
Bloomberg Brief Weekly Video - 06/15

Taylor Riggs, a contributor to Bloomberg Briefs, talks with editor Joe Mysak about this week's municipal market news.

Watch video.

Bloomberg

June 15, 2017

Fitch: I-69 Issues Do Not Present Credit Risk for Indiana.

Fitch Ratings-New York-12 June 2017: Recent issues regarding a public private partnership project (PPP) to rebuild a portion of I-69 are unlikely to affect the state of Indiana's credit profile, according to Fitch Ratings. Fitch recently downgraded the rating on private activity bonds (PABs) issued by the Indiana Finance Authority (IFA) on behalf of the developer (I-69 Development Partners LLC) to 'CC'/Rating Watch Negative. The state is not obligated on those bonds. IFA recently disclosed that it is actively negotiating a state takeover of the project that would include redemption of the PABs and assumption of project completion risk. Fitch's IDR for Indiana ('AAA'/Stable Outlook) already incorporates the par amount of the outstanding PABs, and the estimated exposure for completion risk is well within the state's capacity to absorb at the current rating.

Fitch's recent rating actions on the I-69 PABs reflect various challenges, including substantial construction delays, unresolved disputes between the construction contractor and the IFA and the deteriorated credit quality of Isolux Corsan SA (Isolux), parent of the construction contractor Corsan-Corviam Construccion SA. This has all culminated in an inability to reach a global solution between all stakeholders on the project to avoid a default on the bonds.

As the grantor, IFA (acting on behalf of the state) has been heavily involved in the negotiations. In a recent disclosure, IFA indicated that it has offered to redeem the $240 million in outstanding PABs with the redemption to be funded by proceeds of a separate IFA issuance. IFA is the state's issuer for appropriation-backed debt, which Fitch rates 'AA+'/Stable Outlook, linked to the state's 'AAA' IDR and Stable Outlook.. Under Fitch's U.S. tax-supported rating criteria, the par amount of the PABs are already incorporated into the long-term liability burden analysis since the project is an availability payment based PPP with the IFA as the public sector counterparty. Fitch uses the par amount of debt issued by project companies as a proxy for a state grantor's liability on availability payment based PPPs.

The IFA's disclosure also indicated that based on current estimates, the gap between currently available resources within the transaction, and remaining construction costs and outstanding claims costs is $165 million. Fitch considers this amount, whether met through the state's cash on hand, additional financing, or a mix, to be immaterial to Indiana's credit profile.

At the end of fiscal year 2016 the state maintained available balances of over $2 billion. Fitch anticipates those levels, while down modestly for planned one-time uses this fiscal year, are still substantial and in excess of $1.5 billion. Fitch's calculation of the state's long-term liability burden includes $2.5 billion in debt (including $900 million for two availability-payment based PPPs). Indiana could absorb additional issuance of $165 million to fully fund the estimated additional costs of the I-69 project without changing Fitch's 'aaa' assessment of its long-term liability burden.

Fitch will continue to monitor the I-69 PABs and IFA's role in the project. Default on the PABs will not have a direct effect on the state's IDR or appropriation-backed ratings, given Fitch's criteria approach and Indiana's credit profile as described above. Issues around this transaction may affect the state's willingness to enter into future similarly structured PPP transactions. Fitch notes the state recently implemented legislation to increase various transportation taxes and fees, and to explore tolling of interstate highways, providing additional financing and funding methods for infrastructure needs.

Contact:

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

Stacey Mawson
Director
+1-212-908-0678

Media Relations: Elizabeth Fogerty, New York, Tel: +1 (212) 908 0526, Email: elizabeth.fogerty@fitchratings.com.

Additional information is available on www.fitchratings.com

Fitch: Slow US State Tax Revenue Growth Pressuring Budgets.

Fitch Ratings-New York-14 June 2017: Tepid revenue growth is pressuring state budgets, leading to mid-year budget cuts and reserve draws, which is unusual eight years into a national economic expansion, Fitch Ratings says.

This may become a more significant issue for state governments if tax revenue growth continues to lag economic growth and continued divergence could pose long-term credit challenges for states. States have used the growing revenue typically accompanying economic expansions to restore structural budget balance, fund new priorities and build-up reserves. A permanent decoupling of this link could gradually pressure the typically robust revenue frameworks for states.

The median year-over-year (YoY) revenue growth for the 35 states reviewed by Fitch – those states that have reported monthly revenue data through April – was just 1.8%. April is typically a large month for income tax collections. This was below the 2.2% annual rate of inflation in April. Revenue growth also trailed growth in personal income at 3.7% and wages and salaries at 3.8%, which were both up solidly on an annual basis through March, the most recent month available.

Median sales tax collections grew at just 1.8%. The shift to online sales could be one cause as sales taxes are not always collected on those transactions. State and local governments may have missed out on as much as $26 billion in sales tax revenue from e-commerce and other remote sales in 2015 alone, according to the National Conference of State Legislatures and the International Council of Shopping Centers.

Personal income tax (PIT) revenues were somewhat better at a median growth rate of 2.7% YoY through April. PIT includes both paycheck-withholding revenues, which continue to generally track economic performance, and non-withholding revenues which tend to be linked to capital gains and are much more volatile.

In the limited states where non-withholding data is available, Fitch noted widespread sharp YoY declines as of April. The steepest declines were in Connecticut, which posted a nearly 14% decline and Massachusetts reporting a more than 6% drop off. Connecticut’s shortfall contributed to the state’s revision of its projection to a nearly $400 million operating deficit in the current year.

Pennsylvania’s relatively smaller 4% decline in non-withholding revenues added to pressure from steep declines in business tax collections and softness in sales tax collections, leading the state to project an approximately $1 billion overall general fund shortfall for the current fiscal year.

States reported one possible driver of the declines in non-withholding personal income tax revenue could be taxpayers who shifted income to the 2017 tax year in anticipation of large federal tax cuts. If that is a key driver, states may see a rebound in revenues in the next fiscal year.

A closer look at historical data indicates a more fundamental shift may be underway. Based on a review of quarterly state and local tax receipt data from the US Bureau of Economic Analysis, Fitch notes a recently widening gap between growth rates for tax collections versus key economic indicators including personal income and wages and salaries.

Between third-quarter 2015 and first-quarter 2017, annual growth in quarterly state and local tax receipts averaged 1.9% while growth in quarterly personal income averaged 3.6% and growth in wages and salaries averaged 4.2%. Behavioral changes or ongoing consumer shifts to untaxed activity as described above may be factors. In the preceding decade, average growth rates in quarterly tax receipts, wages and salaries, and personal income were much closer.

Contact:

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

Laura Porter
Managing Director, U.S. Public Finance
+1 212 908-0575

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

Media Relations: Elizabeth Fogerty, New York, Tel: +1 (212) 908 0526, Email: elizabeth.fogerty@fitchratings.com.

The Federal Budget: How City Leaders Can Fight the Cuts.

The Trump Administration released their full Fiscal Year 2018 budget proposal last month, which includes $54 billion in domestic cuts that would eliminate dozens of successful programs, including CDBG, TIGER grants for transportation projects and the HOME Investment Partnerships Program. The proposal would have major consequences for every city in America – regardless of size, location or economic outlook.

Join NLC's Federal Advocacy team to learn more about the budget, the process and how you can join our fight to prevent these devastating cuts to cities from becoming a reality.

Register.

National League of Cities

Ashley Smith Senior Associate,
Grassroots Advocacy Federal Advocacy
202-626-3094 asmith@nlc.org

Pennsylvania Lawmakers Compromise on Pension-Overhaul Bill.

Measure will move most future state and public school workers at least partly into 401(k)-style plans

Pennsylvania Gov. Tom Wolf signed a pension-overhaul bill Monday that the nonpartisan Pew Charitable Trusts says will be one of the most comprehensive state-level reforms in the U.S.

The compromise measure will move most future state and public school workers at least partly into 401(k)-style plans to help shore up the deeply underfunded pension system and shift market risk from taxpayers to employees. An independent analysis estimates the state will save $5 billion to $20 billion over 30 years, depending on investment performance.

"I think we have a road map to actually move out of the nightmare that we've been in for the last 20 years," Gov. Wolf, a Democrat, said in an interview Monday.

Pennsylvania is one of many states, including New Jersey, Illinois and Connecticut, grappling with rising pension costs and huge unfunded liabilities—the gap between promised benefits and the funding available to meet those obligations. A 2015 Pew report found that the nation's state-run retirement systems had a collective $968 billion shortfall.

Pennsylvania's pension crunch dates to a 2001 move by the legislature to sweeten benefits, combined with subsequent underfunding by state government and school districts, and weak investment returns, particularly after the 2008 financial crash.

A 2010 law boosted the government pension contributions, and Mr. Wolf said the current bill represents a key second step.

Republicans and Democrats in the GOP-led state legislature hashed out the bipartisan deal along with the governor and his aides.

The Pennsylvania School Boards Association applauded the bill, saying school districts have faced growing financial pressure because legally required pension contributions have risen at an unprecedented rate.

Current and retired employees will remain under the traditional "defined benefit" pension that provides set retirement payments. The two pension systems for state and public school employees have about 863,000 active, vested and retired members. The new law won't apply to state troopers or correctional officers.

Greg Mennis, director of Pew's public-sector retirement systems project, said the bill breaks new ground.

"Our research indicates that this would be one of the most—if not the most—comprehensive and impactful reforms any state has implemented," he wrote in a letter to lawmakers.

Critics of the legislation say it would do little to address the state's roughly $62 billion in existing pension debt.

"Pension debt is the sole reason for doing pension reform and yet, ironically and bizarrely," the bill doesn't address existing unfunded liabilities, Republican state Rep. John McGinnis said during a recent debate. "We're not making history, we are repeating it."

Gov. Wolf said the criticism amounts to "crying over spilled milk," adding: "A big part of that is because the commonwealth didn't pay its bill and kicked the can down the road" until the 2010 change.

Republican House Speaker Mike Turzai acknowledged the state isn't likely to see major savings for years under the pension overhaul, but said it is time to follow the private sector into 401(k)-type retirement plans, where the market determines future benefits.

"At a certain point you've just got to turn off the spigot, and you've got to move to where the private sector's been," he said in a video on his website.

His office says 18 states have enacted some 401(k)-style plan for state workers, and notes that the state's Independent Fiscal Office estimates pension payments by Pennsylvania taxpayers will account for nearly 10% of the state's general fund budget by 2019.

Gov. Wolf, who vetoed a 2015 GOP pension bill that he deemed unfair, said one key element of the current bill is a push to cut Wall Street investment fees by $3 billion over three decades. Pennsylvania has the fifth-highest fee levels of any state, according to Pew.

The union representing more than 65,000 Pennsylvania state employees said it can "live with" the bill because it lets current employees keep their plans and offers retirement security for new employees.

“Ultimately, this proposal may be as good as it gets with a Republican-controlled legislature that has constantly been going after pension reform,” said David Fillman, executive director of the American Federation of State, County and Municipal Employee Council 13, on the union’s website.

Starting in 2019, the retirement age for new employees will rise to 67 from 65.

Mr. Wolf said the new approach offers portability that better suits many workers. “There are a lot of people who might want to stay in public service four or five years,” he said, but it takes employees 10 years to vest in the state pension system.

The Wall Street Journal

By Scott Calvert

June 12, 2017 11:33 a.m. ET

A Town’s ‘Creative Accounting’ Leads to a Fraud Conviction.

Such misrepresentation is common in municipal bookkeeping. Rarely do officials answer for it.

For years, local governments have had little to fear from using dubious accounting practices to shore up their finances on paper. Sure, critics could scream: In 2015 Paul Volcker, a former chairman of the Federal Reserve, sounded the alarm about states and cities that used slippery accounting to “obscure their true financial position, shift current costs onto future generations, and push off the need to make hard choices.” But rarely have officials been made to answer for their deception.

Until now. Last month a jury convicted Christopher St. Lawrence, the former town supervisor of Ramapo, N.Y., of federal charges including securities fraud in connection with the financing of a minor-league baseball stadium. Prosecutors have frequently jailed local officials for accepting bribes or stealing money. But Mr. St. Lawrence, who could serve prison time and is planning to appeal, is the first to face criminal charges for cooking a municipality’s books. His conviction, part of an escalating federal enforcement effort, should be a wake-up call for towns, cities and states nationwide.

In 2010 residents of Ramapo voted 67% to 33% against using public money to build a new stadium for the Rockland Boulders. So Mr. St. Lawrence concocted an elaborate plan to have the town’s economic-development agency float debt for the stadium. But the agency couldn’t actually finance all the debt: Mr. St. Lawrence was funneling money to it from town accounts. Then he tried to hide Ramapo’s weakening finances.

After assuring a bond analyst in 2013 that the town’s budget was sound, Mr. St. Lawrence was caught on tape telling employees, with a laugh, that to make the numbers work “we’re going to have to all be magicians.” Prosecutors also accused him of recording on Ramapo’s books a proposed $3.1 million sale of town property, even though the deal eventually fell through because the land was a rattlesnake habitat.

Mr. St. Lawrence’s lawyers argued that he did not profit from the transactions. They portrayed him as a well-meaning official guilty only of creative financing. But several witnesses painted a picture of

Mr. St. Lawrence as a man who lied to raise money for a pet project and then tried to cover up the result.

The former head of Ramapo's development agency, N. Aaron Troodler, was charged with conspiring to commit securities fraud and pleaded guilty. He testified at Mr. St. Lawrence's trial that the town had booked a $3.6 million payment from Mr. Troodler's agency for rights to the stadium land, even though there had been no such transfer.

Ramapo's finances remain in disarray, and the town has struggled to pay its debts. But the acting supervisor says there's no way to know how bad the situation is until officials complete a forensic audit. Meantime, Standard & Poor's has withdrawn Ramapo's credit rating because of the town's unreliable financial statements.

The jury's verdict ought to resonate far beyond Ramapo. Nearly 44,000 local governments issue debt, and for years the Securities and Exchange Commission, daunted by the task of trying to track their financial filings, did little to discipline public officials. But then came the financial crisis, followed by a rash of government defaults, including in Stockton, Calif., where one official described the city's bookkeeping as having "eerie similarities to a Ponzi scheme."

By early 2010 the SEC had created a new unit to police municipal misconduct. Later that year, regulators accused New Jersey of misleading investors over a decade about its pension debt. No penalties were imposed, but the state was told to change its practices. Since then, the SEC has gotten tougher. In 2013 it charged Miami and the city's budget director, Michael Boudreaux, with financial manipulation that included shifting money among its various accounts "to mask increasing deficits." In an unprecedented civil trial, a jury found both guilty, and a judge fined Miami $1 million and Mr. Boudreaux $15,000.

With Ramapo, the SEC and prosecutors went a step further by bringing criminal charges. But this may represent the proverbial tip of the iceberg. Municipal budgeting is littered with misrepresentations meant to raise money for favored projects, increase spending during election years, or reward political supporters with rich contracts. Investors and taxpayers should welcome a crackdown.

The Wall Street Journal

By Steven Malanga

June 16, 2017 6:00 p.m. ET

Mr. Malanga is a fellow at the Manhattan Institute and a senior editor for City Journal.

Christie Betting That Lottery Can Bail Out Troubled Pensions.

New Jersey Gov. Chris Christie is betting that the lottery is the ticket to shoring up one of the state's most vexing money problems: ever-growing obligations to the pensions for public employees.

The idea of linking the lottery to pensions has been around for years, but legislation backed by the Republican governor was introduced this week to make the lottery the property of the pension system for 30 years.

Analysts and advocates say the deal — an arrangement that would be unique to New Jersey — probably won't hurt, but there's not a consensus on how much it might help.

"Where it does provide tremendous relief is optically," said Lisa Washburn, managing director at Municipal Market Analytics, a firm that analyzes government bonds. "The numbers look better on a whole lot of levels. Whether or not they're truly better is questionable."

Since Christie took office in 2010, the state has contributed more than $6 billion to retirement funds to which past governors have often skimped on payments — or skipped them entirely. Still, the gap between the money expected to be in the funds and that which is owed to retirees has only grown. By any measure, it's among the biggest unfunded pension liabilities in the country.

Trying to solve the problem makes it harder for officials to expand other government services or make major tax cuts.

State Sen. Paul Sarlo, a Democrat sponsoring the legislation, called it an "intriguing" proposal that deserves to be debated. He said there's a long-term benefit under the administration's projections. "The next governor will have the huge benefit after five years of being able to reduce the pension payment," he said.

Here's how the measure that will now be debated by the state's Democratic-controlled Legislature would work:

THE CLEAR BENEFIT — AND COST

There's a consensus that the lottery deal would give the state a guaranteed stream of money coming in to make a portion of its pension contributions.

That income — a projected average of more than $1 billion annually — is a bit more than one-fifth of the $5 billion the state would have to annually contribute to fully fund the pension funds.

Christie's budget proposal for the fiscal year that starts July 1 calls for about $2.5 billion in pension contributions — which would be a record.

But the lottery revenue isn't found money: It is currently used to help pay for institutions including the state's universities, psychiatric hospitals and a home for disabled soldiers. The state would still need to pay for those programs; officials say the move would not increase costs for taxpayers.

ADDRESSING THE UNFUNDED LIABILITY

The state treasurer's office is promoting a second benefit of the lottery deal. This is the part Washburn and others are skeptical about.

Christie's administration says the value of the lottery, assessed at $13.5 billion, could be used to offset the unfunded liabilities in the pension funds.

The administration says that would immediately shrink the gap — which it pegs at $49 billion, but some other calculations say could be as high as $136 billion.

Using the state's evaluation of those unfunded liabilities of $49 billion, that would shrink the gap significantly and immediately. Under accounting rules, it would mean the state could recalculate how much it needs to pay into the fund to meet its obligations. That could mean the state would need to contribute less each year. A better pension position could result in a better bond rating for the state, allowing it to get more favorable borrowing rates.

Hetty Rosenstein, the New Jersey director of Communications Workers of America, the biggest union of state government workers, said she isn't taking a position on the idea because she doubts it would reduce the liability anywhere but on paper. "At the end of the day, you can't pay out pieces of the lottery," she said.

Tom Byrne is a former chairman of the state Democratic State Committee who currently heads the Council on Investment, which oversees investment of pension funds. He says that the move could be helpful, despite the doubts of union leaders.

"Their brows might be a little furrowed," he said. "They're saying, 'It's not cash, so is this real?' From an accounting standpoint, it is."

By THE ASSOCIATED PRESS

JUNE 13, 2017, 3:52 P.M. E.D.T.

Connecticut Bill Would Force Fee Disclosures for Teacher Retirement Plans.

Public schoolteachers and other education workers in Connecticut should soon have an easier time figuring out how much they are paying for their retirement investments.

These costs should not be a mystery, yet they are often difficult to find and even more challenging to understand, particularly for employees in public schools. These workers are commonly sold expensive and complex investments inside their 403(b) plans, which are retirement accounts offered to educators, nonprofit employees and many hospital workers. Most of these plans leave employees more vulnerable because they are more lightly regulated than their better-known counterparts, 401(k) accounts.

A bill passed by the Connecticut Legislature tries to improve this situation by requiring all 403(b) retirement plan providers to disclose fees and compensation to state and municipal workers. The legislation, which unanimously passed in the state Senate last week, is headed to Gov. Dannel P. Malloy for his signature.

The bill was written by Matthew Lesser — a Connecticut state representative who leads the House banking committee — after he read a series of articles published in The New York Times that documented the problems in 403(b) plans.

The legislation — which will take effect in 2019, but could be changed to 2018 as language in the bill is completed — would require companies that operate 403(b) plans to disclose the charges and returns (after subtracting fees) for each investment offered. It would also require plan administrators to disclose fees paid to any person "who for compensation provides investment advice."

The disclosures must be made to all plan participants when they enroll, and every year after that. Alternatively, a provider can follow federal disclosure rules — as part of the Employee Retirement Income Security Act of 1974 — that govern 401(k)'s and other retirement plans.

"This bill grants teachers the same fee and conflict-of-interest disclosures available to private sector workers having a 401(k) and allows the comptroller to make lower-cost plans available directly to local boards of education," said Mr. Lesser, a Democrat.

Mr. Lesser was referring to a state-run 403(b) plan, overseen by the state comptroller, which includes several low-cost funds and a low administrative fee. He said the process of crafting the legislation brought a renewed focus on other ways to help school employees, which includes giving them access to low-cost retirement plans already in place and offered through the comptroller's office. The comptroller already has the authority to market the state's 403(b) and 457 plans — another type of retirement plan offered to state and local government workers — to school districts and other municipal employees.

A spokeswoman for Kevin Lembo, the Connecticut state comptroller, said his office was analyzing ways to make those plans more readily available. "I am hopeful that we can encourage more opportunities for municipalities, particularly school districts, to partner with the state," Mr. Lembo said in a statement, "including through both the 457 and 403(b) plans."

Joshua B. Gottfried, a financial planner in Connecticut who works with many teachers, has said he often tells them to avoid the 403(b) altogether, given the dismal lineup of available investments and the high fees.

He said the state-run plan is a better option. "Compared to many of the products we see in local districts, it does provide a better platform by offering teachers the benefits of low-cost funds and diversification," Mr. Gottfried said.

THE NEW YORK TIMES

By TARA SIEGEL BERNARD

JUNE 15, 2017

In Atlanta, Murals as Art, and as Zoning Law Test Cases.

ATLANTA — Next to Fabian Williams's fresh mural and around a corner from a wasp-infested wall where he had painted another one, the graffitied doors along Flat Shoals Avenue seemed like an ideal canvas.

"So, I did this," Mr. Williams said last week as he stood between a weave shop and a tax preparation office and a few feet from a recently finished aerosols-and-acrylics depiction of James Baldwin, the novelist and social critic.

The owner of the tax business loved the painting, which hardly seemed out of place in a city full of colorful visual tributes to cultural figures, civil rights heroes and local music. But to some here, the Baldwin mural is like many other works of street art on private property: potentially illegal because it is in public view and displayed without a series of government approvals detailed in a seldom-enforced 2003 city ordinance.

This spring, the city abruptly suggested that it might begin to carry out the ordinance, leaving Atlanta in a dispute of art and municipal zoning that turns on constitutional principles and quickly landed in court.

Atlanta is hardly the only American city increasingly marked by wall-size splashes of color and design. But it the latest place to contemplate whether and how it can regulate murals that can be reflections of neighborhood pride, artistic visions, and local debates over commercialization and gentrification.

Artists contend that the First Amendment is their surest shield against rules that municipal officials argue are necessary to prevent works that some find obtrusive.

“It can be an extremely politicized road,” said Olga Garay-English, a former executive director of the Department of Cultural Affairs in Los Angeles, where she was involved in a battle over mural rules. “Once you start bringing in elected officials to be arbiters of what is a mural and what isn’t, my opinion is that it’s very tempting to start looking at content when that’s really the first thing you’re not supposed to be doing.”

In Atlanta, where the streets can sometimes seem like galleries, the controversy ignited after a surprising threat to invoke a longstanding, but mostly ignored, ordinance that effectively requires murals on private property to receive approvals from five sources, including the mayor, the City Council and a representative of the Urban Design Commission.

City officials are also supposed to examine whether a proposed work will “constitute a traffic hazard or undue or dangerous distraction to motorists or pedestrians” and ensure that it is “not inconsistent with the City of Atlanta’s public art program.”

Violators risked jail time, but compliance and enforcement were sporadic. Then the city stunned muralists in April when it quietly introduced a sweeping amnesty program to allow artists to receive retroactive, streamlined certifications. Murals that remained unsanctioned and defied a June deadline, an Atlanta official warned, were “subject to removal.”

The dispute renewed a debate about street art that has percolated for more than a decade at neighborhood meetings, acts of protest and City Hall debates.

Mr. Williams, who said he thought the sudden shift was an effort to sanitize Atlanta’s culture and appease developers, joined other artists in going to Federal District Court.

“The city is not empowered to regulate or prohibit or criminalize, in this case, artistic expression on a person’s own property,” said Gerry Weber, a lawyer who represents Mr. Williams and who, in 2006, negotiated a settlement to a separate graffiti ordinance. “We’re not saying the city doesn’t have a significant amount of discretion in saying what art goes on public property.”

Mayor Kasim Reed said that there was “no city policy to remove artwork on private property” and that “any communications from the city suggesting otherwise were a mistake, and do not represent the city’s position.”

Mr. Reed, who was not in city government when the ordinance took effect and who represented performing artists when he was a practicing lawyer, said that Atlanta’s existing standard warranted reconsideration. But he said Atlanta did “need some standards to govern art on private property which can be viewed by the public.”

“Of course we must and will be mindful of the First Amendment and, consistent with the First Amendment, protect against offensive and harmful content,” Mr. Reed said. “At the same time, we can and should create space for artists to express themselves through their work, and bring more vibrancy and beauty to our city.”

The city has not filed its answer to Mr. Williams's lawsuit, but lawyers are discussing a settlement.

"At the beginning, the champions of zoning did not emphasize that because of their fear that zoning would be struck down as too arbitrary because beauty is in the eye of the beholder," said Michael Allan Wolf, a law professor at the University of Florida, who was written extensively about zoning and land use. "In reality, it cannot be denied that one of the reasons we have land use regulation is because it looks better, and a community that looks better is a healthier community, a more vibrant community."

But Atlanta's requirements, experts said, could trouble the courts if Mr. Williams's case ever went to trial. The ordinance appeared "to be pushing the envelope," Professor Wolf said, because it involves art on private property.

The city does not seem to want to test the professor's prediction. A judge ordered an update on settlement negotiations by June 23, and Mr. Reed suggested that Atlanta could revise the city code "in the next few weeks."

THE NEW YORK TIMES

By ALAN BLINDER

JUNE 15, 2017

World Offers Cautionary Tale for Trump's Infrastructure Plan.

LONDON — The rest of the planet bears a warning for President Trump's plan to lean heavily on private business in conjuring a trillion dollars' worth of American infrastructure: Handing profit-making companies responsibility for public works can produce trouble.

In India, politically connected firms have captured contracts on the strength of relationships with officialdom, yielding defective engineering at bloated prices. When Britain handed control to private companies to upgrade London's subway system more than a decade ago, the result was substandard, budget-busting work, prompting the government to step back in. Canada has suffered a string of excessive costs on public projects funneled through the private sector, like a landmark bridge in Vancouver and hospitals in Ontario.

By contrast, China has engineered one of the most effective economic transformations in modern history in part through relentless investment in infrastructure, traditionally financed and overseen by an unabashedly powerful state. China illustrates both the benefits and perils of state domination. It has constructed projects strategically, as part of a highly successful effort to catalyze economic growth. Yet the state has wielded authoritarian powers, generating waste and corruption.

The Trump plan was heralded as a way to lift America's sagging infrastructure while spurring growth. But it risks yielding India-like problems while failing to produce China's economic benefits.

Many economists warn of a classic mismatch of incentives. Governments may have good reason to invest in projects that yield no profit, building roads to nowhere that ultimately open up undeveloped land for job-generating commerce. Government alone has the incentive to upgrade shoddy wastewater treatment and supply systems for drinking water. Absent public guarantees for profits, private companies have no inducement to bring such works into creation.

“Private investors need to have a decent rate of return,” said Louis Kuijs, head of Asia for Oxford Economics, based in Hong Kong. “They cannot wait 40 years, and they are simply not able to take into account the additional tax revenues for the government.”

India’s heavy reliance on so-called public-private partnerships — the mechanism Mr. Trump has in mind — comes not from some ideological predisposition toward private enterprise, but from the fact that its government is short of financing. Like most countries, India cannot borrow as cheaply as the United States, which attracts virtually unlimited flows of investment by dint of the dollar serving as the global reserve currency.

India has expanded its highway network with private companies collecting tolls. Power stations have been erected, though often at costs far in excess of initial bids. Banks, many operated by the state, have been left with piles of bad debts as developers have failed to recoup enough to pay their loans.

“It hasn’t worked out,” said Pranab Bardhan, an economist at the University of California, Berkeley, and the author of “Awakening Giants, Feet of Clay: Assessing the Economic Rise of China and India.” “Many of the infrastructure projects in India are now stalled.”

In 2008, the Indian highway authority granted a contract to a private company, a subsidiary of L&T Infrastructure Development Projects, to establish a six-lane toll road beginning in the state of Tamil Nadu, running north from the city of Chennai. By the government’s reckoning, the highway was supposed to be finished three years later at a cost of about $65 million. But difficulties in acquiring land led to delays and cost overruns. Two years ago, the company defaulted on its loans. The road has yet to be completed.

That Mr. Trump will find investors for his plans may be taken as a given. Be it Japan, Europe or North America, central banks have maintained rock-bottom interest rates in an effort to spur recovery from the worst financial crisis since the Great Depression. As a result, money managers are on the prowl for investments offering a decent rate of return.

“Infrastructure investment, which typically yields 3 to 4 percent, looks relatively attractive,” said Linda Yueh, a visiting senior fellow at the London School of Economics.

But others question why the United States needs to involve private money. The American authorities can tap vast and sophisticated bond markets, with municipal bonds exempt from federal taxes.

“The borrowing costs for the U.S. government are zero,” said Mark Weisbrot, a co-founder of the Center for Economic Policy and Research in Washington. “There’s simply no reason to turn to private capital and all the complications, uncertainties, and opportunities for corruption and bad outcomes that you add to the mix.”

China provides a textbook case of what happens when the state invests aggressively in infrastructure. From 1992 to 2013, China allocated about 8.6 percent of its economic output toward infrastructure projects, according to an analysis by the McKinsey Global Institute. In 2013 alone, China spent $829 billion on infrastructure, more than the United States, Canada and Western Europe combined.

Inefficiency has added to the cost of many projects. Corruption has erected no shortage of white elephants. Still, China’s huge expansion demonstrates the benefits of the state guiding infrastructure spending.

Had the private sector been shaping plans, the Pearl River Delta in southern China would presumably not have gained the ports, highways and electrical supplies that transformed it into a clattering zone of industry. Once in place, the infrastructure attracted vast sums of foreign investment. The region grew into the factory floor to the world, generating millions of jobs for poor migrant workers.

That process has been aided by features of the Chinese political system that are anathema in the democratic world.

The government can seize land, moving less-than-enthusiastic residents to new homes. China has not been constrained by owls or fish or other environmental considerations.

In many areas, China overbuilt infrastructure, helping bring government debt levels to alarming proportions. The construction industry has frequently conspired with state banks and local officials to unleash projects that can be justified only as opportunities to make money change hands, enabling well-connected fingers to extract a cut.

Atif Ansar, the co-author of a paper studying China's infrastructure investments and a management scholar at the Saïd Business School at the University of Oxford, said he and his colleagues found many roads that "were almost empty" in parts of southwestern China.

"Had China focused on about a third of its most productive investments, it would have reaped lasting economic benefits without the debt overhang," Dr. Ansar said.

As China's indebtedness has soared, the state has expanded infrastructure investment while turning to a new mode that limits the state's direct outlay — the public-private partnership. Two years ago, China invited private investors to finance more than 2,000 proposed infrastructure projects totaling an estimated $622 billion.

Mr. Trump is not one to let cautionary tales stand in the way of his plans. The globe appears poised for another test case in what happens when private finance is handed control over public works.

THE NEW YORK TIMES

By PETER S. GOODMAN

JUNE 16, 2017

SIFMA U.S. Economic Outlook: Mid-Year 2017.

A semiannual survey of SIFMA's Economic Advisory Roundtable concerning the U.S. economic outlook and rates forecasts.

Summary

The Economy:

SIFMA's Economic Advisory Roundtable forecasted that the U.S. economy will grow 2.1 percent in 2017, strengthening to 2.3 percent in 2018. The current outlook for 2017 is slightly weaker than the Roundtable's end-year 2016 prediction.

Monetary Policy:

All but one respondent expect the Federal Open Market Committee (FOMC) to raise the Federal Reserve's target rate range at the June 13-14, 2017 meeting.

Respondents were also nearly unanimous for the number of rate hikes they expect in 2017; all but one respondent expect two rate hikes in 2017, inclusive of the rate hike in June. The dissenting respondent only expected one rate hike in 2017. Opinions were more varied for 2018, with half of respondents expecting three rate hikes, nearly a third (28.6 percent) expecting two rate hikes, about a fifth (19.0 percent) expecting four rate hikes, and the balance one rate hike.

The report also includes forecasts concerning the employment outlook, oil prices, and regulatory reform, among other issues.

Download the Report.

GFOA Alert: Public-Private Partnerships (P3).

GFOA Advisories identify specific policies and procedures necessary to minimize a government□s exposure to potential loss in connection with its financial management activities. It is not to be interpreted as GFOA sanctioning the underlying activity that gives rise to the exposure.

Background:
Public Private Partnership (P3) Agreements are complex arrangements that use public and private sector resources to accomplish a stated goal. Many organizations have used P3 agreements successfully to gain access to capital, develop capital assets, provide services more efficiently, or provide large infusions of cash to help fund other organizational priorities. However, P3 agreements also contain varying degrees of risk, and some organizations have pursued projects that have been controversial and detrimental to the short-term and long-term fiscal health of the public sector entity. P3 agreements can leave the public entity exposed to fiscal and/or political fallout if proper due diligence does not occur, the private partner fails to perform, or if expected project outcomes do not happen. Careful planning and analysis is necessary with every P3 project. GFOA has developed resources for approaching P3 agreements in a structured way that mitigates risk and improves prospects for long-term success.

Recommendation:
Organizations, and especially the finance officer, must understand what is at stake and make informed, strategic decisions on whether or not to pursue P3 opportunities. Finance officers should be involved throughout the process of a public entity's consideration of potential P3 opportunities. Not fully understanding the overall financial implications, including what the public entity may forfeit, can result in P3 agreements that may not serve the public interest or be detrimental to the long-term financial health of the organization.

Before deciding to pursue or enter into a P3 agreement, the public entity should carefully analyze the potential P3 agreement, including all financial impacts. The list of key considerations below has been developed to help the public entity decide whether or not to pursue a P3 opportunity.1

1. Legal Authority of P3. Does the public entity have the legal and regulatory capacity, including approval from any applicable oversight body, to enter into processes that result in a P3 agreement? Also, does the public entity's contracting/procurement policies or requirements provide for how to handle the proposed P3?

2. Justification for the Project. Does the project address a public priority and is the P3 project consistent with the overall strategic, master plans and financial policies of the organization
3. Competition. Will the potential P3 opportunity be open to competition? What is the expectation for competition in determining the best private partner? Otherwise, is there justification to support a non-competitive process? Also, has the financial, risk and legal analysis of the project been compared to a public-sector alternative?
4. Expected Project Revenue. If the P3 opportunity involves an upfront payment by the private partner in exchange for operation of a public asset, has the public entity evaluated and prioritized how to use project proceeds?
5. Independent Analysis. Has the public entity or an independent third party analyzed the P3 opportunity to verify revenue projections, demand and other assumptions used in the P3 evaluation?
6. Method for Performance Monitoring. Is there a proper management structure in place and within the proposed agreement in the event that anticipated/expected results are not achieved? How will performance be monitored against expected results and who will have this responsibility? Will there be check-in milestones, executive reporting and service-level targets in place to monitor and report performance of the project?
7. Flexibility During the P3 Term. Does the expected term of the P3 agreement limit the public entity's flexibility in responding to changing demographics or other circumstances? Does the P3 agreement limit the public entity's flexibility to make certain decisions about service provision in the future. Does the public entity have the ability to renegotiate the agreement?
8. Project Risks. Are project risks and risk transfer elements clearly articulated and understood by all key stakeholders? Is the public entity responsible for any costs should the private entity not perform?
9. Transaction Costs. Does the project proposal contain a comprehensive and realistic statement of transaction costs? Do expected transaction costs limit project benefits? Often, for smaller organizations and smaller projects, the time and costs associated with negotiating and finalizing a P3 agreement can limit the potential benefits from the project.
10. Bond Rating Impact. What are the potential positive or negative bond rating impacts on the public entity? Are municipal payments treated as operational expenses or debt service in a flow of funds?
11. Public Participation and Disclosure. Have appropriate public outreach mechanisms (such as community meetings, informational newsletters, and other communications or actions as may be required by law) been met to provide transparency and feedback?
12. Availability of Assistance. Do external resources such as professional associations, state agencies or non-profit organizations exist to support and assist the public entity with the consideration, process and/or drafting of the agreement? P3 agreements are typically complex and will require access to specialized financial, legal or technical skill sets. Many smaller governments may also lack the resources necessary to ensure adequate, independent analysis and due diligence when evaluating potential opportunities.

Committee:
Economic Development and Capital Planning

Notes:
1 Note: this list is not intended to serve as a comprehensive analysis of all P3 terms and features, but as a listing of common risks and areas of focus.

BE AWARE: Governments Being Hit by Sophisticated Electronic Fraud Scams.

All governments should be aware of recent electronic fraud and other sophisticated measures being used to access banking account and other payables information. These schemes include sending extremely realistic e-mails from fake or hacked e-mails disguised as known vendors, including banks. Governments should exercise caution in their handling of e-mails announcing changes to a vendor's ACH or other account information, or from vendors requesting the government's account information. GFOA is cautioning governments to be aware and put safeguards in place to prevent fraud.

At GFOA's annual conference last month in Denver, the *Addressing Fraud in Electronic Payments* session focused on this topic. Speakers provided their own tales of how their governments' accounts had been or were nearly breached by sophisticated fraud attempts. Slides from the presentation, which are available on the GFOA website, provide valuable information about establishing policies and procedures to prevent and react to this type of fraud, as well as details about how it is executed.

Some key elements to help governments avoid being the victim of fraud include the following recommendations:

- Do not make any changes to vendor information, particularly payment addresses and/or bank account information, without carefully reviewing the information provided and corroborating the change through other sources.
- **Do not use e-mail to confirm changes to vendor payment information**—if the government or vendor has been recently hacked, you will likely be contacting the fraudster rather than the vendor. Verify changes by phone or regular mail, using information from existing vendor records.
- Revise the government's forms to require that vendors provide both the old and new bank routing and account numbers or billing addresses when requesting a banking change or a payment mailing change.
- Remove vendor change forms from the government's website to help avoid this kind of scam. Instead, ask vendors to contact staff directly for these forms.
- Communicate with staff and outside departments about the importance of prioritizing outstanding balance inquiries from vendors and resolving them quickly. Payment questions need to be addressed as quickly as possible because they may uncover vendor or payment fraud. Again, insist that staff use telephones, faxes, or the postal service for correspondence rather than e-mail to address issues with vendors.

If you are aware of fraudulent account routing and numbers, notify your bank and law enforcement. They may already be involved in a related investigation and might be able to help.

Download the slides from the GFOA conference.

- As the Countdown to the New Issue Price Regulations Continues, Let the Document Negotiations Begin!
- Outline For Discussion Of New Issue Price Rules.
- Black & Veatch: 2017 Water Industry Report.
- CDFA Water Finance Resource Center.
- A Comprehensive Look At S&P Global Ratings' U.S. Public Finance Water And Wastewater Ratings.
- KBRA Rating Letters for Insured Bonds.

- S&P Request for Comment: Limited-Tax General Operating Debt.
- S&P Request for Comment: Issue Credit Ratings Linked To U.S. Public Finance Obligors' Creditworthiness.
- Couple of interesting tax cases: *DirecTV, Inc. v. Town of New Hampton* and *Upper Moreland Township v. 7 Eleven, Inc.*
- *Vermillion State Bank v. State by Department of Transportation* – Court of Appeal holds – as a matter of first impression – that a landowner is the only person that may petition for attorney fees and costs under statute providing for such awards to landowners in inverse condemnation actions, and an attorney has no right to seek fees and costs under the statute independently of the landowner.
- And finally, The Grinch that Stole Grinchiness is brought to us this week by *Carr v. Town of New London,* in which the Town went to the mats to contest homeowners' request for a tax abatement. The petty reason for the homeowners' whining about their tax bill, against which the Town made such a valiant stand? The home in question HAD BURNED TO THE GROUND. Which, come to think of it, is probably some kind of code violation. Look into that, Town of New London.

ZONING & PLANNING - CONNECTICUT

Mayer v. Historic District Commission of Town of Groton

Supreme Court of Connecticut - May 30, 2017 - A.3d - 325 Conn. 7652017 WL 2263050

Property owners appealed from two decisions of town's historic district commission that granted adjacent property owners' application for certificate of appropriateness allowing them to remove portion of historic barn and determined that commission lacked jurisdiction over adjacent owners' second application for certificate of appropriateness that would have allowed them to alter the barn to create new facade.

The Superior Court dismissed the appeals. Following Appellate Court's grant of certification to appeal, property owners appealed to Appellate Court, and Supreme Court transferred the appeals.

The Supreme Court of Connecticut held that:

- Property owners were not statutorily aggrieved under historic district appeals statute and zoning board appeals statute, and thus lacked standing to appeal from decisions of town's historic district commission, abrogating *Peeling v. Historic District Commission of the Town of New Canaan*, 2006 WL 3359619;
- Property owners were not classically aggrieved by decision of town's historic district commission that allowed adjacent owners to remove portion of historic barn, and thus, owners lacked standing to appeal from the decision; and
- Property owners failed to plead facts sufficient to demonstrate that they were classically aggrieved by decision of town's historic district commission that it lacked jurisdiction over adjacent owners' second application for appropriateness, and thus, owners lacked standing to appeal from the decision.

LIABILITY - GEORGIA

City of Richmond Hill v. Maia

Supreme Court of Georgia - May 30, 2017 - S.E.2d - 2017 WL 2332660

Mother, individually and as administratrix of deceased teenaged daughter's estate, brought action against city and police officer for wrongful death arising out of daughter's suicide death after officer's disclosure of photographs of daughter's body following previous suicide attempt.

The Superior Court denied defendants' summary judgment motion. City and officer applied for interlocutory appeal, which was granted. The Court of Appeals affirmed the denial of summary judgment. Defendants sought certiorari review, which was granted.

The Supreme Court of Georgia held that:

- There is a special relationship exception to the general rule that suicide breaks the causal connection between an alleged negligent act and the resulting death, disapproving *Harvey v. Nichols*, 260 Ga.App. 187, 581 S.E.2d 272, *Tucker v. Pearce*, 332 Ga.App. 187, 771 S.E.2d 495, *Pearce v. Tucker*, 299 Ga. 224, 787 S.E.2d 749, *Dry Storage Corp. v. Piscopo*, 249 Ga.App. 900, 550 S.E.2d 419;
- Daughter's suicide acted as intervening cause that extinguished any causal connection between officer's wrongful conduct and daughter's death;
- Special relationship exception to general rule that suicide breaks the causal connection between an alleged negligent act and the resulting death did not apply; and
- Rage or frenzy exception to general rule that suicide breaks the causal connection between an alleged negligent act and the resulting death did not apply.

EMINENT DOMAIN - MINNESOTA

[Vermillion State Bank v. State by Department of Transportation]

Court of Appeals of Minnesota - April 17, 2017 - N.W.2d - 2017 WL 1375306

After landowner successfully moved to have state Department of Transportation (DOT) initiate eminent domain proceedings in inverse condemnation action, landowner's prior law firm moved to recover its attorney fees from DOT pursuant to statute.

The District Court granted prior law firm's motion awarding it $52,065 in attorney fees and $368.46 in other costs. DOT appealed.

The Court of Appeals held that:

- Prior law firm lacked statutory standing to make its own claim for attorney fees and costs, and
- As a matter of first impression, only a landowner may petition for attorney fees and costs under inverse condemnation statute.

Landowner's prior law firm in inverse condemnation action lacked statutory standing to make its own claim for attorney fees and costs, even though landowner successfully compelled state Department of Transportation (DOT) to commence eminent domain proceedings. Statute was plain and unambiguous in permitting only landowner to make a claim for attorney fees, plain meaning of statute could not be set aside to pursue spirit of law, purpose of statute was consistent with allowing only landowner to petition for attorney fees, so landowners could decide whether to pursue such an award in settlement negotiations, and permitting only landowners to bring such petitions would not have lead to an absurd or unreasonable result.

A landowner is the only person that may petition for attorney fees and costs under statute providing for such awards to landowners in inverse condemnation actions, and an attorney has no right to seek fees and costs under the statute independently of the landowner.

INSURANCE - NEW YORK

Town of Amherst v. Granite State Ins. Co., Inc.

Court of Appeals of New York - June 1, 2017 - N.E.3d - 2017 WL 2365246 - 2017 N.Y. Slip Op. 04321

Town brought action against special excess liability insurer, arising from dispute over whether insurer was entitled to recover any of the postjudgment interest on payment by third party pursuant to settlement of town's indemnification claims arising out of underlying personal injury action.

The Supreme Court, Erie County, denied insurer's motion to compel arbitration and granted town's motion for permanent stay of arbitration. The Supreme Court, Appellate Division, affirmed as modified. Town appealed.

The Court of Appeals held that issue of whether later agreement between parties affected arbitrability of dispute should be resolved by arbitrator.

Under terms of parties' special excess liability insurance policy, which incorporated rules of American Arbitration Association, issue of whether later agreement between parties affected arbitrability of dispute over whether insurer was entitled to recover any postjudgment interest on payment of third party pursuant to settlement of insured's indemnification claims arising from underlying personal injury claim should be resolved by arbitrator.

SPECIAL ASSESSMENTS - TEXAS

MHI Partnership, Ltd. v. City of League City

Court of Appeals of Texas, Houston (14th Dist.) - April 18, 2017 - S.W.3d - 2017 WL 1450563

City brought interpleader action to determine entitlement to excess funds resulting from special assessments in connection with development of subdivision. Developers who paid special assessments requested refunds to those who paid assessments based on a pro rata formula.

Following bench trial, District Court entered judgment ordering distribution to current owners of property within the subdivision. Developers appealed.

The Court of Appeals held that:

- Evidence was insufficient to support findings of fact regarding developers' prior reimbursement for excess assessments;
- Evidence was insufficient to support findings of fact regarding current possession as requirement for refund; and
- Refunds were to be distributed on pro rata basis to those who actually paid assessments.

Refunds for excess amounts resulting from special assessments in connection with development of subdivision were to be paid on a pro rata basis to those who paid the assessments, rather than to holders of record title to each property on date of trial court's judgment, without regard to whether current holders had paid assessments. City ordinance governing excess assessments provided for a refund, paying money from excess-assessment fund to property owners who did not make special-assessment payments was not a refund, but was a windfall, and interests in potential refunds were personal rights belonging to those who actually paid the assessments, without regard to whether they owned the properties at the time of the refunds.

LICENSING - TEXAS

[Cadena Comercial USA Corp. v. Texas Alcoholic Beverage Commission]()

Supreme Court of Texas - April 28, 2017 - S.W.3d - 2017 WL 1534052 - 60 Tex. Sup. Ct. J. 729

Applicant challenged Texas Alcoholic Beverage Commission’s (TABC) order denying its application for wine and beer retailer’s off-premise permit.

The 201st Judicial District Court affirmed. Applicant appealed. The Austin Court of Appeals affirmed. Applicant filed petition for review.

The Supreme Court of Texas held that:

- Brewers’ stockholders are encompassed by the “tied house” statutes that prohibit overlapping ownership between manufacturing, wholesaling, and retailing segments of the alcoholic beverage industry;
- TABC could impute corporate parent’s interests in brewers to applicant in denying applicant a permit to sell alcohol; and
- Applicant failed to show that its right to equal protection was violated.

Within the meaning of the statute prohibiting a person who owns or has an interest in the business of a brewer from owning or having a direct or indirect interest in the business, premises, equipment, or fixtures of a retailer, the phrase “interest in the business of a brewer” broadly encompasses any commercial or economic interest that provides a stake in the financial performance of an entity engaged in the manufacture of alcoholic beverages, including a brewer’s stockholders; it is not limited to those actually engaged in the business of brewing beer.

Under the statute prohibiting a person who owns or has an interest in the business of a brewer from owning or having a direct or indirect interest in the business, premises, equipment, or fixtures of a retailer, an “interest in the business of a brewer” exists when a person has a commercial or financial interest—significant or otherwise—that provides a stake in the financial performance of an entity or person engaged in brewing.

Under statute prohibiting a person who owns or has an interest in the business of a brewer from owning or having a direct or indirect interest in the business, premises, equipment, or fixtures of a retailer, Texas Alcoholic Beverage Commission (TABC) could impute corporate parent’s interests in brewers to subsidiary in denying subsidiary a permit to sell alcohol.

Subsidiary failed to show that its right to equal protection was violated by decision of Texas Alcoholic Beverage Commission (TABC) to deny subsidiary a permit to sell alcohol based on its corporate parent’s interests in brewers; subsidiary did not provide evidence that TABC had granted permit or license to applicant with similarly significant cross-tier investment interest.

EMPLOYMENT - WEST VIRGINIA

Cales v. Town of Meadow Bridge

Supreme Court of Appeals of West Virginia - May 30, 2017 - S.E.2d - 2017 WL 2415300

Former member of town sanitary board brought mandamus petition seeking reinstatement to position on board. The Circuit Court denied petition. Former member appealed.

The Supreme Court of Appeals held that a member of a municipal sanitary board is a municipal employee rather than a municipal officer and thus is not entitled to procedural protections set forth in statute governing involuntary removal of a municipal officer.

ZONING & PLANNING - WISCONSIN

AllEnergy Corporation v. Trempealeau County Environment & Land Use Committee

Supreme Court of Wisconsin - May 31, 2017 - N.W.2d - 2017 WL 2349200 - 2017 WI 52

Silica sand mining company sought certiorari review of county environment and land-use committee's denial of its conditional-use permit application for non-metallic mineral mining.

The Circuit Court affirmed the committee's decision. Mining company appealed. The Court of Appeals affirmed. Mining company appealed.

The Supreme Court of Wisconsin held that:

- Committee kept within its jurisdiction;
- County ordinance on non-metallic mineral mining was not unconstitutionally vague;
- Substantial evidence supported committee's denial of permit; and
- Any fulfillment of all of the specific conditions specified in county ordinance did not entitle mining company to the permit.

County environment and land-use committee considered the factors that the county board of supervisors per ordinance directed the committee to consider in denying sand silica mining company's conditional-use permit application for non-metallic mineral mining, and thus committee kept within its jurisdiction, where committee members who voted against the permit based their decision on such items as the impact of the proposed mine on the general health, safety, and welfare of the public, the wise use of county's material resources, the aesthetic implications of the siting of the mine, and the adverse effects of the mine on the environment, including water quality, ground water, wetlands, scenic beauty, wildlife, and recreational opportunities.

County ordinance that required county environment and land-use committee to consider various factors such as effect on area property, noise, odor, dust, surface water drainage, and natural beauty in deciding whether to grant a permit for non-metallic mineral mining was not unconstitutionally vague; ordinance did not blanket the committee with unfettered discretion.

Substantial evidence supported county environment and land-use committee's denial of silica sand mining company's conditional-use permit application for non-metallic mineral mining, where there were public expressions of concern about the mining project's effect on a nearby creek, mine's potential to aggravate flooding in a flood-prone area, mine's effect on the area's aesthetics, and health problems caused by sand and dust.

Any fulfillment by silica sand mining company of all of the specific conditions specified in county ordinance on non-metallic mineral mining did not entitle mining company to a conditional-use permit, despite argument that mining company could not be required to satisfy subjective and generalized conditions in the ordinance; no language in the ordinance guaranteed that a conditional-use permit would be granted if all requirements were met, and an “entitlement approach” to conditional-use permits had no basis in precedent.

Deloitte: Cybersecurity for Critical Infrastructure.

Cyberattacks on critical infrastructure have grown increasingly sophisticated and effective, so it is important that states expand their risk mindset and take a leadership role in addressing cyber risks. In our new report, Cybersecurity for critical infrastructure: A growing, highly visible threat calls for state leadership, we take a deeper look at the challenges that cyberattacks present and detail how states can better prepare for the threats.

