBS). The report, “Natural Hazard Mitigation Saves: Utilities and Transportation Infrastructure,” provides analysis and key examples that underscore the benefits of investing in mitigation measures.

The report was released Oct. 30 during a webinar co-hosted by the institute and The Pew Charitable Trusts. Ryan Colker, NIBS vice president, and Philip Schneider, director of NIBS’ Multihazard Mitigation Council, provided an overview of the report, including cost-benefit assessments of flood-related case studies. The webinar also featured Melissa Clow, a civil engineer and special projects administrator for Iowa City, Iowa, who discussed the city’s disaster mitigation work on a bridge and major road.

In developing the report, NIBS examined natural hazard mitigation investments across the country that included upfront spending on infrastructure projects—such as raising roads above anticipated flood levels and moving water treatment plants outside of flood plains—as well as near- and long-

term maintenance. Benefits included avoiding replacement or repair of damaged infrastructure and disruptions to daily life from impacts such as closed roads, impaired public safety, and loss of essential services like water and electricity. Of the 21 case studies analyzed in the report, 10 focus on mitigating the impacts of flooding on infrastructure—projects involving roads, bridges and railways, water and wastewater facilities, and electric and telecommunications substations.

Continue reading.

The Pew Charitable Trust

by Forbes Tompkins

Nov. 20, 2018

MSRB Floats Proposal to Streamline Disclosure Process.

WASHINGTON — The disclosures underwriters provide to issuers at the beginning of a deal could become shorter under a proposal to revise interpretive guidance on the Municipal Securities Rulemaking Board's fair dealing rule.

The MSRB on Friday asked the market for comment on proposed amendments to interpretive guidance it issued in 2012 on the application of its Rule G-17.

The MSRB asked for comment on the guidance back in June, and market participants subsequently provided it. That 2012 guidance established obligations for underwriters to disclose information to issuers about the nature of their relationship and risks of transactions recommended by the underwriters, among other information. But those disclosures have in many cases become too lengthy and boilerplate to be as useful as intended, according to many in the market.

The MSRB's proposal is part of an ongoing retrospective review of its rules and their interpretations, and in this case is aimed at making the so-called "G-17 letters" more useful to issuers and less burdensome for underwriters.

The proposal would make several key changes, both in what disclosures are provided and in who must provide them. The current interpretive guidance requires that underwriters provide disclosure of both actual and potential conflicts of interest, but under the new proposal they would need to disclose only actual conflicts. Potential conflicts would be disclosable only if the dealer believed it likely that they would become actual conflicts during the term of the transaction.

Another change would shift responsibility for providing disclosures on behalf of an underwriting syndicate onto the shoulders of the syndicate manager. Under the current guidance, a syndicate manager may provide the disclosures on behalf of the group. Under the new proposal, the syndicate manager would be responsible for providing both standard and transaction-specific disclosures on behalf of the syndicate.

The MSRB is also proposing to allow an alternate method for providing the standard disclosures that do not vary from transaction to transaction. Under the proposal, once the standard disclosures have been made in a transaction the syndicate manager could simply reference and reconfirm those prior standard disclosures for subsequent deals with that issuer.

This means that a firm that participated in the previous syndicate and is now manager on a new transaction would could benefit from the disclosures made by the manager on the previous issuance. Further, that syndicate manager could reference back to the disclosures on behalf of new members of the syndicate which did not participate in the prior one.

Issuers could choose, however, to require the standard disclosures be provided to them again. In either case, the transaction-specific disclosures would need to be made anew each time.

The MSRB's proposal would also allow an email receipt to serve as confirmation that the disclosures had been provided to the issuer. Some underwriters have complained that obtaining confirmation of receipt as provided by the 2012 guidance is sometimes challenging because issuers are not responsive.

The MSRB chose not to touch some possibilities raised in comments, such as allowing issuers to opt out of receiving the disclosures or creating a system of disclosure "tiers" based on the size or other aspects of the issuer.

"The concepts covered in our G-17 interpretive guidance are fundamental to the underwriter/issuer relationship," said MSRB Chair Gary Hall. "We think the proposed changes will enhance operational fairness and efficiency in the market, and our effort to solicit comments is connected with our retrospective rule review, which is a key focus for the MSRB this year."

The board is asking for comments by Jan. 15.

After the comment period the board could choose to alter the proposal or could ask the Securities and Exchange Commission to approve it.

The Bond Buyer

By Kyle Glazier

November 16 2018, 4:31pm EST

Renewable Energy: Leveraging the Opportunity Zones Tax Incentive to Improve Returns on Renewables, Storage Plus, and Standalone Storage.

Federal and state tax credits for renewable energy facilities are winding down, but a new federal tax incentive enacted in tax reform may provide a boost to many new installations, repowering projects, and storage facilities. The Qualified Opportunity Zones ("QOZ") incentive provides attractive tax benefits for investors with capital gains that, unlike other federal incentive programs such as the New Markets Tax Credit and Historic Rehabilitation Tax Credit, can be combined with the Investment Tax Credit ("ITC") and Production Tax Credit ("PTC") for facilities located in geographic areas that are designated as QOZ. Further, QOZ benefits will remain in place for a significant period after the ITC and PTC have become less valuable or expired. Recently released regulations provide significant clarity and highlight how valuable the QOZ incentive can be for qualified investments. See our October 23 alert for a discussion of how the regulations make the QOZ incentive even more interesting.

How does the QOZ Incentive work?

The QOZ incentive is designed to encourage long-term investment in over 8700 low-income areas in rural and urban parts of all 50 states, the possessions, and the District of Columbia that have been designated by the Secretary of the Treasury as QOZs. The benefits of the QOZ incentive are available when a taxpayer disposes of a capital asset and, within 180 days, invests the proceeds in a qualified opportunity fund ("QOF") that invests in QOZ property, either through a direct investment in QOZ tangible business property ("QOZBP") or a newly-issued equity interest in a partnership (including an LLC) or corporation operating a business in a QOZ ("QOZB"). A QOF can be a corporation or a partnership (including an LLC) for U.S. federal income tax purposes and can function as an investment fund, a private investment entity, or many options in between. The major requirement is that at least 90 percent of the QOF's assets (measured by cost or value, depending on the applicable facts) must be invested in QOZ property as described above. For more details about the terms and conditions of the QOZ incentives, see our March 14 alert, which contains a helpful overview.

What are the benefits of the QOZ Incentive?

The QOZ incentive consists of three tax benefits for investors.

- First, federal taxes on capital gains invested in QOFs may be deferred until 2026.
- Second, if the taxpayer holds the QOF investment for at least five years, the basis of the asset sold to generate proceeds for investment in the QOF may be increased by 10 percent, thus reducing the capital gain that is eventually recognized. The basis will be increased by another 5 percent if the taxpayer holds the QOF investment for at least seven years.
- Third, if the taxpayer holds the QOF investment for at least 10 years, capital gains realized upon disposition of the investment are free from federal income tax due to a step up in basis of the investment to its fair market value at the time of disposition.