Building an effective program for managing cyber risks will require time, commitment, and close cooperation. Learn how states can be program leaders in driving public-private collaboration for sharing information, raising awareness of roles, and establishing a unified response to cyberattacks on critical infrastructure.

Black & Veatch: 2017 Water Industry Report.

Water providers are increasingly focused on sustainability and integrated planning to help solve the years-long conflicts between aging infrastructure and a safe, resilient water supply. Black & Veatch’s 2017 Strategic Directions: Water Industry Report analyzes how political leadership and collaboration can overcome concerns about costs and customer demand. The report also explores how data analytics, consumer education on infrastructure modernization and a more comprehensive view of sustainability are helping water utilities gain ground on these challenges.

CUSIP Requests Surge in May Signaling Growth in Corporate and Muni Bond Issuance.

NEW YORK, June 12, 2017 /PRNewswire/ — CUSIP Global Services (CGS) today announced the release of its CUSIP Issuance Trends Report for May 2017. The report, which tracks the issuance of new security identifiers as an early indicator of debt and capital markets activity, found a surge in the pre-trade market for corporate and municipal bonds in May. This increased demand for new CUSIP IDs for corporate and municipal bonds is suggestive of a possible uptick in new security issuance volume over the coming weeks.

CUSIP identifier requests for U.S. and Canadian corporate debt and equity offerings totaled 2,289 in May, a 12% increase from April 2017 totals. So far this year, demand for new CUSIPs for both corporate debt and equity offerings are up 34% over the same period in 2016, reflecting the strong pace of request volume observed during February, March, and May of this year.

Municipal bond requests also increased in May. A total of 1,413 muni identifier requests were made during the month, an increase of 32% over April. This made May the most active month so far in 2017 for new requests for municipal bond CUSIPs. Despite this growth, municipal bond request volume was down 25% through the end of May 2017 on a year-over-year basis, reflecting some volatility in municipal bond issuance volumes over the course of this year.

“A combination of macroeconomic and technical variables have driven a fair amount of volatility in month-to-month CUSIP request volume so far this year,” said Gerard Faulkner, Director of Operations for CUSIP Global Services. “Overall uncertainty about where the markets and interest rates are going, and preparations for pending regulatory reforms such as the Fiduciary Rule have all conspired to create a choppy trend in pre-trade activity.”

International debt and equity CUSIP International Numbers (CINS) volume was mixed in May. International equity CINS increased 16% and international debt CINS decreased 1% during the month. On a year-over-year basis, international equity requests were down 9% and international debt requests were up 74%, reflecting continued volatility in international markets.

“In the big picture, we’re seeing very healthy levels of CUSIP request volume, indicative of robust new issuance activity,” said Richard Peterson, Senior Director, S&P Global Market Intelligence. “But the path we’ve been taking to get there has been bumpy with monthly surges in activity followed by slow-downs over the course of the year.”

To view a copy of the full CUSIP Issuance Trends report, please click here.

Asian Insurers Developing Appetite for Taxable Munis.

A growing number of insurance companies in Tokyo, Seoul and Taipei are doing their part this year to make American infrastructure great again.

Their investment vehicle of choice: U.S. taxable municipal bonds, growing but still less than 15% of the $3.8 trillion U.S. muni market. That market — a focus for U.S. retail investors — remains dominated by tax-exempt bonds state and local governments issue for public-interest-related infrastructure investments.

Taxable muni bonds, by contrast, help fund projects with a private-interest element, such as retail concessions at airports. They typically offer healthy spreads over the yields on tax-exempt bonds, which could be used to fund the construction of runways, for example.

In a March interview, Atsushi Tachibana, Japan Post Insurance’s managing executive officer in charge of investments, said his team invested in taxable U.S. munis in the fiscal year ended March 31, favoring them over lower yielding tax-exempt munis. Mr. Tachibana declined to comment on talk that Kampo, as his organization is known, issued $1 billion in taxable muni mandates.

At Dongbu Insurance, a fixed-income representative confirmed in April that Eaton Vance (EV) Management (EV) was awarded a $100 million taxable municipal bond mandate.

Other insurers in Asia — including Korean Reinsurance Co. and Kyobo Life Insurance Co. Ltd, both of Seoul — have issued RFPs for U.S. taxable munis in recent months, according to money management executives who declined to be identified. A Korean Reinsurance spokesman declined comment. And a source familiar with Kyobo Life, who declined to be identified, said the insurer is looking to award U.S. taxable muni mandates to two managers at the end of June. He didn't offer details on the size of the mandates.

A spokeswoman for Standish Mellon Asset Management said the firm recently won a taxable muni bond mandate from a Korean institution but declined to elabo details.

Growth predictions

Executives with global money management firms predict continued interest in taxable U.S. muni allocations from insurance companies and other long-term investors in Europe and Asia, even as the latest U.S. Federal Reserve data showed outflows of $17.2 billion for the first quarter, leaving outstanding foreign holdings of U.S. taxable munis at $90.4 billion. The outflows largely offset combined inflows of $19.3 billion over the prior two quarters.

Thomas McLoughlin, New York-based managing director and head of fixed income, Americas, with UBS Financial Services, said the case remains intact for expected increases in foreign investor flows to taxable munis. The latest quarter's data might reflect an apparent bout of profit-taking on the back of a powerful recent market rally, which saw valuations swing quickly to rich in the months following the U.S. presidential election, he said.

Bernhard Fischer, New York-based senior fixed-income analyst (municipal bonds) with Principal Global Investors, said despite first quarter outflows, "we can say with certainty that interest has increased significantly," judging by international RFP inquiries. Interest from Asian investors, which was focused in Japan last year, broadened to the rest of Asia in 2017, said Mr. Fischer. Plus, European insurers also set out several RFPs, and PGI's sales team in Australia is likewise seeing growing prospects, he said.

James Welch, a New York-based taxable muni portfolio manager with PGI, tied the prospect of continued growth by foreign investors to their efforts to familiarize themselves with the asset class since yields went negative for large swaths of developed market sovereign bonds.

Over the past 12 to 18 months, institutional investors outside of the U.S. have been putting considerable time and effort into learning about the taxable muni market, and now a growing number are ready to take advantage of opportunities the market presents, agreed Cynthia Clemson, Boston-based co-director of municipal investments with Eaton Vance (EV) Management (EV).

A combination of factors — including superior yields, high credit quality and relatively low correlations with other major asset classes — is coming together now to make taxable U.S. muni bonds a viable asset class for institutional investors around the globe, Ms. Clemson said. And with annual issuance of more than $30 billion a year, the taxable market, at roughly $470 billion today, is fast approaching the $500 billion mark, a scale that should provide further psychological comfort, she said.

Long duration

Another charm of the taxable muni market for insurers in Asia is the securities' relatively long duration, which helps the insurers immunize their liabilities, noted Jeffrey Burger, a Boston-based senior portfolio manager on Standish Mellon's taxable muni team.

Data from Barclays Capital show the average maturity of the bonds in the Barclays Taxable

Municipal index is 17.7 years, while the corresponding figure for the tax-exempt index is 12.8 years.

While being able to tap bonds with maturities that extend well beyond other credit alternatives is an attraction for insurers across the region, recent changes to regulations in Korea could add further incentives for insurers there.

Stella Ng, a Hong Kong-based analyst with Moody's Investors Service, said amended risk-based capital requirements for Korean insurers announced May 31 by the country's regulators will raise the maturity cap on insurance liabilities to 30 years from 20 by the end of 2018. That will leave insurers under pressure to better match their assets and liabilities or risk weakening their risk-based capital ratios. "We expect the trend of increasing overseas investments" — including investments in U.S. municipal bonds — "will continue because insurers are seeking more long-dated securities to match their insurance liabilities," said Ms. Ng, in an email.

Mr. Burger, who was in Asia the week of May 29 to visit clients in Japan, Korea, Hong Kong and Australia, said still another advantage of taxable muni bonds now is their more defensive nature in a rising rate environment. The yield for the benchmark Bloomberg Barclays Taxable Municipal Bond index ended 2016 at 3.78%, besting the tax-exempt Bloomberg Barclays Municipal Bond index's 2.65% and the benchmark 10-year Treasury's yield of 2.48%.

PENSIONS & INVESTMENTS

BY DOUGLAS APPELL · JUNE 12, 2017

[The P3 Wars Continue – Trump vs. Texas vs. Tolls (the T3s)]

A few years ago, I wrote a blog post entitled "The P3 Wars" in which I provided a brief explanation of how a P3 (i.e., a public-private partnership) works, and the general arguments for and against the use of P3s. More recently, President Trump proposed a $1 trillion U.S. infrastructure plan that likely includes the use of P3s. Although no details of his plan have been released, Elaine Chao, his Secretary of Transportation, recently told the Senate Environment and Public Works Committee that of the $1 trillion dollar infrastructure investment, approximately $200 billion would consist of public funding, which leaves $800 billion of private financing.

In the early 2000s, then Governor of Texas, Rick Perry, who is now President Trump's Secretary of Energy, was a big proponent of P3s. He promoted toll roads built and operated by private persons as a way to fund the construction and operation of Texas highways, because he found P3s to be preferable to raising fuel taxes for the same purpose. However, sometime in the mid-2000s, a populist movement began and continues in Texas that voraciously opposes toll roads operated by P3s. That movement was instrumental in getting the Texas legislature to pass a legislative moratorium in 2007 on most P3 funded highway projects. A few toll road projects were permitted to go forward, however, even after the legislative moratorium. One such toll road project involved a highway that would bypass the congested Austin metropolitan area. However, the private entity involved with the P3 declared bankruptcy last year, adding fuel to the populist movement's fire. (Advocates for P3s counter that the failure only supports the argument that toll roads should be used for major thoroughfares).

Continue reading.

By Cynthia Mog on June 8, 2017

The Public Finance Tax Blog

Squire Patton Boggs

[As the Countdown to the New Issue Price Regulations Continues, Let the Document Negotiations Begin!]()

The effective date of the new issue price regulations (Regulations) is less than a week away, and because of the need to discuss and plan for application of the new rules with issuers, underwriters and financial advisors for bonds that will be subject to the new rules, we are already gaining experience with documentation relating to the Regulations. NABL and SIFMA have done an excellent job of providing model documents – sale documents in the case of SIFMA and issue price certifications in the case of NABL – that will significantly smooth the transition from a reasonable expectations standard for establishing issue price to a general rule based on actual sales. Use of these model documents, with some variations, should ease the burden, which could otherwise be overwhelming, of negotiating these documents for each type of bond sale with each underwriter. Like all model documents, however, there will undoubtedly be fine tuning as we gain more and more experience working with the Regulations and negotiating documents for specific transactions. This post notes two negotiating issues that have been raised in current transactions.

Continue reading.

The Public Finance Tax Blog

By Bob Eidnier on June 5, 2017

Squire Patton Boggs

[Trump Plans to Shift Infrastructure Funding to Cities, States and Business.]()

WASHINGTON — President Trump will lay out a vision this coming week for sharply curtailing the federal government's funding of the nation's infrastructure and calling upon states, cities and corporations to shoulder most of the cost of rebuilding roads, bridges, railways and waterways.

He will also endorse a plan to privatize and modernize the nation's air-traffic control system. That plan, which is to be introduced on Monday at the White House and the subject of a major speech in the Midwest two days later, will be Mr. Trump's first concrete explanation of how he intends to fulfill a campaign promise to lead $1 trillion in United States infrastructure projects. The goal is to create millions of jobs while doing much-needed reconstruction and updating. But the actual details of the initiative are unsettled, and a more intricate blueprint is still weeks or even months from completion.

What the president will offer instead over the coming days, his advisers said, are the contours of a plan. The federal government would make only a fractional down payment on rebuilding the nation's aging infrastructure. Mr. Trump would rely on a combination of private industry, state and city tax money, and borrowed cash to finance the rest. It would be a stark departure from ambitious infrastructure programs of the past, in which the government played a major role and devoted substantial resources to paying the cost of large-scale projects.

“We like the template of not using taxpayer dollars to give taxpayers wins,” said Gary Cohn, director of the National Economic Council and an architect of the infrastructure plan, in an interview Friday in his West Wing office.

His language evoked the corridors of Wall Street, where he previously worked. “We want to be in the partnership business,” Mr. Cohn said. “We want to be in the facilitation business, and we’re willing to provide capital wherever necessary to help certain infrastructure along.”

As a model for the approach, Mr. Trump plans on Monday to send a proposal to Congress for overhauling the nation’s air-traffic control system. He would spin it off into a private, nonprofit corporation that would use digital satellite-based tracking systems, rather than land-based radar, to guide flights in the United States. There would be no cost to the government, Mr. Cohn said, because a newly formed corporation would finance the entire enterprise, using loans to handle the initial costs of equipment and other needs.

On Wednesday, Mr. Cohn said, the president will travel to the banks of the Ohio River to deliver a speech about overhauling the nation’s infrastructure, including the inland waterways that are in dire need of attention.

The philosophy undergirding the speech, administration officials said, is that melding public and private forces to rebuild the nation’s physical backbone will vastly expand the resources available to pay for doing it. The concept — a discussion of which helped cement Mr. Cohn’s hiring by Mr. Trump late last year — has driven infrastructure policy in the United States for many years. But Mr. Trump is proposing a far smaller federal investment than many Republicans and Democrats have long thought is necessary.

Mr. Trump is “trying to figure out, How do I get the most infrastructure improvements for the American citizens in the quickest fashion I can with the best return on investment for the U.S. taxpayers,” said Mr. Cohn, a former Goldman Sachs executive. “It’s sort of a businessman’s model.”

The White House has said Mr. Cohn will recuse himself from matters pertaining to Goldman, but it is unclear how that decision will affect any future plans by the company to bid for government partnerships in infrastructure. The White House noted on Saturday that the proposed air-traffic control corporation would be governed by independent directors with a fiduciary duty to the new entity.

On Thursday, Mr. Trump will hold listening sessions at the White House with a group of mayors and governors. On Friday, he plans to cap off what members of the administration are calling “infrastructure week” with a visit to the Transportation Department, where he will discuss drastically reducing the time it takes to obtain federal permits for projects.

The Trump administration clearly hopes the infrastructure rollout will provide a sorely needed policy victory. Its first attempt to overhaul the Affordable Care Act was so unpopular, even among Republicans, that House Speaker Paul Ryan called off a planned vote and began a rewrite. Senate Majority Leader Mitch McConnell recently said he was uncertain whether he could find a majority to move a health care bill through his chamber.

The president’s principles for a “massive” tax cut, encapsulated in what appeared to be a hastily written one-page document issued in April, were widely ridiculed for a lack of specifics and their underlying economic-growth assumptions, which many economists and policy experts considered overly rosy. And Mr. Trump has been roundly chastised for his recent decision to withdraw from the Paris climate agreement, a multinational plan to limit global warming through curbs on emissions that Mr. Cohn and many prominent corporate executives supported.

Despite the public push to promote the infrastructure package, Mr. Cohn acknowledged that the White House did not have a detailed proposal ready to release. He said, for example, that no decision had been made on whether the infrastructure plan would ultimately be married to a tax measure. Republicans and Democrats tried such a step during the Obama administration, in a plan that would have used revenue from repatriating corporate profits parked overseas to finance projects to improve roads, bridges, waterways, broadband and other areas.

“It’s undetermined yet,” Mr. Cohn said. “It may come before. It may come during. It may come after.”

Mr. Trump said in an interview with CBS News in April that his infrastructure bill was “largely completed, and we’ll be filing over the next two or three weeks, maybe sooner.”

Mr. Cohn blamed the delay on lawmakers, saying the White House was reluctant to send its proposal to Congress until progress had been made on the health care bill, a budget bill, legislation to raise the debt ceiling and the as-yet-unformed tax bill.

“If we thought it was the time to release an infrastructure bill, we would release an infrastructure bill,” Mr. Cohn said. “We just can’t keep throwing stuff on Congress. We actually need them to get legislation done. And as they start getting legislation done, we’ll come back with infrastructure.”

When that happens, the package is likely to meet with substantial criticism from Democrats, who were heartened to hear Mr. Trump focus on infrastructure spending during his presidential campaign but crestfallen to see the budget he unveiled last month. The proposed spending plan devoted only one-fifth of the money that he had spoken of for building and improving infrastructure.

“When Trump talked during the campaign about $1 trillion for infrastructure, people were taking him at his word that it would be $1 trillion,” said Sarah Feinberg, a former senior official at the Transportation Department in the Obama administration. Mr. Trump’s budget proposal to spend $200 billion in the next 10 years falls far short of what is needed, she said.

“The idea that this really minimal amount of federal investment will spur that level of private investment is hopeful but not realistic,” Ms. Feinberg said. “The reality is, the state of infrastructure has become an existential threat to huge portions of the economy.”

For now, Mr. Trump is focused on popular ideas that have been discussed by members of both parties for years. At the Transportation Department on Friday, he will pitch what Mr. Cohn called his “10-to-two plan,” an effort to cut permitting requirements so the process takes only two years instead of a decade. The current sluggish pace has prompted frequent complaints from construction and financing companies, who say the excessive bureaucracy that surrounds major infrastructure projects can be a costly and sometimes insurmountable hurdle.

Mr. Trump’s air-traffic control privatization plan is based on a bill sponsored by Representative Bill Shuster, Republican of Pennsylvania and chairman of the Transportation and Infrastructure Committee. It has drawn criticism from Representative Peter DeFazio of Oregon, the ranking Democrat on the panel, who has said it would cater to large airlines at the expense of smaller operators.

Jonathan Root, a senior credit officer for the ratings agency Moody’s, said privatizing air-traffic control could be a welcome change. “The expectation is that a private organization will complete the modernization much quicker than if it remains with the F.A.A.,” he said.

Although many of the details of the privatized air-traffic control system are far into the future, administration officials said they did not anticipate higher airline-user fees or increases in ticket prices.

In a statement, Thom Metzger, a spokesman for the National Air Traffic Controllers Association, expressed cautious optimism about the air-traffic control reforms, which have been widely telegraphed in Mr. Trump's public comments and at White House gatherings. "Natca considers the status quo to be unacceptable," Mr. Metzger stated, adding that the group shares "the administration's commitments to infrastructure modernization." It supports the notion of privatizing air-traffic control, he said, but only in a nonprofit entity.

THE NEW YORK TIMES

By JULIE HIRSCHFELD DAVIS and KATE KELLY

JUNE 3, 2017

Outline For Discussion Of New Issue Price Rules.

New tax rules relating to establishing the issue price of publicly offered tax-exempt bonds become effective soon. This outline describes the new issue price rules, provides a high-level strategic analysis to help guide a discussion between an issuer and its advisors, and sets forth (at the end) the regulations themselves.

Basic Principles

Effective Date: The new tax rules for establishing the issue price of bonds apply to all tax-exempt bonds sold on or after June 7, 2017. Some preparation is required in advance of the pricing date to make sure the provisions of a notice of sale or bond purchase agreement (and any related agreement among underwriters) allow for the issuer to implement the new rules in the manner desired.

Issue Price established by CUSIP: The rules apply on a CUSIP-by-CUSIP basis. The sum of the CUSIP issue prices is the issue price of the entire issue of bonds. It is best to focus on CUSIPs rather than maturity dates due to split coupons or other features that materially differentiate the terms of bonds of the same maturity. The issue price for each group of substantially identical bonds is established separately.

Actual Facts and Safe Harbors: The approach of the new rules is to provide a baseline rule that establishes issue price based on actual facts (i.e., the first price at which 10% of a CUSIP is actually sold to the public) and then to provide safe harbor rules that allow the issuer to use the initial offering price as the issue price if certain requirements are satisfied, regardless of whether 10% of each CUSIP is sold at the initial offering price. If satisfying a safe harbor is desired but not achieved, actual facts will control.

Sales to Public: Perhaps the most helpful rule is that all sales by an underwriter to a party that is not an underwriter are treated as sales to the public. Any party that is not connected to the issuer through a contract or series of contracts (e.g., BPA, AAU, retail distribution agreement) is treated as the public. A sale of bonds to a known "flipper" is as good as a sale of bonds to a buy and hold investor.

Actual Facts Rule: Issue price can always be established based on the first price at which 10% of the principal amount of a CUSIP is actually sold to the public. Note that this rule may not be as clear as it seems. The exact time of sales of bonds to different investors may not be easy to establish.

Hold-The-Price Rule: One safe harbor that can apply in all public offerings is the hold-the-price rule. The issue price of a CUSIP is the initial offering price for that CUSIP (as evidenced by the pricing wire), so long as the underwriters have agreed in writing not to sell or offer any bonds of that CUSIP at a price higher than the initial offering price for a period of five business days after the sale date. The five-day requirement ends early if at some point 10% of the principal amount of that CUSIP has actually been sold to the public at any combination of prices that are not higher than the initial offering price.

Competitive Sale Rule: For bonds sold in a typical competitive sale process, the issue price of a CUSIP is the initial offering price for that CUSIP (as evidenced by the pricing wire), so long as the issuer receives at least three bids for the bonds from reasonably competitive bidders. The detailed requirements of this safe harbor, set forth at the end of this outline, should be consulted. Note that if three bids are not received, the winning bidder can be required (for example, in the notice of sale as a condition of making the bid) to satisfy the hold-the-price rule. The two rules are not mutually exclusive.

Continue reading.

Article by Andrea Ball, Charles C. Cardall, Richard Chirls, Dean Criddle, Kathryn V. Garner, Richard J. Moore, Edwin G. Oswald, Aviva M. Roth, Scott Schickli, Larry D. Sobel, John Stanley, Angela Trout, Winnie Tsien and George G. Wolf

Last Updated: June 6 2017

Orrick

KBRA Rating Letters for Insured Bonds.

Kroll Bond Rating Agency (KBRA) issues a rating letter at **no cost** for all municipal bonds insured by a KBRA-Rated bond insurer.

Please see the links below for a sample KBRA rating letter as well an overview of our Public Finance/Financial Guaranty sector:

Sample Rating Letter
Public Finance/Financial Guaranty Overview

KBRA rates the following bond insurers:

Assured Guaranty Corp. (AGC)
(Rated AA, Stable Outlook)

Assured Guaranty Municipal Corp. (AGM)
(Rated AA+, Stable Outlook)

National Financial Guarantee Corporation (National)

(Rated AA+, Stable Outlook)

Municipal Assurance Corp. (MAC)
(Rated AA+, Stable Outlook)

TAX - NEW HAMPSHIRE

DirecTV, Inc. v. Town of New Hampton

Supreme Court of New Hampshire - May 26, 2017 - A.3d - 2017 WL 2323088

Taxpayer, a provider of satellite television service, filed petition for property tax abatement for satellite antennas and batteries used by taxpayer at its satellite uplink facility.

The Superior Court denied the petition.

The Supreme Court of New Hampshire held that:

- In determining whether personalty constituted a fixture subject to property tax, proper focus was relationship of the personalty to the realty itself, abrogating *Despatch Line of Packets v. Bellamy Man. Co.*, 12 N.H. 205, *Automatic Sprinkler Corp. v. Marston*, 94 N.H. 375, and *Lathrop v. Blake*, 23 N.H. 46;
- Satellite antennas were personalty, rather than fixtures; and
- Batteries were personalty, rather than fixtures.

Satellite antennas used by taxpayer at its satellite uplink facility in connection with its satellite television service were personalty, rather than fixtures, and, thus, were not subject to property tax. Antennas were readily removable and transportable without affecting the utility of the underlying land or buildings, nothing about the land rendered the antennas unfit for other commercial or professional uses if they were removed, and, had the antennas been removed, the only articles associated with the antennas that would have remained on the land would have been concrete pads and underground wiring, neither of which would have detracted from the fitness of the property for other uses.

Batteries used by taxpayer to provide backup power at its satellite uplink facility in connection with its satellite television service were personalty, rather than fixtures, and, thus, were not subject to property tax. Batteries were not affixed to a building, but were stored in steel racks and were easy to install and remove, removal of batteries would not have impaired function of building on the property, and batteries could be used at other facilities

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TAX - NEW HAMPSHIRE

Carr v. Town of New London

Supreme Court of New Hampshire - May 17, 2017 - A.3d - 2017 WL 2193454

Taxpayers sought review of town’s denial of their application for an abatement of the tax assessment on property on which the house burned down.

The Superior Court granted summary judgment to taxpayers. Town appealed.

The Supreme Court of New Hampshire held that fire-related building loss occurring after April 1 may constitute “good cause” under tax abatement statute.

Fire-related building loss occurring after April 1 may constitute “good cause” under tax abatement statute allowing a taxpayer to seek relief under that statute as an alternative to relief under statute that governs prorated assessments for damaged buildings and that sets forth a 60-day window for seeking relief following the destruction of property.

TAX - PENNSYLVANIA

Upper Moreland Township v. 7 Eleven, Inc.

Commonwealth Court of Pennsylvania - April 13, 2017 - A.3d - 2017 WL 1365591

Taxpayer, a Texas corporation that maintained a regional corporate office in the township for division of its franchise convenience stores that operated inside and outside of Pennsylvania, appealed township’s assessment of business privilege tax.

Following a bench trial, the Court of Common Pleas invalidated assessment. Township appealed.

The Commonwealth Court held that:

- Taxpayer demonstrated that charges paid by Pennsylvania franchise stores resulted from interstate activities, and thus were subject to apportionment under Commerce Clause;
- Trial court acted within its discretion in admitting taxpayer’s organizational chart; and
- Proper remedy was remand to township for constitutional assessment of business privilege tax, rather than invalidation of assessment.

Taxpayer, which was Texas corporation that maintained regional office in township for division of franchise and corporate convenience stores, demonstrated that charges Pennsylvania franchise stores paid to taxpayer in exchange for various services resulted from interstate activities, and thus were subject to apportionment under Commerce Clause in township’s assessment of business privilege tax. Taxpayer presented evidence that many services provided to Pennsylvania franchise stores were product of interstate commerce, including that marketing department which managed nationwide advertising and information systems department were located in Texas and that employee in Massachusetts was responsible for providing technology to all stores in division, including Pennsylvania stores.

Trial court acted within its discretion in admitting organizational chart of taxpayer, which was Texas corporation that maintained regional office in Pennsylvania for corporate and franchised convenience stores, in taxpayer’s appeal challenging township’s assessment of business privilege tax on charges paid by franchise stores, though chart was not identified in discovery or produced until after pre-trial conference; trial court admitted chart to aid in understanding of testimony by taxpayer’s division vice president regarding company’s operations, and vice president was subject to cross-examination about chart by township.

Proper remedy following trial court’s determination that township violated Commerce Clause in its assessment of business privilege tax by failing to apportion charges paid to taxpayer, which was Texas corporation that maintained regional office in township for division of franchise and corporate convenience stores, by franchise stores in Pennsylvania that resulted from interstate commerce, was remand to township for constitutional recalculation of the assessment, rather than invalidation of assessment. Township could constitutionally tax the charges, provided that the taxed receipts were validly apportioned, taxpayer had not paid those taxes, and remand for recalculation was in interest of fairness to other taxpayers in township.

Muni Bond Expert On Puerto Rico: 'It's Going To Be More Than A Haircut'

Puerto Rico's bankruptcy, with $74 billion in debt at stake, is the largest municipal default in history.

Despite the scope of the U.S. territory's financial troubles, one of the bond business' most respected analysts said Puerto Rico's debt is unlikely to break the foundation of the muni market.

Lou Schimmel, 80, is a retired former executive director of the Municipal Advisory Council of Michigan and emergency manager in the Michigan cities Pontiac and Hamtramck. Today, Schimmel does turnaround consulting on a contract basis.

The buying of municipal bonds represents a loan from bondholders to government, and they should be paid back, Schimmel said. But that's isn't always possible.

"At some point, when [finances] get bad enough, you go to bankruptcy. Not all bankruptcies are the same, but they are the same in the sense that somebody's not going to get 100 cents on the dollar."

The restructuring case before U.S. District Judge Laura Swain includes $74 billion in debt and $49 billion in unpaid pension liabilities.

The recovery level for Puerto Rico's 500,000 bondholders could range from 5 cents on the dollar to 75 to 80 cents on the dollar, depending on the type of debt, Puerto Rico Clearinghouse analyst Cate Long told Benzinga in a recent interview. Puerto Rico's proposed 2018 budget dedicates one-fifth of its $9.6 billion in spending on pension payments, according to Bloomberg. The territory's pension systems are projected to go broke by July, the wire service said.

Every stakeholder in Puerto Rico's restructuring will take some kind of loss, Schimmel said.

"In Puerto Rico, it's going to be more than a haircut. It's going to be part of the scalp as well."

Lessons From Detroit

Detroit's July 18, 2013, filing for Chapter 9 bankruptcy with $18 billion in debt didn't have the rub-off effect on other municipal debt that some expected, Schimmel said.

"It didn't ruin everybody next door. You look at what you're buying," he said, adding that "each individual credit" should be evaluated separately.

"I don't believe Connecticut is going to have a higher interest rate because Puerto Rican bonds are in trouble."

In Detroit, the plan of adjustment approved Nov. 7, 2014 by U.S. Bankruptcy Judge Steven Rhodes incorporated a $800 million "Grand Bargain" package of public and private funds.

The money allowed the city to exit bankruptcy without selling pieces from the Detroit Institute of Arts to raise capital.

The appearance of a third party in the Puerto Rico case — for example, assist with pension shortfalls — wouldn't surprise Schimmel.

"You never know in the situation who's going to show up," he said. "If there's an outside source, all the better for the bondholders."

'There Was No Other Option'

When Schimmel served as emergency manager in Pontiac, a city of 60,000 located 30 miles north of Detroit, he paid off $87 million in debt.

Pontiac never declared bankruptcy, but Schimmel said the city had more options than Detroit or Puerto Rico.

"There was no other option," Schimmel said of Puerto Rico's May 3 bankruptcy filing under PROMESA, a restructuring law signed by former President Barack Obama.

"And that's why the bondholders made the mistake of misjudging who they loaned money to. I'm on the side of the bondholder until it becomes impossible to get repaid."

Schimmel compared a bond default to taking out a mortgage without any intention of paying it back.

"You honor it until it's [not possible]. You're going to have to break a promise."

A unique challenge for governments in distress is that they must continue to provide basic services while a restructuring is underway.

"You've got to provide basic services above all else," Schimmel said.

"I've closed economic development authorities. I've closed all sorts of things. You've got to have police, fire [and] public works. That was first."

Benzinga

by Dustin Blitchok

June 07, 2017

[S&P: Houston's Pension Reform Is A Step In The Right Direction.]

In its latest session, the Texas legislature formally adopted significant pension reforms for the City of Houston (AA/Negative), which are a step in the right direction toward improvement in the city's pension plans' funded status and plan sustainability.

[Continue reading.]

Jun. 9, 2017

S&P Medians And Credit Factors: Kansas Local Governments

The creditworthiness of Kansas cities and counties remains stable in 2017, despite potential challenges that could stem from the state itself.

Continue reading.

Jun. 9, 2017

S&P Request for Comment: Limited-Tax General Operating Debt.

S&P Global Ratings is requesting comments on proposed revisions to its methodology for rating limited property tax general operating (LTGO) debt. The criteria are being updated to provide general guidance and transparency on S&P Global Ratings' view of limited property tax debt to the market.

Continue reading.

Jun. 8, 2017

S&P Request for Comment: Issue Credit Ratings Linked To U.S. Public Finance Obligors' Creditworthiness.

S&P Global Ratings Services is requesting comments on proposed changes to its methodologies for assigning issue credit ratings on obligations which are linked to the creditworthiness of U.S. Public Finance obligors, such as non-ad valorem/general fund-backed bonds, lease-backed bonds, appropriation-backed obligations and moral obligation bonds.

Continue reading.

Jun. 8, 2017

Why Big Bondholders are Sticking with Illinois.

(Bloomberg)—Some of the top holders of Illinois debt aren't bailing out, even as the state slides toward a junk bond rating. The reason? They say Illinois isn't an economic basket case, just the victim of a political logjam that will one day be broken.

"Illinois' problems are self-inflicted," said Guy Davidson, director of municipal bonds at AllianceBernstein Holding, which owns about $550 million of the bonds. "They have the resources to pay their debt and we think they ultimately will."

Illinois' debt was downgraded June 1 to one step above junk by Moody's Investors Service and S&P Global Ratings, giving it the lowest ranking on record for a U.S. state, because of a clash between the Democrat-controlled legislature and Republican Gov. Bruce Rauner that's left the government without a full-year budget for nearly two years.

If the state doesn’t enact a plan that reins in its chronic deficits, S&P warned that Illinois will likely lose its investment-grade status around July 1, an unprecedented step for a state that would bar certain funds from buying its securities and has stoked speculation that some investors would sell off their holdings en masse.

Fidelity Investments is the biggest public holder of Illinois general-obligation bonds, with about $1.8 billion, according to data compiled by Bloomberg. Vanguard Group holds about $1.6 billion, and Nuveen Asset Management about $920 million. Three other firms—Dodge & Cox, AllianceBernstein and Wells Fargo Asset Management—hold more than $500 million each.

BlackRock, the world’s largest money manager, wouldn’t have to dump its Illinois bonds if the rating is cut, a move the company sees as a strong possibility, said Peter Hayes, head of municipal bonds at the company. Illinois accounts for less than 1 percent of its $122 billion holdings of state and local debt.

Like other money managers, Hayes sees Illinois as a state with a solid economy but serious political problems. “In that sense, it is very different from places like Detroit and Puerto Rico,” he said.

While Illinois has drawn comparisons to Puerto Rico, which collapsed into bankruptcy after the U.S. gave it legal power to escape from its debt, the differences are vast. Illinois’ bond debt is less than half the Caribbean island’s, even though the state’s population is more than three times as big.

Illinois’ $800 billion economy—more than 10 times the size of Puerto Rico’s—is growing, albeit slower than the rest of the nation. It has been adding jobs, sending its unemployment rate tumbling to 4.7 percent from more than 11 percent in the aftermath of the recession. State law requires the government to appropriate sufficient money to pay debt service and it can draw from all unrestricted funds to do so. Illinois has never defaulted.

Dropping the state’s already historically low rating to junk won’t unleash a wave of selling, said John Miller, co-head of fixed income at Nuveen, who oversees about $124 billion of municipals.

“Illinois’ taint is a fairly well known fixture of the municipal-bond market,” Miller said. “What’s happening in Illinois is not being replicated across other states.”

Investors have been steadily driving up the yields on Illinois bonds, relative to top-rated debt, as the state’s gridlock persisted. Its 10-year bonds yield 4.5 percent, 2.6 percentage points more than those on benchmark debt. That gap, a measure of the perceived risk, is the highest since at least January 2013 and more than any of the other 19 states tracked by Bloomberg.

Illinois’ plight reflects in part the expiration of temporary tax increases that helped the state deal with the toll of the recession. Facing a $13 billion deficit in 2011, it boosted the income tax from 3 percent to 5 percent. It dropped to 3.75 percent in 2015 and officials have been at loggerheads over how to eliminate the deficit ever since.

Pushing the tax back to 5 percent would go a long way to plugging the state’s ongoing deficit, said Lyle Fitterer, head of tax-exempt fixed income at Wells Fargo, where he oversees $40 billion. Fitterer, who has held an outsized allocation of Illinois bonds for five years, said a cut to junk could be the catalyst that compels politicians to act.

“The market will ultimately force them to pass a budget or they will lose access to the capital markets,” said Fitterer. “Something will have to give.”

While the money managers agreed now was not the time to sell, they were divided on whether Illinois might represent a buying opportunity.

"We would not be a buyer right now," said BlackRock's Hayes. "We don't think you are being compensated for the risk at current spreads. There is more bad news to come."

At AllianceBernstein, Davidson agreed there was no rush to buy more Illinois. "We might add more if the bonds get cheap enough after a downgrade," he said.

Nuveen might add to its position, depending on how much more yields widen against other securities, Miller said.

Sophie Launay, a Fidelity spokeswoman, declined to comment. Steve Gorski, a spokesman for Dodge & Cox, declined to comment. Freddy Martino, a spokesman for Vanguard, said the company's municipal specialists said it made sense to continue holding Illinois based on their confidence the state will find a path through the budget impasse.

June 07, 2017

Analysts: Muni Disclosure Varies by Sector.

PHOENIX – Analysts see major discrepancies in the quality of disclosure available across different sectors of the municipal market, while regulators would like to see good disclosure across-the-board.

Investor analysts had high praise for the quality of disclosure in the healthcare and senior living spaces generally, but had more mixed responses when it came to charter schools and certain revenue and general obligation debt for governments and essential services, particularly for smaller or less frequent issuers. Regulators have made improving muni market disclosure a priority in recent years, with enforcement actions aimed at underwriters and issuers as well as a new proposal to expand the scope of information investors would have access to.

Lisa Washburn, managing director with Municipal Market Analytics, said that the sectors with issuers that operate more like for-profits and companies generally have better disclosure, but that it "defies across the board categorization." Hospitals are generally better disclosers not only in terms of the timeliness of filing, in part through quarterly disclosures, but also because they have been doing interim reporting for years, she said.

"If you look at it, the sector is smaller and the investors in health care are more concentrated so the investors were able to request and get more information from the hospitals and health care organizations," Washburn said. "If you have a very concentrated investing base or you have a few very large investors, typically they can at least wield more influence on what you would get."

Arthur Schloss, a senior analyst at Invesco, said that hospitals tend to provide good disclosure in a clear way due to their business-like structure.

"Areas like healthcare, hospitals … they tend to be very numbers-oriented," Schloss said. "You tend to get very good presentation of the numbers."

Schloss said he finds it extremely helpful to see detailed breakdowns of how management arrived at their calculations, because he sometimes finds methodology that could raise an eyebrow.

“I have seen several occasions where a borrower will calculate days of cash on hand, but they will include restricted cash,” he said by way of example.

Dean Lewallen, a high yield analyst at AllianceBernstein, said that healthcare and senior living generally have a universal way of presenting their information to investors that makes it easy for investors to navigate.

“Healthcare and senior housing have the most standardized presentation formats and are the most user-friendly for bondholders,” he said.

Julie Egan, chair of the National Federation of Municipal Analysts, agreed that hospitals are generally seen as strong issuers with regard to disclosure.

“Historically, hospitals have been a bit of a riskier sector and more difficult to analyze because often they have obligated groups and require more groups to be analyzed as well as reimbursement questions regarding payor mix,” Egan said. “It was probably more prudent to get quarterly information.”

Egan added that while quarterly reporting is not widespread for munis, it is something NFMA and analysts generally would like to see from the market. Egan said that fiscal troubles in Detroit and Puerto Rico have gotten analysts questioning some prior beliefs that general obligation bonds are “pretty golden and pretty safe.”

“We’ve been asking for quarterly disclosures for a long time and if our beliefs are changing we may very well require issuers to be more accommodating as far as disclosure,” Egan said.

Sectors with limited pools of investors, like those with higher risk securities, can generally get more types of disclosure on a more routine basis, like conference calls, access to managers, and things of that nature, Washburn said. Analysts consistently said that conference calls and issuer willingness to answer questions from bondholders is extremely helpful, but lamented that many issuers have been scared into being relatively unresponsive.

“There is frequently a reluctance to answer detailed questions,” said Joseph Rosenblum, AllianceBernstein’s director of municipal credit research. Rosenblum said that issuers are sometimes frightened that they could get into trouble for making information available to only a small segment of investors. He suggested that issuers faced with that problem could solve it by scheduling a conference call for all investors.

“It’s not as if we want insider information,” said Rosenblum.

“I wish there were more frequent calls,” said Lewallen. “If it’s an investment grade entity, maybe once a year is sufficient. If things get into trouble, you need to have conversations with your investors a lot more frequently.”

Periodic communication is necessary even if the continuing disclosure agreement requires relatively infrequent conversations, analysts said. Bondholders are much more likely to agree to measures to alleviate fiscal distress when they’ve been kept in the loop, said Schloss.

“I’ve always said I can’t help you if I don’t know what’s going on,” Schloss said.

“Lawyers have people so scared,” added Lewallen, explaining that many investors seem to believe that they must tell every single investor every piece of information available, or must say nothing to anyone at all.

Washburn said that weaker issuer disclosure, like strong disclosure, is not always sector specific.

However, she said smaller, infrequent local governments "generally speaking" struggle more with disclosure.

Charter schools were another sector that multiple analysts highlighted as sometimes being problematic for analysts. Lewallen said that while the standard quarterly conference calls common in healthcare and senior living would probably be too often for charter schools, there is school specific information such as test results pertinent to investors that could be disclosed in a more timely manner.

"They've got six months to get this general information out, and it's not hard to do," said Lewallen.

"Charter schools are sometimes difficult," said Rosenblum.

Richard Ciccarone, president and chief executive officer of Merritt Research Services in Chicago, said water and sewer issuers could generally improve their disclosures.

"I think a lot of people take water and sewer bonds as being an essential service and therefore less rigorous disclosure is required for them to feel comfortable with it," Ciccarone said. "There is a lot of work that needs to be done on water and sewer, particularly on getting better metrics in order to measure the quality of their security and their ability to make good on it." Those metrics should include data usage, customers, water supply, quality of infrastructure, and maintenance programs, Ciccarone said.

While accuracy and fullness of disclosure are important, Ciccarone said, there is also the consideration of issuers' timeliness in disclosing. Merritt does an annual survey on issuer's timeliness of disclosure that measures the amount of time between the end of the issuer's fiscal year and the time the audit is signed. The median reporting time for all issuers Merritt looked at for 2015, the most recent survey, was 151 days, a rise from 142 in 2014 and the first time the number had gone above 150 since 2008.

Of the issuers, wholesale electric, hospitals, and private higher education were the most timely in 2015, taking 105, 112, and 115 days to disclose, respectively. Counties and states took the longest with 180 and 182 days, respectively. Cities were close behind taking 172 days, according to the survey.

While disclosures can be improved, the analysts who spoke with The Bond Buyer generally agreed that disclosure overall has been getting better with time.

"My perspective is that there are gaps and there are things that need to be done, but over the last 30 years we've come a long way," Ciccarone said. "I don't mind mentioning that because I think it's only fair to governments that we say that."

"There's been a big improvement, I'd say, in the quality of information and the timeliness," said Lewallen.

Washburn pointed to the Securities and Exchange Commission's Municipalities Continuing Disclosure Cooperation enforcement initiative, which focused on issuers' and underwriters' continuing disclosure failures, as a positive for disclosure in the market.

"Love or hate MCDC … I think that it has at least elevated the conversation about disclosure," Washburn said.

The SEC is now considering another action aimed at ensuring proper disclosure. The recent regulatory proposal would require event notices to be filed for a broad range of "financial obligations," if material, including private placements, bank loans, leases, guarantees and monetary obligations resulting from a judicial, administrative or arbitration proceeding. The SEC's proposed amendments to its Rule 15c2-12 on muni disclosure would also require notices to be filed for actions and events related to financial obligations that "reflect financial difficulties."

Many participants have criticized the proposal, which is meant to ensure investors and others have access to information about alternative financings to public bond offerings, as overly broad and burdensome. But market groups generally agree with the idea that increased disclosure on private placements and bank loans is important. The SEC is currently considering the numerous comment letters participants sent on the proposal.

Schloss said that while 15c2-12 and any amendments to it are fine as a basic framework, but good disclosure goes well beyond that.

"It's more of a state of mind, or an outlook, than something you can narrowly require," Schloss said. "It's very hard to rigidly mandate."

The Bond Buyer

By Kyle Glazier, Jack Casey

Published June 05 2017, 2:17pm EDT

CDFA Water Finance Resource Center.

Financing water infrastructure is a major challenge and opportunity for communities throughout the country. However, water infrastructure is an extremely broad asset class ranging from drinking and storm water issues to waste water and sewage processing improvements. The development finance toolbox, none the less, provides dozens of financing tools and mechanisms that can be effective in financing this infrastructure. Primarily, three specific tools exist to support water infrastructure – bonds, state revolving loan funds and the new federal credit subsidy program called WIFIA.

Visit the Resource Center.

A Comprehensive Look At S&P Global Ratings' U.S. Public Finance Water And Wastewater Ratings.

S&P Global Ratings maintains long-term ratings on more than 1,600 U.S. obligors issuing a combination of water, wastewater, drainage, or irrigation system revenue bonds. This is in addition to the ratings on U.S. regional wholesale water and/or wastewater systems.

Continue reading.

Jun. 7, 2017

The Week in Public Finance: Kansas' Experiment Ends, Alaska Still Has No Budget and Keeping Track of Debt.

A roundup of money (and other) news governments can use.

GOVERNING.COM

BY LIZ FARMER | JUNE 9, 2017

Can a Cyberattack Cause a Credit Rating Downgrade?

While it seems far-fetched, the danger is real for small governments.

Last month saw an unprecedented global ransomware attack that infected tens of thousands of computers in nearly 100 countries, including the U.S., the U.K. and Russia. Hospitals in the U.K. were the hardest hit as more than a dozen were forced to turn away nonemergency patients and doctors had to rely once again on pen and paper.

The disruption has caused many to consider how vulnerable U.S. government services are to a similar attack. But some are raising the possibility of another vulnerability: That a cyberattack has the potential to lower a government's credit rating, making borrowing to fix the problem even more expensive for taxpayers.

The possibility seems remote: No government yet has been downgraded because of a cyberattack. But S&P Global Ratings analyst Geoff Buswick says the risk is real, particularly for smaller governments with less financial flexibility. That's because attacks can cost a lot, but can also cost taxpayer trust. That in turn, can hinder a government's ability to raise taxes. "As a rating analyst, I look at the willingness and ability to repay debt," says Buswick. "Without taxpayer support you don't have that ability."

The concerns come as ransomware attacks — malicious software that blocks computer system access until a ransom is paid — have been on the rise. According to the U.S. Department of Justice, an average of more than 4,000 ransomware attacks per day occurred in 2016, a 300 percent increase over the prior year.

This year alone, the St. Louis Public Library; Licking County, Ohio; the library server system for Hardin County Schools, Tenn.; Bingham County, Idaho; and the network of the Pennsylvania Senate Democratic Caucus were all victims of a ransomware attack.

The success of such attacks vary. In St. Louis, the library had backups for the encrypted files and refused to pay the ransom.

But more sophisticated attacks on smaller governments can bring more damage. In Bingham County, which is not rated, a ransomware attack in mid-February brought down the county's website and disrupted the emergency dispatch center. The problems persisted for weeks as officials worked to rebuild the county's computer infrastructure to avoid paying the $28,000 ransom. In the end, though, it agreed to pay a $3,500 ransom to the hackers in early March after officials determined that it would be cheaper than buying new servers.

But the ransom was just the tip of the financial damage. Bingham County's IT Department told the East Idaho News that the cost of repairing the servers was nearing the $100,000 mark, and that it could take the remainder of the year to get back to normal. For a county with less than $1 million in reserves, the unplanned expense cuts into the government's financial flexibility, a key credit rating measure.

Often, the monetary damage can be bigger. In spring 2016, the city-owned Lansing, Mich., Board of Water & Light paid a $25,000 ransom to unlock its internal communications systems. The utility, which is rated, reported six months later that responding to the attack cost the city $2.4 million, all but $500,000 of which was covered by insurance.

Buswick notes that the Lansing utility was large enough to absorb the damage but says others might not be in that position. Utilities have monthly income but school districts, for example, only get their revenue twice a year. "[The utility] had to use some of the reserves they were not on using," he says. "In another situation, credit could be an issue."

GOVERNING.COM

BY LIZ FARMER | JUNE 7, 2017

Legal Judgments Put Financial Pressure on Local Governments.

A small rural county in southeast Nebraska might have to declare bankruptcy, not because of mismanagement or high labor costs but because of an unexpected legal judgment that the county government cannot pay.

Gage County on the Nebraska-Kansas border could be the next local government in the nation to file for bankruptcy protection after a federal jury awarded $28.1 million in damages plus attorneys' fees last July to six people wrongly convicted of a brutal rape and murder.

Leaders from the farming community of about 22,000 people said they can't afford that amount. The county's insurance carriers have declined to cover the verdict.

"No county could prepare for that," Myron Dorn, chairman of the county Board of Supervisors, said in an interview.

Increasing taxes to cover the judgment would be difficult, because Nebraska's property tax cap limits the county from raising taxes by more than about $3.7 million. Residents could theoretically vote to exceed the state-imposed limit, but that is unlikely.

The county has appealed the verdict and is awaiting a decision; in the meantime, officials have hired bankruptcy attorneys to explore their options in case they lose the appeal.

While municipal bankruptcies are generally rare—only 54 counties, cities, towns, and villages nationwide have filed for bankruptcy since 1980—it's not unusual for lawsuits to contribute to Chapter 9 filings. Of the 18 general purpose local government bankruptcies filed since 2006, legal judgments have been an important factor in five, or nearly 30 percent, according to research by The Pew Charitable Trusts. [General purpose local governments include entities such as counties, cities, towns, and villages and exclude special purpose districts such as school districts or and fire districts, which account for a much larger proportion of municipal bankruptcies. Nebraska historically has led the nation in special district bankruptcy filings.]

The legal judgments underscore the importance of local governments maintaining a healthy reserve fund balance to absorb unforeseen expenses. They also reinforce the need for states to be aware of the fiscal health of their local governments, so officials can prepare for situations when the state may need to step in to help. Washington state, for example, asks local governments about "litigation costs or pending legal judgments that risk depleting available fund reserves," to try to anticipate and to plan for potential fiscal shocks.

Elsewhere around the country, Hillview, Kentucky, filed for Chapter 9 in August, 2015, after losing a lawsuit filed by a local truck driving school over a property dispute and being ordered to pay $15 million. The bankruptcy was dismissed in May, 2016 after city leaders agreed to raise taxes and sell bonds as part of a settlement with Truck America.

Other municipal bankruptcies that were prompted at least in part by lawsuits include:

- Mammoth Lakes, California, filed for bankruptcy in June, 2012, after a property development dispute resulted in a $43 million legal judgment. Mammoth Lakes later settled with the land acquisition company out of court.
- Boise County, Idaho, was ordered to pay $5.4 million in damages and attorneys' fees to a developer for violating the federal Fair Housing Act. The county filed for bankruptcy in March 2011, but failed to prove in court that it was insolvent and the bankruptcy was dismissed. The county spent $2.25 million from its cash reserves and used bond financing to pay the rest. In addition, the Idaho Legislature passed a law to enable the county to levy additional property taxes to repay the bond.
- Washington Park, Illinois, filed for bankruptcy in 2009 after accumulating debts totaling over $1 million. The village struggled with numerous problems, including public employees stealing money and numerous lawsuits. A federal judge dismissed the bankruptcy, which followed another bankruptcy filing in 2004.
- Westfall Township, Pennsylvania, filed for bankruptcy in April, 2009, after a federal court decided in favor of a developer who had argued that township supervisors illegally halted development of a 1,500-unit residential project.

GOVERNING.COM | JUNE 9, 2017

By Stephen C. Fehr, Adrienne Lu, and Matthew Cook

Puerto Rico Bond Traders Still Find Buyers Despite Epic Collapse.

- **Trading volumes have edged up since unprecedented bankruptcy**
- **It may be easy to sell, but prices are still near record low**

Puerto Rico bondholders who don't want to roll the dice in the island's record bankruptcy can still find a quick way out.

The volume of trading in Puerto Rico securities has ticked up since the island turned to a federal court last month to cut its $74 billion debt, showing that the market hasn't seized up despite the U.S. territory's defaults and the prospect of deep haircuts faced by investors.

A daily average of $267.4 million of commonwealth debt changed hands in the past 50 days, higher than the $195.9 million average seen over the past 200 days, according to data compiled by

Bloomberg. That 50-day average reached $291 million on May 24, the highest since September 2015.

Puerto Rico's bonds were for years among the most actively traded in the U.S. municipal-debt market because they were tax-exempt everywhere in the U.S., giving them a national base of buyers. While mutual funds spurned the debt once Puerto Rico's credit rating was cut to junk more than three years ago, it still found buyers among hedge funds who wagered it wouldn't go broke.

But it since has, and a federal board installed to oversee the government's finances approved a fiscal plan in March that allocates less than a quarter of the $33.4 billion the commonwealth owes in principal and interest payments through fiscal 2026. After negotiations with creditors failed to advance, Puerto Rico on May 3 filed a form of bankruptcy protection created by Congress last year to allow the island to force its creditors to take losses in court.

Since that filing, the 50- and 200-day moving averages for daily trade volume have increased by 17 percent and 6 percent, respectively.

"It has become more clear that there isn't much money," said Matt Fabian, a partner with Municipal Market Analytics Inc. "Maybe Puerto Rico investors were too optimistic in what they thought the control board would do or what Puerto Rico could theoretically pay them."

While the securities are easily sold, some are still hovering near record lows.

An index of commonwealth securities has fallen 6.7 percent since March 1, according to S&P Dow Jones Indices. General obligations with an 8 percent coupon that mature in 2035, the island's most-actively traded fixed-rate security, changed hands May 25 at an average 58.9 cents on the dollar, the lowest since the bonds were first sold in 2014, Bloomberg data show. The debt traded Tuesday at an average 59.8 cents.

Bloomberg Markets

by Michelle Kaske

June 7, 2017, 2:00 AM PDT

Contrarian Barclays Says Munis Are Not Headed for a Strong Summer.

- **Very supportive supply/demand technicals trumped by valuations**
- **Ratios are 2+ standard deviations rich, close to 5-year lows**

While many on Wall Street expect a heady summer for state and local debt, Barclays analysts are making a different call.

Despite forecasts for negative net issuance amid steady demand, the municipal market is unlikely to see a strong performance over the summer, according to Barclays municipal analyst team led by Mikhail Foux. Valuation is a better indicator of where the securities' performance is headed, they wrote in a June 2 note to investors.

Municipal bonds current yields relative to U.S. Treasuries mean "there is very little value in the front-end but, with 30-year ratios already in mid-90s, the long end is hardly attractive." Barclays added that, "as it stands, muni ratios are 2+ standard deviations rich compared with their three-month average, and are close to five-year lows."

"Given that, currently, muni ratios are moving close to multi-year lows, we do not foresee strong performance from the asset class over the coming months, despite supportive technicals," the strategists wrote in the note.

The view differs from other strategists who expect municipal bonds to continue to strengthen as demand outpaces supply and cash-rich investors have more money to deploy. The Barclays analysts wrote they expect net issuance to be a negative $25 to $35 billion this summer, near the levels other analysts estimate, but that a similar amount of negative net issuance in 2014 did not translate into lower ratios that year. They also noted that negative net issuance is not uncommon for the summer season.

"We are unlikely to see a major selloff any time soon, but, in our view, ratios might end up higher by the end of August."

Bloomberg

by Rebecca Spalding

June 6, 2017, 9:51 AM PDT

Bloomberg Brief Weekly Video - 06/08

Taylor Riggs, a contributor to Bloomberg Briefs, talks with Editor Joe Mysak about this week's municipal market news.

Watch video.

Bloomberg

June 8, 2017

Autonomous Vehicles: A Policy Preparation Guide.

Autonomous vehicles are rolling out on city streets across the country at a rapid pace – much faster than anticipated just a few years ago. While state and federal entities have always played a role in regulating transportation, cities are where this new technology is being deployed now.

National League of Cities latest resource, "Autonomous Vehicles: A Policy Preparation Guide," provides an overview of AV technology and answers frequently asked questions for city leaders around AV manufacturers, public policy considerations, municipal coordination, and infrastructure investment.

NACo Releases Analysis of Potential County Impacts of the President’s FY 2018 Budget Request.

On May 23, President Trump released his Fiscal Year (FY) 2018 Budget Request, laying out a $4.1 trillion spending proposal for fiscal year 2018 and the following decade. The budget expands upon the administration’s initial “skinny budget” request for FY 2018 released earlier this year. NACo has released a comprehensive analysis of the president’s FY 2018 Budget Request and its potential impact on programs important to America’s counties.

The budget proposes significant spending cuts, which combined with optimistic economic growth assumptions, attempt to balance the budget over the next decade. Specifically, it outlines discretionary spending levels at $1.151 trillion and mandatory spending levels at $2.943 trillion. This represents a $1.7 trillion cut in mandatory programs over 10 years and a 10 percent cut to domestic programs in 2018.

Counties are concerned with several of the president’s proposed spending cuts, which include the elimination and reduction of programs that aid counties and their residents. The proposed budget includes significant changes to the Medicaid program, converting the program to a block grant or per capita cap. Other significant proposed reductions compared to enacted FY 2017 levels include the U.S. Environmental Protection Agency (30 percent) and the U.S. Departments of State (32 percent), Agriculture (21 percent), Labor (20 percent), Commerce (15 percent), Health and Human Services (16 percent), Transportation (17 percent) and Housing and Urban Development (12 percent).

In response to the president’s budget, NACo Executive Director Matthew Chase expressed his concerns with the president’s budget in a statement released May 23: “We are greatly concerned that this proposed budget essentially abdicates the federal role in the federal-state-local intergovernmental partnership that is essential to addressing our nation’s most pressing challenges. This budget, if enacted, would deal devastating blows to some of the most vulnerable people in our communities.”

For the full NACo analysis of the President’s FY 2018 Budget Request, please click here.

NATIONAL ASSOCIATION OF COUNTIES

By DEBORAH COX

Jun. 6, 2017

President Trump to Launch Push for Infrastructure Investment.

Focus on infrastructure could help Mr. Trump find common ground with members of Congress

President Donald Trump will launch a new campaign this week aimed at fulfilling his pledge for $1 trillion of infrastructure investment, hoping to capitalize on lawmakers’ support for rebuilding the nation’s transportation systems at a time when his tax and health legislation are in flux.

Mr. Trump will begin with a White House event Monday announcing a push to privatize air-traffic control across the U.S., in what backers say could be a catalyst for improving speed and fuel efficiency across the aviation industry.

From there, the president will campaign for reviving infrastructure along the Ohio River, then meet with mayors and governors in the White House, followed by a speech at the Transportation Department on Friday.

The White House still hasn't said how it plans to pay for the federal government's share of the projects, and officials said a more detailed proposal will come at an unspecified later date. But Mr. Trump's top economic adviser said the administration aims to encourage states and cities to bear much of the burden.

"We want to talk to them and make sure we're partnering with them to make sure that they can use their tax dollars as efficiently," White House National Economic Council Director Gary Cohn told reporters Friday. "We can be a good partner with them in helping them to enhance their infrastructure projects."

Shifting the discussion to infrastructure could mean the best chance for Mr. Trump to find common ground with members of Congress who object to other elements of his agenda, given the broad agreement that the nation's roads, bridges, rails and water facilities are in disrepair. It would, however, mean finding a way to live up to campaign pledges that many believe are irreconcilable—investing $1 trillion in infrastructure, but doing so with funds raised almost entirely from the private sector.

The infrastructure push is "encouraging," said Scott Rechler, a real-estate developer and former official at the Port Authority of New York and New Jersey who consulted with Mr. Trump's transition team. "They should have started with this, since it's one area with a level of bipartisan support."

But Mr. Rechler, a Democrat whose own real-estate company has financed infrastructure like sewers and utilities in public-private partnerships with local government, said the administration's plans should recognize that private financing won't be able to replace federal funding in fixing some critical areas—from railroads to crumbling dams—where investors can't turn a profit.

"It's not free," Mr. Rechler said. "At some point or another someone's going to have to pay for this."

In remarks to reporters last week, presidential advisers made clear they will be attempting to pair the president's pledge to renew critical infrastructure with a shift of responsibility for some of the costs from federally funded grant programs to state and municipal taxpayers.

Some city and state officials say that they are already strapped for funds and worry about having to shoulder large additional costs.

"Voters in L.A. have done their part by passing the boldest and largest transportation measure in our nation's history," Los Angeles Mayor Eric Garcetti said. "And I expect Congress to act across party lines, and finalize a budget that provides direct funding for infrastructure projects that will improve quality of life for millions of people."

The administration has called for spending $200 billion on infrastructure projects over 10 years, saying that infusion of federal money could help trigger roughly $1 trillion worth of total funding thanks to a surge in private investment.

Still, after nearly six months in office, the administration hasn't said how it will pay for the federal government's share of that investment, and hasn't put forward legislation that would show exactly how it plans to spur private investment.

Senior administration officials didn't say if Mr. Trump would put forward his own proposals for raising the funds for an infrastructure package or defer to Congress, saying that is "something we are currently debating inside the White House."

An infrastructure proposal fleshed out with actual details will be ready "when the president tells us it should be ready," a senior administration official said.

The administration has been most specific about its desire to cut regulation and permitting that can delay the start of new infrastructure projects. Mr. Trump has seized on a flow chart provided by Mr. Cohn's deputy, DJ Gribbin, that shows how the permitting process for a new highway can involve up to 16 federal agencies.

Mr. Cohn said Friday that the administration would like to shrink the permitting schedule for such projects from as much as 10 years to "two or less."

"The cost of infrastructure goes up dramatically as time goes on in the approval process, capital is tied up, it has people waiting for permits, and the amount of paperwork and the amount of fees that you just encumbered while you're going through the approval process is enormous," Mr. Cohn said.

Those comments would find agreement among some Democrats as well, and echo some of the Obama administration's efforts to "fast-track" selected major capital projects by speeding environmental approvals.

The Wall Street Journal

By Ted Mann and Michael C. Bender

Updated June 4, 2017 9:59 p.m. ET

Write to Ted Mann at ted.mann@wsj.com and Michael C. Bender at Mike.Bender@wsj.com

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Uber, Lyft Asked by San Francisco to Turn Over Driving Records.

City says there are concerns about fatigued drivers, traffic congestion and pollution

Uber Technologies Inc. and Lyft Inc. are in the crosshairs of the city of San Francisco, as the city attorney said the ride-hailing companies have received subpoenas to turn over four years of records on driving practices, disability access and service.

City Attorney Dennis Herrera said Monday the records from Uber and Lyft are needed in response to growing concerns about commuting from long distances before starting 12- to 16-hour shifts, potentially elevating the risk of accidents with other drivers or pedestrians. He said there are also concerns from residents about the impact the companies are having on traffic congestion and efforts to reduce greenhouse gas emissions, since the companies have a combined 45,000 vehicles on San Francisco roads.

The city said Monday that a public records request has also been sent to the California Public Utilities Commission for the information. He said the request to the commission seeks annual reports from Uber and Lyft dating back to 2013.

"No one disputes the convenience of the ride-hailing industry, but that convenience evaporates when you're stuck in traffic behind a double-parked Uber or Lyft, or when you can't get a ride because the vehicle isn't accessible to someone with a disability or because the algorithm disfavors the neighborhood where you live," Mr. Herrera said.

An Uber spokeswoman responded, "We're more than happy to work with the city to address congestion, but it should be a comprehensive solution including construction, the city's population increase, and the rise of online delivery services."

Lyft said it "has always been focused on improving transportation access for people across all cities in which we operate. In San Francisco, nearly 30% of rides take place in underserved neighborhoods and 20% of Lyft rides begin or end at a public transit station. We also have a track record of working collaboratively with policy makers who regulate us, including the CPUC here in California, to ensure that our service complements existing transportation options."

Uber is already engaged in a legal battle with the city about whether it has to comply with a city subpoena seeking contact information for drivers. The city sued Uber last month in San Francisco Superior Court, seeking records to determine whether the company's drivers are properly registered to do business.

The company has resisted providing information, requesting that permission be sought from individual drivers before it is shared publicly.

Municipal, state and federal governments have turned up scrutiny on Uber and Lyft in recent years as the companies have become a larger part of the transportation picture.

Mr. Herrera said Uber and Lyft have 15 days to comply with the subpoenas.

The Wall Street Journal

By Bowdeya Tweh

June 5, 2017 4:15 p.m. ET

Write to Bowdeya Tweh at Bowdeya.Tweh@wsj.com

Hartford's Finances Spotlight Property-Tax Quandary.

Despite top property-tax rate in Connecticut, the state's capital teeters on bankruptcy

For capital cities like Hartford, much of the real estate is held by nontax paying government departments.

Hartford, Connecticut's capital city and hub of the state's insurance industry, is edging closer to joining a small club of American municipalities: those that have sought bankruptcy protection.

The city's $49.6 million budget hole and the impending departure of one of its biggest employers, Aetna Inc., have shined a light on its unusual predicament: Half of the city's properties are excluded from paying taxes because they are government entities, hospitals and universities.

It has less taxable property than the neighboring suburban community of West Hartford, which has less than half of the population than its urban neighbor. And Hartford's total property-tax receipts are about 25% below that of the tony community of Greenwich.

“The root of the problem is you have a city built on a tax base of a suburb,” said Mayor Luke Bronin.

The mayor said the small tax base along with growing fixed costs produced structural budget deficits that prior administrations sought to deal with through asset sales, short-term debt restructuring and property-tax increases.

Mr. Bronin is now asking for financial help from the state. “My goal and my hope is that legislators from around the state of Connecticut will recognize that Hartford cannot responsibly solve a crisis of this magnitude at the local level alone,” he said.

Around the U.S. the main source of funding generated by municipalities is property-tax revenue, contributing 47% of the money raised by local governments, according to the Lincoln Institute of Land Policy.

For capital cities such as Hartford, much of the real estate is held by government departments that don’t pay taxes. Hartford, with a population of about 125,000, is home to the University of Connecticut School of Law, Trinity College, Hartford Seminary and the state Supreme Court.

Other cities in similar situations include Boston, where just over half of the property in the city is tax exempt. In Baltimore, about 32% of the property is tax exempt, and in Philadelphia it’s 27%.

While most U.S. cities are reporting healthy budget reserves that have returned to prerecession levels, Hartford is among a small but growing group of municipalities that are confronting rising levels of fiscal stress, according to Moody’s Investors Service.

Other areas grappling with long-term financial problems driven by poor revenue growth and rising fixed costs include Jackson, Miss., and Wayne County, Mich.

Only 64 bankruptcies have been filed by cities, counties, towns and villages since 1954, according to James Spiotto, an attorney who tracks municipalities’ bankruptcies. In 2013, Detroit became the largest-ever U.S. municipal bankruptcy case.

Victor Medeiros, a public-finance ratings analyst with S&P Global Ratings, which downgraded Hartford last month, said the city could face additional downgrades of several notches.

The credit-ratings firm will be watching whether Connecticut can reach a timely budget agreement and what level of financial assistance the state will be able to offer the city, he said.

Aetna and the other four biggest taxpayers in the city contribute nearly one-fifth of the city’s $280 million of property-tax revenue. Property-tax receipts make up nearly half of the city’s general-fund revenues.

Aetna, Hartford Financial Services Group Inc. and Travelers Cos. Inc., also Hartford’s biggest employers, have said they would collectively give the city a voluntary payout of $10 million annually over the next five years to help avoid bankruptcy. But the companies have said they want to see comprehensive changes that allows the city to stabilize its finances.

The bigger concerns “are getting the city turned around where we can attract private-sector investment here to ultimately begin to drive” property taxes down, said Oz Griebel, chief executive of MetroHartford Alliance, a regional business group.

Since 2000, Hartford has increased its property-tax, or millage, rate seven times. The rate is now more than 50% higher than it was in 1998.

At the current level, a Hartford resident who owns a home with an assessed value of $300,000 currently pays an annual tax bill of $22,287, at rate of 7.43%. A West Hartford homeowner with a similar house pays $11,853 at a rate of 3.95%.

The city must pay nearly $180 million on debt service, health care, pensions and other fixed costs in the coming fiscal year beginning July 1. That is more than half of the city's budget, excluding education.

Mr. Bronin said one-time budget fixes and tax increases won't cut it anymore. After cutting 15% of the city's nonuniformed workforce, he said he won't reduce the number of police officers or firefighters and added that further trimming of city services would be irresponsible.

Democratic Gov. Dannel Malloy last week said Hartford and the state Legislature would have to accept more oversight of the city's finances in exchange for state assistance. "I do not support additional moneys going to our challenged urban environments without a review process," Mr. Malloy said.

Connecticut House Majority Leader Matt Ritter, a Hartford Democrat, said everyone in the capital understands that it is in the state's best interest to make sure the city has a sustainable future.

Bankruptcy "doesn't just affect Hartford," Mr. Ritter said. "It would affect neighboring communities, it would affect the state, it would probably affect our credit ratings."

The Wall Street Journal

By Joseph De Avila

Updated June 6, 2017 4:18 p.m. ET

Write to Joseph De Avila at joseph.deavila@wsj.com

Private Funding Is Key Challenge of Trump Infrastructure Plan.

Effort reflects the difficulty of coming up with taxpayer dollars in era of constrained budgeting; administration has released few details

WASHINGTON — President Donald Trump's proposed infusion of funding for infrastructure turns on a critical question: how the administration will get private investors to put up most of the money.

Mr. Trump launched on Monday what he said would be a week focused on U.S. infrastructure with an embrace of a long-debated proposal to privatize the nation's air-traffic control system.

His advisers said the proposal is a model of how they want to approach an overhaul of national infrastructure maintenance, turning to user fees and private-sector management to fund and operate what has been a federal government service.

But there has so far been little detail on Mr. Trump's lofty infrastructure promise. The GOP president has proposed spending $200 billion over 10 years on programs to incentivize greater use of financing from private investors. The administration said that funding will leverage a total expenditure of $1 trillion to fix and build roads, bridges, dams and broadband lines.

The effort to shift to private funding reflects the difficulty of coming up with taxpayer dollars in an era of constrained budgeting. The last big transportation policy bill to pass Congress, in late 2015, was cobbled together with funding from a Federal Reserve surplus account and other sources that some lawmakers said were unorthodox.

“I think you’ll see a huge increase in infrastructure fund balances once we put into place the two things we’re doing investors care about,” DJ Gribbin, the special assistant to the president for infrastructure policy, said in an interview.

The administration hopes to cut lead times to get projects from the planning stage to construction by reducing permitting requirements. That will lessen the political risk that has deterred some private investment, officials said.

Secondly, it plans to encourage cities and towns to raise fees—like roadway tolls or water-usage charges—that will provide the revenue streams for private-equity investors.

It isn’t clear, however, that private investors will swarm to some of the country’s most seriously decrepit infrastructure projects because not all of them will provide commercial returns.

“I’m a huge supporter of increasing private capital in infrastructure,” said Heidi Crebo-Rediker, an adjunct senior fellow at the Council on Foreign Relations who served in the administration of former President Barack Obama, a Democrat. “But it is not a silver bullet, and as a country we are not set up to take on a fully private investment in public infrastructure.”

The municipal bond market remains a more attractive source of funding to many state and local officials needing funding for major projects, Ms. Crebo-Rediker said, and many local governments lack expertise in how to structure public-private partnership deals.

Private-equity executives and bankers who specialize in infrastructure investing said that finding money for projects isn’t the problem. It is the dearth of attractive investments, they said.

Last year, investors world-wide committed a record of about $59 billion to private-infrastructure funds, pushing to more than $140 billion the amount of ready-to-invest cash in such funds, according to Preqin, a provider of investment-fund data. Much of that money is likely to be spent outside the U.S., where most private infrastructure investing happens in the energy sector

Fundraising has remained strong this year, with another $29 billion flowing into such funds during the first quarter, Preqin said. Blackstone Group LP disclosed last month that Saudi Arabia has agreed to invest $20 billion in an infrastructure fund that the New York firm hopes will reach $40 billion and have spending power of as much as $100 billion once debt is added.

The White House’s challenge will be to steer Wall Street’s mountain of infrastructure money to projects that have traditionally been bypassed, such as toll roads and bridges, because of political hurdles, low returns and project time lines that exceed the length of time these funds have investors’ cash locked up—usually 10 years or so. Speeding up permitting processes could make more projects palatable to private-equity investors, investors say, particularly as competition for deals that fit well within current funds, such as pipelines and power plants, pushes up asset prices.

Blackstone, for example, has spent more than six years securing permits to bury transmission lines that will carry electricity generated by dams in Quebec to New York City and Massachusetts. It could take years more before the power lines are completed, and the firm begins collecting on its investment. Blackstone executives say the massive fund they are raising, which would be more than twice the size of the current record, will have no timeline on returning cash to investors and targets lower returns.

Officials at several major transportation agencies have expressed concern about the administration's infrastructure approach in recent days. One government official, referring to the administration's desire to shift responsibility for providing direct funding from the federal to state and local governments, said Mr. Trump's administration was trying to "starve the beast" and force states and cities to find ways to finance privately.

Others noted with alarm that while the administration said it would devote $200 billion more to infrastructure over the coming 10 years, the department is also cutting funding to existing programs that support major projects.

The administration's infrastructure initiative will be "over and above" the amount of funding provided by Congress through conventional grant programs, said Reed Cordish, a White House adviser.

Ms. Crebo-Rediker praised the administration's embrace of programs that provide loans, loan guarantees and lines of credit for projects with national significance, allowing states and cities that qualify to add leverage to building projects. The administration also called for expanding a similar loan program for water infrastructure, and it said it would lift the cap on a program that allows the Transportation Department to allow the issuance of tax-exempt bonds for private entities.

But she said it wasn't clear how Mr. Trump's plan will prepare cities and states to strike private-financing arrangements to take care of some of their most critical needs.

"The devil's in the details and there have been no details," she said.

The Wall Street Journal

By Ted Mann and Ryan Dezember

Updated June 6, 2017 7:03 p.m. ET

Write to Ted Mann at ted.mann@wsj.com and Ryan Dezember at ryan.dezember@wsj.com

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San Francisco Investigating Whether Uber, Lyft Are Public Nuisances.

SAN FRANCISCO — San Francisco has issued subpoenas to Uber Technologies Inc [UBER.UL] and Lyft Inc for a broad scope of records on driving and business practices as part of an investigation to determine whether the ride-services companies have become a public nuisance.

City Attorney Dennis Herrera said on Monday he was seeking records to investigate whether Uber and Lyft fail to adequately serve poor neighborhoods and the disabled and whether their drivers create hazards on the road.

Herrera said the subpoenas sought four years of records from the companies, which are based in San Francisco and have an estimated 45,000 total drivers in the city. The sweeping request includes hours and miles logged by drivers, driver incentives, traffic infractions and city zip codes visited by drivers.

“No one disputes the convenience of the ride-hailing industry, but that convenience evaporates when you’re stuck in traffic behind a double-parked Uber or Lyft, or when you can’t get a ride because the vehicle isn’t accessible to someone with a disability or because the algorithm disfavors the neighborhood where you live,” Herrera said.

The subpoena sets up San Francisco and Uber for yet another legal battle, as the two are already locked in a fight over the city’s demands for drivers’ names and addresses. Herrera sued Uber last month to compel the company to comply with the data request, which Uber has said is an invasion of driver privacy.

Investigating whether Uber and Lyft are a public nuisance in the city is an unusual approach for San Francisco. An influx of cars driving for the two companies often clog city streets and block bicycle lanes and double-park while they wait for passengers, according to the city.

Such concerns reflect how large the two companies have grown in their hometown.

A Lyft spokeswoman said that 30 percent of rides in San Francisco take place in underserved neighborhoods, and 20 percent begin or end at a public transit station, underscoring its collaboration with public transit agencies.

“Lyft has always been focused on improving transportation access for people across all cities in which we operate,” said spokeswoman Chelsea Harrison.

Uber pointed to a report by the San Francisco Municipal Transportation Agency which says it has the goal of making ride-sharing one of the “preferred means of travel” by 2018. Spokeswoman Eva Behrend said Uber is “more than happy to work with the city to address congestion,” but that the city needs to also look at contributing factors such as construction and population growth.

Herrera added that the “long-distance” Uber and Lyft drivers who travel hours from the Central Valley and small communities elsewhere to find rides in San Francisco are a potential “threat” to public safety. They are on the road for such long shifts that they become drowsy, making the streets unsafe.

Herrera also requested four years’ of documents and data submitted by Uber and Lyft to the California Public Utilities Commission, the state agency that regulates ride-services companies and collects much of the data the city is looking for.

The commission did not immediately respond to a request for comment.

By REUTERS

JUNE 5, 2017, 5:03 P.M. E.D.T.

(Editing by Jeffrey Benkoe)

[Public-Private Projects Where the Public Pays and Pays.]()

Faster, better, cheaper.

As President Trump prepares to deliver a speech on Wednesday about infrastructure, his administration is promoting the benefits of having local governments work with private corporations to build, repair and manage the nation's ailing roads, bridges and airports.

Public-private partnerships, as they are known, have many potential benefits. Companies can complete projects quicker and more cheaply than governments can, proponents say. Letting private industry take the lead can also limit the amount of debt that cities and states need to take on.

Yet in the United States, public-private partnerships represent a tiny fraction of infrastructure spending. On toll roads, for instance, where they have been used the most, they accounted for just 1 percent of all spending between 1989 and 2011, according to a report by the Congressional Budget Office.

And whatever the advantages of giving the private sector a stake in public works — rather than leaving the government in control — experts agree that while some public-private partnerships may result in near-term savings, there is little hard evidence that they perform better over time.

"There is a significant misunderstanding of the way public-private partnerships actually work," said David Besanko, a professor at the Kellogg School of Management at Northwestern University. "Taxpayers or users are going to need to pay for private infrastructure just as they need to pay for public infrastructure. You're going to need to get revenues from somewhere."

Whether through fees like parking meters and tolls on a road, or through government payments to the contractors, such projects are ultimately supported by taxpayers.

On Monday, Mr. Trump proposed creating a nonprofit corporation to modernize the nation's air traffic control system. More glimpses of the administration's plans are scheduled in the coming days, part of what the White House is calling "infrastructure week."

Variations of public-private partnerships — known as P3 deals on Wall Street — are more common in Canada and some European countries than in the United States.

There is a reason for that. America is one of the few nations that exempt the interest on local and state bonds from federal taxes. As a result, the nation's municipal bond market is bigger and more developed than in most other countries, and that makes public financing of infrastructure much more attractive, lessening the need for private partnerships.

In the United States, "the P3 market is in its infancy," said Scott Zuchorski, a senior director in Fitch Ratings's global infrastructure group, adding that there have already been "some growing pains."

In California, a public-private partnership was created to ease congestion on bumper-to-bumper State Route 91. The solution was a four-lane toll road installed in the middle of the highway, which was then leased to and operated by a private consortium formed by subsidiaries of Peter Kiewit Sons, Compagnie Financiere et Industrielle des Autoroutes, a French toll road company, and Granite Construction.

Initially the toll road, which opened in 1995, was a success: Drivers paid for a faster road, and it employed cutting-edge technology, allowing for automated collections and congestion pricing.

Over the long-term, serious drawbacks surfaced.

The 35-year lease agreement included a noncompete clause that barred the state from making any other road repairs and improvements — like adding a lane and improving public transit — that might lure motorists away from the toll road.

Orange County Transportation Authority spent a decade in court before having to buy the express lanes outright for $207 million in 2003 so that it could go ahead with a highway and public transit overhaul.

Mildred Warner, a professor at Cornell University, pointed out that private firms and local governments can have fundamentally different interests.

The government has broad concerns, like improving overall regional transportation, reducing traffic and curbing pollution.

The companies have a narrower concern — maximizing financial returns.

“Is there a reason for there to be public control,” she asked. “Is there a public good?”

Nationwide, Virginia has among the most extensive experience with public-private partnerships. Beginning two decades ago, it turned to firms including Fluor and Transurban, an Australian company, to build and operate high-occupancy tolls lanes along the Beltway to and from Washington, D.C.

The Beltway project has helped reduce congestion, and the state government avoided taking on more debt.

Consumers still pay tolls, however. And if the number of car-poolers is too high — thus depriving Fluor and Transurban of tolls — the state is required to reimburse the companies.

Arrangements like this in which local governments essentially guarantee their private partners substantial payments are not uncommon, and leases that extend beyond the life of the project can also divert extra revenue from the public to the private sector.

The state of Indiana had to pay the private operators of a troubled toll road — one of the first big public-private partnership deals in the country — nearly $450,000 because it waived tolls during a flood emergency in order to speed escaping residents.

“You can make money when there’s a flood,” Ms. Warner said, criticizing the payment, “but the government looks to save lives.”

In New York, the Australian investment bank Macquarie — one of the biggest global funders of infrastructure projects — is working to build and maintain a new Goethals Bridge to replace the span that connects Elizabeth, N.J., and Staten Island. One phase of the bridge could open in the coming weeks, according to a spokesman.

As part of the arrangement, the Port Authority of New York and Jersey has agreed to pay the Macquarie consortium about $56.5 million a year for about 40 years once the bridge opens, regardless of how much traffic it handles.

Macquarie is working on other projects around the country. In 2014, Kentucky tapped the company to oversee the installation and maintenance of 3,400 miles of high-speed fiber optic cable throughout the state.

Construction has been delayed by a year as the Macquarie group works to obtain the rights to install some of the fiber optics on existing utility poles and “uncertainty regarding the magnitude of costs,” according to Fitch. This led Fitch to issue a negative outlook on $300 million in bonds issued by a state entity to finance some of the upfront costs.

The delays on the project might well have occurred even if the government were in charge, and Macquarie said public-private partnerships helped local governments avoid taking on too much debt.

“PPPs have proven themselves to be an efficient and cost-effective project-delivery method, allowing state and local governments to access private-sector financing while effectively transferring risk,” said Geoff Segal, manager of government advisory and affairs for Macquarie Capital.

Aaron Renn, a senior fellow with the Manhattan Institute who has studied a number of public-private partnerships, said one problem with them is that the public officials negotiating these arrangements sometimes lack the financial sophistication and advice to fully understand the deals.

“The most important question,” he said, “is who bears the revenue risk if certain things happen?”

Though local governments can wind up on the hook for billions, sometimes it is private firms and their investors that get burned.

That is what happened with perhaps the nation’s best-known public-private partnership, a 2006 deal in Indiana to lease an aging toll road to an investment group led by Macquarie and Cintra, a Spanish infrastructure firm, for $3.8 billion, which the state used primarily for other road projects.

The 75-year lease provided a big upfront cash payment for the state in return for the consortium’s right to collect toll revenue. But the project to upgrade the antiquated 157-mile roadway ran into trouble as the consortium took on too much bank debt, and ridership on the highway dropped during the Great Recession as fewer people were driving to and from work.

Eventually the investment consortium had to file for bankruptcy in 2015.

Now, most of that $3.8 billion has been spent, and the new operator of the toll road is continuing to collect fees from drivers. In June, tolls more than doubled for many drivers after a state subsidy that was put in place when the lease deal was signed expired in May.

And just this week another road project in Indiana fell into disarray, with state officials announcing on Monday that Indiana was trying to take control of the job from a public-private partnership that led by a Spanish company.

Private money is beginning to line up to take advantage of new deals now that Mr. Trump appears to throwing his backing behind such arrangements.

Blackstone Group, the giant private equity firm, announced last month the establishment of a $40 billion fund to invest mainly in infrastructure projects, with Saudi Arabia’s main sovereign wealth fund kicking in $20 billion.

Stephen A. Schwarzman, Blackstone’s chairman and chief executive, is leading a White House business advisory group, which lists infrastructure work as one of its topics for discussion.

Even Lloyd Blankfein, the Goldman Sachs chief executive who has been critical of Mr. Trump on climate change, jumped into the debate Tuesday on Twitter with a message saying he just arrived in China and was impressed by the condition of the country’s airports, roads and cell service.

“US needs to invest in infrastructure to keep up!” he said.

THE NEW YORK TIMES

By MATTHEW GOLDSTEIN and PATRICIA COHEN

JUNE 6, 2017

Illinois Bonds Hit Hard After U.S. Judge's Medicaid Ruling.

CHICAGO — Illinois general obligation bond prices plummeted and yields soared in the U.S. municipal market on Thursday, a day after a federal judge ordered the cash-strapped state to find more money to pay Medicaid providers.

Yields on bonds due in 2024 climbed to 5.15 percent in secondary market trading where the yield on a top-rated bond maturing that same year was only 1.42 percent, according to Municipal Market Data.

“It’s a real meltdown today,” MMD analyst Randy Smolik said.

Illinois already had the widest so-called credit spreads among the 50 states over MMD’s benchmark triple-A yield scale. The spread on its 10-year bonds widened to a record 335 basis points at the end of trading on Thursday from 280 basis points on Wednesday, MMD reported.

For 20-year bonds, the spread widened to a record 290 basis points from 256 basis points. This signals even higher borrowing costs for the nation’s fifth-largest state.

“This drop today should be a wake-up call,” said John Mousseau, director of fixed-income at Cumberland Advisors, adding that the market appears to be reaching a tipping point on bad news about Illinois.

Late on Wednesday, U.S. District Court Judge Joan Lefkow said Illinois’ action to make only minimal payments to healthcare providers in the Medicaid program for the poor and disabled due to an ongoing budget impasse does not comply with existing federal consent decrees.

While the judge did not specifically push Medicaid payments ahead of other state priorities like debt service on bonds and pensions, she set a June 20 deadline for Illinois and healthcare advocates to reach a deal resulting in “substantial compliance” with the decrees that stem from federal court cases filed in 1992.

That could be tough given the state’s nearly $14.8 billion unpaid bill pile as of Wednesday and $1.85 billion of monthly priority payments that flow to bonds, pensions, schools, payroll and other mandated areas that consume 90 percent of Illinois’ monthly revenue.

Illinois is limping toward the June 30 end of a second-straight fiscal year without a complete spending plan due to a political stalemate between its Republican governor and Democrats who control the legislature.

Lawmakers ended their spring session on May 31 without a fiscal 2018 budget deal, triggering downgrades that pushed Illinois’ credit ratings from S&P and Moody’s Investors Service to a step above junk.

By REUTERS

JUNE 8, 2017, 3:57 P.M. E.D.T.

(Editing by Chizu Nomiyama and Matthew Lewis)

Public Works, Private Benefit.

President Trump's infrastructure plan is turning out to be a mirage. He had talked about a $1 trillion, 10-year effort. But the White House now proposes allocating only $200 billion, which would come from cutting aid to states and localities and giving it to Wall Street investors as tax credits, which it hopes will attract $800 billion in investment for big projects that would turn a profit through tolls and user fees. As an opening act, for example, Mr. Trump is pushing privatization of the nation's air traffic control system, which could jack up the price of air travel for passengers.

But most of the nation's unmet infrastructure needs involve smaller projects to operate, maintain and upgrade — not only highways, but also water, sewer and other systems that are of no interest to private investors. In Ohio, where Mr. Trump went on Wednesday to deliver a campaign-style speech about his plan, more than 1,500 highway projects to be completed over four years have an average cost of only $9.2 million, according to research by the Center for American Progress. That's far too little to attract huge investment funds that are the presumed recipients of the tax credits.

Since 1995, 14 of 36 privately financed highway projects across the nation have been completed, with mixed results, according to a 2015 Congressional Budget Office report. The C.B.O. found that private investments did not increase the amount spent or reduce costs — two supposed goals. It simply substituted for money that could otherwise have been raised through low-cost municipal bonds.

As to whether private financing resulted in more reliably completed and maintained projects, the C.B.O. found that it sometimes could be arranged more quickly than public financing, which allowed some projects to be completed sooner. But three of the projects went bankrupt and one required a public buyout of the private partners.

In recent years, investor risk in privately financed projects has been reduced through heavier public subsidies, federal tax breaks, federal loans or state and local grants. But the more public backing there is for any given deal, the greater the chance that taxpayers will ultimately bear excessive costs — including debt, cost overruns and litigation. In effect, when private partnerships with significant public backing go well, investors reap most of the reward; when they go badly, taxpayers take a hit.

A case in point is the South Bay Expressway in California, an $828 million private project whose financing included a $140 million federal loan. Completed in 2007, the project filed for bankruptcy protection in 2010. When the bankruptcy court imposed a new financing and ownership structure the following year, taxpayers essentially had to forfeit $73 million in loan principal and accrued interest, in all, a loss of 42 percent of the investment.

It's bad enough that Mr. Trump is not tackling the nation's critical infrastructure needs. It's worse that he seems determined to use the limited funds he has scrounged to enrich private investors at taxpayers' expense.

THE NEW YORK TIMES

By THE EDITORIAL BOARD

JUNE 9, 2017

[Texas's Tough Pension Laws May Not Apply in Other States.]

DALLAS — Texas recently enacted two laws that state and local officials hope will stabilize the Dallas Police and Fire Pension and a similar one affecting Houston's police, fire and municipal workers.

The state stepped in after the Dallas fund saw about 20 percent of its assets withdrawn in about four months last year, pushing it closer to insolvency.

Pension members say the impact of the new laws will be painful with reductions in retiree benefits and increases in worker contributions, but something had to be done to save the systems that had billions of dollars in unfunded liability.

The Dallas pension near-meltdown is part of a national malaise in public pensions. But the Texas cure may not work in many states, which have stricter laws on altering pension benefits.

By THE ASSOCIATED PRESS

JUNE 10, 2017, 11:36 A.M. E.D.T.

SIFMA Statement on 'Move America Act of 2017'

Washington, DC, June 2, 2017 — SIFMA today issued the following statement from Michael Decker, SIFMA Managing Director, Co-Head of the Municipal Securities Division on the Move America Act of 2017, introduced by Senators Ron Wyden (D-OR) and John Hoeven (R-ND), which would expand tax-exempt private activity bonds and create a new infrastructure tax credit:

> "We commend Senators Wyden and Hoeven for seeking a bipartisan path to bridge the gap between infrastructure funding needs and available resources. The Move America Act leverages the existing and well-proven tax-exempt bond market, which we believe will be the most crucial funding pillar in the upcoming infrastructure package. Congress should seriously consider proposals like this one that help our cities and states secure funding for projects that create jobs and drive economic growth."

Reminder: Join the MSRB and SEC 6/15 for a Webinar to Prepare Municipal Advisors for the Series 50 Exam.

Municipal Advisor Representative Qualification Examination (Series 50 Exam)

Thursday, June 15, 2017
3:00 p.m. – 4:00 p.m. EDT

During this free webinar, staff of the Municipal Securities Rulemaking Board (MSRB) and U.S. Securities and Exchange Commission (SEC) will review the standards of professional qualification for municipal advisors and discuss the enrollment process for taking the MSRB's Municipal Advisor Representative Qualification Examination (Series 50). For municipal advisor firms that have yet to enroll an associated person to take the Series 50 exam, the MSRB is providing a reminder that, after September 12, 2017, only associated persons who have passed the Series 50 exam can engage in municipal advisory activity on behalf of the firm.

Register.

Recognize the Magnitude of Municipal Securities in the Infrastructure Debate.

The Trump administration and legislators on Capitol Hill have a tall order to fill when it comes to developing policies that can spur more investment in the nation's infrastructure. To inspire informed dialogue on this topic, the Municipal Securities Rulemaking Board (MSRB), created by Congress in 1975 to oversee the $3.8 trillion municipal securities market, recently gathered bankers, developers and scholars for an infrastructure discussion.

Our goal was to look beyond the municipal market – which finances the lion's share of the nation's infrastructure – and better understand all it may take to fulfill the outsized need to maintain and build the nation's roads, bridges, tunnels, schools and more over the next decade. If the municipal securities market serves as the perpetual backdrop and most essential aspect of public finance, how might state and local government finance be coordinated with and enhanced by federal incentives and private sector involvement?

Potential innovations in infrastructure finance and related policies must contend with a legislative process on Capitol Hill that advances on a fragmented and episodic basis, and which is affected by the challenges of rising federal debts and soft economic growth. Transportation funding and water infrastructure bills are core priorities for appropriations and infrastructure committees in Congress.

According to the Congressional Budget Office, federal, state, and local governments collectively spent $416 billion on transportation and water infrastructure in 2014 – a quarter of which came from federal spending. This significant level of spending has been a relatively stable percentage of the GDP over the past 30 years.

Yet congressional involvement in infrastructure policy reaches much further. For example,infrastructure stimulus proposals have been at the top of the agenda for President Obama's, and now, President Trump's, first terms. These proposals engage congressional tax writers in seeking to jumpstart infrastructure through new incentives. While the Trump administration favors federal tax credits and public private partnerships for stimulus, the tax component of Obama-era stimulus legislation established new types of subsidized municipal securities that have since expired, including tax-credit bonds and direct-pay, "Build America Bonds." The return of these bonds, or the development of enhanced private activity bonds programs, is under discussion by the current administration.

A wide array of programs could be enacted by Congress or fine-tuned through regulatory relief in the name of infrastructure development – from P3s to infrastructure banks, QPIBs to QZABs, and WIFIA to TIFIA. Sometimes overlooked in this policy alphabet soup is the very foundation for successful infrastructure: efficient capital markets. Municipal securities, which are traditionally tax exempt, have been and remain the essential element for ensuring state and local governments can affordably access capital markets to maintain infrastructure, from roadways to alleyways, and from universities to elementary schools.

With 50,000 governmental and nonprofit issuers and counting, it is primarily the municipal securities market that assures community needs are identified, prioritized and financed at a reasonable cost. The municipal securities market must function well just to maintain current state and local government priorities, and must thrive to support policies aimed at bridging the nation's infrastructure funding gap. While the market hums along to meet much of the nation's infrastructure need – with an average $430 billion in municipal securities issued annually – experts are focused on removing policy barriers so that public and private finance can fit together more seamlessly and foster innovation.

The MSRB keeps top of mind its mission to promote a fair, efficient and transparent municipal securities market and those policies specifically targeted at its structure. As we seek to protect municipal securities investors and issuers, we are aware that new federal policies not directed at municipal securities or even infrastructure will nevertheless affect our market. Such policies may unleash or stymie the potential of capital markets as a whole – and may put the $3.8 trillion municipal securities market to work – or to rest. Democratic and Republican members of Congress have prioritized infrastructure investment, and the Trump administration is taking careful stock of infrastructure needs and the policies that could unlock the full potential of capital markets and the economy through the tax code and regulatory relief.

Within this debate, corporate or individual tax reform could change the relative value or tax treatment of municipal securities for investors and affect borrowing costs for issuers as priorities are aligned to support ideas for promoting U.S. competitiveness. Such legislative deal making can create surprise consequences, and the municipal securities market can adapt, having endured previous tax reforms, sequestration and economic recessions.

It is a resilient resource borne of the founding principles of a nation that reserves power, decision making authority and access to capital for state and local government. Yet hazards for the market should be avoided or overcome, and indirect consequences of tax proposals, carefully considered. An efficiently operating municipal securities market is the basis from which to advance essential priorities. As policymaking brings disparate ideas into focus, it must be remembered that the municipal securities market, operating quietly in the background, is the very foundation for financing the nation's infrastructure.

THE HILL

BY LYNNETTE KELLY, OPINION CONTRIBUTOR – 06/09/17 02:30 PM EDT

Lynnette Kelly is executive director of the Municipal Securities Rulemaking Board.

- Fitch: Pension Impact Adjusted in U.S. Public Finance Criteria.
- Special Assessment Techniques for Transformative Community Improvements.
- MSRB Seeks Additional Comment on Requirements for Obtaining CUSIP Numbers.
- MSRB Adds Exception in Revised Proposal Requiring CUSIPs for Private Placements.
- BDA Submits Comments to Department of the Treasury and the Internal Revenue Service on

- Recommendations for the 2017-2018 Priority Guidance Plan.
- Federal Infrastructure Tax Credit Legislation Makes Key Changes from 2015 Proposal.
- *The Tavern, LLC v. Town of Alpine* – Supreme Court of Wyoming holds that campground owners sufficiently alleged that, in constructing and financing (loans, rather than bonds) new sewer system, town exceeded its constitutional and statutory authority, as required to state a claim for injunctive relief.
- *Better Government Association v. Illinois High School Association* – Supreme Court of Illinois holds – as a matter of first impression – that voluntary association of public and private high schools was not "subsidiary body" of governmental unit under Freedom of Information Act (FOIA), and thus was not subject to FOIA's disclosure requirement.
- And finally, Can Someone Please, Please Explain This? is brought to us this week by *Ada County Highway District v. Brooke View, Inc.*,, a seemingly garden-variety eminent domain case. Highway District offers subdivision $7,738.47 as just compensation for a 1,425 square foot section of property to complete a sidewalk and drainage project. Subdivision declines. Highway District condemns, subdivision sues over valuation. Court awards $148,390.21, plus prejudgment interest and attorney fees. So far, so good. But, but, but (insert spluttering noises of your choosing). Prejudgment interest = $48,792.66. Non-discretionary costs = $44,051.46. Discretionary costs = $365,703.63. Attorney's fees = $744,243.56! So the county is rung up to the tune of $1.35 million for utilizing 1,425 sq. ft. of land for a public works project? How is this possible? Is this normal? Can I assume that this is how it's done in China? Why haven't they come for us with pitchforks and torches?

IMMUNITY - ALABAMA

Ex parte City of Guntersville

Supreme Court of Alabama - May 26, 2017 - So.3d - 2017 WL 2303161

City park patron filed a negligence action against city after she tripped and fell on diagonal crossbar around parking lot at city park.

The Circuit Court denied city's motion for summary judgment. City petitioned for a writ of mandamus.

The Supreme Court of Alabama held that city park patron failed to establish that city had actual knowledge that diagonal crossbar around parking lot in city park presented a condition, use, structure, or activity that involved an unreasonable risk of death or serious bodily harm, as required for exception to recreational-use immunity to apply and allow patron to maintain her negligence action against city.

BALLOT INITIATIVES - COLORADO

Matter of Title , Ballot Title and Submission Clause for 2017-2018 #4

Supreme Court of Colorado - May 30, 2017 - P.3d - 2017 WL 2333119 - 2017 CO 57

Registered electors sought review of Title Board's decision to grant single-subject approval, to set a title, and to approve an abstract for a proposed ballot initiative to limit housing growth.

The Supreme Court of Colorado held that:

- Proposed ballot initiative contained a single subject as constitutionally required, and
- As matter of first impression, the statute on procedure for reviewing Title Board's abstracts for proposed ballot initiatives authorizes the Supreme Court to review the Board's final decision on an abstract.

Proposed constitutional initiative that gave local governments the right to limit housing growth by initiative and referendum, prohibited permits for new residential housing in ten jurisdictions for one year, and limited housing growth to 1% annually in the same jurisdictions for two calendar years, after which time the growth limitation could be amended or repealed by initiative and referendum, contained a single subject, as constitutionally required for initiatives. Provisions were interrelated and necessarily and properly connected to the subject of limiting housing growth in the state, proposed initiative did not simultaneously add to, repeal, replace, and preempt existing constitutional and statutory provisions, and proposed initiative's plain language was not confusing.

Sufficient basis existed for Title Board's approval of the abstract for a proposed constitutional ballot initiative on limiting housing growth, despite argument that the fiscal impact abstract did not include any hard numbers or other quantitative data, where a legislative council representative testified at the rehearing before the Board that it simply was not possible to provide quantitative estimates for the effects of the initiative since there was no way to predict which jurisdictions would exercise the new right under the initiative to limit housing growth or choose to keep the 1% growth limit contained in the initiative.

IMMUNITY - COLORADO

St. Vrain Valley School District RE-1J v. Loveland by and through Loveland

Supreme Court of Colorado - May 22, 2017 - P.3d - 2017 WL 2224368 - 2017 CO 54

Student, who was injured in fall while using zip line apparatus on public school playground, and her parents filed personal injury action against school district.

The District Court dismissed claims as being barred by Colorado Governmental Immunity Act (CGIA). Student and parents appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. On certiorari review, the Supreme Court affirmed and remanded. On remand, the trial court granted district's motion to dismiss. Students and parents appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. Student and parents sought certiorari review, which was granted.

The Supreme Court of Colorado held that:

- Plaintiffs failed to demonstrate defect in condition of apparatus, and thus apparatus was not dangerous condition warranting waiver of school district's sovereign immunity, abrogating *Longbottom v. State Board of Community Colleges & Occupational Education*, 872 P.2d 1253, and *Hendricks ex rel. Martens v. Weld County School District No. 6*, 895 P.2d 1120, and
- School district's alleged negligence in constructing inherently dangerous apparatus claim of negligent design of playground that did not constitute dangerous condition warranting waiver of immunity.

A non-negligently constructed and maintained piece of playground equipment cannot be a "dangerous condition" under the Colorado Governmental Immunity Act (CGIA) recreation-area waiver, depriving a public entity of immunity in actions for injuries from a dangerous condition of a public facility located in a recreation area.

Student, who was injured in fall from zip line apparatus on public school playground, and her parents failed to demonstrate that there was a physical defect in the construction or maintenance of the apparatus, and thus student and parents failed to establish that zip line was “dangerous condition” warranting waiver of school district’s sovereign immunity under recreation-area exception of Colorado Governmental Immunity Act (CGIA) depriving a public entity of immunity in actions for injuries from a dangerous condition of a public facility located in a recreation area.

For waiver of immunity under Colorado Governmental Immunity Act (CGIA) for injuries resulting from a dangerous condition, the physical condition of the public facility or use thereof must be a physical defect caused by some negligent act or omission of the public entity in constructing or maintaining the facility; abrogating *Longbottom v. State Board of Community Colleges & Occupational Education*, 872 P.2d 1253, and *Hendricks ex rel. Martens v. Weld County School District No. 6*, 895 P.2d 1120.

School district’s alleged negligence in constructing inherently dangerous zip line apparatus on school playground was not dangerous condition for which immunity was waived under Colorado Governmental Immunity Act (CGIA) recreation-area waiver, in negligence action by student and parents following student’s fall from apparatus, but rather constituted claim about negligent design of playground precluded under CGIA provision stating that dangerous condition would not exist solely because design of any facility was inadequate.

STORMWATER UTILITY FEES - FLORIDA

City of Key West v. Key West Golf Club Homeowners'

District Court of Appeal of Florida, Third District - May 31, 2017 - So.3d - 2017 WL 2350129

Landowners on an island that was within city’s boundaries but not the main island brought action challenging the legality of stormwater utility fees for their properties, which included a golf course and a hospital.

After a bench trial, the Circuit Court found in favor of landowners. City appealed, and landowners cross-appealed.

On rehearing, the District Court of Appeal held that:

- City had the authority to charge landowners a stormwater utility fee, and
- Stormwater utility fee bore a reasonable relationship to the benefits conferred.

Landowners on an island that was within city’s boundaries but not the main island contributed to the need for and benefited from city’s stormwater management system, and therefore city could charge landowners a stormwater utility fee, where stormwater discharge from landowners’ properties, which included a golf course and a hospital, would have caused a salt marsh to back up and flood properties were it not for drainage provided by culverts, storm drains, and outlets that were part of city’s stormwater management infrastructure, and city’s stormwater program included anti-pollution services that protected the quality of water surrounding the properties and allowed landowners to avoid the more onerous and expensive treatment of their runoff under state and local laws.

Stormwater utility fee that city charged landowners on an island that was within city’s boundaries but not the main island bore a reasonable relationship to the benefits conferred, and therefore landowners were not entitled to a lower rate than the ratepayers on the main island, even if the stormwater discharge from landowners' properties did not travel through the stormwater infrastructure located on the main island; the stormwater utility funded more than infrastructure, and substantial, city-wide stormwater anti-pollution measures benefited landowners' properties.

ZONING & PLANNING - FLORIDA

Hardee County v. FINR II, Inc.