Who can use the QOZ Incentive?

Any U.S. person and certain non-U.S. persons can invest in a QOF and use the QOZ incentive. This includes individuals, corporations, partnerships, and trusts. Partners investing capital gains from a partnership have a longer window to invest in a QOF than the partnership would.

How does the QOZ Incentive help renewables projects?

Many QOZs are located in desirable locations for renewable energy projects and standalone storage. An equity interest in a renewable energy facility (e.g., solar, wind, biomass, geothermal) generally should be a qualified asset, provided that the facility is located in a QOZ and all the requirements of the QOZ incentive for tangible property or a QOZB are met. In addition, there is extensive overlap in the type of property that qualifies for the QOZ incentive, PTC, and ITC, which may boost the value of the ITC and PTC even while the credit rates are sun-setting. Specifically, all three incentives require an ultimate investment in tangible property that is used in a trade or business (ITC and PTC qualified assets also must be personal property). Moreover, the QOZ incentive is:

- technology agnostic;
- available for standalone storage as well as transmission assets;
- available for new installations, as well as repowering or rehabilitation (including installation of storage) of existing installations acquired after December 31, 2017 when expenditure thresholds are met and the work required to meet those thresholds is completed within a 30-month period;
- compatible with the structuring techniques familiar to tax equity investors and developers AND offers new options for tailoring the structure to suit certain investors; and
- may be combined with other available tax credits, including the ITC and PTC.

The benefits of leveraging the QOZ incentive with other tax incentives can be considerable. However, the terms and conditions to meet QOZ requirements are quite complex, so it is important that investors and developers obtain good counsel in order to avoid costly mistakes that could result in loss of QOZ benefits. Our Opportunity Zones and Renewables teams would be happy to help you determine how the QOZ incentive can help your projects pencil out and to make sure you are complying with all QOZ requirements.

Opportunity for Treasury comments/more guidance coming

The U.S. Treasury has requested taxpayer comments on a variety of points in the Proposed Regulations and on several issues to be addressed in forthcoming proposed regulations expected by the end of the year. Taxpayers may provide responses to these requests and other comments through December 28, 2018. Comment opportunities include how long a QOF may take to reinvest proceeds in qualified assets, the treatment of vacant land, how to determine if at least 90 percent of a QOF's assets are qualified assets, how exits must be structured, and when the 30-month period for repowering or other rehabilitation activities of existing projects begins.

K&L Gates

by Elizabeth C. Crouse and Mary Burke Baker

Nov 16, 2018

S&P U.S. Public Finance State & Local Government Credit Forum, New York

Jan. 10, 2019 | New York

S&P Global Ratings U.S. Public Finance team invites you to join us for our 2019 State and Local Government credit forum, January 10th in New York City.

Register For This Event

After the Retail Apocalypse, Prepare for the Property Tax Meltdown.

Big-box retailers nationwide are slashing their property taxes through a legal loophole known as "dark store theory." For the towns that rely on that revenue, this could be a disaster.

WEST BEND, WI—Kraig Sadownikow doesn't look like an anti-corporate crusader. The mayor of West Bend, Wisconsin, stickers his pickup with a "Don't Tread on Me" snake on the back window, a GOP elephant on the hitch, and the stars-and-stripes logo of his construction company across the bumper.

His fiscal conservatism is equally well billboarded: In the two hours we spent at City Hall and cruising West Bend in his plush truck, Sadownikow twice mentioned the 6 percent he has shaved off the Wisconsin city's operating budget since becoming mayor in 2011, and stressed its efforts to bring more business to town.

So you might be surprised to learn that Sadownikow (he instructed me to pronounce his name like *sat-on-a-cow*) is personally boycotting two of the biggest big-box retailers in his town, Walmart and Menards, the Midwestern home improvement chain. He's avoiding shopping at these companies' stores until they cease what he sees as a flagrant exploitation of West Bend's property tax system: repeat tax appeals that, added up, could undermine the town's hard-won fiscal health.

Continue reading.

NEXT CITY

LAURA BLISS

NOV 14, 2018

Investing in Better Procurement Processes Can Enable Better Infrastructure Outcomes.

Editor's Note: *This post is the first in a two part series about how procuring infrastructure systems, technologies, and services can be an entry point to resilience in cities, rather than an obstacle to it.*

Many cities across the United States are home to legacy infrastructure systems. These older water, transportation, and communications systems are not only poorly suited to current needs, but they are also nearing (or well past) the end of their usable lives after decades of underinvestment and deferred maintenance.

The motivation for investing in resilience—taking measures to adapt and modernize systems amid rising environmental and social pressures—could not be greater, especially at a local level.

However, local government resources for infrastructure transformation are limited at best. As a result, local leaders are caught in a tug-of-war. On one side are high-priority incremental repairs to keep critical services up-and-running. On the other side is all the up-front planning required to invest in long-term capital projects. Both are costly. Both are necessary. In the coming years, more places will inevitably be confronted with a stark choice: keep making short-term fixes or find the resources to make major upgrades and replacements.

Continue reading.

The Brookings Institute

by Shalini Vajjhala and Ellory Monks

November 26, 2018

TAX - OREGON

Seneca Sustainable Energy, LLC v. Department of Revenue

Supreme Court of Oregon - November 8, 2018 - 363 Or. 782 - 429 P.3d 360

Taxpayer brought action challenging Department of Revenue's determination as to its industrial property's real market value, the assessor's notation of the assessed value on the assessment roll, and enterprise zone's sponsor's imposition of a public benefit contribution.

Following bench trial, the Tax Court issued opinion setting the real market value of taxpayer's electric cogeneration facility at $38.2 million and $19.1 million for two tax years. The Department appealed.

The Supreme Court of Oregon held that:

- Taxpayer's claims all fell within the sole, exclusive, and final judicial authority of the Tax Court;
- Taxpayer had standing to challenge the Department's erroneous real market value determination; and
- Evidence was insufficient to support Department of Revenue's real market value determination with regard to taxpayer's electric cogeneration facility.

Taxpayer's claims, which challenged the Department of Revenue's determination as to its electric cogeneration facility's real market value, the assessor's notation of the assessed value on the assessment roll, and enterprise zone's sponsor's imposition of a public benefit contribution, all fell within the sole, exclusive, and final judicial authority of the Tax Court, regardless of whether or not the facility was exempt from taxation during the years at issue; taxpayer was subject to taxation, irrespective of whether it owed any taxes in a given year, all the statutes that related to taxpayer's claims bore on tax liability, the first arising out of the Department's obligation to determine real market value for industrial properties, and the second arising out of the assessor's obligation to ensure that the tax rolls accurately reflected assessed values, and at all material times, taxpayer was paying property taxes on the real property underlying its electric cogeneration facility.