Supreme Court of Florida - May 25, 2017 - So.3d - 2017 WL 2291004

Property owner filed complaint seeking compensation from county pursuant to Bert J. Harris Jr., Private Property Rights Protection Act for county's reduction of mining setback on phosphate company's adjacent property.

The Circuit Court granted county's motion to dismiss. Owner appealed. The District Court of Appeal affirmed in part, reversed in part, remanded, and certified direct conflict of decisions. County's application for review was granted.

The Supreme Court of Florida held that:

- Act does not apply to property that has suffered diminution in value or other loss as result of proximity to the property that is subject to a government action, and
- Setback around mining company's property was not a property right for which adjacent owner could state a claim under the Act.

Bert J. Harris, Jr., Private Property Protection Act does not apply to property that has suffered diminution in value or other loss as result of its proximity to the property that is subject to a government action.

Quarter-mile setback around phosphate mining company's property was not a property right for which adjacent landowner operating neurological rehabilitation center could state a claim under the Bert J. Harris, Jr., Private Property Protection Act when county reduced setback to 150 feet; setback was created by police power as a land use designation for the general welfare.

EMINENT DOMAIN - IDAHO

Ada County Highway District v. Brooke View, Inc.

Supreme Court of Idaho, Boise, February 2017 Term - May 23, 2017 - P.3d - 2017 WL 2247652

In eminent domain proceedings, the District Court entered judgment awarding $148,390.21 plus prejudgment interest and attorney fees to property owner as just compensation for a parcel of property condemned by county. County appealed.

The Supreme Court of Idaho held that:

- Just compensation for property condemned by county did not include compensation for damage to a wall caused by the construction of improvements on the taken parcel, and

- Jury instructions that misstated the law were reversible error.

Damages accruing during construction of project for which property is condemned under the State's eminent domain powers are not properly part of just compensation and must be pursued separately in tort.

Jury instructions in eminent domain proceedings that led the jury to consider physical damages to property caused by construction project on condemned property were reversible error, where instructions misstated the law of just compensation, and the majority of the final judgment amount awarded in the case was for the cost to cure damages occurring during construction.

PUBLIC RECORDS - ILLINOIS

Better Government Association v. Illinois High School Association

Supreme Court of Illinois - May 18, 2017 - N.E.3d - 2017 IL 121124 - 2017 WL 2180590

Records requester brought action against association of high schools and one of its member school districts, seeking a declaration that they violated the state Freedom of Information Act (FOIA).

The Circuit Court granted association's and district's motions to dismiss. Requester appealed. The Appellate Court affirmed. Requester's petition for leave to appeal was allowed.

The Supreme Court of Illinois held that:

- As a matter of first impression, association was not "subsidiary body" of governmental unit under FOIA;
- As a matter of first impression, a "subsidiary body" does not necessarily include an entity found to be a state actor under federal civil rights laws; and
- Association had not contracted to perform governmental function on behalf of district.

Voluntary association of public and private high schools was not "subsidiary body" of governmental unit under Freedom of Information Act (FOIA), and thus was not subject to FOIA's disclosure requirement. Even though public schools accounted for majority of memberships in association, association was not created by school district or other public body, no public body had control over how governing board was established or comprised, and association did not receive direct governmental funding.

REVENUE - MISSOURI

City of Normandy v. Greitens

Supreme Court of Missouri, en banc - May 16, 2017 - S.W.3d - 2017 WL 2119349

Municipalities and taxpayers filed petition for declaratory judgment and injunctive relief, challenging constitutionality of statutes relating to revenue that municipalities could generate from minor traffic and municipal ordinance violations, and which established reporting requirements for same.

The Circuit Court entered judgment declaring that statutes creating lower cap on revenues were unconstitutional special laws and that statutes relating to financial reporting amounted to unconstitutional unfunded mandate, and it dismissed plaintiffs remaining claims for failure to state claim. State appealed.

The Supreme Court of Missouri held that:

- Statute imposing limits on percentage of operating revenues generated from fines, bond forfeitures, and municipal court costs, based on population classifications, together with statute imposing minimum law enforcement accreditation standards based on population classifications, were presumptively unconstitutional special laws;
- State failed to rebut presumption that statutes were unconstitutional special laws;
- Portion of statute that was unconstitutional special law was severable from remainder of statute that reduced cap to 20% on such revenues that applied to all other counties and municipalities within State;
- Claim that statutes amounted to unfunded mandate, in violation of Hancock Amendment to Missouri Constitution, was not ripe for review;
- Statutes relating to municipality's financial reporting requirements did not violate separation of powers;
- Statute setting time limits for hearings for defendants in custody pursuant to arrest warrant issued by municipal courts did not impermissibly amend or annul court rule entitling defendants to hearing before judge "as soon as practicable";
- Statute requiring that all fines, bond forfeitures, and court costs ordered or collected for minor traffic violations or violations of municipal ordinances be paid to director of revenue if municipality failed to comply with auditing and reporting requirements did not implicate provision of Missouri Constitution municipal corporation with population of under 400,000 "shall receive and retain any fines to which it may be entitled."

Statute imposing 20% cap on percentage of county's operating revenue from fines, bond forfeitures, and court costs from minor traffic violations and municipal ordinance violations for county with charter form of government, except county with more than 950,000 inhabitants and city, town, or village within that county, which were subject to 12.5% cap, together with statute imposing minimum law enforcement accreditation standards for municipalities located within county with charter form of government and more than 950,000 inhabitants, were presumptively unconstitutional special laws for which State was required to offer evidence of substantial justification for special treatment; classifications applied to only one county in State, other municipalities similar in population to municipalities within affected county were not subject to lower 12.5% revenue cap or to minimum law enforcement requirements, and it was highly unlikely that another county would come within scope of statutes or that population of single affected county would fall below 950,000 in foreseeable future.

State failed to rebut presumption that statute imposing 20% cap on percentage of county's operating revenue from fines, bond forfeitures, and court costs from minor traffic violations and municipal ordinance violations for county with charter form of government, except county with more than 950,000 inhabitants and city, town, or village within that county, which were subject to 12.5% cap, together with statute imposing minimum law enforcement standards for municipalities located within county with charter form of government and with more than 950,000 inhabitants, were unconstitutional special laws, where State provided no evidence of substantial justification for classification.

Provision of statute reducing to 12.5% cap on percentage of operating revenue from fines, bond forfeitures, and court costs from municipal ordinances and minor traffic violations for county with charter form of government with more than 950,000 inhabitants and on city, town, or village within that county, which was unconstitutional special law that applied to only one county within State, was severable from remainder of statute that reduced cap to 20% on such revenues that applied to all other counties and municipalities within State.

Claim by municipalities and residents that statutory scheme reducing from 30% to 12.5% percentage of county's operating revenue from fines, bond forfeitures, and court costs from minor traffic violations and municipal ordinance violations for county with charter form of government and with more than 950,000 inhabitants and on political subdivisions within that county, together with imposition of minimum law enforcement accreditation standards and audit requirements, amounted to unfunded mandate, in violation of Hancock Amendment to Missouri Constitution, was not ripe for review; plaintiffs presented evidence of only potential costs of complying with laws, plaintiffs presented no evidence that General Assembly would not fund accreditation of police departments, and despite potential for increased costs, requirements had not yet become mandate.

Statutes requiring political subdivisions to submit addendum to state auditor with annual financial reports showing figures used in calculating percentage of annual operating revenue generated from fines, bond forfeitures, and court costs for minor traffic violations, requiring municipalities to certify substantial compliance with certain procedures in handling of cases by filing another addendum with state auditor, and requiring director of revenue to send notice to presiding judge of circuit court if any political subdivision failed to comply with addendum requirements or to send excess revenues to director, did not violate separation of powers by shifting Supreme Court's inherent authority to supervise municipal courts to director; it was presiding judge of circuit court, and not director, who ordered clerk of noncomplying municipal court to certify all pending matters until such political subdivision filed accurate addendum and sent excess revenue to director.

Statute granting defendants in custody pursuant to arrest warrant issued by municipal courts right to hearing before judge not later than 48 hours on minor traffic violations or later than 72 hours on other violations, and which required that defendants be released if not given that opportunity, did not impermissibly amend or annul court rule, without identifying rule, requiring that person arrested under warrant for ordinance violation who did not satisfy conditions for release be brought "as soon as practicable" before judge of court that issued warrant, did not violate constitutional provision giving Supreme Court power to "establish rules relating to practice, procedure and pleading for all courts and administrative tribunals"; municipalities could comply with both statute and rule to bring defendants before judge "as soon as practicable," as statute merely imposed time limit within which to do so.

Statute requiring that all fines, bond forfeitures, and court costs ordered or collected for minor traffic violations or violations of municipal ordinances be paid to director of revenue if municipality fails to comply with auditing and reporting requirements relating to calculation of percentage of general operating revenues obtained from fines, bond forfeitures, and court costs did not implicate Missouri Constitution provision that municipal corporation with population of under 400,000 "shall receive and retain any fines to which it may be entitled"; amount of fines, if any, that municipality was "entitled" to keep for ordinance violations was function of statute, not Constitution, and Constitution left determination as amount that municipality was entitled to keep to General Assembly.

UTILITIES - WYOMING

[The Tavern, LLC v. Town of Alpine]()

Supreme Court of Wyoming - May 16, 2017 - P.3d - 2017 WL 2124030 - 2017 WY 56

Campground owners brought action against town, seeking declaratory and injunctive relief arising out of town's financing and construction of new sewer system. Owners also brought action against engineering firm retained by town, after firm reported campground to state Department of Environmental Quality, alleging abuse of process, civil extortion, and civil conspiracy against firm and town.

The District Court consolidated the cases, dismissed owners' claims against town for failure to state a claim, and granted summary judgment to engineering firm on owners' claims against it. Owners appealed.

The Supreme Court of Wyoming held that:

- Owners sufficiently alleged facts establishing that controversy with town was justiciable, as required for declaratory judgment claim;
- Owners established standing on claim against town under Uniform Declaratory Judgment Act;
- Owners stated claim for injunctive relief against town; and
- Engineering firm did not commit tort of abuse of process.

Campground owners sufficiently alleged that they had a tangible interest that had been harmed, as required to establish that controversy with town arising out of town's construction and financing of new sewer system was justiciable, within the meaning of the Uniform Declaratory Judgments Act. Owners alleged that they had private septic system, so if town enforced ordinances requiring connection to town's system, it would make owners' business economically non-viable and would irreparably diminish value of owners' real estate, and town also allegedly required owners to decommission their septic system, which owners estimated would cost over $100,000.

Campground owners sufficiently alleged that a judicial decision in their favor would effectively remedy harm they were suffering, as required to establish that controversy with town arising out of town's construction and financing of new sewer system was justiciable, within the meaning of the Uniform Declaratory Judgments Act. Owners' requested declaration that town's loans from state for new sewage treatment facility were unconstitutional, necessarily implicating town's ordinances and exactions, which owners asserted would have rendered their business economically non-viable.

Campground owners sufficiently alleged that they faced a perceptible, rather than speculative, harm, as required to establish standing under Uniform Declaratory Judgment Act to bring declaratory judgment action against town, arising out of town's construction and financing of new sewer system. Owners alleged that they would be required to decommission their existing, functional septic system, allegedly an expensive task, while also connecting to new sewer facility and paying related connection fees and utility costs.

Campground owners sufficiently alleged that, in constructing and financing new sewer system, town exceeded its constitutional and statutory authority, as required to state a claim for injunctive relief. While town was entitled under statute to charge rates for sewer system services, which could have been used to pay cost of operating and maintaining system as well as paying principal and interest on bonds issued to pay for system, town instead borrowed money to pay for system rather than issuing bonds, so owners asserted that revenues received through sewer system fees and rates could not be applied to alleged illegal loans.

Campground owners sufficiently alleged that they would be irreparably harmed by town's financing and construction of new sewer system, as required to state a claim for injunctive relief against town. Owners alleged that their business and property values would be harmed if town enforced enactments requiring owners to connect campground to new sewer system, even though owners maintained private septic system, and requiring owners to pay for sewer service and to repay loans town received for construction.

Engineering firm retained by town to design town's new sewer system did not commit tort of abuse of process by sending letter to state Department of Environmental Quality, asserting that campground's septic system violated agency's rules. Letter sent by engineer was outside any legal proceeding or process, instead reporting a claimed violation to agency that had authority to investigate complaint, and if appropriate, could have taken administrative action.

MSRB Adds Exception in Revised Proposal Requiring CUSIPs for Private Placements.

WASHINGTON – The Municipal Securities Rulemaking Board has recast a prior proposal clarifying that CUSIPs are required for private placements by providing a limited exception in response to market comments.

Comments on the MSRB's revised proposal are due by June 20.

The modified proposal is like the prior version that was released on March 1 in that it clarifies the requirement in MSRB Rule G-34 on CUSIP numbers for dealers to obtain CUSIP numbers for new issue securities sold in private placement transactions, including direct purchases, where the dealer is the placement agent. It also requires that non-dealer municipal advisors be subject to the CUSIP requirement for new issue securities that are sold in a competitive offering.

CUSIPs are groups of six- and nine- numbers and letters that identify an issuer and its securities. They are used for a number of purposes in the muni market, including trading, recordkeeping, clearance and settlement, customer account transfers and safekeeping.

Market groups representing dealers, MAs, and issuers responded to the initial proposal asking that the MSRB include an exemption for private placements that involve a limited number of participants and are not expected to be resold. A number of groups also said they were concerned that the proposed changes and clarifications could adversely impact the municipal market by discouraging banks from pursuing private placements and discouraging issuers from engaging placement agents and municipal advisors.

In response to these comments, the MSRB said that while it believes obtaining CUSIP numbers is a necessary aspect of activities like tracking trading and recordkeeping, it also "is of the view that the increase in the number of direct purchase transactions between municipal issuers and banks as an alternative to letters of credit and other similar types of financings may support an exception from the blanket requirement to obtain CUSIP numbers in all private placements."

The MSRB is proposing an exception in the modified proposed rule under which a dealer acting as an underwriter or a placement agent in a new private placement with a bank could "elect not to apply for assignment of a CUSIP number if the dealer has a reasonable belief that the purchasing bank is likely to hold the securities to maturity or limit the resale of the municipal securities to another bank."

There would also be an exception from applying for CUSIPs for MAs in competitive sales of munis where the securities are purchased directly by a bank and the MA believes the bank will hold the securities to maturity or limit any resale to another bank.

The MSRB said it expects both dealers and MAs to have policies and procedures in place that are reasonably designed to help them come to conclusions about whether to get a CUSIP number and to apply those policies and procedures during any CUSIP number-related evaluations. Dealers and MAs would also be expected to document their findings that play into any ultimate determinations about whether to get CUSIPs.

The board also clarifies that an MA advising an issuer in a competitive sale of new issue securities must apply for the CUSIP number no later than one business day after dissemination of a notice of sale or other such request for bids.

Lynnette Kelly, the MSRB's executive director, noted in a release accompanying the new request for comment that the MSRB modified the draft amendments in light of market feedback and added the MSRB "appreciates the thoughtful participation of commenters in the rulemaking process and invites further dialogue on how to ensure CUSIP number requirements appropriately reduce investor risk and regulatory uncertainty."

The MSRB said it is not setting prescriptive steps to comply with the exception and will not further specify instances where the exception would apply. It also will not define the parameters for how a dealer should craft its policies and procedures. The proposal also does nothing to affect a dealer's obligation to determine whether a transaction should be considered a loan or security, the board said.

Dealers had also been concerned that the first proposal would have been problematic because G-34 requires dealers to apply for depository eligibility and disseminate new issue information, something placement agents may not be able to do because they never purchase the securities.

The MSRB is extending a similar exception to the portion of G-34 that deals with depository eligibility to cover that concern. It proposes the exception cover munis purchased directly by a bank where the underwriter reasonably believes the bank is likely to hold or limit resale of the munis to another bank in a way that makes immobilization in a depository unnecessary. The underwriter would have to make a "principles-based assessment as to whether depository eligibility, and thus, dissemination of new issue information, would be necessary for the particular new issue" and be subject to requirements for policies and procedures and documentation, according to the MSRB.

The MSRB is additionally proposing to make the draft rule amendments prospective after commenters said market participants see the changes as new requirements.

Jessica Giroux, general counsel and managing director of Bond Dealers of America, said BDA is "pleased that the MSRB revised the proposed rule to create an exception for direct purchase transactions," adding it will "provide a major point of needed clarity in the municipal securities market." BDA is still reviewing the proposed changes and plans to comment on other aspects of the proposal in the future, she said.

Leslie Norwood, managing director, associate general counsel and co head of the Securities Industry and Financial Markets Association's municipal securities division, said the group is pleased the MSRB considered industry comments and that SIFMA plans to file a comment letter on the revised proposal.

"Although we are still reviewing the proposal, we believe the addition of an exception to the rule for certain direct placements and the clarification that the rule change will only be applied prospectively are positive changes to the proposal," Norwood said.

Susan Gaffney, executive director of the National Association of Municipal Advisors, said that while the group appreciates the MSRB's work to re-propose the rulemaking, "we remain concerned with the proposal, including having MAs obtain CUSIPs for competitive sales."

"Also, at first glance, the new provision that calls on MAs to 'reasonably believe' that the bank will "likely" hold the security seems to place a burden on MAs to determine the intent of investors, which may conflict with the regulatory limitations that exist with having MAs interface with investors," Gaffney added.

The Bond Buyer

By Jack Casey

06/02/17 07:07 PM EDT

Social Finance Announces Awardees to Develop Nation's First Outcomes Rate Cards.

Social Finance Announces Awardees to Develop Nation's First Outcomes Rate Cards, Driving Government Performance through a Focus on Outcomes

Riverside County, CA and Yale Child Study Center with the State of Connecticut will employ pioneering tool to deliver results for at-risk children

May 31, 2017 – Boston, MA – Social Finance today announced the first round of awardees for the Outcomes Rate Card Development Competition, launching two new partnerships to advance outcomes-based contracting and financing in communities across the country. With support through funding awarded last year from the Corporation for National and Community Service's Social Innovation Fund, Social Finance will partner with the Riverside County Executive Office and the Yale Child Study Center with Connecticut's Office of Early Childhood to develop the nation's first outcomes rate cards.

Outcomes rate cards scale solutions to society's most pressing challenges by allowing government to identify priority outcomes for vulnerable citizens, and enabling service providers to achieve those outcomes through diverse interventions. An outcomes rate card standardizes the Pay for Success approach, by establishing a menu of outcomes a government seeks to "purchase" for a given issue and target population and the amount it is willing to pay each time a given outcome is achieved. With one outcomes rate card, governments can launch multiple projects, directing resources towards outcomes rather than outputs.

"Today's announcement represents the growing enthusiasm of state and local governments to tackle persistent social challenges through outcomes-based approaches," said Tracy Palandjian, co-founder and CEO of Social Finance. "Outcomes rate cards will allow us to scale Pay for Success, delivering even greater impact for children and their families in California and Connecticut."

The Yale Child Study Center and Connecticut's Office of Early Childhood, a state agency, will build on the state's history of collaboration and experience with Pay for Success to design an outcomes rate card addressing early childhood outcomes. The partners will work with Social Finance to analyze data from the state's Early Childhood Information System and identify the issues of greatest need facing the state's young children and their families. Together, they will develop an outcomes rate card to support outcomes-based projects addressing the identified area of need.

“Connecticut has been a national leader in Pay for Success thanks in large part to the state’s collaboration with Social Finance and the Yale Child Study Center,” said David Wilkinson, Commissioner of the Office of Early Childhood. “We are excited to be selected in this competition to work together again as we seek to make the promise and potential of PFS achieve broader reach more efficiently. Government and service providers share a mission of generating positive outcomes, so it makes sense to align payment with the outcomes we want to see.”

“This award allows us to apply the rigorous research at the Yale Child Study Center on effective interventions for children and their families in our relationships with government and policy partners,” said Dr. Linda Mayes, Professor and Director of the Yale Child Study Center, co-Principal Investigator

Riverside County Executive Office will develop an outcomes rate card to improve services for Children of Incarcerated Parents (CIP). Incarceration in county jails and state prisons is a growing challenge in Riverside County, imposing a substantial social and economic burden on the community. Children of Incarcerated Parents face a range of challenging circumstances that put them at a higher risk for adverse health outcomes, low academic performance, and diminished economic opportunity. An outcomes rate card will help Riverside County expand the range of services needed to adequately support CIP, driving resources toward high-quality service providers and meeting the diverse needs of impacted children to help set them up for long-term success.

“The Riverside County Executive Office is honored to be selected as a service recipient. We will use the Outcomes Rate Card to develop a proactive model to reduce the incarceration rate by intervening early in the lives of children who experience risk factors that make them more susceptible to future incarceration,” said Brian Nestande, Deputy County Executive Officer, Riverside County.

Outcomes rate cards are one approach to developing Pay for Success projects, which combine nonprofit expertise, private funding, and independent evaluation to transform how government leaders respond to chronic social problems. Over the past six years, over 70 Pay for Success projects addressing chronic social issues have launched in 18 countries worldwide.

The Outcomes Rate Card Development Competition is supported by the Social Innovation Fund (SIF), a program of the Corporation for National and Community Service (CNCS). Social Finance was awarded funding as part of SIF’s Round 2 Pay for Success Grants Competition, which seeks to build the pipeline of Pay for Success projects for local governments.

“The Social Innovation Fund is an innovative program that seeks to invest in truly compelling solutions and expand programs that work,” said Lois Nembhard, acting director of the Social Innovation Fund. “We are pleased to support the development of the first outcomes rate cards in the United States and believe these projects will represent cross-sector collaboration at its best—laying the groundwork for more governments and nonprofits to follow the lead of the two service recipients announced today.”

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About Social Finance

Social Finance US is a 501(c)(3) nonprofit organization dedicated to mobilizing capital to drive social progress. We believe that everyone deserves the opportunity to thrive, and that social impact financing can play a catalytic role in creating these opportunities. As a Pay for Success intermediary, Social Finance has built upon the work of our sister organization Social Finance UK, who pioneered the first social impact bond in the world in 2010.

About the Social Innovation Fund

The Social Innovation Fund (SIF) is a program of the Corporation for National and Community Service, a federal agency that engages millions of Americans in service through its AmeriCorps, Senior Corps and Volunteer Generation Fund programs, and leads the nation's volunteer and service efforts. SIF positions the federal government to be a catalyst for impact—using public and private resources to find and grow community-based nonprofits with evidence of results. The Social Innovation Fund focuses on overcoming challenges confronting low-income Americans in three areas of priority need: economic opportunity, healthy futures, and youth development. To learn more, visit www.nationalservice.gov/sif

Contact: Alex Zaroulis, Director of Communications, Social Finance
617.549.0358
azaroulis@socialfinance.org

Deloitte Power & Utilities Quarterly Accounting Update Webinar - Q2 2017

Tuesday, July 11
12:00 – 1:30 p.m. ET

Prepared by Deloitte & Touche LLP's Energy & Resources Group, this Quarterly Accounting update webinar will focus on technical accounting and regulatory issues in the Power & Utilities sector. Participants will learn about new accounting rules and other utility accounting matters, and use this knowledge to prepare for quarterly accounting and reporting requirements.

This event may qualify you for 1.5 CPE credits.

Who should attend: Power & Utilities sector accounting, audit, tax, and finance professionals

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GASB On The Horizon: Debt Disclosures, Including Direct Borrowing.

The GASB is preparing to issue the Exposure Draft, *Debt Disclosures, including Direct Borrowing*. The key question of the project is: *do current disclosure requirements convey the essential information about these transactions to users of financial statements?*

Since the GASB's debt disclosures standards were issued, governments have continued to innovate and diversify their debt portfolios. As a result, related disclosures can be inconsistent. Specifically, concerns have been raised about the adequacy of the disclosures regarding direct borrowings, such a bank loans.

Governments are turning to direct borrowings in lieu of issuing bonds. GASB disclosure requirements for direct borrowings are just as rigorous as they are for other types of debt offerings including bonds; however, direct borrowings contain provisions that often are not associated with other forms of debt, but are essential for users to know about.

One feature of the Board's proposal will be a definition of debt—including direct borrowings—to distinguish it from other types of long-term liabilities in applying disclosure requirements for notes to financial statements.

The Board in this project also considered potential new disclosures that financial statement users need related to debt and is expected to propose the following:

- Unused lines of credit
- Collateral pledged as security for the debt
- Significant events of default or termination events and their significant finance-related effect as specified in the debt agreement, and
- Subjective acceleration clauses.

What's next: An Exposure Draft is expected to be approved in the later part of June 2017. A 90-day comment period will follow after which the Board will consider and then redeliberate due process feedback. A final Statement is planned for spring 2018.

More information about the debt disclosures project.

Coming Soon: New GASB Leasing Guidance.

Later this month, the GASB is scheduled to issue new standards on lease accounting. As many of you know, leasing is an important activity for many state and local governments across the United States. It can be a financing option for obtaining access to certain necessary items—including vehicles, heavy equipment, and buildings—without having to buy them outright.

Through the forthcoming leasing guidance, the Board is seeking to align the accounting and financial reporting of lease transactions more closely with their economic substance. The guidance will be based on the underlying principle that leases are financings of the right to use an underlying asset for a period of time. It will eliminate the current distinction between operating and capital leases by treating all leases as financings.

Board deliberations in the leases project were informed by private-sector lease requirements of the Financial Accounting Standards Board (FASB) and the International Accounting Standards Board (IASB), which recently reexamined their leases standards.

WHY NEW GUIDANCE WAS NEEDED

The Board initiated the project because the current leasing guidance predates the GASB and doesn't take the conceptual framework into consideration—including the definitions of assets and liabilities. Moreover, the existing lease standards allow a lease to be structured in a manner that avoids reporting the economic substance of the transaction. That is, a long-term liability and related asset were not reported as a result of the lease transaction.

LEASE DEFINITION

The definition of a lease will change under the new guidance. The definition focuses on a contract that conveys control of the right to use another entity's non-financial asset, which will be referred to in the new Statement as the underlying asset.

LEASE TERM

The lease term is the period during which the lessee has a noncancelable right to use an underlying asset, adjusted for certain options to extend or terminate the lease.

SHORT-TERM LEASES EXCEPTION

The standard provides an exception for short-term leases, which are lease that, at their beginning, have a maximum possible term of 12 months or less. These leases are recognized based on the payment provisions of the contract.

LESSEE ACCOUNTING

Lessee governments—that is, governments that pay to use another entity's capital asset (the underlying asset) for a given period—will report the following about their leases (except for short-term leases):

- An intangible lease asset that represents the government's right to use the underlying asset
- A corresponding lease liability
- Amortization expense from using up the lease asset during the lease, and
- Periodic interest expense on the lease liability.

LESSOR ACCOUNTING

Lessor governments—that is, governments that lease their capital assets to others—will report the following about their leases:

- A receivable for the right to receive payments
- A corresponding deferred inflow of resources
- Lease revenue, reported systematically over the lease term, and
- Periodic interest revenue from the receivable.

EFFECTIVE DATE AND TRANSITION

The requirements of the leasing guidance are to be effective for reporting periods beginning after December 15, 2019, with earlier application encouraged.

More information about the leases project.

IMMUNITY - TEXAS

Jamro Ltd. v. City of San Antonio

Court of Appeals of Texas, San Antonio - March 15, 2017 - Not Reported in S.W.3d - 2017 WL 993473

On September 8, 2005, the City of San Antonio adopted a resolution expressing an intent to consider the creation of a tax increment reinvestment zone ("TIRZ") to finance public improvements in the Palo Alto Trails Development (the "Project").

On May 18, 2006, the City adopted an ordinance designating the Project area as a TIRZ, noting the City's desire to support revitalization activities for the Project. On June 20, 2013, the City adopted an ordinance terminating the TIRZ.

On December 30, 2015, JAMRO, Ltd. filed the underlying lawsuit against the City alleging claims for breach of contract, quantum meruit, promissory estoppel, fraud, negligent misrepresentation, and negligence. JAMRO alleged it was in the process of developing property when City officials and agents approached JAMRO and asked it to apply to have the area being developed declared a reinvestment zone. JAMRO further alleged it complied with the request and made changes to JAMRO's plans and specifications at the City's request and completed the construction but was never notified the TIRZ had been terminated. JAMRO sought compensatory and punitive damages.

The City filed a plea to the jurisdiction asserting it was immune from the lawsuit because it never entered into a contract with JAMRO and immunity is only waived for contractual claims not for quasi-contractual claims like quantum meruit and promissory estoppel. The City further asserted immunity is not waived for intentional torts like fraud, and immunity is only waived for negligence claims for damages arising from an employee's use of a motor vehicle.

JAMRO responded to the City's plea, asserting the City was not entitled to immunity because the City was performing a proprietary function. JAMRO asserted "the City was acting as a Developer and private citizen seeking to finance for one company and individual a portion of their construction" and the City's actions "could not be more proprietary in nature."

After a hearing, the trial court signed an order granting the City's plea. JAMRO appealed.

In its brief, JAMRO argued that the City's actions were proprietary because it sought out a specific private developer "to spur development in a specific area of town for the benefit of only those inhabitants and the City itself." JAMRO asserted the City "asked [JAMRO] to alter an existing subdivision plan to meet the City's guidelines and [in] return promised tax benefits to [JAMRO]." The City responded that its actions were governmental functions.

The Court of Appeals affirmed the trial court's order granting the City's plea to the jurisdiction, finding that the City's actions with regard to the TIRZ were governmental functions.

The Court noted that the City's actions with regard to the TIRZ met the definition of a governmental function because Chapter 311 enjoined on the City the authority to create the TIRZ to serve a public purpose in the interest of the general public. The City's actions with regard to the TIRZ were directed at financing public improvements which meet the definition of governmental functions.

KBRA Releases Surveillance Report: Chicago Midway Airport

Kroll Bond Rating Agency (KBRA) has affirmed the long-term rating of A with a Stable outlook on the City of Chicago, Chicago Midway Airport Second Lien Revenue Bonds, with the exception of Series 2004C-1 and Series 2004C-2, Series 2004D, and Series 2014 C Bonds, which are backed by direct pay letters of credit.

Please click on the link below to access the report:

City of Chicago, IL Chicago Midway Airport Second Lien Revenue Bonds

If you have any difficulties accessing the report, please contact info@kbra.com or visit www.kbra.com.

KBRA Affirms AA- and Revises Outlook from Stable to Negative on the State of Connecticut's GO Bonds.

Kroll Bond Rating Agency (KBRA) has affirmed the long-term rating of AA- and revised the outlook from Stable to Negative on the State of Connecticut's outstanding general obligation bonds. This rating applies to all of the state's outstanding general obligation bonds, but excludes bonds backed by a letter of credit or liquidity facility. The state has approximately $19 billion of general obligation debt outstanding.

Please click on the link below to access the report:

State of Connecticut General Obligation Bonds

If you have any difficulties accessing the report, please contact info@kbra.com or visit www.kbra.com.

Fewer Muni Bonds have Investors Snapping up Riskier Hospital Deals.

(Reuters) – A lean issuance calendar in the municipal bond market is propping up debt prices for U.S. cities and states and will likely keep a floor under some of the market's wobbly sectors, even hospitals, according to data and analysts.

The scarcity of new deals also provides an opportunity for less credit worthy municipal issuers to come to market when cash levels are high and demand is strong.

Credit traditionally seen as more risky by investors, such as BBB-rated hospitals that rely heavily on government-funded Medicaid and Medicare, are seeing "enthusiastic demand" from the market, said Alan Schankel, municipal strategist at Philadelphia-based Janney Montgomery Scott.

But sweeping changes to the country's healthcare law currently under consideration by Congress has woven uncertainty into hospitals' future revenue streams. Such a tumultuous environment should give caution to investors to beware of debt tied to healthcare, in particular city and safety net hospitals.

"It certainly flashes a yellow light for me, a caution light," said Schankel. But when it comes to new bond issues coming to market, "there is nothing around, so investors are chasing this stuff."

Demand for bond deals will likely surge even more this summer, as billions of dollars worth of municipal bonds exit the market.

"The supply is way down. You have far fewer bonds in the market," said Greg Saulnier, municipal research analyst at Thomson Reuters' MMD. "With so much money and cash pouring back into the market, you have guys flush with cash with no where to put it."

Some $130 billion to $140 billion in bond redemptions will outweigh the $100 billion of new debt expected to be issued in June, July, and August. The extra cash will likely set records, municipal analysts say, driving demand and bond prices up because of a dearth of deals in which investors can participate.

The “wave of cash” will create a “steady if not strong performance for the marketplace going into the end of summer,” said Jim Colby, portfolio manager for VanEck’s municipal bond investments. “You can see why this is an interesting time.”

HEALTHY DEMAND

Demand for hospital credits comes at a time of huge uncertainty and potential upheaval for the healthcare sector. U.S. President Donald Trump and the Republican-led Congress have vowed to repeal and replace the Affordable Care Act, the nation’s healthcare law commonly referred to as Obamacare.

A Republican-proposed healthcare bill approved by the House and now under consideration by the Senate would likely reduce federal Medicaid payments to states, a large revenue source for hospitals.

“We have seen incremental rating pressure recently, even among some of our largest and strongest organizations,” said Martin Arrick, managing director at S&P Global Ratings. “This pressure could grow, and threaten our stable outlook on the sector, depending on administrative and legislative actions under the new administration,” Arrick said.

Tax-exempt 10-year BBB-healthcare bonds on Friday saw a 2.97 percent yield and a 111 basis point spread over the benchmark MMD AAA yield curve. That spread has remained the same since the end of last year, even as the sector’s yield has declined from 3.42 percent on Dec. 30th.

Recent examples of the lower rated healthcare sector bonds hitting some high notes include two California hospitals from the BBB-rated category – Children’s Hospital Los Angeles sold $275 million and Eisenhower Medical Center in Southern California’s Coachella Valley sold $233 million. Both deals, done in May, saw yields reduced after preliminary pricing by 5 to 15 basis points, evidence of stronger-than-expected investor demand.

Cleveland’s MetroHealth sold $946 million of revenue bonds in May, even after the system received a three-notch downgrade from all three rating agencies.

The bonds saw strong after-market activity, topping the list of most active issues.

One tranche of the 40-year maturity carrying a 5 percent coupon was initially priced at a slight discount of 99.48, and a 5.03 percent yield. Nearing the end of the day’s activity, however, block trade yields fell as low as 4.64 percent, lifting the price to 102.78, according to Schankel. MetroHealth reported that 122 banks, firms, and individuals competed for the bonds.

“I don’t know that it’s quite in the category of frothiness, but it’s getting close,” Schankel said.

Reuters

By Robin Respaut

June 05, 2017

(Reporting by Robin Respaut; Editing by Daniel Bases and Diane

Craft)

TAX - MISSOURI

[Armstrong-Trotwood, LLC v. State Tax Commission]

Supreme Court of Missouri, en banc. - May 16, 2017 - S.W.3d - 2017 WL 2118656

Taxpayers sought review of State Tax Commission's dismissal of their challenge to the property tax assessments on their residential properties, which were part of multi-county taxing districts, and sought a declaratory judgment that their assessments were discriminatory and that the State Tax Commission failed to carry out its duty to equalize property assessments as between counties.

The Circuit Court dismissed. Taxpayers appealed.

On transfer from the Court of Appeals, the Supreme Court of Missouri held that:

- Taxpayers failed to state a claim that their tax assessments violated the uniformity clause of the state constitution, and
- State Tax Commission lacked jurisdiction to hear taxpayers' appeal.

Taxpayers' challenge to their property tax assessments on the grounds that their assessments were discriminatory and that the State Tax Commission failed to carry out its duty to equalize property assessments as between counties did not concern the "construction of the revenue laws of this state," and thus the Supreme Court did not have exclusive appellate jurisdiction; the constitutional and statutory provisions at issue did not impose, amend, or abolish a tax or fee, and the taxes at issue were paid to a multi-county taxing district rather than the state treasury.

Taxpayers' challenge to their property tax assessments on the grounds that their assessments were discriminatory and that the State Tax Commission failed to carry out its duty to equalize property assessments as between counties presented important questions regarding the application of sections on state constitution concerning the levying of taxes, and thus the Supreme Court could transfer the case on its own motion, even through the Court did not have exclusive appellate jurisdiction; the Court could take transfer of a case before its disposition by the Court of Appeals if it presented a question of general interest or importance.

Taxpayers who alleged that other counties in multi-county taxing districts undervalued properties such that the tax assessments on taxpayers' residential properties caused taxpayers to bear a disproportionate share of the cost of operating the multi-county taxing districts failed to state a claim that their tax assessments violated the uniformity clause of the state constitution; the uniformity clause did not pertain to the valuation of property, and each multi-county taxing district at issue levied a tax rate that was uniformly applied to the same class or subclass of property within the territorial limits of the taxing authority.

State Tax Commission lacked jurisdiction to hear taxpayers' appeal of county board of equalization's denial of their claim that other counties in multi-county taxing districts undervalued properties such that the tax assessments on taxpayers' residential properties caused taxpayers to bear a disproportionate share of the cost of operating the multi-county taxing districts in violation of the uniformity clause of the state constitution; county board did not have the power to conduct intercounty equalization, and the Commission's jurisdiction was derivative of the county board when it reviewed appeals from the county board.

State Tax Commission's intercounty equalization orders affect counties and classes of taxpayers, not the individual rights and interests of specific parties, and, consequently, are not subject to review in either a contested or non-contested case before the Commission on appeal from a county board's decision.

TAX - MONTANA

[Mountain Water Company v. State , Department of Revenue]

Supreme Court of Montana - May 16, 2017 - P.3d - 2017 WL 2123151 - 2017 MT 117

Property owner brought declaratory judgment action seeking determination that city was responsible for property taxes accruing on property during pendency of city's condemnation action.

The District Court granted summary judgment in favor of property owner. Department of Revenue appealed.

The Supreme Court of Montana held that city was not statutorily responsible for property taxes accruing on property during pendency of city's condemnation action. Statute at issue provided that property taxes were prorated once condemnor actually took possession of property, and property owner continued to possess property during pendency of condemnation action.

[S&P: Jacksonville Adopts Pension Reform, But The Ultimate Impact On Credit Quality Remains Uncertain.]

Jacksonville, Fla.'s city council unanimously approved legislation finalizing its pension reform package late last month. In our view, the overall reform package represents an improvement to the previous pension framework, but we believe there are still some inherent risks with this strategy that largely cancel out its immediate benefits to Jacksonville's credit quality.

[Continue reading.]

May 24, 2017

[S&P: Dallas' Adopted Pension Reforms Look To Stabilize The System, But More Work Remains To Ensure Long-Term Sustainability.]

During its latest session, the Texas legislature formally adopted pension reforms for the City of Dallas (AA-/Negative), which is a first step in stabilizing the city's police and fire pension plan and addressing some of the structural issues that led to rapid declines in the pension's funded ratio over the past year.

[Continue reading.]

Jun. 1, 2017

Mnuchin: Administration Wants to Preserve Muni Bond Tax Exemption.

WASHINGTON – The administration "strongly" supports the preservation of the tax exemption for municipal bonds, Treasury Secretary Steven Mnuchin said during a Senate Finance Committee hearing on Thursday.

At a hearing on the fiscal 2018 budget and tax reform, committee member Sen. Sherrod Brown, D-Ohio, on tax reform, asked Mnuchin a series of questions on tax reform, including whether the administration supports the tax exemption for municipal bonds.

"Our preference is strongly to keep the interest deductibility of state and local bonds," Mnuchin said.

The administration wants to maintain the mortgage interest deduction, he also said in response to Brown's rapid fire questions. But he declined to answer several other specific questions about what the tax reform plan would or would not include, saying negotiations are still ongoing.

During the hearing, committee Democrats accused the administration of "double counting … Bernie Madoff math … anomalies … and fuzzy math" in its budget, which shows $2 trillion of revenues from 3% economic growth being used to pay down the deficit when administration officials have said those revenues are going to help pay for tax cuts in the forthcoming tax reform plan.

"Your budget assumes 3% growth, which you claim adds $2 trillion to revenues. That's kind of a dubious proposition to me," said Sen. Ron Wyden from Oregon, the top committee Democrat. "You told us last week that this economic growth is what pays for tax reform, but the Trump budget doesn't include tax reform. So, unless you make this clear to us, aren't you double counting the same $2 trillion to pay down deficits that you claim will pay for tax reform? I mean this is kind of Bernie Madoff math, but maybe I'm missing something. Tell me how it works."

Mnuchin said, "We're absolutely not double-counting. When the president's budget was done, we were not ready to have a full-blown tax reform plan that we could model into the budget."

Later Sen. Claire McCaskill, D-Mo., made the same point. "You can't have tax reform paid for by growth and then count that growth against the deficit," she said. "You can't have both. That's beyond fuzzy math, that's double counting," she said.

Mnuchin said economic growth comes from lots of things besides just tax cuts, such as regulatory reforms.

"It just defies understanding that you're going to project what the growth is going to be based on a tax cut but you can't put anything in the budget about what the lack of revenues are going to be because of the tax cut," she said. "That doesn't even make sense. How can this document even be taken seriously?"

Sen Mark Warner, D-Va., said the proposed fiscal 2018 budget would take discretionary funding down to 3% of gross domestic product -– the lowest it has ever been.

He also noted that the bipartisan Committee for a Responsible Federal Budget has projected the tax plan will result in a revenue loss of $5.5 trillion over a decade. If that's the case, the administration will have to go after most of the big tax preferences, including the deductibility of employer health care plans.

Mnuchin said it is absurd for groups to score the revenue impacts of the tax reform plan since they have no details about it yet.

The Bond Buyer

By Lynn Hume

Published May 25 2017, 12:32pm EDT

Federal Infrastructure Tax Credit Legislation Makes Key Changes from 2015 Proposal.

Sens. John Hoeven, R-N.D., and Ron Wyden, D-Ore., reintroduced bipartisan legislation May 25 to establish a program to spur infrastructure investment through the creation of Move America Bonds and Move America Credits. The major benefit of the Move America Act of 2017 is that it includes the use of public-private partnerships, or P3s, to assist in financing infrastructure. The primary benefits of using P3s include:

- Private equity providers will generally be sophisticated institutional investors exercising a high level of asset management.
- In-depth financial underwriting of projects before development.
- Construction and/or reconstruction risk borne by private equity investors.
- The performance risk transfers to private parties.

The two concepts behind the bill include expanding the available tax-exempt financing for infrastructure and creating credits to harness additional private sector investment. In this bill (revised from a 2015 version), the Move America Bond volume cap will be 50 percent of the state ceiling under cap for tax-exempt private activity bonds. In order to receive Move America Credits, states may elect to trade in all or a portion of their Move America Bonds for Move America Credits at a 25 percent rate. In other words, the credit limitation for each state for each calendar year is a dollar amount equal to 25 percent of the Move America Bond volume cap. For example, if a state has $100 in Move America Bonds, it may trade that $100 for $25 in Move America Credits. According to Sen. Hoeven, about $226 billion would be the annual volume cap for Move America Bonds over the next 10 years. That means that up to $56 billion, or 25 percent of the Move America bond cap, would be available annually for Move America Credits over the next 10 years.

This bill was first introduced by Sen. Wyden in 2015 as the Move America Act of 2015. With the reintroduction, there are a number of changes to the bill, discussed below.

The overall structure borrows heavily from both the Low-Income Housing Tax Credit (LIHTC) program and the New Markets Tax Credits (NMTC) program. Permitting these alternative structures provides greater flexibility in matching the right financing mechanism with the needs of individual infrastructure project.

Summary of Revisions

Expanding a List of Qualifying Infrastructure Projects

The previous version of the bill included airports, mass transit, freight and passenger rail, roads, bridges, flood projects, and inland and costal waterway improvements. The new version includes everything that was previously included, as well as water and sewage projects and rural broadband.

Traditional Investment Credit Structure

The revised provision dealing with Move America Credits would follow a structure similar to the LIHTC for equity investments in infrastructure projects. Investors would be able to directly invest in a qualified project, meaning that the investor's credit would equal the percentage of the direct investment in a qualified project, subject to limitation discussed below. The investors would receive tax credits equal to 10 percent of their equity investment each year over a 10-year tax credit period.

Credit Levels

The credits available for equity investments in an infrastructure project cannot exceed 20 percent of the qualified project's total costs, which is retained from the previous version. However, the cap related to private investment would be eliminated. In the revised draft, designated state agencies are also required to set the credits allocated to each project at the minimum amount for the project to achieve financial viability.

Capitalizing Infrastructure Funds

The 2017 Move America Act also provides that if states wanted to set up a structure that mirrors the NMTC, states would be permitted to use the credits to capitalize a state infrastructure bank or other infrastructure loan funds. States would be permitted to allocate credits to entities (e.g., state infrastructure banks, which are typically difficult to capitalize) and the entities could offer the credits to investors in order raise capital necessary to fund qualified projects. This is similar to the structure of community development entities (CDEs) in the NMTC program, and indeed, if designated by the state, CDEs could receive Move America credits to establish infrastructure funds. Under this option, the investors would be eligible to claim a tax credit equal to 5 percent of their equity investment in the Infrastructure Fund. There would be compliance requirements that share similarities to the NMTC compliance requirements.

Conclusion

This bill provides a mechanism to encourage more P3s to be used for infrastructure investment. President Donald Trump campaigned on using a federal infrastructure tax credit and this bill may also gain additional traction with White House support.

Novogradac & Company LLP is working on a white paper exploring the various design specifics of a federal infrastructure tax program. We have also authored posts related to the reasons to hope for a federal infrastructure tax credit and the benefits of a federal infrastructure tax credit. Additionally, please be sure to keep an eye on our infrastructure credit page.

Novogradac & Company LLP

Published by Owen P. Gray on Thursday, May 25, 2017 – 12:00am

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[MBA to House Tax Panel Members: Support Tax-Exempt Bonds.]()

WASHINGTON – The Municipal Bonds for America coalition is urging members of the House Ways and Means Committee to support tax-exempt bonds, including private activity bonds.

“The investments financed with these bonds have a proven track record to help our economy grow and create jobs,” 12 state, local, investor and other MBA groups told committee members in a letter sent to them on Monday after the start of their tax reform hearings.

The groups said that while some have suggested that a surtax or cap on bond interest could raise revenue for the federal government without increasing the interest rates demanded by investors, such a tax or cap, would actually reduce the value of all bonds in the secondary market by as much as $200 billion.

“It would also disproportionately hurt seniors,” they wrote. “About three-fifths of bond interest paid to individuals is paid to those aged 65 years and older and 84 percent is paid to those aged 55 and older.”

In addition, they wrote, investors would demand higher rates of return to: accommodate the surtax; reflect the bond’s loss of value in the secondary market; and compensate for the risk that Congress will expand the tax to hit more bondholders, increase the tax rate imposed, or both.

One need look no further than qualified private activity bonds, most of which are subject to the alternative minimum tax, to see an example of this. The AMT “is effectively a surtax beyond the regular income tax that is paid by taxpayers above a certain minimum income level,” the coalition said, and it costs issuers as much as 50 basis points more in interest rates than another non-AMT similarly rated tax-exempt bond.

The groups pointed to the Dallas/Fort Worth International Airport, which used tax-exempt PABs subject to the AMT to help finance $3.1 billion of its massive terminal improvement project. The airport paid $268 million more than if it had used fully tax-exempt bonds, they said.

During the last decade state and local governments made about $2 trillion in bond-financed infrastructure investments and they are expected to invest $2 trillion to $3 trillion in infrastructure over the next decade, the groups wrote. States and localities build nearly three-quarters of the nation’s core infrastructure, using tax-exempt bonds for most of the financing, they added.

“It is vital that [tax reform] not impose an unprecedented federal tax – in any form – on these investments,” the groups told the lawmakers.

State and local governments issued about $400 billion of muni bonds in 2015. Of those, about $85 billion were used for primary and secondary schools, $39 billion financed investments in colleges and universities, $50 billion were used for roads, bridges, ports, airports, mass transit and other transportation facilities, $38 billion financed water and sewer projects, $27 were used for hospitals and clinics and $18 billion financed electric utility projects, the groups said.

“These are investments that make commerce possible and our communities strong and livable,” they added.

The groups said that private activity bonds were also used to finance public-private projects. In 2015, they said, about $8 billion were used to finance transportation-related projects such as airport terminals and port facilities. Another $6.7 billion was used for rental housing and $4.6 billion for affordable mortgages. In addition $700 million of PABs helped finance state and local student loan programs, and $250 million was used for industrial development projects and farm facilities.

The groups told the lawmakers that while alternatives to tax exempt bonds exist, each has substantial shortcomings — primarily increased borrowing costs, added complexity, and a lack of access for smaller issuers. Public-private partnerships may supplement tax-exempt bonds, but these and other alternatives can't replace them, they said.

The Bond Buyer

By Lynn Hume

Published May 24 2017, 4:00pm EDT

In Scranton, Pa., Fiscal Progress Comes With Political Costs.

The city is on the brink of making a speedy turnaround. Many worry that the tough financial decisions it took to get there could reverse some of its political progress.

After a quarter-century of being branded by the state as "fiscally distressed," Scranton, Pa., is the closest it's ever been to shedding that label. If its finances remain stable, the city is expected to exit the state's Act 47 distressed cities program — which it entered in 1992 — in the next three years.

What makes the news remarkable is the tailspin that Scranton was in just a few short years ago. When Mayor Bill Courtright took office in 2014, he inherited a city that had balanced its budget for five straight years using onetime revenues and deficit financings. "In early 2014, everyone wrote us off," says Courtright. "It was like we had a disease."

But thanks to what observers are calling a new era of political cooperation between the mayor and council, Scranton has made considerable progress. City officials have approved several tax increases aimed at balancing the budget, including a hike in property taxes and garbage fees. Those, combined with a new commuter tax, have injected $16.2 million in new annual revenue into the $90 million general fund.

Courtright credits a team that stubbornly adhered to a financial recovery plan devised with the help of a financial consultant. The mayor, also a former councilmember, says he and the current council have communicated better and worked to move beyond the infighting that dominated public meetings in previous years. "We knew we had to change the image between past mayor and past council," he says. "We knew we wouldn't get the financial community to go along with us if we couldn't cooperate amongst ourselves."

But this kind of swift financial progress usually comes with a political cost. To understand the political implications, one must first understand how Scranton came to its current state.

Making Tough Choices

Facing a new state law in 2014 that would have placed the city in receivership if it didn't make progress, Scranton conquered several key financial demons in recent years.

For starters, the city reached a settlement with police and fire unions over a multimillion-dollar back pay lawsuit first filed more than a decade ago. The Pennsylvania Supreme Court sided with the unions in 2011, but the city couldn't afford to pay the initial $24 million settlement and instead let the award collect interest.

Last year, Courtright announced the city had agreed to pay the unions most of what it owed — now $30 million — in exchange for reforms to the city's troubled public safety pension. The biggest concessions were that workers would increase their pension contributions over time and that the pension funds would be managed by a third-party professional administrator. The administrative transfer also included more stringent guidelines for determining whether an employee is eligible for a disability pension.

In the name of budgetary stability, the city has unloaded a couple of albatross assets as well.

Officials negotiated a long-term lease of its parking authority, which had gone into receivership after the default in 2012 because of political infighting between the council and previous mayoral administration. Last year, the city entered into a lease concession agreement that turns over the system's day-to-day operations and long-term maintenance to the nonprofit National Development Council and ABM, a parking operator. After they pay off the parking authority's outstanding debt, ownership of the system will be returned to the city.

The final deal has perhaps been the most controversial and may even be responsible for upending the political harmony the city has achieved. Late last year, elected officials approved the sale of the city's sewer authority to the private company Pennsylvania American Water for $195 million. The city expected to net $95 million from the sale, but various costs, such as easement acquisition, reduced the net to $83 million.