Taxpayer was aggrieved by Department of Revenue's erroneous real market value determination with regard to taxpayer's electric cogeneration facility, and because the erroneous act affected taxpayer and its property, taxpayer had standing to challenge that determination in the Tax Court; taxpayer alleged a wrong, the erroneous real market value determination, as well as a private interest that was different from that of the general public, the imposition of an excessive public benefit contribution directly resulting from that erroneous determination, along with an attendant increase in property taxes.

Evidence was insufficient to support Department of Revenue's real market value determination with regard to taxpayer's electric cogeneration facility for the tax year in question; the Department's appraiser relied on a power purchase agreement that provided taxpayer with revenues significantly in excess of what a purchaser of the property on the assessment dates would have been able to negotiate for, for electricity, capacity, and renewable energy credits (REC), and erroneously considered intangible assets by valuing taxpayer's entire property and business under the income approach, subtracting only an amount for working capital.

TAX - NORTH DAKOTA

Thompson v. Molde

Supreme Court of North Dakota - November 13, 2018 - N.W.2d - 2018 WL 5916790 - 2018 ND 245

Property owners brought action against county for fraud, inverse condemnation, and slander of title,

based on alleged lack of county authority to tax their property.

The District Court granted summary judgment in favor of county. Property owners thereafter filed motion for transfer and assignment of property tax obligations to county's attorney. The District Court denied the motion and awarded attorney fees to county. Property owners appealed.

The Supreme Court of North Dakota held that:

- Property owners failed to establish a claim for abatement or refund, and
- Property owners' appeal was frivolous.

Property owners, who challenged county's assessment of taxes on their property, failed to establish a claim for abatement, where they did not submit such claim to county board of commissioners for administrative review prior to seeking judicial relief.

Property owners' appeal to trial court's grant of summary judgment against them, in their action challenging county's tax authority over their property, was frivolous, and thus county was entitled to attorney fees and double costs; owners' arguments on appeal, such as that "it is the federal government's obligation to pay the real estate tax[,]" were so devoid of merit that owners should have been aware of the impossibility of success.

Sports Stadiums Are a Bad Deal for Cities.

But cities can fight back.

When I want to go to an Oakland A's baseball game, I walk 10 minutes to the MacArthur bart station. The station was part of an infrastructure plan that cost Bay Area taxpayers in the 1960s and '70s $1.6 billion, and currently costs billions in maintenance and expansion. I pay a few bucks to ride—about 75 percent of bart's operating costs are maintained by fares. If the train car I step into is new, it cost taxpayers $2 million.

The train travels south, dips underground through downtown Oakland, hangs a left around Lake Merritt, and resurfaces in Fruitvale. It stops outside of the looming monstrosity called the Oakland–Alameda County Coliseum, home to the A's and, for now, the Raiders. Just behind it is the Oracle Arena, home to the Golden State Warriors basketball team, also for now. Both stadiums opened in 1966 and together cost $25.5 million for construction, in addition to $1 million for the land they sit on, all funded by municipal bonds, which is to say taxpayers.

I and my fellow passengers walk over the sloping concrete bridge, where vendors hawk tickets, T-shirts, and beers amid the din of train whistles and street drummers, and we merge with other fans. They've come in cars and buses, maybe bicycles or Bird e-scooters, streaming in on public roads that will cost Oakland at least $66 million to improve and maintain in 2019. We all go inside, having given our money to John J. Fisher, the billionaire majority owner of the A's, who in exchange lets us watch his team play.

Continue reading.

THE ATLANTIC

RICK PAULAS

NOV 21, 2018

These Muni-Bond Funds May Offer Year-End Bargains.

Bargain hunters can find plenty of discounted stocks these days. But year-end tax-loss selling may be creating good bargains in closed-end funds, particularly those that hold municipal bonds, according to a note from BlackRock.

CEFs have two prices: the fund's share price and its underlying net asset value, or NAV. When the share price falls below the NAV, the fund is said to trade at a "discount." A 10% discount enables investors to buy a fund's underlying securities, such as stocks or bonds, at 90 cents on the dollar, for example. Investors can profit when the discount to the NAV narrows even if the underlying securities don't budge much.

Historically, CEF discounts widen in the fourth quarter as tax-loss selling kicks in, according to Stephen Minar, head of closed-end funds at BlackRock. Investors sell the funds to realize capital losses in the tax year. That may be especially prevalent this year as stock and bonds have slumped, putting some categories of CEFs in negative territory.

Yet the funds tend to bounce back in the new year-a well-known "January effect." CEF discounts have narrowed in January in 16 of the last 20 years, Minar points out. "Based on historical trends," he wrote, "BlackRock believes that tax-loss selling may present an opportunity to reap the rewards of a temporary mispricing in the CEF market."

Some of the best deals may be on municipal bond CEFs. Interest income from muni bonds isn't taxed at the federal level and may be tax-free at the state level (if the bonds are issued in the investor's state).

Investors should calculate their tax-equivalent yield to see if munis make sense for them. For example, a 5% muni yield would be equivalent to a 6.9% taxable yield for investors with income of $100,000 in the 28% federal tax bracket, according to Bankrate.com. The higher a person's tax rate, the more of a break they would receive from investing in munis.

National muni CEFs, which invest in state and local debt from across the country, are down by an average of 8.7% this year, through Oct. 31, including dividends, and they trade at an 11.3% discount to NAV. That's steeper than their historical discount of 7.3%, according to BlackRock. Indeed, muni CEFs have traded at a narrower discount on 99% of trading days over the last 20 years, averaging 3.5%, Minar writes.

"At BlackRock, we believe these conditions are cyclical and discounts this wide are not likely to persist longer term," he says.

Granted, bonds have been under pressure as the Federal Reserve has raised interest rates and investors have grown increasingly concerned about inflation. Those trends aren't likely to disappear in the new year, keeping up the pressure on bond prices and making it tough to generate positive returns.

To help lower risks, consider funds with a relatively low average "duration," or sensitivity to interest rates. Another consideration is a fund's use of borrowed money, or leverage. Many CEFs use leverage to juice their distributions, and the more leveraged a fund, the steeper its yield is likely to

be. But leverage can amplify losses when a fund's underlying securities lose value.

The BlackRock MuniAssets fund (ticker: MUA) has a moderate duration of six years, well below that of long-term bond funds that would lose more in a rising-rate climate. Its distribution rate is 5.2% and it trades at an 8.2% discount to NAV, a wider gap than its 52-week average of 3.7%, according to Cefconnect.com, a closed-end fund research site. More than half of the fund's $500 million in assets are in investment-graded munis, rated BBB or higher. The fund's leverage is relatively low at 12.5%.

The Eaton Vance Municipal Bond fund (EIM) trades at a 14.2% discount to NAV, below its 52-week average of 10.6%. Its distribution rate is 4.6%. The fund's duration is 7.3 years, giving it more rate-sensitivity than the BlackRock fund, but the underlying debt is of higher quality. The portfolio of nearly $1 billion consists of investment-grade bonds, with 70% rated AA or AAA.

If you're willing to take more interest-rate risk in exchange for a higher yield, consider Nuveen AMT-Free Municipal Credit Income fund (NVG), one of the largest muni bond funds with $3.2 billion in assets. Trading at a 13% discount, the fund yields 5.9%. More than 60% of its bond holdings are rated investment-grade, and the fund emphasizes munis that don't subject investors to the alternative minimum tax.

Nonetheless, the fund uses a considerable amount of leverage, at 39% of assets. With an effective duration of 13 years, the fund's shares will get hit hard if rates continue to increase. That could sting long after the January effect wears off.

Barron's

By Daren Fonda

November 23, 2018

Detroit Launches New Redemption of Bankruptcy-Related Bonds.

CHICAGO, Nov 20 (Reuters) – Detroit is eyeing savings from a just-launched redemption offer for bonds it issued in 2014 as part of the city's exit that year from its historic bankruptcy, municipal officials said on Tuesday.

The city is targeting $131 million of its nearly $632 million of series 2014B financial recovery bonds that mature in 2044 with a tender offer that expires Dec. 3. The move follows the redemption of $70 million series 2014C bonds earlier this year.

"This is a limited tender and we will only move forward if we achieve our savings goals," said John Hageman, chief of staff for the city's finance office, in a statement that did not disclose the goals.

Detroit issued the bonds as part of its federal court-approved plan to exit what was then the biggest U.S. municipal bankruptcy, which allowed the city to shed about $7 billion of its $18 billion of debt and obligations. Debt proceeds were used to fund settlements with bond insurers, interest-rate swap providers, city pension funds, as well as to raise money for capital projects.

The tender offers were initiated as a way to save money for Detroit, which has only been paying interest on the financial recovery bonds. Principal payments are due to commence in 2025 around

the same time that higher-than-expected city pension contributions start.

Unlike previous bond redemptions, which were financed with a budget surplus and proceeds from a property sale, Detroit will pay for the latest one through financial recovery bond refunding issued via the Michigan Finance Authority and backed by a fifth lien on the city's distributable state aid revenue.

Early next month, Detroit will sell the first unlimited tax general obligation bonds on its own credit since the bankruptcy, which included defaults on GO debt.

Underwriters led by Goldman Sachs & Co are scheduled to price nearly $111 million of junk-rated bonds to fund capital projects under voter-approved authority that dates back to 2004 and 2009.

Michigan's largest city was able to shed active post-bankruptcy oversight of its finances in April after concluding three-straight fiscal years with balanced budgets.

Moody's Investors Service recently warned that big capital needs at Detroit's public school system posed a threat to the city's "post-bankruptcy economic revitalization" unless the state or philanthropic community step in with funding.

The Best Bond Funds to Buy for 2019 as Interest Rates Rise.

In normal times, when a stock-market downturn looks likely, investors move money into bonds, the better to protect their wealth from sharp losses. But these are not normal times: It looks like the beginning of a downturn in fixed income too. Interest rates are rising, which drives down bond prices. The value of a 10-year Treasury note maturing in November 2027 has fallen 6% in the past year. And the Federal Reserve is expected to hike benchmark rates three times in 2019, putting even more pressure on prices.

Another conundrum: This is a time when many investors actually do need to rebalance their portfolios to own more bonds. The S&P 500 has risen nearly 35% since the 2016 elections, which means most investors have a higher share of stocks in their portfolio than their investment plan might dictate. An October survey by the American Association of Individual Investors found that average exposure to fixed income had dipped to a 10-year low of 13.3%, compared with a high of 25.5% in 2010.

So how can investors rebalance into bonds, and their relative safety, without taking a small but still painful beating? Amy Wasser, a financial adviser at Edward Jones, is adding short-duration U.S. Treasuries to her mix of bonds. While shorter-dated bonds tend to yield less interest than longer-term ones, their prices take less of a hit when inflation rises. (The Vanguard Short-Term Treasury [VFISX] fund is a low-cost way to play that sector.) Independent adviser Lewis Altfest recommends emerging market bonds, whose higher yields make up for the volatility of their prices. (Goldman Sachs Emerging Markets Debt Fund [GSDIX] is a popular option for those assets.)

Municipal bonds are also worth adding if you live in a high-tax state or locality, says Don Martin of Mayflower Capital. They're less sensitive to fluctuations in interest rates, and the fact that their interest is partly tax-exempt can sweeten their payout.

One last reason to beef up your bond portfolio: Its value could rise sharply if a truly big stock plunge sends investors fleeing to bonds for shelter. "For all we know, it could be the start of the bear

market," says Greg Ghodsi, a Raymond James financial adviser.

FORTUNE

By LUCINDA SHEN

November 19, 2018

BDA Forms Fixed Income Market Structure Working Group.

On September 25, 2018, the Bond Dealers of America (BDA) announced the formation of a **Fixed Income Market Structure Working Group**. The group is co-chaired by Brad Winges, Head of Fixed Income Services at Piper Jaffray and Kevin Giddis, Head of Fixed Income Capital Markets at Raymond James, and will focus on all aspects of fixed income market structure with retail, institutional, taxable and muni-focused participants.

The BDA is convening this group to proactively address the challenges and opportunities that changing business practices, technology, regulation and market forces have on fixed income management. The working group brings together a seasoned and diverse group of industry professionals. As a 'Main Street' thought leader on fixed income market structure, the BDA's new working group anticipates direct engagement with the SEC, Capitol Hill, federal regulators and other market participants.

"Underneath the cyclical gyrations in the fixed income marketplace, there are serious secular changes taking place. By virtue of its membership, this working group will provide a unique perspective about the critical issues faced by the fixed income industry. Our collective voice will play a critical role in helping policymakers ensure that tomorrow's investors will be fairly served in the fixed income markets," said co-chairs Brad Winges and Kevin Giddis.

Topics of interest to the working group include:

- Federal regulation and the impact on fixed income liquidity;
- Technology, execution and the impact on trading and sales;
- Electronic execution in the taxable primary markets; and
- Evolving buy-side capabilities and expectations

BDA's Fixed Income Market Structure Working Group includes the following members:

Brad Winges (Co-chair)
Head of Fixed Income Services and Piper Jaffray Firm Investments and Trading
Piper Jaffray Companies

Kevin Giddis (Co-chair)
Executive Vice President and Head of Fixed Income Capital Markets
Raymond James Financial, Inc.

Matt Boardman
Managing Director and Head of US Wealth Management Fixed Income
RBC Wealth Management

Larry Bowden
Executive Vice President and Director of Fixed Income Sales and Trading
Stephens, Inc.

Brian Brennan
Head of Fixed Income
KeyBanc Capital Markets

Tom Dannenberg
President and CEO
Hutchinson, Shockey, Erley & Co.

Mark Evans
Executive Vice President, Director of Trading
Vining Sparks

Kenneth Friedrich
Senior Managing Director, Head of Fixed Income Capital Markets
Hilltop Securities, Inc.