To Courtright, the sale is something of a crowning achievement. Selling the system gave Scranton cash to help pay off some of its pension and high-interest debt. It also unloaded an EPA-required $140 million upgrade to the system to protect the Chesapeake Bay onto Pennsylvania American Water. The requirements would have meant a 5 percent rate hike each year for 25 years. Instead, the sale stipulated the private company could raise rates no more than 1.9 percent on average for the first 10 years.

A Political Cost?

That deal, however, has not been cheered by everyone. Councilmember Bill Gaughan says it was ill-advised and lacked transparency. He points to a closed-door meeting in February with Council President Joe Wechsler, Councilmember Wayne Evans and Jason Shrive, the new sewer authority director, that discussed the sewer's lower price tag.

Adding fuel to the fire was a report in early May by local ABC television affiliate, Newswatch 16. The station reported that the sale's fees were a whopping $3.1 million charged by 50 different attorneys.

The controversy has taken its toll: In Scranton's Democratic primary election, Wechsler failed to win nomination while Gaughan sailed ahead easily.

Jean Wahl Harris, a professor of political science at the University of Scranton, said that while the council president voiced concerns about the sale, he wasn't as adamant as others. "I'm not sure why Wechsler was picked out," she says, "except that the other two [incumbents] spoke up a little more against the mayor and called for accountability in the sewer sale."

Many worry that the fallout could affect the political cooperation the city has achieved. Still, most agree that Scranton — politically and financially — is in a much better place than it was just a few years ago. "The times following the political meltdown [in 2012] called for someone willing to look at a different direction and someone with a different style," says Gerald Cross, executive director of the Pennsylvania Economy League, Scranton's recovery coordinator. "I think we have the right people in the right place."

"They used to be insane," Cross adds of those council meetings in which tensions between elected officials and the public got so high that metal detectors were installed at one council meeting in 2007. “But it’s hard to argue now with balanced budgets and progress downtown. The budget is stable, now we have to strive for sustainability — and that’s all very boring.”

GOVERNING.COM

BY LIZ FARMER | MAY 30, 2017

Is It Time for an Infrastructure Garage Sale?

Australia has had success with ‘asset recycling.’ Maybe turning old into new could work here too.

The Trump administration’s proposed federal budget calls for spending $200 billion over 10 years to “incentivize” infrastructure investment by state and local governments. One key to the strategy is reportedly “asset recycling” — selling or leasing infrastructure assets to the private sector and using the proceeds to pay for upgrades, maintenance and new infrastructure. If the administration is indeed embracing this reinvestment mechanism, it deserves our serious consideration.

Asset recycling was developed by the Australian government in 2014. It may have hit the Trump administration’s radar screen because Australia’s 2016 budget demonstrated that $5 billion in federal funding incentives had stimulated more than $20 billion in infrastructure investments through asset recycling. It also attracted institutional investors by creating project pipelines, the lack of which has long impeded the development of a U.S. infrastructure market. Top Trump administration officials and advisers — including Vice President Mike Pence, Transportation Secretary Elaine Chao, National Economic Council Director Gary Cohn, and Steven Roth and Richard LeFrak, co-chairs of the President’s Infrastructure Advisory Committee — have been championing the concept.

Asset recycling also involves another key to the Trump administration’s trillion-dollar infrastructure strategy: the engagement of the private sector through public-private partnerships. P3s have received mixed reviews worldwide, and P3 activity in the United States has consistently trailed most countries. To move the debate on P3s forward in Australia, the government of Prime Minister Tony Abbott introduced the concept of asset recycling. Officials reasoned that tapping into a source of funding for needed infrastructure that would not cost taxpayers or add public debt might have the potential to overcome reservations about P3s.

To encourage Australian states and territories to mine their balance sheets for assets that could be divested, the Abbott government offered to contribute 15 percent of the value from the proceeds of divested assets to new infrastructure projects being financed with the proceeds from divested assets. The states and territories had a two-year window to identify the assets to be sold or leased and reach an agreement with the federal government.

Some jurisdictions jumped at the opportunity. New South Wales, for example, netted $3 billion from port leases to a consortium of Australian pension funds and a government-owned investment fund, then used the proceeds to improve roads and transit facilities. Tasmania sold an airport to fund transportation, agricultural water storage and irrigation projects.

Could what worked in Australia — essentially a garage sale of government-owned infrastructure — work in the United States? Maybe, but we’ve got some big challenges. In addition to the reluctance of local officials to give up control of infrastructure, current tax law provides powerful disincentives to the selling or leasing of assets. Assets that are sold or leased must not only repay associated tax-exempt debt, but state and local governments would also have to finance any new debt that is incurred on a more expensive, taxable basis.

Those challenges aren't insurmountable, as Indiana has shown. In 2006, the state leased the Indiana Toll Road, netting $3.5 billion after repaying $300 million of tax-exempt debt. The state put the proceeds into its infrastructure fund, which has since financed other transportation assets without taking on any additional debt or imposing tax increases.

Estimates of the potential value to be realized in the U.S. through recycling of existing revenue-generating assets — including not only toll roads but also ports, airports, bridges, water systems and parking facilities — exceed $1 trillion. And these estimates do not include the value of providing a reliable source of funding for infrastructure projects requiring "availability payments," the disbursements to concession-holders based on project or performance milestones.

As with other approaches to selling or leasing public assets to the private sector, any plan involving asset recycling will need much discussion to address risks. How do we guard against assets being sold on the cheap? How can we protect the public from potential misuse of market power by new private owners tempted to boost profits by increasing user charges? Other issues span the need to ensure that adequate regulatory frameworks govern divested assets to the task of assessing the impact of political pressure on market competitiveness. Not trivial issues.

Just as traditional public-private partnerships are not a silver-bullet solution to infrastructure financing, nor is asset recycling. Distinguishing assets most suited for recycling from those that are not will be tough. Resource-strapped governments will be hard-pressed to develop comprehensive asset inventories and master lifecycle management practices. And public pensions could be put under additional pressure to buy assets that don't fit into their investment strategies.

But it may be worth the work required. A federally driven asset-recycling program could help state and local governments access capital — without incurring debt or raising taxes — to build a new generation of infrastructure assets. More importantly, it would signal that the U.S. infrastructure market is open for business.

GOVERNING.COM

BY JILL EICHER | JUNE 1, 2017

The Week in Public Finance: Pension Reform in Texas, Fitch Lowers Expectations and Illinois Downgraded Again.

A roundup of money (and other) news governments can use.

GOVERNING.COM

BY LIZ FARMER | JUNE 2, 2017

Illinois Budget Crisis Is About to Get Even Harder to Solve.

- **Starting Thursday, three-fifths majority needed to pass budget**
- **State at risk of being first cut to junk since at least 1970**

Illinois leaders will blow past a deadline that will leave the state careening toward the third straight year without a budget.

The Illinois House isn't voting on a budget on Wednesday, which means the gridlock-prone government won't pass a spending plan by midnight. That means approving a budget — a usually routine task that has eluded the state for 700 days — will become even more difficult because a three-fifths majority will be required. Democratic lawmakers, who control both chambers, and Republican Governor Bruce Rauner have repeatedly failed to agree on how to solve chronic budget deficits worsened by the expiration of tax hikes in January 2015.

"We are probably approaching that point of impaired ability to function at basic level," said John Humphrey, the Chicago-based head of credit research for Gurtin Municipal Bond Management, which oversees about $10.1 billion of state and local debt and has steered clear of Illinois. "We've already probably passed that point. We haven't seen this in a modern state before."

The self-inflicted crisis has left the fifth most-populous state with a record $14.5 billion of unpaid bills, ravaged entities like universities and social service providers that rely on state aid and undermined Illinois's standing in the bond market. Unless a surprise deal emerged before midnight, it's increasingly likely that Illinois enters its third fiscal year on July 1 without a budget.

Democratic House Speaker Michael Madigan, who controls much of the legislative agenda, blamed Rauner for "holding the budget hostage" to his agenda, and said in an emailed statement Wednesday that Democrats will keep working on a budget and hold public hearings, starting in Chicago on June 8.

In turn, Rauner criticized the Democrats, calling the failure a "complete dereliction of duty by the majority in the General Assembly" and said there should be no tax hikes without a property tax freeze and local control of those levies.

Bond-rating companies have warned of further ratings cuts, signaling that Illinois could be the first state since at least 1970 to lose investment-grade status.

Investors have long punished the state for its financial woes, and the penalty has only gotten worse amid the impasse. Its 10-year bonds yield 4.4 percent, 2.5 percentage points more than those on top-rated debt. That gap — a measure of the perceived risk — is the most since at least January 2013 and more than any of the other 19 states tracked by Bloomberg.

Rauner, who in 2015 became the first Republican to lead the state since 2003, wants any spending plan to be tied to his key priorities, such as property tax-freeze. The Senate on Tuesday approved measures that would lock most local real estate levies in place for two years, but Republicans said they didn't go far enough.

In the meantime, Illinois is spending more than it's taking in because of consent decrees, court orders and other appropriations that have kept the government from shutting down despite the lack of a budget. Its current-year operating deficit is about $6 billion, Moody's Investors Service said in a March report.

Moody's and S&P Global Ratings have warned that Illinois could be downgraded deeper if no budget is enacted. The companies rank the state at Baa2 and BBB, respectively. That's two levels above junk.

The unpaid bills are also adding to the fiscal squeeze. The comptroller has estimated that the state will owe at least $800 million in interest and fees on overdue bills by the end of June.

That backlog is "headed in the direction of being a factor that just by itself really threatens the sort of financial foundations of the state," Ted Hampton, Moody's lead analyst on Illinois, said in an interview, citing litigation from those demanding payment. "There is kind of an uncertain but very real legal and political limit to the state's ability to keep deferring payments."

A group of school superintendents from districts statewide held a press conference in the Illinois State Capitol on Wednesday, calling for the passage of a full-year budget, instead of just a temporary stopgap, and changes to the school funding formula. Illinois owes districts $1.1 billion, which is "unconscionable," said Tony Sanders, chief executive officer of the state's second-largest school system, in Elgin.

Despite the gridlock, Illinois hasn't missed any bond payments and state law requires it to continue making monthly deposits to its debt-service funds. Still, the fighting has impeded any progress on bolstering a state retirement system that has more than $129 billion of unfunded liabilities — a source of stress that has helped drive its rating down.

The Clock Is Ticking

State leaders still have the month of June to find an agreement before the start of fiscal year 2018 on July 1. Last year, lawmakers approved a six-month, stopgap budget to keep schools open and operations going.

So far, consensus has proven elusive. The Illinois Senate approved a spending plan on May 23, with only Democratic votes, that raised income taxes and expanded the sales tax levy. It still needed House approval as of Tuesday afternoon.

Rauner has called for freezing property taxes before raising any income tax increase is considered, but he rejected the two-year property tax freeze that the Senate approved Tuesday. Eleni Demertzis, a spokeswoman for Rauner, called the move "a phony two-year freeze riddled with holes." It exempted Chicago, and Rauner had pushed for a lengthier time frame.

The impasse is decimating social services agencies that help the most vulnerable citizens, including school children, the elderly and the mentally ill, according to a coalition of groups including the Civic Federation, which tracks the state's finances.

"Forty-nine other states would never try this experiment," Laurence Msall, president of the Civic Federation, said in a press conference last week. "Only Illinois, which has seen its credit rating crumble, which has seen its social service infrastructure weaken, which has seen its higher education punched into the stomach in terms of what its future looks like, would try this experiment. It's not working. We have to have a state budget to move forward."

Bloomberg

by Elizabeth Campbell

May 31, 2017, 5:23 AM PDT May 31, 2017, 3:13 PM PDT

California's Brown Steers $9 Billion School Bond Into Slow Lane.

- **Voters approved debt issue for school construction in November**
- **It may be more than a decade before some districts get funds**

A potential deluge of bond sales for California schools may be more like a trickle.

Although state voters in November approved borrowing $9 billion for school construction, the sales may span more than a decade, according to the nonpartisan Legislative Analyst's Office. Democratic Governor Jerry Brown, who opposed the debt measure, wants to tighten requirements on eligibility and oversight that kindergartens through high schools must adhere to before bonds are sold for their projects.

To prevent delays, advocates are lobbying legislators to limit the changes to be included in the budget due June 15, said Dennis Meyers, assistant executive director of governmental relations for California School Boards Association. About $600 million of general obligations authorized by the voters would be sold in the fiscal year starting in July, according to Brown's finance department. Supporters of the debt issue want the funds raised at a faster pace.

"The worst-case scenario is that the bond funds would be stalled indefinitely," said Meyers, who argues that it would hurt the creation of construction jobs. "Our goal is to let legislators know the importance of getting these funds out the door under current law and to act quickly."

A subdued approach to the debt sales may help support prices of bonds issued by California, the biggest issuer in the $3.8 trillion municipal market. The state's securities have gained as the booming economy erased once massive budget shortfalls, allowing Brown to pay down debt built up during previous downturns. California's 10-year securities yield about 2.16 percent, or just 0.2 percentage point over benchmark debt, a third of the premium investors demanded four years ago.

The state has seen its credit rating rise to the highest in more than a decade, in part because of the decision to pay down debt and sock away more into its reserves. California's outstanding general-obligation and lease-revenue debt has declined to $84 billion in May from about $86 billion in June 2016, according to the treasurer's office.

Even with rates low, investors have clamored for bonds from issuers in California as the amount of maturing securities outstrips new debt. About $1.3 billion in California bonds are expected to be sold within 30 days, down from about $4.5 billion in the middle of last month, according to data compiled by Bloomberg.

The governor's approach to the school bond sale would prevent a surge in the supply of debt. The regulations would ensure proceeds are being spent appropriately, considering a state audit last year that showed that previous bond funds were used on ineligible items such as golf carts, said H.D. Palmer, a spokesman for Brown's finance department.

"We will be able to put in place a process that provides further guarantees to the taxpayers who approved this multi-billion dollar bond authorization that these dollars are in fact being spent in the manner in which they were told would be spent," Palmer said.

Californians embraced the first statewide education bond in a decade despite Brown's objection that it will benefit richer school districts with stronger tax bases. Under the program, school districts raise local dollars and apply for matching state dollars for projects. Low-income communities can also request grants.

Of the $9 billion, $2 billion is dedicated to community colleges and the rest for K-to-12 schools. A delay in bond funds could see a court challenge from those who seek expeditious action since the voters indicated they want the bonds sold, according to the Legislative Analyst's Office. It encouraged lawmakers to adopt a plan with a quicker pace.

Some of the provisions the administration is proposing are "changing the rules mid-stream" and could set precedent by allowing any funds that the state may seek to claw back from school districts to come from aid for operating costs, said Meyers, the school board association lobbyist.

The measures are clarifications of existing regulations, Palmer said. The passage of the bond didn't "reverse the administration's concerns and focus on adopting additional reforms."

Bloomberg

by Romy Varghese

May 31, 2017, 2:00 AM PDT

[Hartford's Credit Rating May Be Cut Deeper Into Junk by Moody's.]

Hartford, the beleaguered Connecticut capital, may have its credit rating cut deeper into junk by Moody's Investors Service amid uncertainty over whether the state will extend a lifeline to help the city close a $50 million budget shortfall.

Moody's rates Hartford's $550 million of general-obligation bonds Ba2, two steps below investment grade. The company said Tuesday that it's conducting a 90-day review of the city that will take into account how much Connecticut, which is facing a two-year deficit of about $5 billion, can give Hartford in the budget to be adopted over the next several weeks. Connecticut was downgraded by all three major bond rating companies earlier this month, after plummeting income-tax collections widened the government's deficit.

"Unable to generate significant incremental revenues internally or to cut expenses further, the city is primarily relying on increased state aid to close its budget gap," Moody's wrote in a report. "At the same time, the state of Connecticut's fiscal position has become weaker over the last year."

Hartford's ability to increase property-tax collections, a key source of revenue, is constrained by its already high levies and sluggish real estate market, Moody's said. About half of the property in Hartford is tax-exempt. A proposal by Governor Dannel P. Malloy to allow municipalities to levy a property tax on hospitals hasn't gained traction in the legislature.

Cost-cutting opportunities in the city are limited because the city has already gone through previous rounds and labor negotiations haven't led to concessions, Moody's said.

The city's large deficits are driven by escalating costs for debt service, pensions and health care, without sufficient revenue growth to offset them. The city has considered soliciting proposals from law firms that specialize in municipal bankruptcy, according to the Hartford Courant newspaper.

"While reflecting prudent contingency planning for a shortfall in state funding without a viable alternative solution, we believe it also indicates increased willingness by the city to entertain bankruptcy as a tool to address its growing fiscal pressures," Moody's wrote.

Bloomberg

by Martin Z Braun

May 30, 2017, 4:00 PM PDT

Bloomberg Markets: Manges Sees 'Smooth Sailing' for Muni Market.

Bloomberg Markets with Carol Massar and Cory Johnson.

GUEST: Hardy Manges Head of Municipal Dealer Sales MarketAxess Discussing the outlook for muni bond investing. Oliver Renick, Bloomberg News Stocks Reporter, also participates in the discussion.

Running time 08:00

Play Episode

Bloomberg

May 30, 2017 — 12:33 PM PDT

producer: Paul Brennan +1-212-617-8292 or pbrennan25@bloomberg.net

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Muni-Bond Vultures Rethink Risks Lurking in Market's Junk Yard.

- **Puerto Rico bankruptcy rule changes surprised traders**
- **Distressed funds say they'll demand discounts in the future**

Puerto Rico's bankruptcy has left distressed municipal-debt traders like Hector Negroni wondering if the old rules still apply — not just in San Juan, but across the U.S.

The island's effort to shred protections written into its constitution to determine which creditors get paid first has made Negroni reconsider the high-yield, high-risk corner of the $3.8 trillion muni-bond market. "They're attempting to suspend the constitution," said Negroni, a principal at New York-based hedge fund Fundamental Credit Opportunities and a member of the general-obligation ad hoc group pushing for full payback.

It's true that no state has defaulted since Arkansas in 1933 — Puerto Rico is a U.S. territory — and that so far the island's actions have had no evident effect on the broader muni bond market. But the reverberations could, eventually, reach highly indebted states like Illinois, New Jersey and Connecticut. Puerto Rico's decision to renege on its constitutional commitment, the argument goes, may trigger a quicker deterioration in investor confidence in the next borrower that gets itself into real trouble.

As part of Puerto Rico's bankruptcy, made possible by an act of the U.S. Congress last year, a judge will now decide how investors will split repayments of $74 billion in bond debt, and Negroni and others will likely have to take less money than they were promised.

"People are going to start pricing in an increased probability of laws changing" by demanding discounts when they buy distressed debt, Negroni said.

Raise Taxes

Distressed muni-debt traders usually buy when the credit rating of a bond is downgraded to junk status. That's when institutions, such as mutual funds, are forced to sell or otherwise long-term retail investors get spooked.

"Next time around, you bet that they're going to be asking for lower prices when mutual funds want to unload something like Illinois," said Matt Fabian, a partner with Municipal Market Analytics Inc. in Concord, Massachusetts.

When faced with a swelling budget shortfall or a looming default, states are expected to do anything from raising taxes, cutting services or selling off assets to pay creditors. They don't have access to bankruptcy protection. Neither did Puerto Rico until last year, when Congress voted to help the commonwealth restructure its unsustainable debt. Puerto Rico has said it can only cover about $8 billion of $33.4 billion in bond payments due through 2026.

Doubly Protected

The law change came as a shock to some general-obligation bondholders, such as Negroni, who believed they were doubly protected. Not only would there be no bankruptcy, but the commonwealth's constitution said that repaying bondholders was a priority, even ahead of providing citizens with essential services. (That approach may not have thrilled those outside observers worried about worsening living conditions on the island, but it was the law.)

Although there's been no decision yet on how bondholders will divvy up the money, hedge funds holding $1.4 billion of the general-obligation bonds, including Aurelius Capital Management and Monarch Alternative Capital, have already sued to receive overdue principal and interest payments.

Puerto Rico's bankruptcy is the biggest in muni land. About half the states prohibit towns and cities from filing. Michigan isn't one of them. In Detroit, which was the second-largest muni bankruptcy, bondholders didn't do as well as they could have. Pensioners, despite not having first-paid status, were one of the least-impaired creditors, walking away with 82 cents on the dollar. General-obligation bondholders got 73 cents, and some water-and-sewer bondholders received as little as 1 cent on the dollar.

Bailout Packages

"You should know on the front end that laws can change, and that includes bailout packages as well," said Jon Schotz, co-managing partner at Saybrook Fund Advisors, a $250 million private equity firm that invests in distressed and defaulted municipal securities, including Prepa, Puerto Rico's public power utility.

Puerto Rico probably won't be the last U.S. entity to change the rules to cut down on its debt, said Kjerstin Hatch, managing principal of Lapis Advisers, which has about $380 million in assets under management but no Puerto Rico.

“How the country will deal with municipal default is likely in its infancy,” Hatch said. “Ideas are forming, from a legislative and judicial standpoint, as to how we’ll handle large insolvent municipal entities.”

The flouting of constitutional rules may cause distressed muni-bond investors to insist on discounts, but it won’t scare them away from the market, Fabian said.

“The ending of this movie might disappoint them, but they’d buy the ticket to watch it again.”

Bloomberg Markets

by Kate Smith and Amanda Albright

May 30, 2017, 3:00 AM PDT

[Meadowlands Mall Builder Sets the Year's Top Unrated Muni Sale.]

- **Goldman Sachs Group Inc. will manage $800 million bond issue**
- **American Dream features indoor water and amusement parks**

The Canadian developer building the long-stalled mega-mall in New Jersey’s Meadowlands plans to sell $800 million of tax-exempt municipal bonds next week to help complete the construction of the complex begun more than a decade ago.

Goldman Sachs Group Inc. is managing the deal, the largest sale of unrated municipal bonds this year, for mall owner Triple Five Group, run by the billionaire Ghermezian family. The bonds are backed by payments in lieu of property taxes and will be issued through a Wisconsin agency, the Public Finance Authority, that specializes in acting as a conduit for risky debt. Borrowers for speculative projects sometimes forgo credit ratings rather than risk the taint of being labeled junk.

The sale may benefit from a rally in the tax-exempt securities market as investors steer money into municipal-bond mutual funds, pushing yields to the lowest since early November. As investors seek bigger returns, high-yield state and local bonds have delivered gains of 6.1 percent this year, compared with 3.6 percent for the overall market, according to Bloomberg Barclays indexes.

Initial construction on the project in East Rutherford, about 10 miles (16 kilometers) west of Manhattan, began in 2004, only to be halted after the initial developers ran short of funds. Triple Five took over the project in 2011 and will receive $350 million in grants from New Jersey if the project meets sales-tax revenue targets.

The 2.9 million square-foot (270,000 square-meter) American Dream, originally called Xanadu, will feature an indoor amusement park and water park, an 800-foot (245-meter) ski slope, a 300-foot Ferris wheel, aquarium, 1,500-seat performing-arts theater, skating rink and a 1,400-seat movie theater with “wind, rain, snow, fog and scents all synchronized to the on-screen action,” the company says. It will also have 500 stores, restaurants and food shops.

The total cost of the project is estimated at $2.8 billion, which will be covered by the tax-exempt bonds, $500 million from the developer, payments from tenants and nearly $1.7 billion in loans from JPMorgan Chase & Co.

Last year, a New Jersey appeals court rejected a non-profit group’s challenge to the bond sale.

Bloomberg Markets

by Martin Z Braun

May 30, 2017, 10:57 AM PDT May 30, 2017, 12:24 PM PDT

Bloomberg Brief Weekly Video - 06/01

Amanda Albright, a reporter for Bloomberg Briefs, talks with Joe Mysak about this week's municipal market news.

Watch the video.

Bloomberg

June 1, 2017

Fitch: Pension Impact Adjusted in U.S. Public Finance Criteria.

Fitch Ratings-New York-31 May 2017: Under Fitch Ratings' updated U.S. public finance tax-supported rating criteria, released today, pension liabilities will be discounted at a fixed 6% investment-return assumption, with the upward liability adjustment determined by newly-reported sensitivity data. The accompanying report discusses the criteria changes related to pension analysis, and the rationale behind them in more detail.

The investment-return assumption had previously been set at 7%.

Pension liabilities and the cost of supporting them remain a source of uncertainty for governments given the generally irrevocable nature of vested benefits, the variable nature of liabilities, and the rising burden of contributions relative to resources.

"U.S. growth has been slower and more incremental over the current economic expansion than over longer time horizons. There is little evidence to suggest the economy will accelerate to previous levels of growth in the near term. Fitch believes that pensions will be hard-pressed to achieve their long-term growth expectations in the current economic context," said Douglas Offerman, Senior Director.

"The 6% return assumption, and increased total pension liability, better reflect the magnitude of the burden posed by pensions."

In another change announced in the new criteria, Fitch will compare its existing metric for the carrying cost of long-term liabilities, which relies on the reported actuarially determined contribution for pensions, to a new, supplemental metric that combines a hypothetical annual pension cost using a level repayment of the Fitch-adjusted net pension liability in a manner similar to bonded debt and an estimate of the cost of newly-accrued benefits.

The supplemental metric highlights outliers where expenditure flexibility can be expected to decrease substantially and unavoidably over time as a result of pensions.

The criteria adjustments will have only limited impact on current ratings because existing through-the-cycle assessments already capture Fitch's expectation for rising pension burdens.

The criteria report released today updates and replaces the tax-supported rating criteria dated April 18, 2016. The only material changes to those criteria relate to the analysis of defined benefit pension liabilities. Other revisions to the report are designed to improve clarity but are not substantive changes to the rating approach for U.S. state and local government credits.

For more information, a special report titled "Revised Pension Risk Measurements" is available on the Fitch Ratings web site at www.fitchratings.com or by clicking on the link.

Contact:

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

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

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

Media Relations: Elizabeth Fogerty, New York, Tel: +1 (212) 908 0526, Email: elizabeth.fogerty@fitchratings.com.

Additional information is available on www.fitchratings.com

Fitch Teleconference Replay - North American Airports.

Fitch Ratings held a teleconference discussion on developments in the airport sector over the last decade and future transportation trends.

Key discussion points included:

10-Years in Infrastructure

· Ratings Averages
· 2007-2016 World Airport Traffic Volumes
· Large International Airports vs. O&D
· Airport Resiliency to Airline Volatility
· Airport Sector: Next 10 Years

Transportation Trends

· Solid, but Softening Enplanement Growth

· Fitch-Rated Airports
· Large Hubs
· U.S. Carriers

Canadian Airport Privatization

Speakers:

Seth Lehman, Senior Director, Global Infrastructure & Project Finance
Jeffrey Lack, Director, Global Infrastructure & Project Finance

Listen to the Replay.

Contact:

Michele O'Brien
Senior Director
Global Investor Development
312-368-2087
michele.obrien@fitchratings.com

BDA Submits Comments to Department of the Treasury and the Internal Revenue Service on Recommendations for the 2017-2018 Priority Guidance Plan.

The BDA submitted comments to the Department of the Treasury and the Internal Revenue Service on recommendations for items that we believe should be included in their 2017-2018 Priority Guidance Plan. You can view our final comments here.

The Treasury Department's Office of Tax Policy and the IRS use the Priority Guidance Plan each year to identify and prioritize the tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance. The 2017-2018 Priority Guidance Plan will identify guidance projects that the Treasury Department and the Service intend to work on as priorities during the period from July 1, 2017, through June 30, 2018.

BDA's letter focuses on the following topics:

- **Political Subdivision:** BDA continues to urge the IRS and Treasury to withdraw the proposed rules and release a new set of proposed regulations that reflect the concerns expressed by BDA and other participants in the municipal bond market.
- **Tax Exempt Bonds & Infrastructure:** The BDA believes tax-exempt bonds can and should continue to play a leading role in infrastructure investment.
- **Issue Price:** We suggest that the IRS and Treasury should monitor the impact of the new rules on the market.

The regulatory notice can be found here.

Bond Dealers of America

June 1, 2017

Empowering the Public and Nonprofit Sectors with Data and Technology.

Abstract

Local government and nonprofit staff need data and technology skills to regularly monitor local conditions and design programs that achieve more effective outcomes. Tailored training is essential to help them gain the knowledge and confidence to leverage these indispensable tools. A recent survey of organizations that provide data and technology training documented current practices and how such training should be expanded. Four recommendations are provided to assist government agencies, elected leaders, nonprofit executives, and local funders in empowering workers with the necessary training to use data and technology to benefit their communities. Specifically, community stakeholders should collectively work to

- expand the training available to government and nonprofit staff;
- foster opportunities for sharing training materials and lessons;
- identify allies who can enhance and support local training efforts; and
- assess the local landscape of data and technology training.

This brief is part of the Expanding Training on Data and Technology to Improve Communities project, launched by the National Neighborhood Indicators Partnership and Microsoft's Civic Technology Engagement Group to explore community training on data and technology. Other products include a guide for organizations interested in providing community training, a catalog of trainings from across the country, and a summary of current training content and practices from our survey.

View the Brief.

The Urban Institute

by Kathryn L.S. Pettit and Maia Woluchem

June 1, 2017

Municipalities Grapple With Whether Nursing Homes Should Be Taxpayer-Funded.

NANTUCKET, Mass.—The 11,000 year-round residents of this summer colony off Cape Cod are confronting an emotional question: whether the island is a place where they can grow old.

Nantucket, a ritzy vacation destination whose permanent community is of more modest means, has one nursing home: Our Island Home, a 45-bed facility that is owned and run by the town and with a history that goes back to 1822. It sits on prime town-owned real-estate where its residents can watch boats on Nantucket Harbor. But it runs an annual deficit of about $3 million, needs major repairs and is pressuring the town's coffers at a time when Nantucket needs other infrastructure to accommodate growth.

"The town is getting to the point where it's just taking on way too much," said Donna Hamel, chairwoman of the Nantucket Republican Town Committee. "Should the town be in the nursing-home business? No. They don’t know anything about it.”

Our Island Home is one of roughly 1,100 of the U.S.’s 15,600 nursing homes that are government-owned, a vestige of an era when municipalities ran sanitariums and homes for the indigent. Nantucket now joins cities and towns from New Jersey to Tennessee in wondering whether nursing homes are an essential municipal service like fire, sewers and schools.

As baby boomers turn 65 at an estimated pace of 10,000 people a day, communities are increasingly confronting the questions of how and where to care for the elderly.Some are deciding they don’t expect nursing homes to befinancially independent.

Over the past five years, most New Hampshire counties have rolled their publicly owned nursing homes from the “enterprise” budget column, where services are supported by user fees, to the general fund, said Nicholas Lehman, an analyst with Moody’s Investors Service. In these places, “residents want a nursing-home option for themselves in the future, and they’re willing to pay taxes to support that,” he said.

In these places, “residents want a nursing-home option for themselves in the future, and they’re willing to pay taxes to support that,” he said.

But government-owned and -run facilities often have deficits and have outdated institutional styles that don’t attract the wealthier private-pay customers that offset Medicaid patients, said Jeff Binder, managing director of Senior Living Investment Brokerage Inc. Medicaid payments also face uncertainty, with the new White House budget proposing heavy cuts to the federal-state health program for the poor.

Financial pressures led New Jersey counties to sell their nursing homes to private companies, a move that saved some facilities, according to John Donnadio, executive director of the New Jersey Association of Counties. Only seven New Jersey counties still run nursing homes, down from 14 about five years ago, and “that number is going to drop more,” he said.

But privatizing doesn’t always go smoothly. Three years ago, Nashville began to shift two city-owned long-term-care facilities to private operators after deciding it couldn’t continue chipping in $10.5 million annually for their operation.

The plan hit snags. Local elected officials heard complaints about the conditions and food, and the city cut ties with the for-profit operator that ran one complex. In January, the city brought in an emergency operator to run the assisted-living center. Officials say that despite challenges, conditions have improved and the shift to private operators ultimately saved millions.

For Nantucket, the debate has extra resonance because without a nursing home on the island, residents might have to move.

While the island has swanky shops lining cobblestone streets and multimillion-dollar vacation homes that sit empty for many months of the year, Nantucket Town Manager Elizabeth Gibson says there are year-round residents who are “really struggling,” in part because of the high cost of living.

Elderly year-rounders tend to live at home for as long as possible, but they complain that home-health workers are costly and in short supply. There are fewer options for assisted living or services like memory care. Some seniors move to the mainland, but most don’t want to leave their spouses or community. That leads the elderly who need skilled nursing care to seek out the island’s only nursing home. Even some well-to-do year-round residents find that Our Island Home is their only option.

When Yvonne DuMont Stelle decided she could no longer care for her husband, Donald, who suffers from dementia, the painful decision was made easier knowing that he would be a five-minute drive away.

“It’s a horrible thought to think we wouldn’t have this here,” said Ms. Stelle, who regularly checks in on Donald, 90, and is part of a local group that bring extras, from art classes to live music, to the nursing home.

Ms. Gibson, the town manager, said she doubts many residents would say the nursing home doesn’t belong in the community, but the tension is taxpayers are being asked to support a service that is bleeding money while the community pays heavily for other services.

“It’s probably going to come down to, Can we keep affording it?” Ms. Gibson said.

A nearly completed school was a $40 million-plus project, Ms. Gibson said, and the town has appropriated another $40 million toward sewers and $17 million for a fire station. Town officials also are discussing whether they may have to subsidize housing to recruit employees who can’t afford Nantucket’s high housing prices.

At the annual town meeting in April, taxpayers voted 264-253 against a $30 million proposal to construct a new, modern campus for Our Island Home. Concerns ranged from the cost to the new location to suspicion about a march toward privatization.

But local residents cherish the care that the elderly get at Our Island Home—such as when two staff members drove 91-year-old resident Gladys Soverino and her husband, Malcolm, last October to renew their vows at the Nantucket church where the couple had married 70 years earlier.

“We’re an island,” said Allison Forsgren, a local real-estate broker whose late father lived in the town-owned nursing home. “You have to sort of watch out for people and not let them fall through the cracks.”

The Wall Street Journal

by Jennifer Levitz

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Write to Jennifer Levitz at jennifer.levitz@wsj.com

S&P Downgrade Brings Illinois Debt One Step Closer to Junk.

Illinois may become the first U.S. state to be given a junk rating

Illinois is on the verge of becoming the first U.S. state with a junk-bond rating following downgrades from two of the world’s largest ratings firms.

S&P Global Inc. warned that Illinois could be downgraded to junk status next month if it doesn’t solve its partisan gridlock. Illinois hasn’t had a budget for two years due to a standoff between the Republican governor and Democratic legislature.

Illinois is one of many cities and states that, despite a generally strong U.S. economy, are struggling to close budget gaps because of pensions and other entitlements. State and local retirement liabilities have ballooned after the financial crisis, and most governments don't have enough assets to cover all future obligations.

S&P on Thursday dropped its grade on the state's general-obligation bonds one level to BBB-minus, the lowest possible investment-grade rating, citing Illinois's inability to pass a budget. Moody's Corp. also dropped its Illinois rating to one notch above junk. Fitch Ratings has rated Illinois at two notches above junk.

A downgrade to a junk rating would worsen Illinois's financial straits by likely increasing interest rates on all future borrowings.

"By letting the state get downgraded, Illinois's government is only making its own budget problems worse," said Matt Fabian, a partner at Municipal Market Analytics

Gov. Bruce Rauner and the state's Democratic House speaker, Michael Madigan, have been deadlocked over taxes and spending since Mr. Rauner took office in 2015.

"Madigan's majority owns this downgrade because they didn't even attempt to pass a balanced budget, get our pension liability under control, and other changes that would put Illinois on better financial footing," a spokesman for Mr. Rauner said Thursday.

A spokesman for Mr. Madigan couldn't be reached for comment, but a spokesman for Illinois Senate President John J. Cullerton, a Democrat, said "our worst fears are being realized daily as this impasse lingers…I urge the governor to recognize the need for compromise…and end this chaos that has gone on far too long and hurt far too many."

State lawmakers can continue to work toward a budget in the coming weeks, but they will need more votes. After the regular session of the General Assembly ended Wednesday, three-fifths of both houses must support the budget, instead of a simple majority.

Investors didn't react severely to Thursday's actions from the Wall Street ratings firms. Prices on some Illinois general-obligation bonds fell to about 99 cents on the dollar Thursday after trading as high as 105 cents earlier in May.

Even in the face of high pension costs and stretched budgets, most U.S. states maintain high ratings in large part because they have the power to tax residents and lack the ability to declare bankruptcy.

New Jersey, the next lowest-rated state after Illinois, is pegged at four notches above junk by both S&P and Moody's despite burdensome pension liabilities and a persistently imbalanced budget. Moody's also rates Connecticut at that level.

Other states have had their ratings fall nearly as low and been able to engineer a turnaround. California has largely recovered from fiscal distress that drove its rating down to two notches above junk by S&P in 2003 and kept it low for much of the next 10 years.

The state regained the confidence of rating analysts in part by making regular deposits to a rainy-day fund, according to reports from S&P.

Puerto Rico last month was placed under court protection in what amounts to the largest-ever municipal bankruptcy, owing $73 billion to creditors. That dwarfed the roughly $9 billion in bond debt owned by the city of Detroit when it entered what was previously the largest municipal bankruptcy in 2013.

Puerto Rico created problems for itself by borrowing money to buy time while its economy deteriorated.

But no state had gone without a budget for over a year since the Great Depression until Illinois. The stalemate originated with ideological differences between two major political figures in the state. Gov. Rauner has called for broad changes, including curbs on unions he argues would save the state and businesses money. Democrats, who are led by Mr. Madigan, have said those issues are unrelated to the budget.

In the meantime the state's backlog of bills has swelled to roughly $15 billion, or 40% of the state's operating budget, according to Moody's. The state's budget deficit is more than $5 billion, according to S&P and Moody's.

The current problems are aggravated by burdensome debts that eat into the money available to run the state. Illinois's pension debt last year reached $251 billion, according to Moody's calculations. Retirement and health benefits combined with debt payments now absorb 29% of the state's general fund expenditures, S&P said.

"Legislative gridlock has sidetracked efforts not only to address pension needs but also to achieve fiscal balance," said Ted Hampton, a Moody's analyst, in a release. "During the past year of fruitless negotiations and partisan wrangling, fundamental credit challenges have intensified enough to warrant a downgrade, regardless of whether a fiscal compromise is reached in an extended session."

The budgetary issues in Illinois have rippled well beyond the state capital of Springfield, denting everything from infrastructure spending to the amount of books in elementary schools.

Public universities have been among the hardest hit with many schools pausing on any new construction and forced to stop hiring for vacant positions. Some universities including Northeastern Illinois, Governors State and Southern Illinois are weighing fixes such as raising tuition, cutting academic programs or laying off student workers.

While the state is still funding certain core functions, many nonprofits have had to shut down or reduce operations and lay off staff after going without payments from the state.

If Illinois does get downgraded to junk it would have to make millions of dollars in termination payments on contracts designed to stabilize interest payments on some state debt, according to S&P.

Those penalties would be about $10 million in the event of a downgrade to junk by one rating firm, would reach $19 million if two firms gave the state a junk rating and could reach $108 million in the event of further downgrades, according to estimates by S&P based on current market conditions.

"In our view, the unrelenting political brinkmanship now poses a threat to the timely payment of the state's core priority payments," S&P analyst Gabe Petek said in his ratings report Thursday.

The Wall Street Journal

By Heather Gillers

Updated June 2, 2017 2:54 p.m. ET

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

[Connecticut’s Tax Comeuppance.]

With the rich tapped out, the state may resort to Puerto Rico bonds.

The Aetna insurance company has been based in Hartford, Conn., since 1853, but this week it said it is looking to move to another state. Governor Dannel Malloy has pledged to match other states’ financial incentives, but taxpayer money can’t buy fiscal certainty and a less destructive business climate. That’s the real problem in Connecticut, which saw GE vamoose to Boston last year and which even Mr. Malloy now seems to recognize.

“As a huge Connecticut employer and a pillar of the insurance industry, it must be infuriating to feel like you must fight your home state policymakers who seem blind to the future,” Mr. Malloy wrote in a May 15 letter to Aetna CEO Mark Bertolini. “The lack of respect afforded Aetna as an important and innovative economic engine of Connecticut bewilders me.”

Now he tells us. Gov. Malloy has spent two terms treating business as a bottomless well of cash to redistribute to public unions. Now that his state is losing millionaires and businesses, he has seen the light. But the price of his dereliction will be steep.

Last month the state Office of Fiscal Analysis reduced its two-year revenue forecast by $1.46 billion. Since January the agency has downgraded income-tax revenue for 2017 and 2018 by $1.1 billion (6%). Sales- and corporate-tax revenue are projected to fall by $385 million (9%) and $67 million (7%), respectively, this year. Pension contributions, which have doubled since 2010, will increase by a third over the next two years. The result: a $5.1 billion deficit and three recent credit downgrades.

According to the fiscal analyst, income-tax collections declined this year for the first time since the recession due to lower earnings at the top. Many wealthy residents decamped for lower-tax states after Mr. Malloy and his Republican predecessor Jodi Rell raised the top individual rate on more than $500,000 of income to 6.99% from 5%. In the past five years 27,400 Connecticut residents, including Ms. Rell, have moved to no-income-tax Florida, and seven of the state’s eight counties have lost population since 2010. Population flight has depressed economic growth—Connecticut’s real GDP has shrunk by 0.1% since 2010—as well as home values and sales-tax revenues.

Corporate revenues also took a hit after General Electric relocated to Boston. Mr. Malloy then offered tax breaks to hedge funds and companies to stay in Connecticut, which has further eroded revenue.

The Governor—a slow learner—seems finally to have accepted that raising taxes on the wealthy is a dead fiscal end. Democrats are now proposing higher taxes on tobacco, expanding casinos and eliminating some tax breaks, though they don’t want to touch an exemption for teacher pensions. The state teachers union warns that axing the exemption would impel retired teachers to relocate. A quarter of pension checks are currently sent out of state.

Mr. Malloy is also seeking $1.6 billion in concessions from unions, which would be easier to achieve if collective bargaining weren’t mandated by law. He’s suggested increasing municipal pension contributions and cutting state-revenue sharing, both of which could drive up property taxes and imperil insolvent cities like Hartford. Mr. Malloy’s budget includes a $50 million bailout for Hartford to prevent bankruptcy, which might occur in any case if Aetna—its fourth largest taxpayer—leaves.

The state treasurer has advocated “credit bonds” securitized by income-tax revenues to reduce the state’s borrowing costs. Investors beware: Puerto Rico tried something similar with its sales tax, and bondholders might not get back a penny. Maybe Democrats should follow Jerry Seinfeld's advice to George Costanza and do the opposite of the instinct that has brought the state so low: Cut taxes.

THE WALL STREET JOURNAL

June 2, 2017 6:52 p.m. ET

U.S. Judge Freezes a Puerto Rico Debt Payment Subject to Competing Claims.

NEW YORK — A federal judge on Tuesday ordered the trustee for Puerto Rico's COFINA bonds not to make a $16 million payment due on June 1, allowing creditors to litigate competing claims to the money that could be central to how the bankrupt U.S. territory restructures debt.

Judge Laura Taylor Swain made the ruling during a hearing in her Manhattan courtroom, putting a freeze on the payments while stakeholders hash out central disputes over who is to be paid first and from which revenue sources.

Puerto Rico, with $70 billion in bond debt and another $49 billion in pension liabilities, is embarking on the biggest financial restructuring in U.S. municipal history. Sorting out obligations of the COFINA sales tax authority, which owes some $17 billion, is arguably the biggest task in the restructuring.

Swain's ruling granted a request by the COFINA trustee, Bank of New York Mellon, for "interpleader," a move authorizing the bank to hold onto the interest payment due on Thursday without fear of liability, while claims over the money are resolved.

Judge Swain did not rule on the underlying claims, a process that could take months, but said "their existence makes it clear that interpleader is warranted."

Senior creditors of COFINA argue the authority has already defaulted, through the Puerto Rican government's indications that it plans to cut debt repayments. They say junior COFINA creditors should therefore stop being paid, to ensure payment for seniors.

Meanwhile, holders of Puerto Rico's $18 billion in general obligation (GO) debt argue that COFINA's assets belong to them, under a constitutional guarantee giving them first claim on all the island's resources.

By freezing Thursday's payment, Judge Swain is giving sides the green light to litigate at least parts of these issues, though the primary dispute is the one between senior and junior COFINA creditors. Judge Swain stressed she was not ruling immediately on whether GO holders would be allowed to intervene.

Separately on Tuesday, Puerto Rico's government said it would make a $13.9 million payment on June 1 to bondholders of the Employees Retirement System, the island's largest pension, settling a lawsuit filed last week.

By REUTERS

MAY 30, 2017, 3:36 P.M. E.D.T.

(Reporting by Nick Brown; Editing by Meredith Mazzilli)

In Texas, Some Rare Good News About Cities With Pension Woes.

Detroit. Stockton. Puerto Rico. The list of places bankrupted by ballooning pension obligations and other debts is growing. But now comes some good news about two cities, Dallas and Houston, that have pulled back from the brink.

Just six months ago, the mayor of Dallas, Michael S. Rawlings, was warning that his city might need to declare bankruptcy after a panic led stampeding retirees to pull half a billion dollars out of its pension fund for police officers and firefighters.

But instead of going to bankruptcy court, Mr. Rawlings went to Austin, the state capital, to lobby for state pension laws that would stop the bleeding. So did the mayor of Houston, Sylvester Turner, who faced other pension problems and had persuaded the city's labor groups to agree to concessions worth $1.3 billion over the next 30 years.

The resulting legislation — which essentially averts crises in Texas' biggest and third-biggest cities — was signed into law by Gov. Greg Abbott on Wednesday.

Each city had its own bill, because each had its own unique problems. But both bills involve measured reductions in pension accruals for workers and retirees — mainly in secondary benefit categories like inflation adjustments and lump-sum payouts. In exchange, the pension funds will receive more money from the cities to protect the core benefits.

Most important, both bills establish financial benchmarks for the coming years. If the pension funds do not meet them, there will be more benefit cuts, some of which could be steep. The point of this is to keep elected officials from giving the can one good kick down the road now, then declaring victory and turning their backs while the same intractable problems are festering under the surface.

"The key to all this is, not one retiree's pension check is going to be reduced one penny," said Ray Hunt, the president of the Houston Police Officers Union. "It just means that future increases are slowed or stopped. I believe the majority of our members think this is the responsible way."

As happy as the resolution may seem, the steps that Texas took are illegal in other places where public pensions are imperiling the finances of cities and states. Illinois, California, Oregon, Pennsylvania and Kansas are among the states where, by law, public pensions cannot be reduced — not even the pensions that current workers hope to earn in the future.

That doctrine, known as the California Rule, explains why California cities like Vallejo and Stockton reduced their payments to other creditors when they went into bankruptcy but did not touch their workers' costly pension plans.

Of all labor groups in the public sector, police and firefighters' unions tend to be the California Rule's most ardent champions. When Memphis recently tried to scale back pensions, for example, half the police force called in sick and hundreds of others resigned.

Police unions in California are now pushing a critical test of the California Rule through the courts, after a lower court ruled that they did not have "an immutable entitlement" to the best pension they could hope for, but "only to a 'reasonable' pension." Final adjudication appears to be many months away.

Against that forbidding backdrop, Dallas and Houston show there is still room for compromise (although Houston’s firefighters did withdraw their support for the bill that was just signed into law).

Both cities were spurred to act by the risk of credit downgrades and by a recent accounting change that calls for cities to calculate the number of years before their pension funds will run out of money — a once-unthinkable catastrophe that has come to pass in Prichard, Ala.; Central Falls, R.I.; and now Puerto Rico.

Those developments — and Detroit’s bankruptcy — have shown that Washington will not bail out government pension funds that go bust; officials had to patch together money from other sources, and even then, the retirees of Prichard, Central Falls and Detroit had their benefits cut. Cuts are expected soon in Puerto Rico, too.

Seeing that, and knowing that the doomsday clock was also ticking in Dallas and Houston, made labor leaders in those cities conclude that fighting concessions to the finish would not, in the end, protect their members. The Dallas pension fund was on track to run out of money in 10 years, and Houston’s in less than 15.

And in both cities, the police and firefighters have opted out of Social Security, something state and local workers often do in hopes of avoiding the Social Security payroll tax. Federal law allows that, but if a government pension fund collapses, older adults are left without a backstop.

“We have to have a fair pension system, both for us and for taxpayers,” said Mr. Hunt of the Houston police union. “It’s either that or take a 100 percent pension cut in the future, when you have no pension fund.”

Josh McGee, the chairman of the Texas Pension Review Board, a state oversight body, called Houston’s overhaul “one of the most comprehensive I’ve seen in the country,” and all the more notable because the mayor who pushed it through is a labor-friendly Democrat.

As for the Dallas pension measure, Mr. McGee called it a good first step.

“Dallas waited until they were in crisis before they did anything, so it’s really, really painful, and it’s going to take more actions in the future to solve the problem,” he said.

Dallas’s measure includes raising the retirement age, slowing benefit accruals, ending most cost-o--living increases and raising each worker’s required pension contribution to 13.5 percent of pay, from 8.5 percent.

Importantly, the new law for Dallas also bans the kind of big, one-time withdrawals that caused last year’s run, in which retirement-age police and firefighters stripped about $500 million out of their pension fund, leaving it tattered almost beyond repair.

Such lump-sum withdrawals were allowed under a fairly common program known as a DROP, for deferred retirement option program, but they caused a stampede after workers learned that the pension fund had been overstating its assets.

The workers started to grab cash for fear that it would not be there later if they waited. Hundreds of people qualified for payments over $1 million each, in addition to their regular pensions.

The changes approved Wednesday are not expected to turn the fund around, only to stabilize it. The law calls for Dallas to stress-test the fund in seven years and to make more cuts if it fails. City officials have warned that they may still claw back some of the money people took during last year’s run.

On Thursday, Fitch, the credit-rating agency, said it would review Dallas's rating. The city had been on a watch list for likely downgrades because of pension risks.

Houston had different pension troubles, dating to 2001, when officials decided that the bull market of the 1990s justified big benefit increases. The dot-com crash quickly showed that the decision was a mistake, but instead of revoking the increase, the city coped by not making its yearly contributions to the fund.

"The city was on a path to bankruptcy, and we just realized we were going to have to have some kind of reform," said Mark Watts, the head of the Greater Houston Partnership's municipal finance task force.

Under the new law, Houston reduces certain secondary pension benefits, like a DROP feature and cost-of-living increases, in exchange for better funding.

If costs still keep rising too sharply, the law calls for further reductions. And if that does not work, the system automatically shuts down the defined-benefit plan and switches to a hybrid, called a cash-balance plan.

"That caps the city's downside risk," said Mr. McGee, of the Texas Pension Review Board.

THE NEW YORK TIMES

By MARY WILLIAMS WALSH

JUNE 1, 2017

MSRB Seeks Additional Comment on Requirements for Obtaining CUSIP Numbers.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) is seeking additional public comment on draft amendments to MSRB Rule G-34, on obtaining CUSIP numbers. Consistent with its previous proposal, the MSRB's revised draft amendments clarify the obligations of municipal securities dealers to obtain CUSIP numbers for new issue securities sold in private placement transactions, including direct purchases, and require all municipal advisors to obtain CUSIP numbers in competitive offerings. However, the MSRB is now requesting input on possible exceptions from each of these requirements in certain limited circumstances.

"In light of feedback from municipal market participants, the MSRB has modified its draft amendments to include a principles-based exception from the proposed requirements," said MSRB Executive Director Lynnette Kelly. "The MSRB appreciates the thoughtful participation of commenters in the rulemaking process and invites further dialogue on how to ensure CUSIP number requirements appropriately reduce investor risk and regulatory uncertainty."