Michael Haire
Vice President of Fixed Income
LPL Financial

Kelly Martin
Managing Director, Head of Leveraged Finance
William Blair & Company, LLC

Eric Needleman
Head of Fixed Income Capital Markets
Stifel Financial Corporation

Randy Nelson
Co-Founder, Executive Vice President and Managing Director
Wells Nelson & Associates

John Reilly
Managing Director, Capital Markets Trading Business and Strategy
Wells Fargo Advisors

Tim Romanow
Executive Vice President and Director of Trading
FTN Financial

Jack Schlifer
President of Debt Capital Markets
Duncan-Williams, Inc.

Pete Sirbu
Vice President, Head of Fixed Income Capital Markets Trading and Strategies
Ameriprise Financial

Tom Wammack

Managing Director, Fixed Income Capital Markets
Robert W. Baird & Co.

Don Winton
Chief Operating Officer
Crews & Associates

Data Driven Fixed Income Dealer Growth Survey.

Trust and Data Drive Fixed Income Dealer Growth was led by Kevin McPartland at Greenwich Associates and surveyed 50 fixed income dealers – both large and regional – examining the current state of the fixed income business, top concerns of both large and middle-market dealers, technology priorities, and the most likely path forward given each firm's strategy of managing balance sheet and relationships in a more quantitative driven way.

This newly released study has been provided through an active partnership between Greenwich Associates and the BDA.

Bond Dealers of America

November 13, 2018

Fitch Ratings: New Constitutional Amendments Could Limit Flexibility of Florida Public Universities

Fitch Ratings-New York-20 November 2018: The State University System of Florida's 12 public universities have more stringent requirements for raising revenues following passage of amendments 5 and 7 in the November election, according to Fitch Ratings. Amendment 5 will require a two-thirds vote (rather than a simple majority) by each chamber of the legislature to increase undergraduate in-state tuition levels, while amendment 7 will require a supermajority vote (rather than a simple majority) by the university's Board of Trustees or the Board of Governors to raise, impose or authorize any university fee (such as capital improvement fees, athletic fees, activity and service fees, student housing fees, transportation access fees, decal fees, and health fees).

The independent ability of public universities to set tuition rates is a sub-factor in Fitch's assessment of Revenue Defensibility in its 'Exposure Draft: U.S. Public Finance College and University Rating Criteria' (Criteria Exposure Draft, dated Nov. 15, 2018). However, in this assessment, Fitch also considers the level and consistency of direct and indirect support from the state government as an offset to tuition control imposed by the state.

In Florida, the legislature sets the undergraduate in-state tuition rate but tuition has not been raised for many years in an effort keep the cost of higher education affordable. Instead, Florida public universities receive generous levels of state operating support and other revenue allocations (performance funding, pre-eminent funding and other grant-like funding), and are expected to continue to do so. Moreover, tuition may not be pledged to any revenue bonds, pursuant to current Florida law. Fitch does not expect financial operations to narrow or overall credit quality to decline as a result of the new voting requirement in amendment 5.

The implementation of new university fees or increases to existing fees are typically approved by unanimous or near unanimous votes of the required board or boards. Since debt of Florida public universities is issued by blended component units (generally to support housing, parking and student health and other type of auxiliary systems on each university's campus), the debt is expected to be solely supported by the pledged revenues of these entities themselves. As such, the boards have covenanted in bond documents authorizing capital improvement debt to set fees at levels sufficient to cover debt service. The Board of Governors has stated that based on current Florida law, amendment 7 will not affect such covenants.

Fitch not does not expect any immediate impact on the financial operations of Florida's public universities or their auxiliaries as a result of the constitutional amendments; and expects little, if any, impact on their ability to repay debt obligations. However, over time, more stringent requirements for raising revenues could lead to erosion of cash flow and debt service coverage levels, particularly if there is broader university operating pressure. The amendment could limit a university's ability to make a rate adjustment if needed to offset enrollment decline. If several fees are collected, an increase in one pledged fee supporting an auxiliary system may need to be offset by a reduction in another auxiliary system fee, suppressing the pledged revenues that support that system's bonds. Pressure on cash flows supporting the pledged revenues for any one auxiliary system could have rating implications. In most cases, the sum of the fees is limited by law (to a percentage of student's base tuition fee) unless authorized by the state legislature, leaving limited flexibility to increase rates over time if needed.

Fitch continues to take a forward looking approach to ratings in the sector as described in the Criteria Exposure Draft. In its assessment of Revenue Defensibility, Fitch considers the level of local university control over tuition as one factor that could be deemed 'weaker' in this case. However, the final determination of the Revenue Defensibility assessment will also reflect other components, such as demand, market reach, pricing power and other revenue sources. Lack of tuition and student fee control could be expected to have greater impact on a smaller, regional public university with weaker or eroding demand than on a state flagship university with more resilient demand and other revenue sources available to preserve overall revenue levels going forward.

Contact:

Nancy Moore
Director
+1-212-908-0725
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

Margaret Johnson
Director
+1-212-908-0545

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

Additional information is available on www.fitchratings.com

DC's Green Bank Could Be a Powerful Tool to Fight Climate Change, if the City Funds It.

As the dust settles on the 2018 elections, the DC Council continues to weigh action on clean energy legislation that could halve greenhouse gas emissions in the region. The bill contains funding for a critical tool the Council adopted over the summer: the DC Green Finance Authority, a "green bank" which was established to leverage public and private funds to invest in clean energy technologies and infrastructure.

The Clean Energy DC Omnibus Act of 2018 would help DC transition to a greater reliance on renewable energy sources and reduce carbon emissions, which drive climate change. The record on the second of two DC Council committee hearings closed last week, and the Committees on Transportation and Environment and on Business and Economic Development will soon make recommendations on the bill.

Here's what a green bank does

In passing the Green Finance Authority Establishment Act this July, DC joined a growing list of jurisdictions creating so-called "green banks" that use various financial tools, including loans and credit enhancements, to support investment in clean energy projects.

Green banks use public dollars to attract private investment in projects using solar, wind, and other clean energy technologies. This reduces costs that can otherwise complicate or preclude the implementation of sustainable energy. Green banks are already operational in California, Connecticut, New York, and Maryland, among other places. The Connecticut Green Bank, for example, estimates that from its inception in 2011 through 2017, it drove public and private investment totaling more than $1 billion toward clean energy projects.

In a 2017 report prepared for the DC Department of Energy and Environment (DOEE), the non-profit Coalition for Green Capital (CGC) defined the goal of green banks as "accelerat[ing] the deployment of clean energy by removing the upfront cost of adoption, leveraging great private investment in clean energy, and increasing the efficiency of public dollars." The CGC report shows that the District's current levels of private investment are far from sufficient to meet the potential demand.

DC's law allows the Green Finance Authority to use its funding for various financing tools. For example, the bank might use loan loss reserves and loan guarantees ("credit enhancements") to make private investment more secure, and thus more attractive. Alternatively, it might offer a loan for a particular project, supplementing private funds and thereby facilitating more clean energy projects and more investment.

In general, green banks prefer *financing* rather than *grants*. Green banks start with some initial funds, and while grants would deplete the bank over time and require periodic recapitalization, financing enables the bank to recycle capital through multiple projects over time.

Because green banks want to preserve their capital, they tend to prefer low-risk investments that facilitate short-term cash flow. That means the Green Finance Authority will likely promote investments in specific projects and in the application of mature technologies, rather than funding development of new modes of clean energy. Installation projects (think solar panels and fuel cells) tend to carry less risk and also create revenue streams as consumers divert their utility payments to (less expensive) loan repayment.

Could this be successful in the District?

Though the District offers a substantial clean energy market, the success of the Green Finance Authority will depend significantly on its own management and strategy. Because the projects facing the largest private funding gap are smaller, distributed projects, the Green Finance Authority will need to actively solicit private investors.

Strong oversight will also allow the bank to successfully engage in more complex funding strategies, such as "warehousing." That's where the bank bundles smaller loans and sells them to private investors at scale.

The Green Finance Authority's responsibilities will also reach outside its own confines. The bank will have the authority to provide technical assistance in the development of sustainable programs more broadly. It will also seek to implement projects that complement other DC government sustainable energy initiatives through a Special Committee on Sustainable Program Cooperation.

Though certain details of the Green Finance Authority remain unresolved—DOEE's solicitation of proposals for plans to "stand up" the green bank closed on November 13—one question certain to arise in the coming years will be the matter of funding. The CGC has estimated that every $1 in public capital can attract $5 in private funding, potentially helping the District take significant strides toward its renewable energy goals.

But while the Establishment Act identifies several potential funding sources (including federal funds, donations, settlement proceeds, loan repayment and interest, and Green Finance Authority revenues), it does not provide for any specific allocation. It does refer to a $7 million transfer from the District's Renewable Energy Development Fund (REDF), but only if that transfer is included in an approved budget and financial plan.

Here's what's next for DC's green bank

As the DC government continues to roll out the Green Finance Authority, it may answer the critical funding question through action on the Clean Energy DC Omnibus Act. The current draft of that bill would secure for the Green Finance Authority $70 million in funding from the Sustainable Energy Trust Fund, to be spread out over six years.

Should that legislation stall out, the DC government will need to return to the drawing board. Other potential funding options including upfront capitalization (potentially including the REDF transfer, which would likely require supplementation for the bank to be successful) or bond issuances. DC must also appoint the governing Green Finance Authority Board, which will be filled by four non-voting District government executives and seven voting members appointed by the mayor.

Regardless, if the recent elections demonstrated the public's faith in the District's incumbent lawmakers, it may soon be time for those representatives to pay up with real support for a critical tool for fighting climate change.

Greater Greater Washington

By Jake Grubman

November 15, 2018

Ohio Becomes First State to Accept Bitcoin for Tax Payments.

"Warren Buffett called Bitcoin 'rat poison,' but the technology behind it is something everyone can agree on. …

Here's how it works: a business signs up through OhioCrypto.com, enters their tax payment information then pays through a third-party processor, BitPay. BitPay then converts the bitcoin into dollars that are deposited into the state's accounts. There is a minimal fee, 1 percent, for the transaction compared with 2.5 percent assessed when businesses use credit cards."

Read the full article on: The Cincinnati Enquirer

Truth in Accounting

Jessie Balmert | November 26, 2018

How the Third Largest Closed-End Fund is Coping With Rising Rates.

Rising interest rates are creating challenges for the Nuveen AMT-Free Municipal Credit Income Fund.

Like other closed-end bond funds, the Nuveen AMT-Free Municipal Credit Income Fund is grappling with the fallout from the Federal Reserve's rate-raising campaign and a roller coaster stock market.

With more than $3.1 billion in assets, the Nuveen AMT-Free Municipal Credit Income Fund is the third largest closed-end fund in the world, according to Lipper Research.

Nuveen's decision a few years ago to expand the fund and revamp its investment focus turned out to be a winner, helping cushion the fund amid rate-hike and stock market turbulence.

Founded in 2002, NVG undertook a significant expansion a few years ago when Nuveen, its parent fund company, merged and combined 18 closed-end bond funds into eight.

Along with an infusion of assets, NVG also was given a new mission to reposition its portfolio to focus on lower-rated municipal bonds.

That strategy has paid off well for NVG, with lower-rated bonds performing handsomely even as their premium-rated cousins have lagged, notes Paul Brennan, a portfolio manager at Nuveen Asset Management, who oversees NVG and other closed-end funds.

"That has been the most positive part of our fund performance," Brennan says. "Over the last number of years, the lower-rated bonds have been the top performers."

Some of NVG's largest holdings are bonds issued by the state of Illinois and Chicago, both of which have struggled in recent years with various budget crises.

Illinois last year resolved a two-year budget standoff that had threatened to implode the state's already shaky finances. And while Chicago faces a $98 million deficit, it is down from $635 million in 2012.

Overall, municipal bonds have proven to be a good bet, with state and local revenues, from taxes to

highway tolls, on the rise, Brennan says. In deciding where to invest, NVG draws upon Nuveen's team of 26 or so credit analysts, who keep tabs on the immense, $3.7 trillion municipal bond market and the tens of thousands of government and quasi-government entities that issue the bonds.

(Full disclosure: Nuveen is an advertiser on TheStreet, but did not participate in the preparation of this article.)

"While the news was very dire in Illinois and Chicago, our belief was that there were solutions," Brennan says. "We were getting bonds at distressed levels at the trough of the cycle. We generated very good yields on those bonds."

The NVG's investments in tobacco settlement bonds have also been a bright spot as well, he notes.

Overall, more than 50% of the fund's holdings are now in bonds rated triple-B, the lowest investment grade, or below.

"A lot of our top holdings have been some of our top performers," Brennan notes. "That is the best type of outcome."

However, the Fed's efforts to jack up interest rates have made it more expensive for the fund to do business.

Unlike open-end mutual funds, which make up most of the market, closed-end funds are allowed to borrow and use leverage, which can boost returns.

But with short-term interest rates rising, NVG's cost of borrowing has also gone up, increasing the amount of money the fund owes to creditors and cutting into earnings, according to Brennan.

The increase in long-term rates, in turn, has had a negative impact on the fund's net asset value, with a reduction in the value of its bonds as investors flock to higher-paying newer issues.

NVG has posted annualized returns of 6.6% over the past five years, with a 5.7% annual distribution rate, a key state for investors seeking steady income. But year to date, the fund's net asset value is down 2.5%, according to Lipper Research.

The fund is trading at a 12% discount relative to its net asset value — another feature unique to closed-end funds, which hold a modest but influential niche in the overall fund world, managing roughly $300 billion in assets.

They differ from their far more numerous cousins in the open-end mutual fund world in their fixed capital structure and the fact they are traded on exchanges throughout the day.