The draft amendments would provide an exception to the requirements of Rule G-34 for municipal securities purchased directly by a bank where the underwriter on the transaction or the municipal advisor advising an issuer in a competitive offering reasonably believes that the bank is likely to hold the municipal securities to maturity or limit resale of the municipal securities to another bank.

Dealers and municipal advisors relying on the exception would be expected to have in place policies and procedures reasonably designed to assist in their determinations.

Comments on the revised draft amendments should be submitted no later than June 30, 2017. [Read the request for comment.]

Date: June 1, 2017

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

Illinois' Troubled, Tempting Muni Bonds.

Some of Illinois' debt is sliding toward junk status, and that's a wakeup call for muni investors, writes InvestmentNews.

The state's financial troubles are "a reminder that financial advisers should pay extra attention to underlying holdings in muni bond funds," the publication writes.

High-quality muni funds can contain junk, and vice-versa. A recent Citigroup report said Illinois' high-yielding debt could present a buying opportunity, because the state has room to "tax and grow" its way toward safe ground.

But Ronald Bernardi, president of Chicago-based Bernardi Securities, tells InvestmentNews he won't touch the state's 10-year bonds, which yield 4.45%. His reasoning: At twice the yield of the highest-quality muni bonds, they're too dangerous.

Those willing to bet on Illinois can do so through a number of mutual funds with meaningful exposure to the state's munis.

Gurtin National Municipal Opportunistic Value Fund, with $117 million, is 23.7% allocated to Illinois' muni bonds. Hartford Municipal Income Fund and Wells Fargo CoreBuilder Share Series each have a little more than 20% weightings.

Barron's

May 31, 2017 4:30 p.m. ET

Muni Market to Benefit from 'Cash Blast' this Summer.

Demand for munis is rising while supply is set to shrink dramatically starting in June.

There are two big reasons why the muni market is likely to see a flood of new cash this summer, which should lift prices.

First, supply of new munis issued is expected to fall while munis mature at record levels. Peter Block of Ramirez & Co. wrote May 30:

> There is an acute supply-demand imbalance in the Muni market in June, which should help the Muni market outperform over the next few months. We estimate that in June alone, about $86 bil. will be available for reinvestment, including June 1 redemptions of $32 bil. and coupon of $54 bil. against the current 30 day visible supply of only $11 bil. New York (-$5.81 bil.), New Jersey (-$2.41 bil.), and California (-$2.37 bil.) will experience the greatest deficits, followed by Florida (-$1.75 bil.), and Georgia (-$1.24 bil.). We reaffirm our long-term new issue gross supply forecast for 2017 at $368 bil., for a decline of about $60 bil., or -14% YoY, which incorporates $204 bil. of new money bonds and $164 bil. of refundings.

Also, investors who fled munis, wary of the "Trump effect," are now coming back, writes Jim Colby, muni portfolio manager for municipal bond exchange-traded funds at VanEck in a Tuesday blog post. That means more demand.

He reports that as of May 23, the 37 municipal bond ETFs had, year-to-date, had collected $1.6 billion in net new assets. They now have $26.0 billion in assets, compared to $21 billion a year ago.

As individual munis become harder to find, Colby believes ETFs make more sense. He writes:

> On the one hand, for those for whom reinvesting (perhaps in individual bonds) in a potentially tighter muni market may pose unwanted challenges, a muni ETF can provide efficient and effective asset class exposure. They also offer the added advantages of both professional stewardship and, equally as important, diversification.

The biggest muni ETF is the iShares S&P National AMT-Free Municipal Bond Fund (MUB), which is approaching $111, after a nice run-up since mid-March. VanEck has a suite of muni ETFs that allow investors to target specific maturity ranges.

Barron's

By Amey Stone

May 31, 2017 3:33 p.m. ET

Senior Municipal Finance Compliance Officer

Confidential Employer

Forget the title! This is an Executive level role that is part of an exciting and eagerly awaited industry relaunch of this Fortune 500's municipal finance business. This position is perfect for someone who is currently a number two in their department (or even a number one seeking a definitive move). You must know munis – inside and out as you will be working closely with bankers and sitting with the traders. We are looking for a confident, quick decision maker who can work with business leaders and who knows how to maintain independence and objectivity.

Compensation range is $175K-$240K with bonus.

Your day-to-day responsibilities include the following:

- provide advice to the municipal bankers and underwriters on topics such as the municipal advisor rules, due diligence requirements, RFPs, etc.
- participate on capital commitment and other committees
- educate the firm on regulatory developments and new rules relating to municipal securities
- review current business practices against regulatory and firm requirements to ensure that discrepancies are proactively identified and addressed
- draft and update policies and procedures relating to municipal underwriting business
- assist in responding to regulatory exams and inquiries

Your team:

You will be working with the Wealth Management Americas Products and Trading team in Compliance. They are responsible for advising on several products, including taxable and municipal securities, equities, options, futures and structured products. The role will be located near Jersey City with some travel to NYC.

Your experience and skills:

You have:

- at least 15 years of experience with municipal finance
- at least a bachelor's degree
- JD a plus
- working knowledge of Word and Excel
- Series 7, 63/66, 53 a plus

You are:

- able to make time sensitive decisions regarding municipal underwriting questions
- capable of completing tasks with very tight deadlines, while also delivering on long term projects
- willing to present regulatory developments to senior management and internal stakeholders
- extremely organizedApply

Illinois GO and MetPier Bonds Fall After Downgrades.

Nuveen's John Miller calls it "stunning" that MetPier's rating can fall so far due to politics when its economics remain healthy.

The muni market can be quite slow moving — for example, Puerto Rico's bonds have been falling pretty gradually for about two weeks since it declared a version of bankruptcy.

But muni investors are pretty swift to sell when there is a major downgrade — which happened with Illinois bonds Thursday.

The state's general obligation bonds and Metropolitan Pier & Exposition bonds were both wider by approximately 25 basis points Thursday afternoon, estimates John Miller, who heads municipal bond investing at Nuveen Asset Management.

MetPier bonds were rated triple-A not that long ago, notes Miller. Plus, revenues (sales and tourism taxes) have actually increased the great majority of years. "Debt coverage is excellent," he adds.

But since the MetPier revenues now essentially pass through the state budget, the bonds have to be downgraded when the state is.

Miller calls it "fairly stunning" to see what dysfunctional politics can do to a bond rating even when the finances of an issuer are healthy. "The economy is moving along and yet the politics are so bad that the bond went from triple-A to double-B-plus purely on politics," he says.

Barron's

By Amey Stone

June 1, 2017 2:21 p.m. ET

New York City Suspends Municipal Business with Wells Fargo.

New York City voted on Wednesday to suspend Wells Fargo from its municipal debt issuance operations, citing a rating tied to doing business in low and moderate-income communities as having fallen below a "satisfactory" level.

The commission also cited last year's scandal, in which the bank was caught creating bogus customer accounts to boost performance measures.

The New York City Banking Commission, in a unanimous 3-0 vote, decided it will give no new bond underwriting mandates or renew existing contracts with Wells Fargo. The decision follows a Federal Community Reinvestment Act (CRA) rating of "needs improvement" for the San Francisco-based bank.

The decision adds New York City to other states and municipalities that have banned the bank from handling their funding operations.

The commission was composed of Mayor Bill de Blasio, Comptroller Scott Stringer and Commissioner of Finance Jacques Jiha.

"What happened at Wells Fargo was fraud – and there must be consequences for wrongful behavior," Stringer said in a statement.

Wells Fargo, however, was given a conditional designation as a New York City bank. That means it can still hold funds under current contract because it would be too disruptive to immediately disentangle the city from the bank.

"The ban will be revisited only when the bank's rating is raised," de Blasio and Stringer said in a joint statement prior to the vote.

The Wells Fargo scandal and the repercussions on its municipal banking operations contributed to a slump in its underwriting business, Reuters reported earlier this month.

Prior to the vote, the bank told Reuters it appreciated the continuing dialogue with the city.

"More than four years have passed since the end of our last CRA evaluation period and we are seeking an expedited review of the 2012-2015 exam," Wells Fargo spokesman Gabriel Boehmer said in an email.

Wells Fargo holds $227 million of collected city taxes and fees and acts as a trustee to the New York City Retiree Health Benefits Trust, currently holding its roughly $2.6 billion in assets.

The ban will suspend the bank's role as a senior book-running manager for the city's General Obligation as well as Transactional Finance Authority bond sales.

"The only allowable exemption will be for affordable housing financing, which has a direct benefit to New York City residents," the joint statement said.

REUTERS

By Dan Freed | NEW YORK

Wed May 31, 2017 | 6:10pm EDT

(Reporting by Dan Freed; Additional reporting and writing by Daniel Bases, editing by G Crosse and Dan Grebler)

The Effective Date of the New Issue Price Regulations is Near.

On December 9, 2016, the United States Treasury Department published regulations (the "Issue Price Regulations") setting forth new rules for the determination of the issue price of a tax-exempt bond issue. The Issue Price Regulations changed a rule that had been in place for many decades. These new rules become effective for tax-exempt bonds **sold on or after June 7, 2017** and thus will affect bond issues now entering the pipeline.

What Is the Issue Price? The issue price is generally the reoffering price to the public of a tax-exempt bond at which a substantial amount of the bonds of the same maturity are sold. The issue price of the entire issue is the sum of the issue prices of the particular maturities of the bonds of the issue. There are special rules, described in "A Quick Recap of the New Issue Price Rules" below that apply in certain circumstances.

Why Is Issue Price Important? The yield on a tax-exempt bond issue is often relevant to many of the tax determinations made by an issuer with respect to that bond issue during the planning stages and could also affect post-issuance obligations of an issuer with respect to that bond issue. Calculating the yield on a bond issue essentially involves discounting the cash flow (principal and interest payments) on the bond issue back to a target amount, which is the issue price. The discount rate is the yield. Thus, a critical component in determining the yield on a bond issue is the issue price.

When Must the Yield Be Determined and Therefore When Must the Issue Price Be Known? In some cases, the issue price must be known and the yield must be determined on the sale date of the bonds. It is especially important to know the issue price and yield on the sale date in the case of an advance refunding bond issue, where the yield on the reinvestment of the bond proceeds in an escrow fund is limited to the bond yield and the escrow investments must be purchased on the sale date. In other cases, such as a current refunding or a new money bond issue, determining the issue price and the yield is less critical from a timing perspective, but generally still needed for overall compliance.

When Does the Yield on the Tax-Exempt Bond Matter? The yield on a tax-exempt bond issue will matter (i) in an advance refunding, because the escrow yield is restricted to the bond yield, (ii) where arbitrage rebate payments or yield reduction payments may be owed to the IRS, and (iii) where certain moneys derived from or related to the tax-exempt bond issue can only be invested in a fixed relationship to the bond yield (such as conduit bonds and single family mortgage revenue bonds).

What Will Happen Next. We have drafted language that will be included in (i) the Bond Purchase Agreements (for negotiated sales of tax-exempt bonds) and Notices of Sale (for competitively sold tax-exempt bonds) as well as (ii) new Issue Price Certificates that the underwriter or direct purchaser of tax-exempt bonds must sign at closing. The form of the required Issue Price Certificate is included as an exhibit to the Bond Purchase Agreement or the Notice of Sale, as applicable. By executing the Bond Purchase Agreement for a negotiated bond or submitting a bid for a competitively bid bond, the underwriter or direct purchaser is acknowledging the application of the new rules and its duties to sell the bonds, and in some instances hold the offering price of the bonds, in accordance with the new rules and to supply the necessary information to the issuer to properly document the issue price.

What Should an Issuer or Conduit Borrower of Tax-Exempt Bonds Do Now. As issuers and conduit borrowers plan their upcoming bond or bond anticipation note issues, they should consult with their Bond Counsel and, where applicable, their Municipal Advisors (sometimes referred to as Financial Advisors), to review the new language and the implications of the new Issue Price Regulations. For negotiated sales, the issuers and conduit borrowers should also consult with the underwriter and underwriter’s counsel regarding the underwriter’s responsibilities in establishing the issue price.

A Quick Recap of the New Issue Price Rules. Generally, the issue price is the first price at which a substantial amount (10%) of the bonds of each maturity are sold to the “public.” The public is any “person” other than an “underwriter” or a related party to an underwriter. A person is any individual or entity for tax purposes and so would include corporations and partnerships. An underwriter is any person who agrees in writing with the issuer that it will participate in the initial sale of the bonds to the public or an entity who agrees with a lead underwriter to do so.

There are three special rules. First, if the bonds are sold in a private placement, the issue price is the purchase price paid for the bonds. **Second**, if the issuer chooses, the issue price will be the initial offering price to the public (typically the price shown in the Official Statement for the bonds) if the underwriter agrees to offer the bonds at a price no higher than that initial offering price for the first five business days after the sale date. **Third**, if the issuer conducts a competitive sale and receives at least three qualified bids, the issue price will be the reasonably expected initial offering price stated in the winning bid. A competitive sale is (i) a process in which the issuer offers the bond for sale to underwriters at specified written terms where those bid terms are disseminated in a manner reasonably designed to reach potential underwriters, (ii) all bidders have an equal opportunity to bid, (iii) the issuer receives bids from at least three underwriters who have established industry reputations for underwriting new issuances of municipal bonds, and (iv) the issuer awards the bonds to the bidder who submits a firm offer to purchase at the highest price or lowest interest cost.

An issuer can choose any of the permitted methods of establishing the issue price, but the issuer must identify the method chosen not later than the issue date of the bonds. This will typically be evidenced in the Tax Certificate for the bonds.

All of the rules described above apply to bonds sold for money. If bonds are sold for property, such as in the case of certain lease transactions where the vendor performs certain services in exchange for rent payments under the lease, special rules apply that are beyond the scope of this QuickStudy.

Locke Lord QuickStudy

May 31, 2017

JDSUPRA

Retirees, Minimize Your Costs When Buying Bonds.

A new rule will require brokerage firms to disclose the markup or markdown on retail customers' trade confirmations for most corporate- and agency-bond trades.

For investors buying individual bonds, it's time to play "the price is right." Regulators are implementing new rules designed to help small investors get better prices on their bond trades.

Unlike stocks, whose prices are easily tracked on an exchange, bonds generally trade in an over-th--counter market where many small investors simply accept the price that their broker pins on a bond. But that price typically includes a "markup" from the prevailing market price (if you're buying the bond) and a "markdown" if you're selling it. These ups and downs are largely profits for broker-dealers—and they're usually not disclosed.

The new rules will change that. Late last year, the Financial Industry Regulatory Authority finalized a rule requiring brokerage firms to disclose the markup or markdown on retail customers' trade confirmations for most corporate- and agency-bond trades. The Municipal Securities Rulemaking Board also announced a similar rule for municipal-bond trades.

"Hallelujah, it's about time" that markups were disclosed, says Marilyn Cohen, chief executive officer of Envision Capital Management, in El Segundo, Calif. Just as competition has driven down mutual-fund fees and brokerage commissions, "there should be a price war in markups too," she says, and the disclosure rules could make that happen.

Although the rules don't take effect until May of next year, they put a spotlight on the importance of trading costs for bond investors—and recent research shows just how high those costs can be. A 2015 study from the University of Southern California Marshall School of Business found that individual investors pay an average of 0.772% in transaction costs when trading corporate bonds—or $115.80 on a $15,000 bond trade. Meanwhile, investors buying a stock through an online broker might pay a commission of $4.95 plus a penny or two per share in "bid-ask spread"—the difference between buying and selling prices.

Currently, many small investors don't even realize they're paying a markup, much less focus on its size. Investors buying the same bond on the same day and in the same amounts often pay very different prices.

But there are ways to minimize your bond trading costs. Online tools can help you research recent trades in the bond you're considering (or trades in bonds with similar characteristics) and raise your odds of paying a reasonable price. Armed with recent trade information, you may be able to haggle with your broker for a better deal. And when you have a better sense of how much bond trading is costing you, you can weigh the costs and benefits against alternatives such as bond mutual funds and exchange-traded funds.

To see recent trades, go to www.finra.org/marketdata for corporate bonds or www.emma.msrb.org for municipal bonds, and enter the CUSIP numbers of bonds that interest you. By looking at trades between dealers, you can get a sense of the prevailing market price. To figure out how much you should be paying, look for recent customer purchases of similar size to yours.

“If you’re buying small, weeny positions [say 10 or 15 bonds at a time], you’ll probably pay at least half a point,” or a markup of 0.5%, for an investment-grade bond, Cohen says. If you’re buying 50 to 100 bonds at a time, the markup may be closer to 0.25%, she says. Investors should expect to pay higher markups for lower-quality, “junk” bonds and bonds that are thinly traded.

But small investors can incur hefty trading costs even in higher-quality, less-obscure bonds. Research firm Municipal Market Analytics offers this example: Looking at a California general-obligation bond maturing in 2037, there were two inter-dealer trades on the morning of March 17 at nearly the same price: $112.73 and $112.67. Three minutes later, a customer bought $50,000 worth of the bonds at $115.10—2.2% more. Less than an hour after that, a large investor buying $6.9 million worth of the bonds got something much closer to the inter-dealer price: $112.99.

Such price discrepancies can make the muni market “very difficult for an individual investor,” says Thomas Doe, president of Municipal Market Analytics. The market actually resembles a “flea market,” he says, “because you have this eclectic product, very inconsistent supply and demand, and you’re just trying to match the product with a buyer.”

Prepare to Negotiate on Price

As in a flea market, you may have to haggle to get a good deal. Investors “don’t have to be price-takers,” says Lynnette Kelly, the Municipal Securities Rulemaking Board’s executive director. Prices can be negotiable. If you’re offered a bond at a price well above recent trade levels, you can say, ” ‘Why would I pay that? No one has paid that today on this transaction,’ ” says John Bagley, MSRB’s chief market structure officer. Then use comparable customer trades to name a price you think is fair.

In many cases, there may not be any recent trades in the specific bond that interests you. But recent trades in comparable bonds can give you a rough idea of how much you should pay for the bond you want. Use the advanced search on the Finra market data site or the price discovery tool on MSRB’s EMMA site to find bonds with similar credit quality, maturity and other characteristics.

Muni-bond investors may be able to get the best price by buying newly issued bonds during the “retail order period,” when orders are accepted only from small investors. That way, “on 10 or 15 bonds you’ll get the same price as Pimco buying 14 million bonds,” Cohen says.

Another simple way to limit your bond transaction costs: Trade them as little as possible. Hold individual bonds to maturity.

But some advisers question whether small investors buying individual bonds can ever get a fair shake. “I think it’s a sucker’s market,” says Frank Armstrong, chief executive officer of Investor Solutions, an advisory firm in Miami.

When clients come to him with individual bonds, Armstrong says, he generally sells them off and replaces them with bond mutual funds or exchange-traded funds. Some bond funds charge annual fees of just 0.04%, while it can cost 4% or 5% to do a “round trip,” meaning buying and selling reasonably liquid individual bonds, Armstrong says. "That just eats into your total return. In an environment where there's hardly any income in fixed income, why would you want to give that up?"

KIPLINGER'S

By ELEANOR LAISE, Senior Editor

From Kiplinger's Retirement Report, June 2017

Special Assessment Techniques for Transformative Community Improvements.

Special Assessment Techniques for Transformative Community Improvements
July 18, 2017 @ 1:00 PM Eastern

Special assessments are a valuable tool that can be used to finance a wide variety of different projects across myriad sectors. Special assessments raise capital by assessing a prescribed fee on property owners within a geographic district. Based on the state authorizing legislation, the capital can then be used for any number of special purposes depending on what improvements are needed in the district. Over the past decade, special assessment has become one of the driving capital access tools for transformative community improvements. During this installment of the CDFA // BNY Mellon Development Finance Webcast Series, our expert speakers will discuss new and innovative uses for special assessments and how this tool is poised for greater use nationwide.

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

Register

- When Should an Issuer of Tax-Advantaged Bonds Use the Hold-the-Offering-Price Method to Establish the Issue Price of the Bonds?
- MSRB Webinar: Municipal Advisor Solicitor Guidance.
- SEC and MSRB to Hold Webinar on Series 50 Exam for Municipal Advisors.
- MSRB Files Amendments to Modernize Customer Account Transfers.
- S&P Global Ratings Announces New Green Evaluation Service.
- Local Governments' Hidden Reason to Oppose Tax Cuts: Bank Loans.
- Rising Seas May Wipe Out These Jersey Towns, but They're Still Rated AAA.
- S&P: The Top 10 Management Characteristics of Highly Rated State and Local Borrowers.
- Successful Investing in Charter Schools Part III: Market Advancements
- And finally, the Supreme Court of Colorado this week took up the issue of whether "Blunt Wraps" qualify as "tobacco products" for tax purposes in *Colorado Department of Revenue v. Creager Mercantile Co., Inc.* The court helpfully informed us that, "Like traditional rolling papers, Blunt Wraps are designed to be filled with tobacco, marijuana, or other smoking material and smoked." And then this bombshell: "See generally Redman, How to Roll A Blunt, on Whut? Thee Album (Columbia Records 1992)." Wait, the Blue Book now covers the proper citing of rap artists? Mad props to the clerks who snuck this into a Supreme Court opinion. But what on earth were the

Justices smoking? Oh. Never mind.

BALLOT INITIATIVES - ARKANSAS

Keep Our Dollars in Independence County v. Mitchell

Supreme Court of Arkansas - April 27, 2017 - S.W.3d - 2017 Ark. 154 - 2017 WL 1536480

Local-option ballot question committee sought judicial review of county clerk's determination that local-option petition to allow voters to decide whether to permit manufacture and sale of alcoholic beverages in county was insufficient to be placed on ballot.

The Circuit Court affirmed. Committee appealed and intervenor cross-appealed.

The Supreme Court of Arkansas held that:

- Ten-day appeal period applicable to clerk's certification that local-option petition was sufficient did not apply to clerk's certification that petition was insufficient;
- Fifteen-day appeal period applicable to clerk's certification of any initiative or referendum petition as sufficient or insufficient applied to insufficiency certification of local-option petition; and
- Constitutional challenge to provision of statute governing local-option petitions prohibiting signatures of residents from more than one county was rendered moot by occurrence of election.

Ten-day appeal period applicable to county clerk's certification that local-option petition was sufficient did not apply to clerk's certification that petition was insufficient to deprive circuit court of subject matter jurisdiction to consider appeal from insufficiency certification filed outside of ten-day period. Provision expressly applied only when county clerk had certified that the local-option petition was sufficient and indicated that it would be placed on the ballot, and there was no language in the statute referring to the procedures applicable to a county clerk's determination of insufficiency.

Fifteen-day appeal period applicable to county clerk's certification of any initiative or referendum petition as sufficient or insufficient applied to insufficiency certification of local-option petition. There were no specific statutory provisions providing for an appeal of a finding of insufficiency within the current statutory scheme for local-option petitions or the statutes referenced therein.

COUNTIES - FLORIDA

Gretna Racing, LLC v. Florida Department of Business and Professional Regulation

Supreme Court of Florida - May 18, 2017 - So.3d - 2017 WL 2210389

Applicant for permit to conduct slot machine gaming at its pari-mutuel facility appealed denial of its application by Department of Business and Professional Regulation.

On rehearing, the District Court of Appeal upheld denial of permit, and certified question of great public importance.

The Supreme Court of Florida held that general constitutional and statutory power of non-charter counties to carry on county government does not constitute authorization to conduct referendum to approve slot machine gaming.

A referendum conducted by a non-charter county concerning approval of slot machine licenses at pari-mutuel facilities is not inherent in the power to conduct county government and, thus, is not "authorized," within the meaning of the statute governing issuance of licenses to conduct slot machine gaming, by the general powers conferred on non-charter counties under either the constitutional or statutory home rule powers provided to non-chartered counties.

EMINENT DOMAIN - GEORGIA

Abramyan v. State

Supreme Court of Georgia - May 15, 2017 - S.E.2d - 2017 WL 2106256

Owners of taxicab operating certificates commonly referred to as taxi medallions in city that required such medallions brought action against state alleging that an amendment to statute governing taxicabs and vehicles for hire that permitted the operation of ride sharing services constituted a taking or inverse condemnation under the state constitution.

The Superior Court granted state's motion to dismiss. Medallion owners appealed.

The Supreme Court of Georgia held that amendment did not constitute a taking or inverse condemnation of any property right possessed by medallion owners.

Amendment to statute governing taxicabs and vehicles for hire, which permitted operation of ride sharing services and barred municipalities from adopting new ordinances requiring taxicabs to procure the operating certificates commonly referred to as taxi medallions, did not constitute a taking or inverse condemnation, under the eminent domain provisions of state constitution, of any property right possessed by owners of taxi medallions in city that had an existing ordinance requiring such medallions, even if it reduced the value of the medallions. Any property interest did not include an exclusive right to operate vehicles for hire or a right to a limited number of medallions.

EMINENT DOMAIN - HAWAII

County of Kaua'i v. Hanalei River Holdings Limited

Supreme Court of Hawai'i - May 16, 2017 - P.3d - 2017 WL 2121115

County brought condemnation action against owners of three parcels of land.

The Circuit Court granted county's motion to withdraw part of its deposit of estimated just compensation, granted county's motion for partial summary judgment on issue of severance damages later entered judgment on jury's finding of fair market value, and granted county's motion regarding proper amount of blight of summons damages.

Owners appealed. The Intermediate Court of Appeals affirmed in part. Owners' application for writ of certiorari was accepted.

The Supreme Court of Hawaii held that:

- One owner was not entitled to severance damages;
- Three unities involved in determining entitlement to severance damages are factors, not essential elements;
- County's deposit of estimated just compensation became conditional, for purposes of blight of summons damages, when one alleged owner waived all interests in deposit; and
- County was able to withdraw portion of its deposit of estimated just compensation.

Owner of parcel being condemned by county and of easement over separate area of land to operate boatyard was not entitled to severance damages in condemnation action; owner lacked unity of use, as owner's permits to operate boatyard were revoked year before condemnation action was instituted, physical unity was lacking, as parcel and easement were separated by other lots, and unity of title was lacking, as different individual owned area of land containing easement.

When determining whether a claimant is entitled to severance damages in a condemnation action, the three unities, which are the unity of title, physical unity, and unity of use, should be evaluated and weighed against one another as factors, and should not be viewed as essential elements; a lack of physical unity will not be dispositive of a claim for severance damages.

County's deposit of estimated just compensation became conditional, for purposes of calculating blight of summons damages, when county did not immediately agree to release funds after possible owner of parcels waived all interests in deposit and consented to disbursement of deposit to other two owners involved in condemnation action, rather than when deposit was initially made or when county objected to disbursement to just two owners; county did not enumerate any restrictions when deposit was initially made, possible owner had previously asserted that she owned involved property, and other two owners were entitled to withdraw funds when possible owner had waived her interest.

A deposit of estimated just compensation does not become conditional, for purposes of calculating blight of summons damages, when a condemning authority objects to a condemnee's motion to withdraw funds based on the fact that the condemnee's entitlement to such funds is not clear.

County was able to withdraw $1.03 million from its $5.89 million deposit of estimated just compensation in condemnation action against landowners, where county moved to withdraw funds before funds had been disbursed to landowners, county's motion was made in good faith, as it was based on updated appraisal that one landowner had impliedly requested by challenging county's initial appraisal as being stale, and landowners' burden of having their properties condemned was alleviated because they were able to withdraw $4.6 million prior to final determination of just compensation.

The court in an eminent domain proceeding has the discretion to permit a governmental entity to withdraw a portion of a deposit of estimated just compensation when the deposit has not been disbursed to the landowner, the government acted in good faith in seeking to adjust the estimate to accurately reflect the value of the property on the date of the summons, and the adjustment will not impair the substantial rights of any party in interest.

LIABILITY - MISSOURI

Newsome v. Kansas City, Missouri School District

Supreme Court of Missouri, en banc - May 16, 2017 - S.W.3d - 2017 WL 2119347

School district employee, a purchasing manager, brought action against school district for wrongful discharge in violation of public policy regarding employee's objections to independent consultant's request for payment from school district and school district's purchase of three motor vehicles.

The Circuit Court entered judgment for employee for $500,000. School district appealed.

On transfer from the Court of Appeals, the Supreme Court of Missouri held that:

- Endorsement to school district's liability insurance that precluded claims that were covered by sovereign immunity never became part of district's insurance policy;
- Sufficient evidence supported finding that independent consultant's payment request violated public policy;
- Sufficient evidence supported finding that purchase of three motor vehicles violated public policy;
- Instructions that erroneously asked jury if employee reasonably believed that transactions violated public policy did not prejudice school district;
- School district could only waive its sovereign immunity up to the statutory liability limit of $403,139; and
- School district's insurance policy's retention amount of $250,000 did not operate to reduce the $403,139 statutory maximum for liability.

Endorsement to school district's liability insurance that precluded coverage for claims which, absent the insurance, would have been covered by sovereign immunity never became part of district's insurance policy, and thus endorsement did not preserve school district's sovereign immunity per statute on waiving sovereign immunity via liability insurance in employee's action against district for wrongful termination in violation of public policy; endorsement was negotiated several months after policy's issuance, and no authorized agent subscribed to the endorsement as required by statute governing contracts for school districts.

School district could only waive its sovereign immunity up to the statutory liability limit of $403,139, and thus remittitur to that amount from the circuit court's judgment of $500,000 was warranted on school district employee's successful claim against district for wrongful discharge in violation of public policy, despite argument that district waived its sovereign immunity up to its liability insurance policy limit of $500,000; by the plain language of statute on waiving sovereign immunity via liability insurance, the district's liability coverage could not exceed $403,139 for a single claim, and the fact that district purchased liability coverage in excess of $403,139 was immaterial.

School district's insurance policy's retention amount of $250,000 did not operate to reduce the $403,139 statutory maximum for liability on school district employee's successful claim against district for wrongful discharge in violation of public policy; statute on waiving sovereign immunity via liability insurance provided that immunity was waived to the maximum amount of coverage purchased and allowed by law, nothing in statute indicated that retention amount did not count as coverage, and under either liability insurance policy at issue, the limit of liability reduced by the retention amount would have far exceeded $403,139.

EMINENT DOMAIN - NORTH DAKOTA

Cossette v. Cass County Joint Water Resource District

Supreme Court of North Dakota - May 16, 2017 - N.W.2d - 2017 WL 2119428 - 2017 ND 120

Property owners brought action against county joint water resource district requesting declaratory relief and challenging district's resolution of necessity relating to intent to acquire interest in property owners' property through eminent domain.

The District Court dismissed complaint. Property owners appealed.

The Supreme Court of North Dakota held that:

- Property owners were not permitted to assert equitable claim for declaratory relief in administrative appeal, but
- Property owners were statutorily entitled to appeal from resolution of necessity.

Property owners were not permitted to assert equitable claim for declaratory relief in administrative appeal from county joint water resource district's resolution of necessity related to district's intent to acquire interest in property owners' property through eminent domain.

Property owners were "aggrieved" by county joint water resource district's resolution of necessity related to district's intent to acquire interest in property owners' property through eminent domain, and therefore property owners were statutorily entitled to appeal from resolution. Although resolution was only one part of eminent domain process, applicable statute allowed appeal from any water resource board order or decision relating to eminent domain, and resolution described the property and stated that district would proceed with eminent domain to acquire interest in the property.

EMINENT DOMAIN - OKLAHOMA

[Stephens Production Company, a division of SF Holding Corp. v. Larsen]

Supreme Court of Oklahoma - May 9, 2017 - P.3d - 2017 WL 1900492 - 2017 OK 36

Natural-gas company brought action to exercise eminent domain power on landowner's 80-acre parcel to establish an underground natural gas storage easement and a surface easement to complete an underground natural gas storage facility on 900 acres of land, which included landowner's parcel.

After a bench trial, the District Court set an amount of just compensation. Landowner appealed. The Court of Civil Appeals affirmed. Landowner appealed.

The Supreme Court of Oklahoma held – as matter of apparent first impression – that natural resource, agricultural, and recreational use, rather than use as a natural-gas reservoir, constituted the highest and best use of landowner's parcel.

Natural resource, agricultural, and recreational use, rather than use as a natural-gas reservoir, constituted the highest and best use of landowner's 80-acre parcel at the time that natural-gas company established an easement on the parcel via eminent domain for underground natural gas storage and a surface easement to complete an underground natural gas storage facility on 900 acres of land, which included landowner's parcel, and thus $9,000, rather than $419,000, was just compensation to the landowner; for the reservoir to have been feasible, a combination of the interests of the landowners whose parcels composed the 900 acres was absolutely necessary, and there was no active market in the area for underground gas storage before natural-gas company began its project.

GOVERNMENTAL UNITS - TEXAS

University of the Incarnate Word v. Redus

Supreme Court of Texas - May 12, 2017 - S.W.3d - 2017 WL 1968030 - 60 Tex. Sup. Ct. J. 908

Parents of deceased student brought action against private university and university's peace officer arising out of the officer's use of deadly force following a traffic stop.

University filed a plea to the jurisdiction. The District Court denied the plea. University appealed. The San Antonio Court of Appeals dismissed the appeal. University filed a petition for review, which was granted.

The Supreme Court of Texas held that the private university qualified as a "government unit" as to its policing function for purposes of provision of Tort Claims Act permitting interlocutory appeals from the grant or denial of a governmental unit's plea to the jurisdiction.

University derived its status and authority to commission and employ peace officers and operate a police department from laws passed by the legislature, university's officers had the same power, privileges, and immunities as other peace officers, and law enforcement was uniquely governmental.

Successful Investing in Charter Schools Part III: Market Advancements

Jun. 07, 2017 | 12 PM ET/9 AM PT

Each year, Orrick and the Bond Buyer present an overview of the charter school facilities bond sector, highlighting transaction fundamentals, sector-level research data, and credit and structure trends. This year, in Part III of the series, the webinar examines the expanding array of financial tools used by charter schools to address facilities needs by assembling a roster of experienced market participants to present current trends and analysis on the sector.

The featured speakers, Paul Jasin of Specialized Public Finance, Paula Permenter of BB&T Capital Markets and Oscar Davis of Regions Bank, will provide insights regarding evolving credit structures for both public capital markets and commercial loan facilities financing for charter schools. Todd Brewer and Eugene Clark-Herrera of Orrick will review transaction fundamentals and discuss trends affecting the growth of the sector.

Who Should Attend?

- State and Local Education Finance Officers
- Charter School Leaders, CFOs and Finance Directors
- Institutional Investors and Commercial Lenders
- Investment Analysts
- Education-Focused Investment Bankers

REGISTER

MSRB Files Amendments to Modernize Customer Account Transfers.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission (SEC) proposed amendments to MSRB Rule G-26, on customer account transfers. If approved by the SEC, the amendments to Rule G-26 would promote a uniform customer account transfer standard for all municipal securities dealers. The MSRB believes the amendments will make the transfer of customer securities account assets more flexible, less burdensome and more efficient, while reducing confusion and risk to investors and allowing them to better move their municipal securities to their dealer of choice.

View the filing.

TAX - COLORADO

Colorado Department of Revenue v. Creager Mercantile Co., Inc.

Supreme Court of Colorado - May 15, 2017 - P.3d - 2017 WL 2106241 - 2017 CO 41

Corporate taxpayer that distributed tobacco and other products to convenience stores sought judicial review of the decision of the Department of Revenue to impose a tobacco products tax on wrappers consisting of pulverized, homogenized tobacco leaves that contained 30% to 48% tobacco.

The District Court affirmed. Taxpayer appealed. The Court of Appeals reversed and remanded. Department petitioned for a writ of certiorari, which was granted.

The Supreme Court of Colorado held that wrappers were a "kind" or "form" of tobacco and were "prepared in such manner as to be suitable … for smoking," and thus wrappers were a taxable "tobacco product."

Wrappers consisting of pulverized, homogenized tobacco leaves that contained 30% to 48% tobacco were a "kind" or "form" of tobacco and were "prepared in such manner as to be suitable … for smoking," and thus wrappers were "tobacco products" that were taxable under statute defining "tobacco products" as "other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a pipe or otherwise"; wrappers were designed and intended to be filled with tobacco, marijuana, or other smoking material and smoked, wrappers were consumed as they were smoked, and each inhalation from a wrapper burned and delivered additional tobacco in the wrap itself to the user.

Municipal Finance Compliance Consultant

Job Description:

Kforce has a client in Weehawken, NJ that is seeking a Municipal Finance Compliance Consultant to assist with Wealth Management Americas Compliance with drafting policies, procedures and training to prepare for a new municipal underwriting business.

Summary:

Team:
The ideal candidate will be working with the Wealth Management Americas Products and Trading team in Compliance. They are responsible for advising on several products, including taxable and municipal securities, equities, options, futures and structured products. The role will be located in Weehawken and New York City.

Duties Include:
Draft and update policies and procedures for the municipal underwriting business relating to topics such as the municipal advisor rules, due diligence requirements, RFPs, and supervision

Create training for newly hired municipal bankers, underwriters and traders

Provide advice to the municipal bankers and underwriters on topics such as the municipal advisor rules, due diligence requirements, RFPs, and supervision

Educate the firm on regulatory developments and rules relating to municipal securities

Review current business practices against regulatory and firm requirements to ensure that discrepancies are proactively identified and addressed

Job Requirements

At least a Bachelor's degree

At least 10 years of experience with municipal finance

Experience drafting policies and procedures with municipal underwriting – at least 5 years

Legal or compliance experience with the municipal underwriting business

Enjoys working closely with the business

Knows how to maintain independence and objectivity

Excellent knowledge of Word and Excel

JD a plus

Series 7, 63/66, 53 a plus

Able to draft policies and procedures regarding municipal underwriting

Capable of completing tasks with very tight deadlines

Highly organized

APPLY NOW

Kforce is an Equal Opportunity/Affirmative Action Employer. All qualified applicants will receive consideration for employment without regard to race, color, religion, sex, pregnancy, sexual orientation, gender identity, national origin, age, protected veteran status, or disability status.

Rising Seas May Wipe Out These Jersey Towns, but They're Still Rated AAA.

- **Cities at most risk from extreme weather still get top ratings**
- **Storms, floods could diminish tax revenue and raise costs**

Few parts of the U.S. are as exposed to the threats from climate change as Ocean County, New Jersey. It was here in Seaside Heights that Hurricane Sandy flooded an oceanfront amusement park, leaving an inundated roller coaster as an iconic image of rising sea levels. Scientists say more floods and stronger hurricanes are likely as the planet warms.

Yet last summer, when Ocean County wanted to sell $31 million in bonds maturing over 20 years, neither of its two rating companies, Moody’s Investors Service or S&P Global Ratings, asked any questions about the expected effect of climate change on its finances.

“It didn’t come up, which says to me they’re not concerned about it,” says John Bartlett, the Ocean County representative who negotiated with the rating companies. Both gave the bonds a perfect triple-A rating.

The same rating companies that were caught flat-footed by the downturn in the mortgage market during the global financial crisis that ended in 2009 may be underestimating the threat of climate change to coastal communities. If repeated storms and floods are likely to send property values — and tax revenue — sinking while spending on sea walls, storm drains or flood-resistant buildings goes up, investors say bond buyers should be warned.

“They are supposed to identify risk to investors,” said Eric Glass, a fixed-income portfolio manager at Alliance Bernstein, a New York investment management firm that handles $500 billion in assets. “This is a material risk.”

Breckinridge Capital Advisors, a Boston-based firm specializing in fixed-income investments, is already accounting for those risks internally: Last year, it downgraded a borrower in Florida due to climate risk, citing the need for additional capital spending because of future flooding.

Rob Fernandez, its director of environmental, social and governance research, said rating companies should do the same. “Either incorporate these factors, or, if you say that you are, tell us how you’re doing it,” he said.

S&P and Moody’s say they’re working on how to incorporate the risk to bonds from severe or unpredictable weather. Moody’s released a report about climate impacts on corporate bond ratings last November and is preparing a similar report on municipal bonds now.

Fitch Ratings Ltd. is more skeptical.

“Some of these disasters, it’s going to sound callous and terrible, but they’re not credit-negative,” Amy Laskey, managing director for the local government group at Fitch, said in an interview. “They rebuild, and the new facilities are of higher quality and higher value than the old ones.”

For more than a century, rating companies have published information helping investors gauge the likelihood that companies and governments will be able to pay back the money they borrow.

Investors use those ratings to decide which bonds to buy and gauge the risk of their portfolio. For most of that time, the determinants of creditworthiness were fairly constant, including revenue, debt levels and financial management. And municipal defaults are rare: Moody's reports fewer than 100 defaults by municipal borrowers it rated between 1970 and 2014.

Climate change introduces a new risk, especially for coastal cities, as storms and floods increase in frequency and intensity, threatening to destroy property and push out residents. That, in turn, can reduce economic activity and tax revenue. Rising seas exacerbate those threats and pose new ones, as expensive property along the water becomes more costly to protect — and, in some cases, may get swallowed up by the ocean and disappear from the property-tax rolls entirely.

Just as a shrinking auto industry slowly crippled Detroit, leading to an exodus of residents and, eventually, its bankruptcy in 2013, other cities could face the accumulating risks of storms or floods — and then suddenly encounter a crisis.

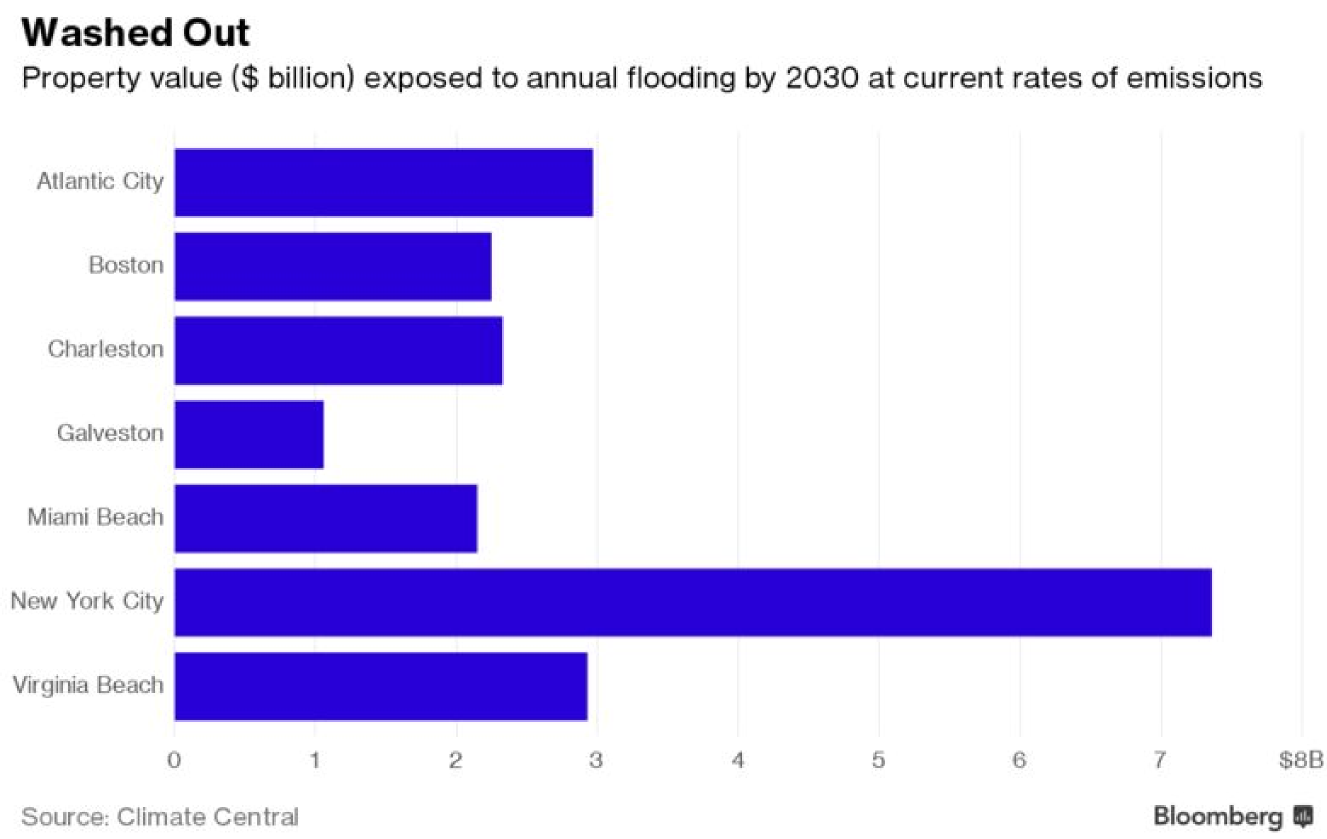
"One of the first questions that we're going to ask when confronted with an issuer along the coast of Texas, or on the coast of Florida, is: How are you going about addressing, mitigating the impacts of climate change?" Glass, Alliance Bernstein, said. And if local officials don't have a good answer to that question, he added, "We will not invest, period."

When asked by Bloomberg, none of the big three bond raters could cite an example of climate risk affecting the rating of a city's bonds.

Kurt Forsgren, a managing director at S&P, said its municipal ratings remain "largely driven by financial performance." He said the company was looking for ways to account for climate change in ratings, including through a city's ability to access insurance.

Henry Shilling, Moody's senior vice president for environment, social and governance risks, said the company is planning to issue a report this summer that explains how it will incorporate climate change into its municipal ratings. "It's a bit of a journey," he said.

Last September, when Hilton Head Island in South Carolina issued bonds that mature over 20 years, Moody's gave the debt a triple-A rating. In January 2016, all three major bond companies gave triple-A ratings to long-term bonds issued by the city of Virginia Beach, which the U.S. Navy has said faces severe threats from climate change.



The threat isn't limited to smaller cities. The World Bank called Boston one of the 10 cities globally that are most financially exposed to flooding. But in March, when Boston issued $150 million in bonds maturing over 20 years, Moody's and S&P each gave those bonds top ratings.

Of course, predictions are hard, especially about the future. While scientists are generally united about the science of climate change, its pace remains uncertain. And what all of that will mean for communities and their likelihood of paying back bonds is not a simple calculation. Ocean County continued to pay back its current debt load after Sandy, and will still have a lot of oceanfront property if its current coast is swamped. The oceanfront just won't be in the same place.

The storms or floods "might be so severe that it's going to wipe out the taxation ability," said Bob Buhr, a former vice president at Moody's who retired last year as a director at Societe Generale SA. "I think this is a real risk."

In May 2016, 117 investors with $19 trillion in assets signed a statement calling for credit ratings to include "systematic and transparent consideration" of environmental and other factors. Signatories also included rating companies from China, the U.S. and elsewhere, including Moody's and S&P.

Not Experts

Laskey, of Fitch, was skeptical that rating companies could or should account for climate risk in municipal ratings.

"We're not emergency-preparedness experts," she said in a phone interview. "Unless we see reason to think, 'Oh, they're not paying attention,' we assume that they're competent, and they're doing what they need to do in terms of preparedness."

That view is at odds with the picture painted by engineers, safety advocates and insurers. Timothy Reinhold, senior vice president for research at the Insurance Institute for Business & Home Safety, a group funded by insurers, said local officials aren't doing enough to prepare for the threats of climate change.

"While most coastal communities and cities have weather-related disaster response plans, many older, existing structures within these communities are not as durable, or as resilient as they could and should be," Reinhold wrote in an email.

Politically Fraught

The types of actions that cities could take to reduce their risk — including tougher building codes, fewer building permits near the coast and buying out the most vulnerable properties — are politically fraught. And the benefits of those policies are typically years away, long after today's current leaders will have retired.

The weakness of other incentives leaves the risk of a credit downgrade as one of the most effective prompts available to spur cities to deal with the threat, according to Craig Fugate, director of the Federal Emergency Management Agency under President Barack Obama.

"They need cheap money to finance government," Fugate said in a phone interview. If climate considerations meant higher interest rates, "not only will you have their attention. You'll actually see changes."

Fugate also said rating companies were wrong to assume that cities are well prepared for climate change, or that their revenue will necessarily recover after a natural disaster.

As an example, he cited the case of Homestead, a city south of Miami that bore the worst damage from Hurricane Andrew in 1992. The city's largest employer, Homestead Air Force Base, was destroyed in the storm; rather than rebuild it, the federal government decided to include the facility in its base closures.

Fugate said climate change increases the risk that something similar could happen to other places along the coast — and they won't ever be able to bounce back as Homestead eventually did.

"If that tax base does not come back," he warned, "they cannot service their debt." Asked about rating companies' insistence that such risks are remote, Fugate scoffed. "Weren't these the same people telling us that the subprime mortgage crisis would never happen?"

Bloomberg

by Christopher Flavelle

May 25, 2017, 1:00 AM PDT

CDFA // BNY Mellon Development Finance Webcast Series: Financing the Nation's Transportation Needs One Community at a Time.

Financing the Nation's Transportation Needs One Community at a Time

June 13, 2017 @ 1:00 PM Eastern

Federal, state, and local funding for transportation is woefully inadequate to cover the costs of maintenance and improvements needed. Although this subject is often discussed on a national level, it often remains a local issue for local communities to address. From bridges and roadways to water and energy, local communities are developing creative strategies to address their growing infrastructure needs. During this installment of the CDFA // BNY Mellon Development Finance Webcast Series, our experts will discuss financing structures that communities are deploying to fund infrastructure improvements.

You will hear from:

Michael Bonini
Director of Public-Private Partnerships
Pennsylvania Department of Transportation

Fran Rood
Senior Vice President
SB Friedman Development Advisors

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

Register.

S&P: The Top 10 Management Characteristics of Highly Rated State and Local Borrowers.

U.S. public finance government borrowers are a varied group, but those with the strongest credit profiles have a lot in common when it comes to management practices.

Continue reading.

May 22, 2017

P3 Digest: May 23, 2017

White House Pushes to Leverage Private Sector for Infrastructure Change

As part of its budget rollout this morning, the White House identified public-private partnerships…

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May 23, 2017

When Should an Issuer of Tax-Advantaged Bonds Use the Hold-the-Offering-Price Method to Establish the Issue Price of the Bonds?

Three score and thirteen years (and one day) after D-Day (June 7, 2017, for the non-history-buffs), the new regulations that prescribe the methods for determining the issue price of tax-advantaged bonds take effect. Of the various methods for determining the issue price of tax-advantaged bonds, the hold-the-offering-price method is the only one that allows an issuer of such bonds in an underwritten transaction to know with certainty in advance of the sale date of the bonds that the issue price of the bonds will be established on the sale date. As discussed below, however, this method will come at a cost to issuers of tax-advantaged bonds.

The question thus becomes, which federal tax circumstances warrant the increased cost of the hold-the-offering-price method to be assured that the issue price of the bonds will be established on the sale date? For the answer, read on.

Continue reading.

The Public Finance Tax Blog

By Michael Cullers on May 24, 2017

Squire Patton Boggs

TAX - OREGON

Boardman Acquisition, LLC v. Department of Revenue

Supreme Court of Oregon - May 11, 2017 - P.3d - 361 Or. 440 - 2017 WL 1957144

Taxpayer, a port, sought review of county assessor's denial of its request for a refund of additional taxes paid per sales agreement on land that port sold to a private entity after port and tenant agreed to end a lease on the land and the land was accordingly disqualified from the special assessment as nonexclusive farm use zone farmland.

The Tax Court, Regular Division, granted summary judgment for the Department of Revenue. Port appealed.

The Supreme Court of Oregon held that:

- The date the disqualification from special assessment is "taken into account on the assessment and tax roll" means the date the disqualification becomes effective on the assessment and tax roll, and
- Land was subject to additional taxes, which were based on prior years' taxes avoided via the then-ended special assessment.