This combination creates gaps between the closed-end fund's trading price and the net asset value of its holdings, often allowing investors to buy the stocks and bonds in the portfolio at a significant discount.

A 12% discount effectively means investors can buy a dollar's worth of bonds in NVG's portfolio for 88 cents, with a potential gain if the discount narrows rather than widens.

That's down from a 52-week high of nearly 14% but up from its 52-week average of around 8.6%.

Looking ahead, Nuveen's Brennan sees more of the same when it comes to the main pressure weighing on NVG and other closed-end bond funds.

“We are still looking for the Fed, which is the most important thing to watch, to continue the pace of slow, gradual increases,” Brennan says.

That, in turn, could set the stage for more growth in 2019 and continued strong performance by municipal bonds.

“We are seeing more volatility in our space but the underlying fundamentals are pretty solid,” Brennan says. “There is still pretty good economic growth and state and local municipalities are performing well.”

TheStreet

by Scott Van Voorhis

Nov 26, 2018 3:08 PM EST

REFERENDA - ARIZONA

Molera v. Reagan

Supreme Court of Arizona - October 26, 2018 - 245 Ariz. 291 - 428 P.3d 490 - 802 Ariz. Adv. Rep. 15

Objectors brought special action seeking to invalidate initiative that would have increased K-12 education funding and raise certain income tax rates to support it, and committee that filed the proposed initiative filed a cross-complaint challenging the constitutionality of statute that required strict compliance with constitutional and statutory requirements for statewide initiatives.

The Superior Court ruled the statute unconstitutional, and concluded the initiative was eligible for the ballot. Objectors appealed.

The Supreme Court of Arizona held that:

- Tax indexing changes omitted from ballot initiative constituted “principal” provisions, and thus, their omission rendered the initiative invalid, and
- Petition’s description of the tax increase on wealthy taxpayers created a significant danger of confusion, rendering the initiative invalid.

Tax indexing changes omitted from ballot initiative description that would have increased K-12 education funding and raised certain income tax rates to support it constituted “principal” provisions, and thus, their omission rendered the initiative invalid, and disqualified the measure from the ballot; the change indexing would have imposed tax increases on most Arizona taxpayers rather than only the state’s wealthiest taxpayers, as the description suggested, which created a significant risk of confusion or unfairness, and could materially impact whether a person would have signed the petition.

With regard to initiative petition to increase K-12 education funding and raise certain income tax rates to support it, the petition’s description of the tax increase on wealthy taxpayers created a significant danger of confusion, rendering the initiative invalid; the petition description stated that the measure would increase taxes on wealthy Arizonans by 3.46% and 4.46%, which on its face seemed modest, but the affected tax rates would actually increase by 76% and 98% respectively, a difference that would materially affect whether a person would be willing to sign the petition.

MUNICIPAL ORDINANCE - CALIFORNIA

Citizens for Amending Proposition L v. City of Pomona

Court of Appeal, Second District, Division 4, California - November 7, 2018 - Cal.Rptr.3d - 2018 WL 5817274 - 18 Cal. Daily Op. Serv. 10, 782

Objectors, including interest group, interest group's chairman, and competitor to billboard advertising company that had development agreement with city, filed petition for writ of mandate and complaint for declaratory relief, alleging that city's adoption of ordinance purporting to extend development agreement with advertising company constituted agreement for new billboards enacted in violation of ordinance prohibiting construction of additional billboards within city limits.

The Superior Court granted petition and awarded objectors attorney's fees. City appealed.

The Court of Appeal held that:

- Interest group and its chairman had public interest standing as city residents to bring mandamus action;
- Trial court acted within its discretion in finding that billboard advertising company was not indispensable party;
- City's approval of ordinance purporting to extend development agreement violated ordinance prohibiting construction of additional billboards;
- No implied-in-fact contract existed between city and advertising company following expiration of original agreement;
- Trial court did not err in finding that significant and widespread benefit was gained from suit, so as to support attorney fee award under private attorney general statute;
- Trial court did not err in determining that objectors established necessity of private enforcement, so as to support attorney fee award under private attorney general statute;
- Trial court did not err in finding that objectors incurred financial burden sufficient to support attorney fee award under private attorney general statute; and
- Objectors were not entitled to appellate sanctions.

PUBLIC UTILITIES COMMISSION - MARYLAND

Board of County Commissioners of Washington County v. Perennial Solar, LLC

Court of Special Appeals of Maryland - November 15, 2018 - A.3d - 2018 WL 5993859

Board of county commissioners and aggrieved residents appealed from decision of board of zoning appeals approving application for special exception and variance to construct a solar panel farm.

The Circuit Court dismissed with instruction that the board of zoning appeals vacate its decision. Board of county commissioners and aggrieved residents appealed.

The Court of Special Appeals held that:

- State law impliedly preempted local zoning regulation of solar energy generating systems (SEGS) that required certificates of public convenience and necessity (CPCN), and
- Applicant was subject to the jurisdiction of the Public Services Commission (PSC).

State law impliedly preempted local zoning regulation of solar energy generating systems (SEGS) that required certificates of public convenience and necessity (CPCN); statute defining the nature and extent of the Public Services Commission's (PSC) regulatory powers and responsibilities detailed the application process required to construct an electric generating system which required a CPCN, and granted the PSC broad authority to determine whether and where a SEGS may be constructed and operated, and no PSC rule or order required compliance with local zoning ordinances as a precondition for obtaining a CPCN.

Applicant for special exception and variance to construct a solar energy generating system (SEGS) was subject to the jurisdiction of the Public Services Commission (PSC), even though it was not a public service company; PSC's jurisdiction was not limited to public service companies only, and for purposes of the PSC law, applicant was a "person" seeking to construct a generating station, and thus, subject to PSC jurisdiction.

EMINENT DOMAIN - MISSISSIPPI

Harris v. State

Supreme Court of Mississippi - November 8, 2018 - So.3d - 2018 WL 5839607

Abutting landowners brought action against State, city, and county to confirm title to waterfront properties.

The Chancery Court granted partial summary judgment in favor of landowners on the issue of tideland boundaries, confirmed landowners' title, and ruled that government parties failed to prove adverse possession or public prescriptive easement. State, city, and count appealed. On appeal, the Supreme Court reversed and remanded. After a trial, the Chancery Court found that State held title to the sand beach in front of landowners' properties as public-trust tidelands and granted easements to county and city. Landowners appealed.

The Supreme Court of Mississippi held that:

- Beach was a public-trust tidelands;
- Trial court acted within its discretion in relying on lay witness testimony that beach was man-made;
- Expert report did not establish that beach was natural rather than man-made; and
- Pumping of sand along shoreline did not constitute an uncompensated taking.

Beach was a public-trust tidelands, and thus landowners could not prevent city and county from obtaining easements across it, where map finalized by the Secretary of State placed boundary of public-trust tidelands seaward of the beach and trial court found that the beach had been artificially created along a shoreline which, previously, had lacked any natural beach.

Trial court acted within its discretion in relying on lay witness' testimony as to whether a beach, in which abutting landowners sought to confirm title, was natural or man-made, and thus subject to State ownership as public-trust tidelands; although witness did not know the locations of landowners' properties, her testimony that the beach did not exist before the late 1940s, and that sand was pumped along the shoreline to create it, was corroborated by testimony of local resident, expert testimony, newspaper clippings that referenced construction of a seawall, and correspondence between county board and United States Army Corps of Engineers about beach construction.

Trial court acted within its discretion in finding that abutting landowners did not offer eyewitness testimony as to whether beach, in which they sough to confirm title, was man-made, and thus subject to State ownership as public-trust tidelands; landowners offered lay testimony that the beach area had undergone no substantial change since 1946/47 but two of three of witness' answers on direct examination were not definite and he admitted that he was away at college during the beginning of beach construction in the early 1950s.

Expert report that a sand beach had existed along a shoreline by 1950 did not establish that the beach was natural rather than man-made, in action brought by abutting landowners challenging State's title to the beach as public-trust tidelands; the report stated that some sand was placed on the beach prior to seawall construction in 1949 and that the current version of the beach was completed in 1954, indicating that it was not natural.

County did not effect an uncompensated taking in having the United States Army Corps of Engineers pump sand along the shoreline abutting landowner's property to create a beach, where letter from the Corps of Engineers to county board established that the pumping, as part of beach construction, occurred in State-owned tidelands.

EMINENT DOMAIN - NEW MEXICO

City of Albuquerque v. SMP Properties, LLC.

Court of Appeals of New Mexico - September 26, 2018 - P.3d - 2018 WL 4625803

City filed complaint for condemnation to acquire commercial property on which city wanted to build a road, and after city was granted possession and right to work on the property, the commercial property owners argued in their answer that $143,850 city had deposited with court was not just compensation and that city's actions caused owners' tenant not to renew its lease.

The District Court granted city's motion for partial summary judgment, and entered a stipulated final judgment for condemnation. Property owners appealed.

The Court of Appeals held that:

- Genuine issue of material fact regarding whether city's actions caused property owners' commercial tenant not to renew its lease precluded summary judgment on damages claim; and
- Genuine issue of material fact regarding whether city's precondemnation actions constituted substantial interference precluded summary judgment on inverse condemnation claim.

Genuine issue of material fact regarding whether city's actions caused property owners' tenant not to renew its commercial lease precluded summary judgment on owners' claims for damages resulting from the loss of its tenant and order prohibiting owner and expert from testifying regarding those damages in condemnation action brought by city.

Genuine issue of material fact regarding whether city's precondemnation activities in informing property owners' tenant about planned condemnation constituted substantial interference with property owners' rights precluded summary judgment on owners' claim for inverse condemnation.

ZONING & PLANNING - VERMONT

In re Champlain Parkway Wetland Conditional Use Determination (Fortieth Burlington, LLC)

Supreme Court of Vermont - November 9, 2018 - A.3d - 2018 WL 5852616 - 2018 VT 123

Objector appealed from decision of the Agency of Natural Resources (ANR) extending city's conditional use determination (CUD) which permitted city to commence construction of parkway project.

The Superior Court, Environmental Division, dismissed, and objector appealed.

The Supreme Court of Vermont held that:

- City was not required to redelineate and reevaluate wetlands on parkway project site prior to seeking extension of CUD;
- ANR's extension of CUD did not operate to excuse city from compliance with any other permit condition;
- City's request for extension of CUD constituted a "minor modification" that did not trigger the need for written approval from the Vermont Wetlands Office;
- Objector could not use appeal to collaterally challenge the city's compliance with the CUD's conditions, Vermont Wetland Rules and statute, or the underlying CUD; and
- While the identification of a newly identified wetland may have been germane to other permit conditions, it would not have been properly considered in a request that solely asked for a time extension of the original CUD.

PUBLIC UTILITIES - WEST VIRGINIA

Pool v. Greater Harrison County Public Service District

Supreme Court of Appeals of West Virginia - November 5, 2018 - S.E.2d - 2018 WL 5913873

Homeowner appealed order from the West Virginia Public Service Commission (PSC) which dismissed, for lack of jurisdiction, homeowner's action challenging public service district's rate increases.

The Supreme Court of Appeals of West Virginia held that public service district was not subject to PSC jurisdiction.

Each customer of public service district's water and sewage utilities could be counted as a separate customer for each utility, and thus service district was not subject to the jurisdiction of the West Virginia Public Service Commission (PSC) with regard to rate increases; Legislature limited the PSC's jurisdiction by restricting its authority over rates to those charged by public service districts with 4,500 or fewer customers and intended the PSC to measure whether this threshold was met by counting the customers for each utility, such that public service district had in excess of 4,500 total customers for water and sewage.

- MSRB Draft Interpretive Guidance on Pennying and Draft Amendments to Existing Guidance on Best Execution.
- Fitch U.S. College and University Rating Criteria Revision.

- Why the Extra Safety You Get Through Bond Insurance Is Worth the Modest Yield Reduction.
- Muni-Bond Defaults Show Risk Clustered in Midwest, Southeast.
- And finally, BCB's Department of Hope-Based Forestry this week proudly brings you *Trustees of Dartmouth College v. Town of Hanover*, in which a town board member testified that, "What we also have to recognize is that there is some shading probably already caused by the existing trees, which are already quite tall and will continue to grow, I hope, in some respects for many years to come." We hope, in some respects, that Mr. Carter will eventually be introduced to the concept of photosynthesis. And those of you with offspring occupying adjoining bedrooms, please inform said siblings that they are authorized – via *Dartmouth* – to refer to each other as "abutters." Once again, you're welcome.

EMINENT DOMAIN - COLORADO

Town of Monument v. State by and through State Board of Land Commissioners

Colorado Court of Appeals, Division VII - October 4, 2018 - P.3d - 2018 WL 4781388 - 2018 COA 148

Town brought action against state, seeking to use its eminent domain power to construct water tank on subdivision lot with restrictive covenant prohibiting such structures, and subdivision lot owners intervened, arguing that town could not eliminate covenant without compensation for loss in property value.

After the District Court held that intervenors had compensable property interest in proceeding, and denied town's eminent domain request, town and board stipulated to dismissal of the case with prejudice. Town appealed.

The Court of Appeals held that:

- Trial court's order was final and appealable; and
- Restrictive covenant was not a compensable property interest.

Order determining that town could not use eminent domain power to overcome restrictive covenant was final and appealable; order completely resolved parties' rights and, even if the initial order was not a final judgment, it was followed by a dismissal with prejudice, which was final.

Restrictive covenant that prohibited town from constructing a municipal water storage tank on subdivision lot was not a compensable property interest for eminent domain purposes.

Town's decision to buy subdivision lot subject to restrictive covenant which barred construction of municipal water storage tank was not an agreement to be bound by the covenant, even if town was aware of covenant when it bought the lot.

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