As used in the statute governing the assessment of additional taxes on land that has been disqualified from special assessment, the date the disqualification from special assessment is "taken into account on the assessment and tax roll" means the date the disqualification becomes effective on the assessment and tax roll, such that a disqualification that occurs between January 1 and June 30 becomes effective on the assessment and tax roll as of July 1, and a disqualification that occurs between July 1 and December 31 will not affect the taxes due until the following July 1.

Land that had been specially assessed as nonexclusive-farm-use-zone farmland and that taxpayer, a port, sold to a private entity on August 10 after taxpayer and tenant had agreed to end tenant's lease on land a few days prior, was subject to additional taxes, which were based on prior years' taxes avoided via the then-ended special assessment, and thus taxpayer was not entitled to a refund of the additional taxes that it paid via the sales agreement with the private entity. The disqualification from special assessment became effective on the assessment roll on the following January 1, and on that date the land was not "public property that was leased or rented to a taxable owner," as required by statute imposing additional taxes on land disqualified from special assessments.

S&P Global Ratings Announces New Green Evaluation Service.

S&P Global Ratings announced the launch of its Green Evaluation service, a comprehensive approach to measuring sustainability at the asset level. Green Evaluations, which are separate from traditional credit ratings, can be used to assess the green impact of a variety of securities and are independent of credit characteristics.

Continue reading.

Apr. 26, 2017

Beyond Green Bonds: Sustainable Finance Comes Of Age.

Investment of some $90 trillion is needed in the next 15 years to achieve global sustainable development and climate objectives, according to estimates put forward by the Group of Twenty's Green Finance Synthesis Report. Over $800 billion needs to be invested every year to 2020 in renewable energy, energy efficiency, and low-emission vehicles alone, according to OECD estimates.

Continue reading.

Apr. 26, 2017

S&P: We Won't Solve for Green Finance Unless We Solve For Infrastructure.

The green bond market reached an estimated $42 billion of new issuance in 2015 and in excess of $80 billion in 2016. As anticipated, given the magnitude of China's environmental issues, its government has constructed a top-down push to solve the country's environmental issues.

Continue reading.

Apr. 26, 2017

How Much Do States Rely on Federal Funding?

There's a wide range of dependence across and within the states. Here's a state-by-state

look at how welfare, education and roads could be impacted by the next budget that Trump signs.

As Congress debates the budget, states are eagerly waiting to hear how it will affect them.

Updated data from the Census Bureau's 2015 Annual Survey of State Government Finances published last week indicates that federal aid made up nearly a third of all states' general fund revenues in fiscal year 2015. The single largest line items in states' budgets include federal funding for transportation, Medicaid and other social assistance programs.

The survey, which provides a detailed portrait of how states generate and spend money, suggests states' reliance on federal money varies greatly. Even larger discrepancies exist across individual areas of state government.

We've compiled data below showing how much of each state's budget is tied to federal aid across select major spending areas.

Continue reading.

GOVERNING.COM

BY MIKE MACIAG | MAY 22, 2017

The Week in Public Finance: The Trump Budget Edition

A roundup of money (and other) news governments can use.

GOVERNING.COM

BY LIZ FARMER | MAY 26, 2017

Where a Shopping Mall Used to Be, an Opportunity Arises.

The decline of malls in America can mean lost jobs and lower tax revenues for states and municipalities — but not always.

There are threats everywhere to state and local revenues. To that list add this one: The golden age of malls in America seems to be well and truly over. Several of the country's 1,000 enclosed malls and a chunk of the nation's 47,000 shopping centers have either shut down or are emptying out.

Overall investment in retail property assets declined nearly 20 percent last year. Vacancy rates in community shopping centers increased in 30 of 77 U.S. metro areas last year. Rents, which usually increase roughly at the rate of inflation in healthy markets, decreased.

These trends may accelerate. In recent months, department stores such as Sears and Macy's — bulwarks of shopping malls — announced plans to close hundreds of stores nationwide. It will surprise few that this change in the fortunes of shopping malls comes in the wake of the accelerating growth of online shopping. Amazon is expected to surpass Macy's as America's top clothing seller this year, according to Cowen Group Inc., a financial services firm.

The fiscal implications of mall closings for states and localities are significant. Not only are jobs, corporate income tax revenues, and sales and use tax revenues foregone, but so are property taxes. “If a mall closes or goes into decline, you’re going to see declining property values in the area,” says Arthur Nelson, a professor of urban planning and real estate development at the University of Arizona.

The Fort Steuben Mall in Steubenville, Ohio, is an example of what it looks like when a mall starts to fail. A former steel town on the edge of the Ohio River, the community is facing a double whammy of store closures: On one end of its mall is an empty space that used to house a Sears; on the opposite is a Macy’s, which is set to close this spring. The mall went into foreclosure in February 2016 and was sold to the bank that held the mortgage — for roughly two-thirds of its previously estimated value.

But the depopulating of malls doesn’t need to be a negative. One city leader says he sees a significant upside: “It can help hasten the eventual redevelopment of the entire mall site. It’s potentially a big positive for the city’s tax revenues as it makes much closer the day where redevelopment proceeds [start pouring in].”

I have watched this play out in my own city of Alexandria, Va., where the Landmark Mall has both a Sears and a Macy’s as tenants. Seventeen years ago, the mall as a whole and the Sears store that anchored it generated $1.25 million in real estate taxes. Today, they bring in only about $500,000 in real estate taxes. Moreover, to aggravate the fiscal dilemma, the reduction in revenues from sales tax, dining tax and other business taxes has also been dramatic. And now Macy’s has announced it is closing its Landmark store. As Alexandria Vice Mayor Justin Wilson told me, “There is no clearer demonstration of the city’s financial challenges than the predicament that currently faces Landmark Mall.”

But Alexandria is seeing and seizing an opportunity. It has rezoned the site and has encouraged the mall’s owner, the Howard Hughes Corp., to move ahead with its plan to transform the enclosed portion of the mall and the Macy’s parcel into an open-air urban village that has stores, restaurants, housing and entertainment venues.

Wilson notes that the passing of the glory days of malls ought not to be a dirge for times gone by, but rather an opportunity to latch onto a nationwide trend of returning to cities’ historic urban centers both to live and to start businesses.

GOVERNING.COM

BY FRANK SHAFROTH | MAY 2017

Should Struggling Airports Be Turned Over to Companies?

St. Louis International could become the largest airport in the country under private control.

St. Louis has a vexing problem with its airport: It’s too big.

Lambert International today handles only about half as much traffic as it did just over a decade ago.

That’s left the facility with more than enough runway capacity and a lot of empty gates.

Why the precipitous drop in traffic? Airline consolidations. When American Airlines took over TWA, which was based in St. Louis, it stopped using Lambert as a Midwestern hub. The airport has somewhat pulled out of that dive, especially as Southwest Airlines has expanded its operations there. But the city is still faced with the challenge of running an airport that’s much larger than it needs to be.

Now, with the help of a think tank that promotes limited government, St. Louis is exploring whether a private operator might do a better job. Thanks to the Trump administration, which has promoted the value of public-private partnerships, the city can now see whether that plan is feasible.

“This approach to airport management increases productivity, revenue and operating efficiency for airports, creating greater access to capital for infrastructure needs,” U.S. Transportation Secretary Elaine Chao said last month, pointing to the success of a similar effort in San Juan, Puerto Rico. Chao announced that the Federal Aviation Administration approved St. Louis’ request to join a federal program that allows airports to be run by private operators. FAA approval is the first step in that process.

A Clinton-era law allows for airports to be privately managed but sets strict rules for how those deals are carried out. The complicated rules are one reason that not many cities have opted to go that route. St. Louis is the fourth — and largest — airport that currently has FAA permission to use a private operator. (Other airports, such as LaGuardia Airport in New York City, have leased individual terminals to private operators, but, unlike the potential St. Louis deal, all of the proceeds from those arrangements must remain in the airport.)

St. Louis is a long way from handing over the keys to its airport. Mayor Lyda Krewson, who assumed office a week before Chao’s announcement, made that clear. “I appreciate their consideration of our application and look forward to working with the FAA throughout the process, but,” she cautioned, “the key is in the details.”

Krewson’s predecessor, Francis Slay, brought the idea to the federal government, but the main driver behind the effort is Grow Missouri, Inc., a group funded by Rex Sinquefield, an anti-tax activist who is a major force in Missouri politics.

Travis Brown, an organizer with Grow Missouri’s Fly 314 Coalition, says there are many ways a private operator could attract new business, update the airport’s facilities and even generate money for the city.

He says a private operator could take a more strategic approach to running the airport. They could, for example, improve the facilities to attract new vendors, negotiate better flight schedules with airlines or lure more cargo business, Brown says. He points to airports in Memphis, Indianapolis and Louisville that have improved their fortunes by expanding cargo operations.

Brown is confident that private investors would be willing to take on a project like running the St. Louis airport. While the arrangement is seldom used in the United States, it is very common in Europe. Plus, Brown points out, Chicago came close to a similar deal for Midway International Airport in 2013. While that plan eventually sputtered out, it did show that airlines could be willing to go along with a privatization plan, which federal law requires for approval of the deal.

But Chicago’s experience also highlights how tricky it can be to execute a move to a private operator. Mayor Rahm Emanuel pulled the plug on the efforts to lease Midway after nine months of exploring a deal. The mayor said the companies bidding on the airport did not offer enough protections for taxpayers.

"I learned in the private sector that sometimes the best deals are the ones you don't make," Emanuel wrote in a Chicago Tribune op-ed. "My most important goal was to protect the interests of the city and its taxpayers in a way that had not been done on previous public-private partnerships."

In other words, Emanuel wanted to avoid the storm of controversy that followed a 2008 deal authorized by his predecessor, Richard M. Daley, to lease the city's parking meters for 75 years. The $1.2 billion deal led to skyrocketing parking costs, and the city's inspector general concluded that the value of the contract was far less than what the private consortium paid for it.

But Daley had tried to lease out Midway, as well. Chicago's city council approved the 99-year, $2.5 billion deal just eight days after it had been made public. But the arrangement fell apart in 2009 when capital markets froze during the Great Recession, and the private investors could not find enough money for the deal.

Emanuel said the city had learned a lot from those experiences. "While this partnership did not work out, the process was not a waste of time," he wrote in the Tribune. He continued:

"There are five things we learned over the past six months that should guide any future public-private partnerships: first, a group of outside experts should be impaneled at the start of the process to monitor each step; second, there must be a minimum 30-day review by the City Council before the project is voted upon; third, there should be a clear set of standards so the public can judge a potential partnership when it is presented; fourth, the funds should be invested in infrastructure rather than used as a plug for short-term budget holes; fifth, a true public-private partnership requires that taxpayers maintain control of the asset and share in management decisions and financial profit."

Those experiences will loom large for St. Louis as it explores its airport lease.

Brown, from Fly 314, says the process will help St. Louis, no matter the outcome. "The worst thing that can happen is that we don't like the proposals we see, but we learn a lot about ourselves and what we should be doing," he says. "We think we're at least as good as Chicago."

GOVERNING.COM

BY DANIEL C. VOCK | MAY 22, 2017

New Study Identifies the Best Cities for Good Government.

What is good government and which cities practice it? Those are the questions driving a new annual report of U.S. cities.

For the first time ever, the nonprofit Living Cities partnered with Governing to study how cities measure up to their definition of a high-performing government. The authors of the study, which is called "Equipt to Innovate," hope it will help the best ideas and practices spread.

Cities have long been creative problem solvers, but local officials still have trouble sharing information about their experiences and learning from their peers, says Ben Hecht, the CEO of

Living Cities.

“There are a thousand flowers of innovation that are blooming,” he says, “but they don’t really provide you with a roadmap for how to systemically apply those innovations to the core elements of government.”

The Equipt report is meant to be a first step in providing that roadmap.

Governing, with the help of researchers at our parent company, e.Republic, invited 321 cities to participate in the study. About 19 percent — 61 — completed the 92-question self-assessment. Researchers at e.Republic also conducted an independent review of cities’ performances to make sure the responses squared with publicly available evidence.

The report defines a city as high-performing if it’s dynamically planned, broadly partnered, resident-involved, race-informed, smartly resourced, employee-engaged and data-driven. It sheds light on what local officials think their organizations do well and where they believe they need to improve.

Perhaps the biggest improvements needed (and in some cases, being made) appear to be in race-related policies and issues.

Almost all respondents (92 percent) said their human resources departments have plans and initiatives in place to ensure the local government workforce reflects the racial and ethnic makeup of the city. In addition, a majority of respondents (74 percent) said they have training programs around the importance of race in their workplaces.

But by other measures, cities are behind in enacting race-informed policies. Only 16 percent strongly agreed that there was trust in local government among their immigrant and minority communities. A majority of respondents (77 percent) said their cities needed a more equitable provision of services, such as transportation, education and community policing.

In other areas, the responses suggest that most places already meet the definition of a high-performing city. For example, 80 percent said they have up-to-date long-term strategic plans, and a majority said they collect sufficient input from agencies and residents. Almost two-thirds said city spending is based on evidence and oriented toward results. And almost eight in 10 respondents said their cities have some kind of open data portal.

Steven Bosacker of Living Cities says he was pleasantly surprised by how advanced cities appear to be on some of the operational elements, such as strategic planning.

“The survey actually not only renewed my faith but reminded me of how functional local government is, especially compared to state and federal government these days,” he says.

On Tuesday, Living Cities and e.Republic named Phoenix the best overall performing city, but nine others received recognition as well: Las Vegas, San Diego, Riverside, Calif.; San Jose, Calif.; El Paso, Texas; Fayetteville, N.C.; San Antonio, Philadelphia and Louisville, Ky.

They also identified the highest-performing city in each of the seven categories (in bold) and five additional cities that were high performers:

- Dynamically planned (**Fayetteville, N.C.**; Boston, Cleveland, the District of Columbia, Las Vegas and Riverside, Calif.)
- Broadly partnered (**Las Vegas**, Kansas City, Mo.; Louisville, Ky.; Philadelphia, Phoenix and Riverside, Calif.)

- Resident-involved (**Albuquerque**, N.M.; Atlanta, Minneapolis, Philadelphia, Providence, R.I.; and Seattle)
- Race-informed (**Seattle**, Grand Rapids, Mich.; Phoenix, Portland, Ore.; Richmond, Va.; and San Jose, Calif.)
- Smartly resourced (**El Paso**, Texas; Boston, Knoxville, Tenn.; San Antonio, San Jose, Calif.; and Virginia Beach, Va.)
- Employee-engaged (**San Antonio**, Denver, Fayetteville, N.C., Las Vegas, Louisville and Minneapolis)
- Data-driven (**Kansas City, Mo.**; El Paso, Texas; Long Beach, Calif.; Louisville, Phoenix and San Diego)

Findings from the study are summarized in a 20-page report that can be found here. Cities that participated will receive private written feedback on how they compare to their peers and how they can improve. Living Cities and e.Republic plan to conduct another round of assessments and hope to document how government performance changes over time.

"This was a pilot year. It's not designed or intended to report perfectly on perfection," says Rhiannon Gainor, director of research at e.Republic. "It's meant to stimulate a national conversation on what good governance is."

GOVERNING.COM

BY J.B. WOGAN | MAY 25, 2017

Where to Park Wall Street's Infrastructure Billions.

President Donald Trump is pushing for $1 trillion in U.S. infrastructure spending over a decade. What will it take to make that happen and where could the money go?

Trump's proposed budget calls for setting aside $200 billion in federal funding with the aim of attracting an additional $800 billion or more of private, state and local investment in roads, bridges and other public works. An additional six pages released with the budget (noticeably longer than Trump's one-page tax plan) include proposals that cover everything from allowing tolling on interstate highways to leasing power-transmission assets.

Parts of the infrastructure plan (along with much of the budget) were quickly slammed by Democrats out of concern that some proposals could rack up costs for constituents and because of quibbles over where the money will come from, among other things. Some Republicans have issues, too — but despite all that, there's widespread recognition that revitalizing infrastructure should be a priority.

The belief that bipartisan support for an infrastructure package will eventually be reached has emboldened private investors — so much so, that newer players in the space like Blackstone Group LP and old hands such as Global Infrastructure Partners have raised or are raising billions of dollars, joining other investors that have long been scoping out the sector:

Building Bricks

Donald Trump's pledge to facilitate $1 trillion in infrastructure spending has sparked a surge in private fundraising for projects targeting North American infrastructure.

They're counting on the fact that the privatization schemes Trump is touting — which are commonplace in Australia, the U.K. and other nations — will play a key part in any new wave of U.S. investment, even if they haven't to a large degree thus far.

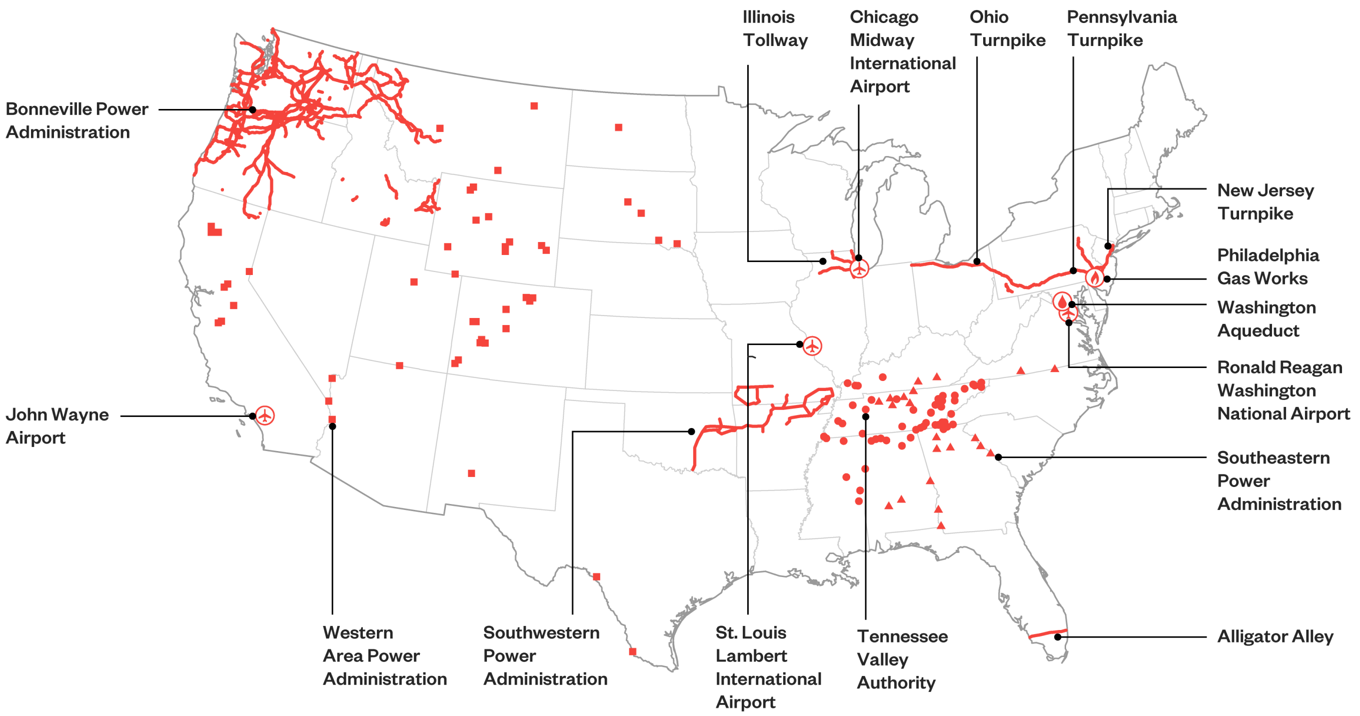
The logic is pretty simple: such programs traditionally involve the sale of long-term leases that give purchasers the right to operate and maintain a project. Sellers of those concessions — often states or municipalities — can then use proceeds and any bonus government incentives to fund additional infrastructure improvements or supplement spending in areas such as health care, transport and education.

Despite the many benefits, these programs haven't been easy sells in the U.S., owing in part to political wrangling at the federal, state and local levels and a general distrust of public assets like roads and airports being run as for-profit enterprises. That's understandable — but there is still merit to the idea of privatizations, and places where they could work:

First on the Runway

First on the Runway

If President Donald Trump's plan materializes, private infrastructure investors may flock toward these potential targets.



Sources: U.S. Census Bureau, U.S. Energy Information Administration, ESRI

BloombergGadfly

Contenders include Chicago Midway International Airport, Philadelphia Gas Works Co. and Pennsylvania Turnpike — all of which have explored privatizations to the point of receiving bids. Then there's St. Louis Lambert International Airport, which last month received preliminary approval to study a privatization plan that would make it the first mainland U.S. airport to be operated by private investors. And other public works that should be taken into serious consideration for privatization include already-tolled roads and federally owned electric utilities such as Bonneville Power Administration.

Beyond traditional infrastructure, Trump has floated the idea of spinning off the U.S. air-traffic system. Other deals that could one day transpire include the possible privatization of businesses such as Amtrak, the U.S. Postal Service (a move that would replicate happenings in Japan and the U.K.) and even state lottery operators (Illinois, Indiana and New Jersey have already paved the way, with mixed success).

Regardless of the specifics, U.S. privatizations will be a political minefield. Ensuring the $200 billion in federal funding incentives are delivered in a way that appeases critics will be key if there's any hope of Trump achieving his lofty $1 trillion goal. But infrastructure does seem to be one place where both parties can come together, even if the rest of his budget is dead on arrival. Private money shouldn't be seen as taboo.

1. To be sure, there have been some notable transactions, including the privatizations of the Indiana Toll Road and Chicago Skyway, but such deals have been few and far between.

2. Under President Bill Clinton, the Alaska Power Administration was privatized. Trump has his eye on other energy utilities, and mentioned Southwestern Power Administration, Western Area Power Administration and Bonneville Power Administration in his budget this week.

Bloomberg

By Gillian Tan

May 26, 2017 7:30 AM EDT

Gillian Tan is a Bloomberg Gadfly columnist covering deals and private equity. She previously was a reporter for the Wall Street Journal. She is a qualified chartered accountant.

To contact the author of this story:
Gillian Tan in New York at gtan129@bloomberg.net

To contact the editor responsible for this story:
Beth Williams at bewilliams@bloomberg.net

Local Governments' Hidden Reason to Oppose Tax Cuts: Bank Loans.

- **Tax cuts could trigger 'yield maintenance provisions' in loans**
- **Officials ' may not appreciate all the risks,' analyst says**

Some local governments have a hidden reason to root against President Donald Trump's tax-cutting agenda: It could make their bank loans more costly, according to Municipal Market Analytics.

Municipalities have borrowed billions from banks to skirt the expenses associated with public bond offerings. But banks often include provisions enabling them to raise the interest rates if legal or regulatory changes diminish their returns. A cut in the corporate tax rate, for example, would likely result in a lower after-tax yield on a tax-exempt loan, potentially triggering "yield maintenance" provisions, wrote analysts at MMA, a Concord, Massachusetts-based independent research firm.

"Given the current administration's focus on tax-reform and/or tax cuts, borrowers that have these yield maintenance provisions could see their debt service costs rise," MMA wrote.

Direct lending by banks has proliferated in the $3.8 trillion municipal market because states, local governments and non-profits can borrow at rates comparable to those on bonds, without the fees or disclosure requirements associated with securities sales.

Because loans aren't classified as securities, states and cities aren't immediately required to disclose them, despite the risk they can pose to bondholders and taxpayers. For example, banks can demand accelerated principal and interest if a payment is skipped or a government's cash falls below a specific target, which could push the borrower into a liquidity crisis if it can't cover the bills.

MMA estimates that some $180 billion of such loans have been made. But given the lack of disclosure, it's impossible to know how many borrowers might be subject to rate increases if federal taxes are cut, MMA wrote.

The Securities and Exchange Commission in March proposed requiring state and local governments provide information about significant bank loans within 10 days.

A borrower with a $20 million loan could pay an additional $50,000 in annual interest if the rate is increased 0.25 percentage point to compensate for the reduced after-tax return a lower corporate levy would bring, MMA said. By contrast, when municipalities issue fixed-rate debt the risk of future tax changes is shifted to bondholders. President Trump has proposed reducing corporate taxes to 15 percent from the current 35 percent.

Many municipalities that used derivatives such as interest-rate swaps in the mid-2000s to lower borrowing costs weren't aware of the risks and had to pay billions of dollars to get out of the contracts when investors dumped certain types of municipal bonds en masse during the financial crisis.

"Banks that provided interest-rate swaps to municipalities found themselves in a firestorm of negative media stories detailing how they profited on the backs of municipal borrowers, costing taxpayers billions of dollars," MMA wrote. As with interest-rate swaps, "many municipalities may not fully appreciate all the risks inherent in bank loans."

Bloomberg Markets

by Martin Z Braun

May 24, 2017, 10:30 AM PDT

Trump Tax Reform Unlikely to Impact Municipal Bonds, BofA Says.

- **'Price independently of the top federal income tax rates'**
- **Political turmoil in administration may derail tax reform**

Tax reform will have little impact on the value of municipal bonds, according to Bank of America Merrill Lynch strategists Philip Fischer and Celena Chan.

Looming tax reform has some investors worried that slashing the nation's top individual tax rates may send demand for the securities tumbling. Municipal bonds are often purchased by wealthy investors seeking to lessen their tax burdens.

The trend has reversed recently as political turmoil has derailed President Trump's legislative agenda, including tax reform. Yields on state and local bonds hit a 2017 low last week.

An analysis shows that municipal bonds "price independently of the top federal income tax rates and have done so for decades." The strategists said the reason for this is that state and local bonds are not well connected to other capital markets.

Corporate tax reform may happen by year-end, according to the analysts, but it's unlikely "P&C and bank taxes will fall sufficiently to distort muni pricing and flows."

Bloomberg

by Rebecca Spalding

May 22, 2017, 8:38 AM PDT

Bloomberg Brief Weekly Video - 05/25

Taylor Riggs, a contributor to Bloomberg Briefs, talks with Editor Joe Mysak about this week's municipal market news.

Watch video.

Bloomberg

May 25, 2017

Municipal Bond Sales Poised to Fall, Buttressing Sector's Gains.

- **Slate of sales set for next 30 days hits two-month low**
- **'Enticing technical backdrop' for the market, analyst says**

The pipeline of bond sales from U.S. state and local governments has dropped to its lowest in more than two months, signaling a continuation of the borrowing slowdown that's helped support a rally in the municipal market.

The volume of tax-exempt bonds that are scheduled to be sold over the next month has tumbled to about $8 billion, the least since late March, according to data compiled by Bloomberg. The decline comes as investors continue to pour money into municipal-bond mutual funds while yields, which move in the opposite direction as price, have slid to their lowest since soon after President Donald Trump's November election.

While the number of planned sales typically drops ahead of the Memorial Day weekend, borrowing by municipalities this year has pulled back from last year's record pace amid uncertainty about the direction of interest rates and Trump's policies. By May 19, $141.5 billion has been issued this year, an 11 percent drop from the same period in 2016, according to data compiled by Bloomberg.

Some analysts have predicted that the tax-exempt market will shirk over the summer as bonds mature at a faster pace than they're sold, leaving investors flush with cash to reinvest. Municipal securities have returned 3.5 percent this year, more than twice the 1.6 percent gain for Treasuries, according to Bloomberg Barclays indexes.

"The net negative supply figures are expected to expand into the summer months," wrote Jeffrey Lipton, head of municipal research at Oppenheimer & Co., in a note to investors this week. "We believe that both retail and institutional demand will prove more robust against a more enticing technical backdrop."

Bloomberg clients: We'll be doing a TOPLive Q&A on Tuesday, May 30 at noon ET, moderated by Elizabeth Campbell, in which you can ask Joe Mysak questions about the latest with Illinois and its budget impasse. You can watch it here. If you want to ask a question, please send to TOPLive@bloomberg.net.

Bloomberg

by Rebecca Spalding

May 25, 2017, 9:03 AM PDT

Municipal Bonds Richest in a Year as Supply Dries Up in Summer.

- **New Jersey, New York and California show net negative supply**
- **Muni sector forecast to show robust performance this summer**

State and local debt hit its richest value compared with Treasuries in about a year, as demand for the securities remains robust against shrinking supply.

The index that tracks the benchmark 10-year municipal bond yield as a percentage of U.S. Treasuries sunk to 86.9 percent this week, the lowest since June 2016, according to Bloomberg data. At the beginning of the month, the gauge hovered near 95 percent.

The rally in municipal debt comes as analysts expect supply to continue to shrink in the summer months at the same time that cash-rich investors will have a hoard to invest. Citigroup Inc. analysts predicted that the market will shrink by $39.5 billion between June and August, while investors will receive $44 billion in interest payments.

"Because of the lack of supply relative to demand, and because of the relative height of nominal yields, its going to be hard for munis to project weakness over the summer," said Matt Fabian, a partner with Municipal Market Analytics Inc., in a telephone interview. "Left to their own devices, munis will be prone to rally."

Not all states are created equal. New York, California, and New Jersey show the most extreme net negative supply numbers as of May 25, with the Empire State posting negative $5.3 billion. All but seven of the 50 states posted negative net supply figures during the same time frame.

"We're heading into a period of even more pronounced supply shortage. Unless governments dramatically increase their borrowing for infrastructure, we're heading into a period with a shortage of bonds," Fabian said.

Bloomberg Markets

by Rebecca Spalding

May 26, 2017, 10:11 AM PD

Puerto Rico Seeks Court's Help to Save Public Pension System.

SAN JUAN, Puerto Rico — Puerto Rico is seeking help from federal court to restructure the debt of the U.S. territory's public pension system, which is projected to run out of money this year.

A federal control board overseeing the island's finances said Monday that the move was taken in part to shield the government from a flurry of lawsuits.

"The government's liquidity and solvency problems are massive, and Title III has now become necessary to protect the people of Puerto Rico," the board said in reference to the court-supervised restructuring process.

Gov. Ricardo Rossello said late Sunday that his administration requested the board approve a court-supervised process because it had been unable to reach a deal with creditors to whom it owes some $3 billion.

"Given the system's uncertain situation … its eventual insolvency in upcoming months and the inability to reach a deal with creditors … I have no other option to protect our retirees," he said.

The U.S. territory is increasingly turning to the courts to restructure portions of the $73 billion public debt it holds as it struggles to emerge from a decade-long recession. The board on Monday also said it will seek to restructure via courts more than $4 billion in debt held by the island's Highway and Transportation Authority.

Rossello said retired workers will still receive their pensions, and that the government will dip into its general fund once the pension system itself runs out of money.

Roberto Aquino Garcia, president of the Association of Retired Puerto Rico Government Workers, said he doubts a court-ordered restructuring will bring substantial relief to the more than 150,000 former government workers who depend on a system underfunded by some $50 billion.

"We hold very little hope, because unless the system receives a significant cash infusion to stay afloat, it will collapse," he said in a phone interview.

Aquino said many retirees worry the general fund will not be able to fund their pensions because it is already low on cash.

"We don't know what the government's priorities will be," he said. "Do we fall under essential services?"

The government is Puerto Rico's largest employer, and the overall liability of its three main retirement systems grew by $10 billion from 2009 to 2013, prompting the previous administration to increase retirement ages, reduce benefits and increase employer and employee contributions.

Puerto Rico's average public pension is roughly $1,100 a month, but more than 38,000 retired government employees get only $500 because of the type of job they had and the number of years worked.

A federal control board overseeing the island's finances is now seeking more cuts. It has said the system will switch to pay-as-you-go funding, and that teachers and public safety workers will be enrolled in Social Security by 2020. Currently, teachers and police officers in Puerto Rico do not receive Social Security.

Aquino said a nonprofit group representing nearly 100,000 retired Puerto Rico government workers has hired the same attorney who represented retired workers in Detroit, which had less than $20 billion in debts when it filed for bankruptcy in 2013 in the biggest U.S. municipal bankruptcy ever.

"There's going to be a humanitarian crisis," Aquino warned. "The government made a commitment to us since 1951 when it created the pension system. It's a contract that all of us have held up on our end."

Puerto Rico economist Vicente Feliciano said it's unlikely the government will be able to fulfill that contract.

He noted that retirees in Detroit were hit with a 5 percent cut, and anticipated that those in Puerto Rico will face a similar or worse fate.

"The majority of retirees will get their pensions cut," he said. "Everybody must take a hit."

By THE ASSOCIATED PRESS

MAY 22, 2017, 10:27 A.M. E.D.T.

Single Audit Roundtable Meets.

The Single Audit Roundtable conducted its first meeting of the year to discuss issues surrounding the single audit. The roundtable is a forum established by the American Institute of Certified Public Accountants and hosted by KPMG where federal audit and accountability representatives meet with members of the non-federal and state government audit communities.

In normal fashion the agenda featured updates from the U.S. Office of Management and Budget, AICPA and the U.S. Government Accountability Office, as well as an update on the status of Federal Audit Clearinghouse activities.

OMB did not reveal a lot of new issues but did talk about the themes of this year's budget proposal: effectiveness, efficiency, accountability and cyber security. It is the Trump Administration's goal to look closely at all federal agencies and their functions to determine if there are changes that can be made to address the themes set forth in the budget proposal. In terms of the single audit and the Uniform Guidance, OMB is looking for input from the grants and audit communities on what sort of changes can be made in the short and long term that will address effectiveness, efficiency and accountability.

OMB also stated that several items are being held pending review to determine if the proposed regulation, guidance or initiative would have a cost or burden associated with it. Such items include:

- An OMB proposal that would amend portions of the Uniform Guidance in the procurement and pension cost areas.
- Additional frequently asked questions that would further clarify inconsistencies in the Uniform

Guidance and address minor implementation issues.
- A new schema for the Catalog of Federal Domestic Assistance (CFDA).
- The Single Audit Quality Study.

Representatives from the AICPA Government Audit Quality Center provided an update on center activities. Currently, the center has 230 member firms and 31 state audit offices. Collectively, 93 percent of single audit (dollars) are represented. The AICPA also noted that they are currently working on internal control. Specifically, on what practitioners need to do better work in this area.

Members of the GAO Yellow Book team provided an update on the Yellow Book noting that comments on the exposure are due by July 6 with the final issuance projected for 2018. GAO noted that the new Yellow Book will include a big change in the peer review area specifically with organizations that are not affiliated with a recognized organization. For these organizations, there are several additional peer review requirements.

Additionally, GAO provided that there are quite a few new requirements around performance audits and a new requirement specifically on waste. Auditors are not expected to seek out waste in their audit.

The next roundtable will be held in November.

NASACT

May 15, 2017

Trump's Proposed Budget Could Bankrupt Cities and Towns.

WASHINGTON — May 23, 2017 — This morning, the Trump Administration sent its full budget proposal to Congress. The proposal includes unprecedented cuts that would slash or eliminate crucial programs that invest in cities and create jobs, including the Community Development Block Grants (CDBG), TIGER grants for transportation projects and the HOME Investment Partnership Program. The National League of Cities (NLC) is concerned that small cities would fare the worst under the proposal, since they are less able to compensate for the cuts. Many states limit the amount of additional revenue cities may raise, leading to a real possibility of municipal bankruptcy for some small cities. In response, NLC President Matt Zone, councilmember, Cleveland, released the following statement:

> "The administration's budget proposal would be devastating to cities and towns. No community in America would be better off with this budget, and it could bankrupt smaller cities and towns. It does nothing to create jobs in our communities, and violates the president's core campaign promise to lift up Americans in communities across the nation.
>
> "The White House ignored more than 700 city officials who urged the administration to protect crucial programs, including Community Development Block Grants, TIGER grants and the HOME Investment Partnership Program. These vital programs allow communities to invest in public safety, economic development and infrastructure, and create private-sector jobs.

> “The budget proposal would have a disproportionate impact on America’s small cities and towns, whose budgets are already stretched thin. In these communities, the programs being targeted are a lifeline for maintenance and investment. For those communities, this budget would spell disaster — and, in many cases, bankruptcy.
>
> “As the leaders of America’s cities, we call on Congress to throw out this budget proposal and develop a new plan focused on building prosperity, expanding opportunity and investing in our future. Congress must reject this budget proposal or risk derailing local economies nationwide.”

The National League of Cities (NLC) is dedicated to helping city leaders build better communities. NLC is a resource and advocate for 19,000 cities, towns and villages, representing more than 218 million Americans. www.nlc.org

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Mayors Buttigieg and Dupree Testify on Wastewater and Stormwater Costs Request to Congress – Pass Integrated Planning and Affordability Legislation.

South Bend Mayor Pete Buttigieg testified on behalf of The US Conference of Mayors and Hattiesburg Mayor Johnny Dupree testified on behalf of the National League of Cities before the House Transportation and Infrastructure Subcommittee on Water Resources and the Environment, on the high costs of Clean Water Act (CWA) mandates and the need to create additional tools to assist communities achieve their goals in a cost-effective manner.

The May 18, 2017 hearing was entitled, Building a 21st Century Infrastructure for America: Improving Water Quality through Integrated Planning. Joining the Mayors were: Todd Portune, Commissioner, Hamilton County, Ohio; on behalf of the National Association of Counties; Craig Butler, Director, Ohio Environmental Protection Agency; on behalf of the Environmental Council of the States; William Spearman, Principal, WE3 Consultants on behalf of the American Public Works Association; and Lawrence Levine, Senior Attorney, Natural Resources Defense Council.

Both Mayors talked about the costs of combined and sanitary sewer consent decrees and stormwater regulations for their cities. Mayor Buttigieg said that South Bend’s consent decree will cost his city $861 million. “This is a significant burden for our residents,” Buttigieg said, “with one out of every five households having to pay 10% of their household income just toward their wastewater bill and one of every ten households will pay 14%. As a result, every South Bend household spending $1300 per year for the next 15 years for a total of $19,500.”

Both discussed how integrated planning and affordability legislation would help their cities achieve better results while making the costs more manageable.

The Conference of Mayors worked with Environmental Protection Agency (EPA) to create the concept of Integrated (or comprehensive) Planning to help cities solve their most pressing water and wastewater needs in a more cost-effective way. Joining the Conference of Mayors were the National League of Cities and National Association of Counties in negotiations with EPA. As a result of our efforts, EPA created memorandums on Green Infrastructure, Integrated Planning, and Financial Capability that they distributed to the EPA Regional Offices. However, the Regional Offices have not always been enthusiastic about allowing communities to implement any of these tools. That is why the three local government associations are seeking legislation that would codify Integrated

Planning, define Financial Capability, and encourage the use of Green Infrastructure.

"While the Integrated Planning Framework and the Financial Capability Framework have been positive steps by EPA to address the high costs of meeting CWA regulatory requirements, there is more work to be done to ensure that these policy frameworks are useful tools for our communities across the country," said DuPree.

Mayor Buttigieg outlined the Conference's key priorities for the legislation including: Codifying EPA's Integrated Planning and Permitting Policy; Achieving Long Term Control of Stormwater Through Permits; Renewing Congressional Support for Exercising Flexibility in Existing Clean Water Law; and Eliminating Civil Penalties for local governments who develop an integrated plan and make reasonable further progress into improving their water.

The members of the House are listening and the Mayors thanked them for introducing multiple bills that would address many of our priorities. Mayor Buttigieg expressed gratitude for all the introduced bills but did say that the Conference of Mayors preferred HR 465, the Water Quality Improvement Act of 2017, which was introduced by Representative Bob Gibbs (OH). HR 465 has several unique provisions that would better help communities by defining affordability, asking EPA to determine if their solutions are technically feasible, and allowing cities to solve their long-term wastewater and stormwater needs through permits, rather than through consent decrees.

The Senate has also taken the issue of Integrated Planning, Financial Capabilty, and Green Infrastructure with Lancaster Mayor Rick Gray testifying on April 4. Their bill, S.692 the Water Infrastructure Flexibilty Act, passed out of the Environment and Public Works Committee and is awaiting action by the entire Senate.

Please click here for a copy of Mayor Buttigieg's testimony, click here to download S.692 and click here to download H.R. 465.

The Nation's Mayors Sound Alarm on Trump FY 2018 Budget: Statement by USCM CEO & Executive Director Tom Cochran.

Washington, D.C. – U.S. Conference of Mayors (USCM) CEO and Executive Director Tom Cochran issued the following statement on the release of President Trump's FY 2018 budget proposal, A New Foundation for American Greatness:

"Mayors across the country are deeply troubled by President Trump's brazen attack on the very people he promised to protect. The unprecedented cuts to critical domestic programs would be nothing short of devastating to all our nation's cities, piercing the very soul of America.

"President Trump's proposed budget stands to drastically reduce or eliminate programs that benefit the most vulnerable of our citizens. Instead of assisting those struggling to make ends meet as he promised, the President plans to ax services designed to forge a path for working families into the middle class. In effect, President Trump pulls the rug out from under those who are already living on the edge.

"Specifically, the Community Development Block Grant (CDBG) would be eliminated, a program that OMB Director Mick Mulvaney characterized as one that does not work. Nothing could be further from truth. For the past 40 years, since its inception, this program has a proven track record of revitalizing neighborhoods and creating jobs.

In light of this, The U.S. Conference of Mayors released today bipartisan letters to Congressional leaders in both the House and Senate in strong support of the CDBG program. More than 350 mayors representing all 50 states, the District of Columbia and Puerto Rico, signed the CDBG letter and remain committed to fighting this destructive cut.

“While many of the nation’s cities and metropolitan areas are strong and continue to drive the national economy forward, many have not yet rebounded from the Great Recession. We cannot and will not turn a blind eye to these communities that are hurting from federal disinvestment.

“President Trump’s proposed cuts betray his campaign pledge to the American people to make the country stronger. If Congress allows these cuts to workforce training, education, housing, public safety, the arts, the EPA and other social services to prevail, the impact will be felt far and wide, severely affecting people living in cities large and small; suburban and rural.

“Further, the elimination and phase out of the National Endowment of the Arts, National Endowment of the Humanities and Institute of Museum and Library Services would destroy the cultural infrastructure of the nation.

“Throughout the campaign, President Trump vowed to make the country stronger and to keep all Americans safe. It’s ironic that the morning after the deadly terrorist attack in Manchester, his budget proposes significant cuts to key Homeland Security programs, a direct contradiction to what he repeatedly promised.

“Yesterday the Attorney General issued a memorandum defining sanctuary jurisdictions as those not in compliance with 8 U.S.C. §1373, a narrow definition. Today the Budget proposes a legislative change that would significantly broaden §1373, threatening many more jurisdictions with noncompliance for upholding the law and the Constitution.

“Since 1932, USCM has maintained that there should be a strong federal-city funding partnership to serve the millions that reside in our cities. In the name of devolution, this budget proposal, at the direction of Mulvaney, would turn billions of funds over to states, putting the future of the American people in the hands of governors and state legislators. Mayors are simply asking for the tax dollars that we send to Washington to be directly repatriated home so we can meet the needs of our local residents in a cost-effective manner.

“The nation’s mayors will be on the front line fighting against this draconian vision for America’s cities and metro areas. The U.S. Conference of Mayors stands ready to work with Congress to craft a budget that reflects the truthful needs of this country’s men, women, and children.”

America's Infrastructure: The Time to Build is Now

The case for making infrastructure a priority and the issues that may affect our ability to fix it.

This week marks the 5th annual Infrastructure Week — a clear reminder that strong, resilient infrastructure is critical to our country’s economic growth and vitality; yet we continue to fall behind due to crumbling and outdated roads, bridges, rails, airports and seaports, water pipes and the power grid. This has not gone unnoticed.

A 2016 National Infrastructure Poll, conducted by the Association of Equipment Manufacturers, found that the majority of Americans recognize the declining state of our country's infrastructure and that it should be addressed. The Trump Administration has identified infrastructure as one of the top priorities of the new President's agenda. To underscore the urgency surrounding U.S. infrastructure, there is also growing bipartisan support: Democratic Senator Bill Nelson, ranking member of the Senate Commerce Committee, discussed infrastructure and the role it plays in our economy, telling Vice President Mike Pence in March 2017 that the "time might be right" for a Bipartisan Infrastructure Bill. With heightened recognition across the country, our leaders and citizens, why is infrastructure still in crisis?

At SIFMA, we distinguish between **financing infrastructure** — bringing capital from investors to build projects — and **funding infrastructure**, finding ways to pay the operating and maintenance costs in the long-term, service the debt and provide a return on capital. We believe the infrastructure problem lies in the ability to identify reliable funding sources and recommend:

- Preserving the tax exemption for municipal bonds;
- Expanding Public-Private Partnerships (P3s), including the use of Private Activity Bonds (PABs) without restrictions for publicly accessible projects, promoting private equity investment in public projects, and applying design-build strategies;
- Reviving direct-pay bonds.

These approaches can help. However, as part of Congress' discussions on federal tax reform, there is concern the House of Representatives may consider options that could negatively affect the ability to fund our infrastructure, such as imposing a full or partial federal income tax on municipal bond interest or eliminating PABs, both of which have been proposed by policy-makers before.

In order to bring our infrastructure into the 21st century, we need to invest more without imposing burdens that can weigh down our economy.

I recently discussed this issue in-depth with The Bond Buyer.

For more information, listen to the podcast.

SIFMA

By Michael Decker

May 17, 2017

SIFMA Municipal Division Recognized by National Federation of Municipal Analysts.

Washington, D.C., May 17, 2017 – SIFMA today received an Industry Contribution Award from the National Federation of Municipal Analysts (NFMA). The award recognizes SIFMA's contributions to issues related to municipal securities disclosure, in particular SIFMA's efforts to bring together stakeholder groups to discuss disclosure and advocate where there is common interest.

Michael Decker, managing director and co-head of SIFMA's Municipal Securities Division, received the award at a luncheon today in Washington, D.C. The NFMA specifically noted Mr. Decker's efforts to coordinate and lead an industry working group to author a letter to the Municipal Securities Rulemaking Board which recommended several enhancements to the EMMA system to aid transparency.

“I am honored to receive this award on behalf of our members,” said Mr. Decker. “SIFMA has consistently worked to improve disclosure in the markets, and we support the goals of investor protection and market transparency.”

The NFMA has presented awards annually since 1984. The awards are given to individuals or entities that further the goals of the NFMA for the enhancement and betterment of the municipal bond industry.

Contact: Katrina Cavalli, 212.313.1181, kcavalli@sifma.org

TAX - WYOMING

Brock v. State ex rel. Wyoming Workforce Services, Unemployment Insurance Division

Supreme Court of Wyoming - May 3, 2017 - P.3d - 2017 WL 1710610 - 2017 WY 47

Lien holders, who had a lien on property created by a certificate of purchase for delinquent taxes, filed an action against the Department of Workforce Services and the Internal Revenue Service (IRS) that sought to foreclose on their lien and a declaration that their lien was superior to all other encumbrances against the property.

The IRS removed the case to federal district court. The United States District Court certified a question to the state Supreme Court.

The Supreme Court of Wyoming held that lien held by lien holders, who had a lien on property created by a certificate of purchase for delinquent taxes, was superior to lien held by the Department of Workforce Services for unpaid contributions to the unemployment compensation fund.

Lien holders obtained a certificate of purchase on the property by purchasing the property for the delinquent taxes assessed against the property, after passage of the required time, “Holders of certificates of purchase of real property sold for delinquent taxes” may apply for a tax deed, and thus lien holders’ lien was a claim for taxes, which would give it priority over a claim for contributions to the unemployment compensation fund pursuant to statute.

KBRA Releases Rating Report: City of Chicago’s Second Lien Wastewater Transmission Revenue Bonds.

Kroll Bond Rating Agency (KBRA) has assigned a long-term rating of AA- with a Stable outlook to the City of Chicago’s Second Lien Wastewater Transmission Revenue Bonds, Project Series 2017A and Second Lien Wastewater Transmission Revenue Bonds, Refunding Series 2017B. KBRA has also affirmed the outstanding AA- rating and Stable outlook on the City of Chicago’s outstanding Second Lien Wastewater Transmission Revenue Bonds.

The bonds are limited obligations of the city having a claim for payment solely from Second Lien Bond Revenues that are derived from the net revenues available for bonds in the city’s sewer fund, and deposited into the Second Lien Bond Account, which claim to the net revenues available for bonds is subordinate to the claim of Senior Lien Bonds. The senior lien is open but there are no plans to issue any additional senior lien debt.

Please click on the link below to access the report:

Second Lien Wastewater Transmission Revenue Bonds

If you have any difficulties accessing the report, please contact info@kbra.com or visit www.kbra.com.

KBRA Releases Rating Report: City of Chicago, IL's Second Lien Water Revenue Bonds.

Kroll Bond Rating Agency (KBRA) has assigned a long-term rating of AA with a Stable outlook to the City of Chicago, IL's Second Lien Water Revenue Refunding Bonds, Series 2017. KBRA has also affirmed the outstanding AA rating and Stable outlook on the City of Chicago's outstanding Second Lien Water Revenue Bonds.

The City of Chicago's Second Lien Water Revenue Bonds are limited obligations of the city having a claim on payment solely from Second Lien Bond Revenues derived from net revenues available in the city's water fund, and deposited into the Second Lien Bonds Account, which claim is subordinate to the claim of Senior Lien Bonds. The senior lien is open, but has not been utilized since 2001 and KBRA is comfortable with the city management's assurances that no further senior-lien issuance is contemplated.

Please click on the link below to access the report:

Second Lien Water Revenue Refunding Bonds, Series 2017

If you have any difficulties accessing the report, please contact info@kbra.com or visit www.kbra.com.

MSRB Webinar: Municipal Advisor Solicitor Guidance.

Date: Thursday, June 22, 2017

Time: 3:00 p.m. – 4:00 p.m. ET

Description: During this free webinar, Municipal Securities Rulemaking Board (MSRB) staff will discuss the recently published guidance on the application of MSRB rules to solicitor municipal advisors. Under the MSRB's mandate to protect municipal entities and obligated persons, the MSRB has developed a core regulatory framework for all municipal advisors. The solicitor guidance comprehensively summarizes that framework and specifically addresses how that framework applies to solicitor municipal advisors, which will be discussed during this webinar.

Click here to register.

SEC and MSRB to Hold Webinar on Series 50 Exam for Municipal Advisors.

Washington, DC – The Securities and Exchange Commission (SEC) and the Municipal Securities Rulemaking Board (MSRB) today announced a joint educational webinar to assist municipal advisors with understanding their professional qualification requirements. The live webinar, scheduled for Thursday, **June 15, 2017, from 3:00 p.m. – 4:00 p.m.** ET, will provide information on signing up for the MSRB's Municipal Advisor Representative Qualification Examination (Series 50 exam), preparing to take the Series 50 exam and fulfilling municipal advisor firms' SEC registration obligations.

The MSRB's recent regulatory notice reminded municipal advisor firms that after September 12, 2017, only associated persons who have passed the Series 50 exam can engage in municipal advisory activity on behalf of the firm.

"We hope that this webinar will address questions municipal advisor firms have about the process for enrolling their associated persons to take the exam by the deadline," said MSRB Executive Director Lynnette Kelly. "The webinar should be particularly valuable for those firms that do not yet have a single Series 50-qualified municipal advisor representative associated with the firm nor any individual scheduled to sit for the exam."

The MSRB makes available on its website a list of Series 50-qualified municipal advisor representatives and their associated municipal advisor firms. Qualification information is updated weekly and is dependent on the quality of the data municipal advisor firms submit to the SEC through Form MA-I.

"Providing and maintaining accurate and up-to-date information on municipal advisor firms' initial registration forms and subsequent amendments is essential to ensuring the effectiveness of the municipal advisor registration system," said Jessica Kane, Director of the SEC's Office of Municipal Securities. "In particular, information about associated persons on Form MA-I promotes confidence in the municipal advisor registration regime and helps protect municipal entities, obligated persons, the public and, ultimately, investors. The Office of Municipal Securities is pleased to partner with the MSRB on this webinar."

During the free webinar, staff of the SEC and MSRB will review the standards of professional qualification for municipal advisors, discuss the enrollment process for taking the Series 50 exam and highlight relevant municipal advisor SEC registration obligations. Members of the public interested in viewing the webinar should register here.

Date: May 23, 2017

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

Fiscal Year 2018 Budget Addresses Infrastructure Initiatives.

President Trump's Fiscal Year 2018 Budget was released on Tuesday and the administration's Infrastructure Initiative Fact Sheet was released on Wednesday. The plans call for $200 billion in outlays, over the next ten years, for infrastructure investment. The $200 billion is to be leveraged, alongside non-Federal funding, to pay for $1 trillion in total infrastructure spending. The proposal also calls for corporatization of the air traffic control system, reform of the Inland Waterways Trust Fund, and a reduction in Federal grants to Amtrak. The transportation plan specifies an expansion of the Transportation Infrastructure Finance and Innovation Act (TIFIA) program, as well as lifting the cap on Private Activity Bonds for highways and liberalizing the use of tolling on Interstates. The budget calls for an elimination of the Transportation Investment Generating Economic Recovery (TIGER) Grant Program, and reduced the Department of Transportation's total budget by 13% from its 2017 level. The administration also called for the regulatory and permitting review to speed the construction of infrastructure projects. At a hearing of the Senate Finance Committee on May 25, on the 2018 budget and tax reform, Treasury Secretary Steven Mnuchin said in response to questioning, "Our preference is strongly to keep the interest deductibility of state and local bonds."

U.S. Administration's Fiscal Year 2018 Budget

Infrastructure Initiative Fact Sheet

King County Achieves Highest Rating for New Green Bond Program.

King County's commitment to environmental protection and sustainability has earned a "dark green" designation – the highest rating awarded by an international research institute – for its environmentally friendly green bond program that was launched this week to fund County projects with multiple benefits.

The County's new certified green bond program offers investors the opportunity to finance public projects that help the County continue its commitment to protecting the environment and confronting climate change.

In crafting its green bond program, the County followed financial market and industry best practices by submitting its program to a review by an internationally recognized leader of second opinions, the Center for International Climate and Environmental Research (CICERO).

As is the case with traditional municipal bonds, King County's green bonds are secured by the County's full faith and credit and benefit from the County's high municipal credit rating. What's unique about green bonds is that the entities issuing them can apply the borrowed funds only toward environmentally beneficial projects, such as green-energy projects, or projects that help respond to climate change impacts.

The County's first sale of green bonds today features Citigroup Global Markets as underwriter. The County is selling limited tax general obligation bonds to provide $35.2 million of funding for the capital program of the King County Department of Natural Resources and Parks' Solid Waste Division, primarily for development and construction of transfer stations and the restoration of closed landfill sites.

The County is anticipating that other projects in the future will also be good candidates for the green bond program. Such projects involve clean transportation conversions to zero-emission buses; habitat restoration to offset greenhouse gas emissions; and design and construction of green-built facilities that include recycled and energy saving materials, improve air quality, reduce water use, and achieve high ratings for sustainable construction.

As an independent, not-for-profit research institute, CICERO has been providing independent reviews of green bonds since the market's inception in 2008. CICERO works with numerous international institutional investors, banks, companies and municipalities.

CICERO second opinions are graded "dark green," "medium green" and "light green" to give investors insight into the environmental quality of green bonds.

The organization, which has been rated as the best provider of independent green bond reviews, gave King County's green bond program its highest certification of "dark green."

"CICERO's 'dark green' rating affirms King County's leadership and commitment to environmental sustainability," said Ken Guy, King County Finance Director. "We expect the green bond program, combined with our historically strong credit ratings, will encourage an increasing number of environmentally-conscious investors to participate with King County in our efforts to create a greener future."

To learn more about King County's unique green bond program, contact Felix Amerasinghe, Chief Financial Officer, King County Department of Natural Resources and Parks, at 206-477-7586.

Illinois Bonds an Opportunity for 'Bold' Investors, Citi Says.

- **Debt paying highest yields over benchmark since at least 2013**
- **Multi-notch downgrade into junk is unlikely, Citi says**

Illinois's nearly two-year budget impasse has created a buying opportunity for municipal-bond investors willing to bear the risks, according to Citigroup Inc.

With the Democrat-led legislature and Republican Governor Bruce Rauner unable to forge agreement on how to close the state's chronic budget deficits, Illinois's 10-year bonds yield 4.43 percent, or 2.45 percentage point more than top-rated municipal borrowers, according to data compiled by Bloomberg. That's the biggest premium since the indexes were started in January 2013.

That may mean it's a good time to buy, according to Citigroup. Despite the governmental gridlock, the fifth most-populous state has "strong fundamentals" and the power to tax and grow its way out of the financial hole, the bank said in a report to clients this week, citing the diverse economy and strong legal security backing its debt. While Illinois hasn't had a full-year budget in place since June 2015, it hasn't missed any bond payments and state law has required it to continue making monthly deposits to its debt-service funds.

"The state's credit rating and bond prices have suffered and may present opportunity for a bold investor," analysts Vikram Rai, Jack Muller and Loretta Bu, said. "We strongly encourage investors to take advantage of the cheapness of the front and intermediate IL GOs."

The crisis stems from a fight between Rauner and the legislative leaders over how to plug budget shortfalls that were worsened by the expiration of income-tax increases in January 2015. With agreement elusive, entities like public universities have been stung by the loss of state aid, triggering cuts to their credit ratings.

Citigroup published its report before Illinois Senate Democrats approved an income-tax hike and spending plan without Republican support, making the outlook for a bipartisan, comprehensive solution even more uncertain. The Senate bills still need approval by the House. The state has until May 31 to approve a budget by a simple majority. Starting June 1, a three-fifths majority is needed, making a deal even more difficult.

Moody's Investors Service and S&P Global Ratings have warned of potential rating cuts if the state enters a third year without a budget. Many of Citigroup's clients expect a one-notch downgrade, and that drop looks like it's already been priced in, according to the bank's analysts. A multi-notch downgrade to junk isn't likely, Citigroup said.

Bloomberg Markets

by Elizabeth Campbell

May 24, 2017, 9:34 AM PDT

- MSRB to Establish Continuing Education Requirements for Municipal Advisors.
- The Countdown to June 7, 2017….. Are You Ready?
- SIFMA: All Bonds Used for Publicly Accessible Infrastructure Should be Treated as GOs.
- SIFMA Submits Comments to the SEC on Proposed Amendments to Rule 15c2-12.
- BDA Submits Comment Letter: SEC Proposed Amendments to 15c2-12.
- Dodd-Frank Rollback Could Hinder Funding of Accounting Standards Board.
- Municipal Bond Market: A Tech Tipping Point Is Here.
- Those of you involved in the dissolution of CA redevelopment agencies should take a look at *City of Santa Maria v. Cohen*.
- And finally, Missing the Forest for the Trees (if by "Trees" You Mean "Sex Offenders") is brought to us this week by *United Union of Roofers, et. al. v. North Allegheny School District*, in which roofers' union sued school districts to enjoin the districts from running standard-issue background checks on roofers. A bold move, to be sure, but some folks might recommend that you instead hang your head and quietly slink away, rather than call attention to the fact that EIGHT members of a single roofing crew failed their background checks. Just a thought.

INDEMNITY - ARIZONA

City of Phoenix v. Glenayre Electronics, Inc.

Supreme Court of Arizona - May 10, 2017 - P.3d - 2017 WL 1929472

Worker sued city and others on theory of negligence after he developed mesothelioma caused by long-term exposure to asbestos while installing and repairing water piping on water infrastructure projects.

Case was converted to one for wrongful death upon worker's death. City filed third-party complaint against eight contractors and 82 developers seeking indemnification from liability.

The Superior Court dismissed third-party complaint, and city appealed. The Court of Appeals affirmed. Review was granted.

The Supreme Court of Arizona held that:

- Eight-year statute of repose governing actions based in contract for improvements to real property applied to city's third-party claims against eight contractors, and
- Eight-year statute of repose did not apply to city's third-party claim against developers.

Eight-year statute of repose governing actions based in contract for improvements to real property applied to city's third-party claims against eight contractors hired by city on water infrastructure projects, seeking indemnification from contractors from liability for wrongful death of worker from mesothelioma caused by long-term exposure to asbestos while installing and repairing water piping for contractors. Statute applied "notwithstanding any other statute" and thus, controlled over general statute exempting state from statutes of limitations and rendered inapplicable doctrine "nullum tempus occurrit regi" that time does not run against the king.

City code providing that developers granted permits for improvements to real property agreed to indemnify and hold city harmless city from suits arising out of any act or omission by permittee that resulted in injury to or death of any person did not create relationship between city and developers "based in contract" for development, sale, or improvements to real property, and thus, eight-year statute of repose governing actions based in such contracts did not apply to city's third-party claim against developers for indemnification from liability for wrongful death of worker from mesothelioma caused by long-term exposure to asbestos while installing and repairing water piping on water infrastructure projects.

BONDS - CALIFORNIA

City of Santa Maria v. Cohen

Court of Appeal, Third District, California - April 25, 2017 - Cal.Rptr.3d - 11 Cal.App.5th 96 - 2017 WL 1458960 - 17 Cal. Daily Op. Serv. 3962

City, in its own capacity and as successor to city's dissolved redevelopment agency, brought action against Department of Finance and its director for declaratory, injunctive, and writ relief challenging Department's determination that redevelopment property tax trust fund could not be used to pay construction bonds for parking facilities.

The Superior Court determined that city as successor was entitled to use the fund to make the bond payments only to the extent the city's lease payments for parking facilities were insufficient to cover the bond payments. City appealed.

The Court of Appeal held that:

- City was not entitled to use its redevelopment property tax trust fund to pay construction bonds for parking facilities;
- Transferring the obligation to pay the bonds to the city did not violate the city's constitutional debt limit; and
- Department's failure to appeal did not preclude the Court of Appeal from reversing the judgment to the extent that it was in the city's favor.

City, as successor to redevelopment agency, was not entitled to use its redevelopment property tax trust fund to pay construction bonds for parking facilities, regardless of whether the bond payments were "required to be paid from former tax increment revenue," since the obligations were payments scheduled to be made on revenue bonds.

Transferring the obligation to pay construction bonds for parking facilities from a dissolved redevelopment agency to the city that sponsored the agency did not violate city's constitutional debt limit, because the bond debt was held by the city in its separate capacity as the successor to the redevelopment agency, and thus the city and its general fund were insulated from direct liability.

Department of Finance's failure to appeal from the trial court judgment partially granting city's petition for writ of mandate challenging Department's determination that city's redevelopment property tax trust fund could not be used to pay construction bonds for parking facilities did not preclude the Court of Appeal from reversing the trial court's judgment against the Department to the extent that it was in the city's favor, on the city's appeal, since the city's appeal raised the issue of the correct interpretation of the controlling statute.

ZONING & PLANNING - IDAHO

Arnold v. City of Stanley

Supreme Court of Idaho, Boise - February 2017 Term - May 12, 2017 - P.3d - 2017 WL 1968326

Property owners filed a petition for judicial review after their building permit application was denied by city council.

The District Court found in favor of city, and denied property owners' petition for rehearing. Property owners appealed.

The Supreme Court of Idaho held that:

- Denial of property owners' building permit application was not subject to judicial review under Local Land Use Planning Act, and
- Neither party was entitled to attorney's fees.

City council's denial of property owners' building permit application was not subject to judicial review under Local Land Use Planning Act (LLUPA); statutory phrase applying Act to "such other similar applications required or authorized pursuant to this chapter," did not include building permit applications, where LLUPA only mentioned building permits in a section related to development of land designated on a future acquisition map.

Neither party was entitled to attorney's fees in action brought by property owners who sought judicial review after their building permit application was denied by city council, where the question of whether building permit decisions were subject to judicial review under Local Land Use Planning Act (LLUPA) had not been previously decided by a court.

COUNTIES - MISSISSIPPI

Tunica County v. Town of Tunica

Supreme Court of Mississippi - May 11, 2017 - So.3d - 2017 WL 2001158

County brought action against town and school district challenging constitutionality of local and private law requiring county to distribute portions of revenue-based gaming fee to town and school district.

The Circuit Court granted summary judgment for town. County appealed.

The Supreme Court of Mississippi held that:

- County did not have standing to challenge constitutionality of law;
- Law did not violate county's due process rights;
- Constitutional prohibition against special or local laws for benefit of individuals or corporations did not apply;
- Law did not violate constitutional prohibition against special or local laws for benefit of individuals or corporations;
- Law's requirement that certain percentages of fee be used for certain educational purposes did not violate constitutional provision requiring that support of school could be accomplished only through general laws;
- Law did not illegally bind county board of supervisors' successors in office by contract;
- Trial court was not required to hold hearing prior to granting summary judgment to town; but
- Town and school district were not entitled to attorney fees.

INVERSE CONDEMNATION - NEBRASKA

Hill v. State

Supreme Court of Nebraska - March 10, 2017 - N.W.2d - 296 Neb. 10 - 2017 WL 952106

Farmers who used water from river basin brought inverse condemnation action against Department of Natural Resources after Department issued orders and sent closing notices to holders of surface water permits in basin.

The District Court dismissed complaint, and farmers appealed.

The Supreme Court of Nebraska held that:

- Farmers did not have property rights superior to interstate Compact;
- Department's actions were not a permanent physical invasion of farmers' property;
- Department's actions did not deprive farmers of all economically beneficial use of their property; and
- Department's failure to curtail ground water pumping that depleted surface waters was not a taking.

Farmers who used water from river basin did not have property rights superior to interstate Compact that allowed diversion of surface water from basin for beneficial use, and thus Department of Natural Resources order and closing notices sent to farmers was not a taking in farmers' inverse condemnation action. Compact was federal law, and as federal law, the allocations set forth under the Compact were supreme law in State, and the Department had to ensure State remained within its allocation under the Compact.

Regulatory actions undertaken by Department of Natural Resources, in which Department sent order and closing notices sent to farmers who used river basin, was not a permanent physical invasion of farmers' property in farmers' inverse condemnation action; farmers' property rights to use the water were subject to Department's enforcement of compliance with Compact between states for use of river basin.

Regulatory actions undertaken by Department of Natural Resources, in which Department sent order and closing notices sent to farmers who used river basin, did not deprive farmers of all economically beneficial use of their property, although farmers showed there was a decrease in production during two growing seasons on the farmers' land, the data indicated there was still production on the land.

Department of Natural Resources did not have authority to administer a river basin's ground water users for the benefit of surface water appropriators, and thus Department's failure to curtail ground water pumping that depleted surface waters that was used by farmers was not a taking to support inverse condemnation action brought by farmers against Department.

EMINENT DOMAIN - NEW YORK

Citibank, N.A. v. Village of Tarrytown

Supreme Court, Appellate Division, Second Department, New York - April 19, 2017 - N.Y.S.3d - 149 A.D.3d 931 - 2017 WL 1394145 - 2017 N.Y. Slip Op. 02981

Property owner brought action seeking review of village's determination that it was necessary to acquire portion of owner's property by eminent domain.

The Supreme Court, Appellate Division, held that owner's assertion that alternate sites would better serve purposes of village, which determined that it was necessary to acquire portion of owner's property for public parking, was not a basis for relief under judicial review provision of eminent domain law. Village, as condemnor, had broad discretion to decide which land was necessary to fulfill its stated purpose.

IMMUNITY - NEW YORK

Olenick v. City of New York

Supreme Court, Kings County, New York - May 4, 2017 - N.Y.S.3d - 2017 WL 1743179 - 2017 N.Y. Slip Op. 27143

Cyclist brought action against city to recover for personal injuries allegedly sustained in a collision with a pedestrian on a bridge.

City moved for summary judgment and to dismiss.

The Supreme Court, Kings County, held that:

- City's development and implementation of plan to update bicycle and pedestrian path markings on bridge to increase visibility was a proprietary function;
- City was not entitled to qualified immunity; and
- Issue of material fact existed as to whether city's failure to conduct safety study contributed to collision.

City's development and implementation of plan to update bicycle and pedestrian path markings on bridge to increase visibility was a proprietary function analogous to roadway planning, design, and maintenance, precluding governmental function immunity in cyclist's negligence claim against city arising from collision with pedestrian.

City was not entitled to qualified immunity in negligence claim brought by cyclist to recover damages for injuries sustained during collision with pedestrian while in bike path on bridge based on its development of a plan to update bicycle and pedestrian path markings on bridge to increase visibility, where city had not conducted a study regarding avoidance of collisions between cyclists and pedestrians before creating the plan.

Genuine issue of material fact existed as to whether city's failure to conduct safety study of collisions between pedestrians and bicycles on bridge before developing plan to update bicycle and pedestrian path markings on bridge to increase visibility was proximate cause of cyclist's collision with pedestrian while he was biking in bike path on bridge, precluding summary judgment in favor of city in cyclist's negligence claim.

CONSTRUCTION - PENNSYLVANIA

United Union of Roofers, Waterproofers, and Allied Workers, Local Union No. 37 v. North Allegheny School District

Commonwealth Court of Pennsylvania - April 18, 2017 - Not Reported in A.3d - 2017 WL 1382227 - 208 L.R.R.M. (BNA) 3607

School Districts appealed an order of the Court of Common Pleas granting a preliminary injunction to United Union of Roofers, Waterproofers, and Allied Workers, Local Union No. 37 (Union). The preliminary injunction enjoined School Districts from conducting background checks mandated by the Public School Code of 19491 (School Code) and the Child Protective Services Law on Union members assigned to roofing projects on School District property because School Districts did not show that the workers will have "direct contact with children." The trial court further ordered School Districts to take corrective action to permit Union's members who had been excluded by the unauthorized background checks to have access to the work sites.

School Districts appealed, arguing that the trial court erred in granting the preliminary injunction because Union failed to establish any of the legal prerequisites for injunctive relief.

The Commonwealth Court agreed, reversing the trial court's order.

"As noted, the trial court granted a preliminary injunction that did two things: (1) allowed previously disqualified Union members access to School Districts' work sites, and (2) prohibited School Districts from doing background checks on Union members unless the position applied for involved direct contact with children. In doing so, the trial court largely focused on the level of interaction between Union members and children at School Districts' project sites and determined that Union was likely to succeed on the merits of its declaratory judgment action because its members do not have direct contact with children."

"We will not address that question. The underlying declaratory judgment proceeding will resolve the legal question of what constitutes "direct contact with children" under the School Code. Likewise, it will resolve the factual question of whether Union members actually have that level of contact with children. Accordingly, we decline to address these matters at this juncture. However, we will reverse the grant of the preliminary injunction because the injunction does not restore the parties to the status quo during the pendency of the underlying complaint."

"By enjoining School Districts from performing their standard background checks, the trial court disturbed the status quo. As established by the evidence, since at least 2011 School Districts have been doing background checks on employees of independent contractors required by Section 111 of the School Code without ascertaining whether those employees will have direct contact with children. Requiring School Districts 'to show a causal connection between any criminal offenses and the position for which employees are to work to justify an exclusion' does not preserve the status quo. Instead, it institutes a new status quo by revising School Districts' longstanding background check practices."

GOVERNMENTAL UNITS - TEXAS

Marino v. Lenoir

Supreme Court of Texas - April 28, 2017 - S.W.3d - 2017 WL 1553095 - 60 Tex. Sup. Ct. J. 832

Patient's mother and father of patient's living child brought medical malpractice suit against resident physician, among others, following the death of patient and her two unborn children.

The District Court granted physician's motion to dismiss under the Tort Claims Act's election-o--remedies provision for employees of governmental units. Mother and father appealed. The Houston Court of Appeals reversed in part and remanded. Physician petitioned for review.

The Supreme Court of Texas held that physician was not an employee of a governmental unit, and thus dismissal under the Act was not warranted.

State university's medical foundation did not have legal right to control resident physician's tasks at clinic, as required for physician to be "employee" of governmental unit, and thus dismissal of medical malpractice action against physician was not warranted under Tort Claims Act's election-o--remedies provision. Even though foundation reserved right to change terms and conditions of employment, clinic's teaching staff and program director assigned responsibility to physician, foundation did not own clinic, and foundation's bylaws stated that it did not control physicians who worked at hospitals it did not own.

TAX - NEW JERSEY

White Oaks Country Club, Inc. v. Township of Franklin

Tax Court of New Jersey - March 7, 2017 - 2017 WL 931393

State Department of Environmental Protection ("DEP") alleged that its property – on which a for-profit entity operated a golf course and related amenities – was exempt from local property taxes.

The Tax Court concluded that the statutory requirements for an exemption set forth in N.J.S.A. 54:4–3.3 were satisfied for the subject property for tax year 2012.

"The exemption at issue here is established in N.J.S.A. 54:4–3.3, and does not require charitable use of the subject property. It is, instead, a public use, consistent with the statutory mandate of the agency that owns the property, that determines whether an exemption applies. The fact that plaintiff does not engage in charitable activity—indeed, there is no dispute that plaintiff is a for-profit business enterprise—does not defeat the exemption in this case. Plaintiff's use of the property furthers the public purpose of the DEP by providing recreational opportunities to the public on land purchased with Green Acres funds."

NCPPP Lauds Pioneers of P3 Transportation Infrastructure.

The National Council for Public-Private Partnerships (NCPPP), the leading association in the field, is proud to announce its inaugural list of the Top 10 P3 Transportation Infrastructure Pioneers.

"Public-private partnerships are as much about the people driving the projects as they are about the projects themselves," said Executive Director Todd Herberghs. "It takes tenacity, creativity and will to incorporate this alternative project delivery method into the traditional financing and procurement model."

A select committee of NCPPP members identified 10 people who have embodied these characteristics while contributing meaningfully to the public or private sector sides of the field. These individuals have seen partnerships as another path forward to improving our national infrastructure network and have overseen the completion of some of the most significant transportation projects and the passage of some of the most groundbreaking P3 laws in the past three decades.

Continue reading.

NCPPP

May 17, 2017

S&P: Stock Market Gains Lift Revenues In California's Revised Budget Plan For Fiscal 2018.

California's revised budget proposal for fiscal 2018 aims to keep the state's finances on a structurally oriented path while adding to its budget reserves, in S&P Global Ratings' view.

Continue Reading

May 15, 2017

Munis in Focus: Guided by Value as the Policy Outlook Brightens.

While we think it's too early to shout "all clear," investors now have more information about policies likely to affect the municipal bond markets this year, and relative valuations are looking more attractive than they did a few months ago.

PIMCO's 2017 Municipal Market Outlook called for greater caution this year due to uncertainty on a number of fronts: From a macro perspective, rising inflation, the potential for large fiscal expansion following the U.S. Republican election sweep, and fears of an imminent trade war painted a potentially volatile picture. Municipals underperformed other U.S. credit asset classes following the 2016 election as tax reform, near the top of the new administration's agenda, loomed over the market.

But so far this year, flows into municipal bond funds have been positive (if only marginally), and recent trends point to further potential upticks as the policy outlook turns more favorable.

Continue reading.

BARRON'S

BY DAVID HAMMER AND MATTHEW SINNI

MAY 22, 2017

The Countdown to June 7, 2017….. Are You Ready?

On June 7, 2017, the Final Issue Price Regulations (the "**Final Regulations**") become effective. More specifically, the Final Regulations apply to bonds sold on or after June 7, 2017 and without regard to the bonds' issuance date. Suffice it to say, if you have read our blog or been practicing in the area of municipal finance for any period of time, you know that June 7, 2017 is a date that is YEARS in the making.

Continue reading.

The Public Finance Tax Blog

By Joel Swearingen on May 19, 2017

Squire Patton Boggs

Saudis' $20 Billion Wager With Blackstone Marks Record Bet on U.S. Public Works.

Trump's infrastructure push cited by Saudis making huge commitment toward Blackstone's $40 billion goal

Saudi Arabia joined the parade of investors into U.S. public works by pledging a record investment with Blackstone BX 6.73% Group LP.

The country's Public Investment Fund agreed to commit $20 billion to Blackstone's new infrastructure fund in the latest push around the world by large investors to buy up airports, pipelines and other public projects, particularly in the U.S.

Blackstone said Saturday the kingdom's money would seed an investment fund that the New York private-equity giant hopes will reach $40 billion and have spending power of up to $100 billion once debt is added to the mix.

The commitment shows how Blackstone continues to distance itself from Wall Street rivals by raising ever larger sums from investors like sovereign-wealth funds, public pensions and rich families. With assets of $368.2 billion as of March 31, it manages nearly twice as much as its closest competitor, Apollo Global Management LLC, and each of Blackstone's four platforms—real estate, private-equity, hedge funds and credit—are among the largest investing businesses of their kind.

Saudi Arabia's planned $20 billion investment alone would be about 25% larger than the biggest infrastructure fund ever raised, a $15.8 billion pool Global Infrastructure Partners completed earlier this year, according to data from industry tracker Preqin. Global Infrastructure Partners, or GIP, is also based in New York and its chief executive, Adebayo Ogunlesi—like Blackstone Chief Executive Stephen Schwarzman —is one of the business leaders President Donald Trump has named to a presidential advisory group.

Last year, investors committed a record of about $56 billion to private infrastructure funds and fund managers collected another $29 billion during the first quarter of this year, according to Preqin. The data provider has said managers of more than 150 other private infrastructure funds are soliciting investors for another $100 billion or so.

Carlyle Group LP and BlackRock Inc. are among other big investment firms that moved recently to beef up their infrastructure investing businesses.

The Blackstone fund will have a broad mandate to find investments, according to a person familiar with the firm's plans, with the ability to invest in things such as hospitals as well as assets that are more typically considered infrastructure, such as pipelines, roads and utilities. Also, unlike most of the private funds the New York firm manages, which lock up investors' cash for 10 years or so, the infrastructure fund will have no expiration date. That structure gives the firm more time to find investments and reduces the pressure to sell them on a deadline.

Both features could help Blackstone circumvent two big issues infrastructure investors have encountered in the U.S.: limited investment opportunities outside the energy sector, and uncertainty over who will eventually buy some assets, such as roads and municipal utilities.

Saudi officials, who are seeking to diversify the kingdom's economy by investing its oil wealth, on Saturday alluded to Mr. Trump's campaign promises to steer $1 trillion into U.S. public works. The Public Investment Fund managing director, Yasir Al Rumayyan, said the pact reflects "our positive views around the ambitious infrastructure initiatives being undertaken in the United States as announced by President Trump."

Yet the flood of cash into infrastructure funds can mostly be attributed to fairly reliable returns that sometimes beat the stock market and often outperform private-equity funds that make arguably riskier investments, such as corporate buyouts, according to Preqin. Still, there have been some prominent flops, including a rash of bankrupt toll roads.

Through late last year, the median annualized return after fees from infrastructure funds launched between 2004 and 2013 has ranged from 5.7% for those that began investing in 2007 to 14.4% for funds launched in 2004, according to Preqin.

Blackstone's foray into infrastructure won't be its first as it once struggled to raise a fund in the wake of the financial crisis. The executives who led the effort left the firm and in 2011 launched their own firm, Stonepeak Infrastructure Partners.

Saturday's pact was announced in Riyadh during Mr. Trump's visit to Saudi Arabia. The president has called boosting private investment in U.S. infrastructure a priority of his presidency.

The Wall Street Journal

By Ryan Dezember

Updated May 20, 2017 4:55 p.m. ET

Write to Ryan Dezember at ryan.dezember@wsj.com

Dodd-Frank Rollback Could Hinder Funding of Accounting Standards Board.

The anticipated rollback of the 2010 Dodd-Frank financial-overhaul law could affect funding the Government Accounting Standards Board receives, according to the not-for-profit organization that oversees it.

The board, known as the GASB, sets financial accounting and reporting standards for state and local governments in the U.S.. The Financial Accounting Foundation is responsible for the oversight and administration of the activities of both the GASB and the Financial Accounting Standards Board, which is responsible for standards of both public and private companies as well as not-for-profit organizations.

A provision in Dodd-Frank allows the foundation to charge a fee for GASB's services. The fee is paid by broker dealers regulated by the Financial Industry Regulatory Authority, or FINRA, that trade in the municipal bond market.

Before the introduction of the provision, the board was voluntarily funded by organizations that are required to follow the standards the GASB writes, creating a potential conflict of interest, said Matthew Broder, vice president of public affairs at the foundation.

"For the past six years, the GASB has enjoyed reliable and independent funding fees to support operations," he said. The funding could be threatened if the Dodd-Frank Act is pared back, Mr. Broder added.

GASB fees made up 18% of the Financial Accounting Foundation's total revenue in 2016. The organization is also funded by fees for FASB's services, that come from a provision in the 2002 Sarbanes-Oxley corporate-governance law. FASB is funded through fees paid by publicly-listed companies and entities in the U.S.. More than half of the foundation's revenue in 2016 came from such fees.

The scaling back of financial regulations faces opposition. The Council of Institutional Investors, an advocacy group, sent a letter to the House of Representatives Wednesday asking them to oppose the Financial Choice Act, a bill that aims to roll back both Sarbanes-Oxley and Dodd-Frank.

THE WALL STREET JOURNAL

By RHEAA RAO

May 19, 2017 7:55 am ET

[Senate Environment and Public Works Hearing on Financing Infrastructure.]

On Tuesday, May 16, the Senate Environment and Public Works Committee held a hearing entitled "Leveraging Federal Funding: Innovative Solutions for Infrastructure." The hearing focused on different funding mechanisms for infrastructure projects. Witnesses discussed the advantages and disadvantages of public-private partnerships (P3s) as compared to direct federal spending from the Highway Trust Fund and various Department of Transportation Grants.

SIFMA Hearing Summary

[Hearing with Secretary Chao Held by Senate Environment and Public Works Committee.]

On Thursday, May 18, the Senate Environment and Public Works Committee held a hearing with Secretary of Transportation Elaine Chao. Senators asked Chao for information about the Trump administration's infrastructure goals, and provided their thoughts on funding mechanisms for infrastructure projects. Chao said that the administration would release core principles for its infrastructure program in May, with a broader legislative package due in Q3 2017.

SIFMA Hearing Summary

[Supreme Court Rules Municipalities Have Standing To Sue Under The FHA, But Raises The Bar On Showing Proximate Cause.]

On May 2, 2017, the United States Supreme Court held that a municipality has standing to sue for injuries under the Fair Housing Act ("FHA") for discriminatory lending. However, the Court declined to decide whether the municipality's injury was proximately caused by the alleged FHA violation.

The Proceedings in the Southern District Court of Florida and Eleventh Circuit

The City of Miami, Florida, (Miami) filed complaints in the Southern District of Florida (District Court) against two national banks (Banks) alleging violations of the FHA. Miami alleged that the Banks engaged in discriminatory lending by providing minorities with home loans containing less favorable terms than similarly situated nonminority borrowers. Miami also claimed that the Banks failed to extend fair refinancing and loan modification opportunities to minorities. Miami claimed that as result of these alleged FHA violations, minorities were unable to stay current on their mortgages, resulting in increased foreclosures in minority communities. As a result of these foreclosures, property values in the minority communities supposedly decreased, which affected the amount of property taxes Miami claimed that it could collect. Miami also alleged that the foreclosures resulted in blight within these communities, resulting in increased expenditures of municipal services, such as police and fire departments in those communities.

The District Court dismissed Miami's complaints, finding that Miami's injuries were purely economic and not discriminatory and therefore fell outside the zone of interests that the FHA was intended to protect. The District Court also held that Miami failed to show how its injuries were proximately caused by the Banks' lending practices.

Miami appealed the District Court's decision to the Eleventh Circuit which held that Miami's injuries fell within the zone of interests contemplated by the FHA and that Miami adequately alleged its injuries were proximately caused by the Banks' alleged lending practices. In finding that Miami sufficiently pled its alleged injuries were proximately caused by the Banks in order to survive a motion to dismiss, the Eleventh Circuit focused solely on whether Miami's injuries were a foreseeable result of predatory lending.

The United States Supreme Court's Majority Opinion

The Supreme Court was faced with two questions: (1) whether Miami had adequately alleged standing to bring an FHA claim and (2) whether Miami had adequately alleged that the alleged lending misconduct proximately caused Miami to lose property-tax revenue and spend more on municipal services.

The Supreme Court, in an opinion written by Justice Breyer, conducted its analysis in two parts. First: (1) in a 5-3 vote, the Court agreed with the Eleventh Circuit that Miami had standing to sue under the FHA. In an outcome joined by the entire Court, it decided that alleging "foreseeability alone" is not enough to meet the FHA's proximate cause requirement. The Supreme Court declined to apply its proximate cause formulation to Miami's allegations. Instead, the Court tasked the Eleventh Circuit with determining whether Miami's alleged injuries were proximately caused by the Banks' actions.

In reaching its conclusion, the Court determined that Miami's injuries were within the zone of interests the FHA protects. The Supreme Court focused on the definition of "aggrieved person" as defined by the FHA. Under the FHA, an "aggrieved person" has standing to bring an action. The Supreme Court, citing its previous ruling on the definition of "aggrieved persons" under the prior version of the FHA, noted that "aggrieved person" is broadly defined to include any person who claims to have been injured by a discriminatory housing practice or believes that such injury will occur. Adopting the same broad definition of aggrieved persons under the amended FHA, the Court noted that Congress failed to limit the Court's broad definition of "aggrieved persons" when it amended the FHA and, therefore, acquiesced to the Court's definition of the term. The Court further compared Miami's claims to those made by a municipality in *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1979) . In *Gladstone*, the Court ruled that the village had standing to sue under the FHA based on alleged injuries due to reduced integration in the community, which resulted in lower tax revenues. The Court noted that Miami's injuries, reduced property taxes and increases in expenditures for municipal services, were sufficient injuries contemplated by the broad definition of "aggrieved persons."

In holding foreseeability alone is insufficient to show proximate cause, the Court cited the well-established common law principle that any injury must be proximately caused by the alleged conduct. The Court noted that although it may be foreseeable that a municipality might be injured by the Banks' alleged practices, the FHA requires a direct relationship between the injury and the alleged violative conduct. Applying common law principles, the Court noted that the injury suffered by Miami must occur within the "first step" of the alleged act. The Court also noted that due to the nature of the housing market and its economic and social implications, nothing in the FHA suggests that Congress intended to allow a suit for injuries merely tangentially related to an alleged violation of the FHA and doing so would result in "massive and complex damages litigation."

The Court, however, declined to dictate the boundaries of proximate cause under the FHA or to apply its ruling to the allegations of the complaints. Instead, the Court vacated the judgments below and remanded to the Eleventh Circuit for that court to apply the new proximate cause formulation.

The Concurrence and Dissent By Justice Thomas

In his Opinion, Justice Thomas stated that he would have held that (1) Miami's injuries fell outside of the FHA's zone of interests and, therefore, Miami lacked standing to bring suit; and (2) that Miami's injuries were too remote to satisfy the FHA' proximate cause requirement. However, Justice Thomas concurred with the majority's decision that foreseeability alone is insufficient to show proximate cause.

In addressing Miami's standing, Justice Thomas distinguished *Gladstone* and the other FHA cases upon which the majority opinion relied on the basis that those cases "at least arguably" involved discriminatory injuries falling within the zone of interests. Justice Thomas described the "quintessential 'aggrieved person'" as "a prospective home buyer or lessee discriminated against during the home-buying or leasing process." Justice Thomas noted that Supreme Court precedent extended "aggrieved persons" status to those who live in a segregated neighborhood, resulting from discriminatory housing practices, and that these cases illustrate the outer limits of protected interests under the FHA. He also noted that Miami's interests are purely economic, unlike those claimed in *Gladstone*, which included both economic injury and changes to the "racial composition" of the community resulting from discriminatory practices. Justice Thomas stated that the FHA was not intended to redress purely economic injuries.

In addressing Miami's lack of proximate cause, Justice Thomas wrote that the causal links between Miami's injuries and the Banks' alleged violations were "exceedingly attenuated," observing that there was a lengthy and "attenuated chain of causation" between the Banks' alleged actions and Miami's injury. Pointedly, Justice Thomas predicted the "Court of Appeals will not need to look far to discern other independent events that might well have caused the [Miami's] injuries."

Practical Impact

The Supreme Court's decision establishes a potentially expansive zone of interests for FHA claims brought by municipalities, thereby recognizing standing for plaintiffs situated similarly to Miami, assuming that they can allege the requisite proximate causation. This portion of the opinion may encourage municipalities to bring claims against mortgage lenders and servicers under the Act.

The Supreme Court's holding that foreseeability alone is insufficient to allege proximate cause raises the bar for alleging proximate cause but does not fully clarify what is required in the FHA claim context. However, Justice Thomas' delineation of the many causal links between the Banks' alleged actions and Miami's injuries shows why it will likely be difficult for Miami and other municipalities to allege proximate cause in attempting to recover lost property taxes and other purely economic damages.

Article by David N. Anthony, Amy Pritchard Williams, Andrew B. Buxbaum and David Long, Jr.

Last Updated: May 12 2017

Troutman Sanders LLP

Green Bonds: Fitch Ratings and Market Overview.

Green bonds are debt securities issued to raise capital specifically to support climate related or environmental projects.

Fitch Ratings provides credit ratings for green bonds based on the underlying credit risk in line with relevant sector criteria. For specific issues, this includes standard credit considerations used to assess credit risk including vulnerability to default and an expectation of relative recovery rates in the event of default. Fitch does not assess the environmental integrity – the "greenness" – of the bond or its stated use of proceeds.

Continue reading.

Donald Trump Signs Measure Ending Safe Harbor for State-Run Private-Sector Plans.

Legislation removing safe harbors for states to implement private-sector retirement programs was signed Wednesday by President Donald Trump, who signed a similar measure against cities and large political subdivisions on April 13.

Rep. Tim Walberg, R-Mich., chairman of the Education and the Workforce Subcommittee on Health, Employment, Labor, and Pensions, in a statement called the safe harbors "a misguided regulatory loophole that would discourage small businesses from providing retirement benefits and put the hard-earned savings of workers at risk."

Mr. Walberg chaired a subcommittee hearing Thursday on regulatory barriers to retirement saving, including what he called the "flawed fiduciary rule" from the Department of Labor that becomes effective June 9. Allowing for more electronic disclosure in retirement accounts and easing federal restrictions on open multiple employer plans, would help improve access to retirement savings programs, Mr. Walberg and several witnesses said at the hearing.

PENSIONS & INVESTMENTS

BY HAZEL BRADFORD · MAY 18, 2017 2:36 PM · UPDATED 4:08 PM

Tax-Exempt Financing For Waste Disposal/Recovery And Wastewater Treatment.

Introduction

Tax-exempt bond financing is available for certain water and sewage, solid waste disposal/recovery project, waste-to-energy projects, and wastewater treatment projects. Bond financing may be available for public, private and public-private partnership projects. Bonds might be issued directly by a city or a county for government-owned project pursuant to Georgia's Revenue Bond Law. A privately owned and operated project might be financeable through Georgia's Development Authorities Law. A government-owned project or a public-private partnership project might be financed with Georgia's Resource Recovery Development Authorities Law or Georgia's Regional Solid Waste Management Authorities Law. In order for the bonds to be issued to qualify for tax-exemption, additional requirements will apply. This memorandum provides a brief overview.

Revenue Bond Law

The Revenue Bond Law authorizes every city and county to issue revenue bonds for the purpose of financing various government-owned undertakings, including projects for the collection, treatment and distribution of water, the collection, treatment, re-use or disposal of solid waste, and for the collection, treatment and disposal of sewage, waste and storm water. Such projects are to be operated by the city, county or authority on a revenue-producing basis, and bonds issued for such purpose may be secured only by revenues of such a project, or other revenue-producing undertakings of the city, county or authority.

Development Authorities Law

The Development Authorities Law creates a development authority that can be activated for any city or county to issue revenue bonds for projects including water pollution control facilities and solid waste disposal facilities. A water pollution control facility is any property used to abate or control water pollution or contamination by removing, altering, disposing or storing pollutants, contaminants, wastes or heat, including the necessary pumping, power and other equipment, sewers, holding ponds, lagoons and related facilities, if such facilities are in furtherance of applicable federal, state or local standards for the abatement or control of water pollution or contamination. A solid waste disposal facility is any property used for the collection, storage, treatment, utilization, processing or final disposal of solid waste, including garbage, refuse, or other discarded solid materials, and also solid waste materials resulting from industrial and agricultural operations and from community activities, but excluding domestic sewage.

No project financed under the Development Authorities law may be operated by a development authority or by any city, county or other governmental subdivision, but must be leased or sold to one or more persons, firms or private corporations. The lessee or purchaser must be required to pay all costs of operating and maintaining the lease or purchased property and pay rentals or installments in amounts sufficient to pay the principal and interest and premium, if any, on all bonds and other obligations issued for the project.

Resource Recovery Development Authorities Law and
Regional Solid Waste Management Authorities Law

The Resource Recovery Development Authorities Law and the Regional Solid Waste Management Authorities Law are two similar pieces of legislation creating in each city or county authorities denominated either a resource recovery development authority or a solid waste management authority. Such authorities have power to issue revenue bonds to finance projects for the collection, transportation, management, storage, treatment, utilization, processing or final disposal of solid waste, or the conversion of solid waste or resources contained therein into steam, electricity, oil, charcoal, gas or other products or energy sources, including any property used in connection with the facility for the extraction, collection, storage, treatment, processing, utilization or final disposal of resources contained in solid waste. Such authorities also have power to finance any property used in the extraction, collection, storage, treatment, processing or utilization of water resources and the conversion of such resources into any useful form of energy. A resource recovery development authority expressly authorizes projects similar to those described above for the sewage sledge. A solid waste management authority or a resource recovery development authority can be activated jointly or on a regional basis by any number of cities or counties.

Distinctive to resource recovery development authorities and solid waste management authorities are their ability to enter into intergovernmental contracts with cities and counties, and thus engage in contract revenue bond obligation financing. One or more cities and counties and one of these authorities can finance a project and avoid the requirement for the holding of a voter referendum to authorize general obligation bonds and the requirement that city or county revenue bonds be secured only by revenue-producing undertakings by engaging in a contract revenue bond financing. The intergovernmental contracts provision of the Georgia Constitution permits two or more public bodies to contract for a term up to 50 years for the provision of services which the contracting parties are authorized by law to undertake or provide. Consequently, one of these authorities can issue its revenue bonds for a project and enter into a contract to provide the use of the project to the city or county, and the city or county can pledge its full faith and credit to that contract. That contract can be pledged to the payment of the authority's revenue
bonds, which are treated in the financial marketplace, in effect, as the general obligations of the city or county.

Resource recovery department authorities also have power to enter into leases of project or contracts with respect to the use of project with private persons, firms and corporation. Thus, all or any part of the use of a project may be transferred to private parties, enabling private-public partnerships for solid waste disposal and reclamation facilities.

Governmental Projects versus Private Activity Projects

If a waste or wastewater project is owned and operated by a government unit, or owned by a government unit and operated by a private company under a qualifying management contract, tax –exempt governmental bonds may be utilized for the financing. For more information on governmental bonds see our "Overview of Governmental Bond Financing." Such financings are not subject to narrow constraints on the types and amounts of property that can be financed, the necessity to obtain an allocation of a limited amount of bond issuing authority (volume cap) available to the State, the need to publish and conduct a public hearing, the limitation on the amount of issuance costs, the applicability of alternative minimum tax to interest earned on the bonds and, in some cases, the tax disadvantages placed on the purchase of such bonds by banks and other financial institutions. However, if the project is to be owned or substantially utilized by private parties, bonds issued will be treated as "private activity bonds" and subject to these restrictions (except that the need to obtain an allocation of volume cap does not apply to a solid waste facility that is government-owned but used by private parties).

If a facility is privately owned, any bonds issued would be treated as private activity bonds. Also, bonds are private activity bonds if the project financed is to be used more than 10%, directly or indirectly, in a private trade or business and if payments from or property of a private business are to secure or repay, directly or indirectly, 10% or more of the bonds. For example, if a government-owned facility is contracted on a long-term basis to process waste from private companies that would utilize more than 10% of the capacity of the facility, this private use satisfies the "use" portion of the test, and the revenues to be paid under the contract probably satisfy the "security" portion of the test, and bonds issued for the project would be private activity bonds.

Requirements for Private Activity Solid Waste Projects

A solid waste facility must comply with several specific requirements to utilize tax-exempt private activity bonds. Such a facility or portion thereof must be used for the collection, storage, treatment, utilization, processing or final disposal of solid waste. "Solid waste" for this purpose is defined as garbage, refuse, and other discarded solid materials including solid waste materials resulting from industrial, commercial and agricultural operations and from communities activities, but does not include solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents, dissolved materials in irrigation return flows or other common water pollutants. The solid waste must be useless, unused, unwanted or discarded solid material that has no market or other value at the place where it is located. If a person is willing to remove such property at his own expense, but is not willing to purchase such property at its location at any price, such material is treated as waste. The material may be valuable in the hands of the recycler, but retains its classification as waste if it was valueless in its original location, taking collection and transportation costs in account.

Although any governmental recycling and waste-to-energy project may be financeable with tax-exempt bonds, there are limitation on the types of private activity projects that qualify for tax-exempt financing. A facility that disposes of solid waste by reconstituting, converting or otherwise recycling it into material which is not waste is financeable on a tax-exempt basis as a solid waste disposal facility only so long as the solid waste constitutes at least 65% by weight or volume of the total materials introduced into the recycling process. A recycling facility will not fail to qualify for tax-exempt financing only because it operates at a profit. However, private activity facilities that further process saleable waste-derived products into finished products are not financeable with tax-exempt solid waste bonds (although they might be financeable as tax-exempt manufacturing bonds — See our "Overview of Private Activity Bonds and Incentives). If the facility has both a solid waste disposal function and another function, only the portion of the cost of the property allocable to the solid waste disposal function may be financed with tax-exempt solid waste bonds. For example, metals and glass can be separated from solid waste and then further sorted, sized, cleaned and pulverized. The private activity solid waste bonds cannot be used, however, to finance facilities that would further process the saleable metal or glass into a finished product.

If materials or head are recovered from the solid waste disposal process, the waste disposal function includes processing of such materials or heat into saleable or useable form, but does not include further processing which converts the materials or heat into other products.

Financing for Private Activity Wastewater Projects

A private activity wastewater, pretreatment facility may be financed with tax-exempt bonds only if it is deemed functionally related and subordinate to a government-owned sewage system. Sewage disposal facilities are defined as property used for the collection, storage, treatment, utilization, processing or final disposal of sewage. Facilities tied directly to sewage facilities that pretreat waste, if the waste is required to be treated prior to release into the sewage system, may constitute a functionally related and subordinate facility that is financeable with tax-exempt bonds. Property is not a functionally related and subordinate to a sewage facility if it is not a character size commensurate with the character and size of the sewage facility.

Summary

Georgia law provides a number of issues and methods for issuing tax-exempt bonds for solid waste disposal, recovery, recycling and waste-to-energy projects, and sewage and wastewater treatment and pretreatment projects. However, if the facility is to be privately owned or substantially used in a private trade or business, special federal tax rules come into play to determine whether and to the extent the facility can be financed with tax-exempt bonds. With the proper legal structuring, however, many privately-utilized waste projects, as well as governmental projects, can be financed on a tax-exempt basis.

Article by James P. Monacell

Last Updated: May 4 2017

Smith Gambrell & Russell LLP

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Transportation Developments In The Trump Administration's First 100 Days: Holland & Knight

In January 2017, Holland & Knight Transportation & Infrastructure lawyers and senior advisors prepared 20 posts for the 20 days leading to President Donald Trump's inauguration regarding what to expect from the Trump Administration, the first session of the 115th Congress and how business planning could be impacted for those in the industry. In this alert, we have prepared updates, if relevant, on transportation-related developments in the Trump Administration's first 100 days, including issues involving Maritime, Motor Carriers, Rail and Antitrust.

Continue reading.

Article by Linda Auerbach Allderdice, J. Michael Cavanaugh, Lawrence J. Hamilton II, David C. Kully, Michael T. Maroney, Andrew J. Steif, Eric Lee and Jameson B. Rice

Last Updated: May 9 2017

Holland & Knight

Why June Is Important For Muni Bond Investors.

While Puerto Rico continues to dominate the muni market headlines, trading in Puerto Rico bonds has totaled less than 3% of muni trading volume so far this quarter (through May 15, according to MSRB data from Bloomberg).

With the bulk of attention focused elsewhere, muni yields have generally moved lower so far this year, lifting most of the muni indices into positive territory. Bond prices rise when yields fall.

Continue reading.

ETF.COM

PATRICK LUBY

May 18, 2017

Patrick Luby is the municipals strategist with CreditSights Wealth.

[U.S. Conference of Mayors to Stress Importance of Tax-Exempt Municipal Bonds During Infrastructure Week.]

WASHINGTON, DC–(Marketwired – May 16, 2017) – On the heels of President Trump reaching 100 days in office, U.S. Conference of Mayors (USCM) President Oklahoma City Mayor Mick Cornett will add his voice to the need for additional infrastructure investment and the preservation of the tax exemption on municipal bonds at events in the nation's capital during Infrastructure Week (May 15-19).

On Wednesday, May 17, Mayor Cornett will join other local as well as state leaders at two events to emphasize the vital importance of protecting tax-exempt bonds as the key tool in supporting local infrastructure investment. In the morning, at 10 am, he will participate in a joint forum of the National Association of Counties, National League of Cities and The United States Conference of Mayors to discuss infrastructure investment and the pressing need to protect tax-exempt bonds. In the afternoon, at 2 pm, Mayor Cornett will join a "Big 7" state and local government organizations briefing on Capitol Hill, where he will further emphasize the importance of tax-exempt bonds for cities. See schedule below.

For more than a century, municipal bonds have enjoyed tax-exempt status and have been the primary method by which state and local governments finance public capital improvements, mostly infrastructure. These projects are engines of job creation and economic growth.

Over the last decade, tax-exempt municipal bonds have been used to finance critical infrastructure including the construction of schools, hospitals, airports, affordable housing, water and sewer facilities, public power and gas utilities, roads and public transit. According to USCM data, local and state governments financed nearly $1.7 trillion in infrastructure projects through tax-exempt municipal bonds from 2003 to 2012. In the absence of such financing, it would have cost cities up to $500 billion more — dramatically increasing the costs borne by taxpayers for critical infrastructure projects.

"As Congress discusses tax reform measures in the coming months, mayors across the country will fight to preserve the tax exemption on municipal bonds so that we can continue to repair crumbling roads, bridges, water systems, and schools," said Mayor Cornett. "If Congress repeals the exemption, it will strangle infrastructure investment causing economic growth to slow, the elimination of hundreds of thousands of jobs and further deterioration of our national infrastructure. When mayors met with President-elect Trump this past December, he assured us that he supported maintaining the exemption. We were encouraged by that assurance and hope that this successful and irreplaceable financing mechanism remains in place."

Throughout Infrastructure Week, Mayors will challenge Washington to accept the fact that Mayors work with the private sector and the federal government to build infrastructure projects from start to finish faster, with more cost efficiencies than other governments. To prove the point, The U.S. Conference of Mayors has released its "On Task, On Time, On Budget" report. The report features city infrastructure projects, including transportation, water, energy, ports and public buildings, citing their financial structures and the many benefits that resulted from them.

As a national infrastructure package is developed, this new report is intended to inform Administration and Congressional leaders on why more infrastructure dollars should be directed to mayors and other leaders who ensure that such projects are implemented more efficiently, with greater economic impact and timeliness.

Mayors participating in Infrastructure Week Activities in Washington, D.C.:

May 17

Oklahoma City Mayor Mick Cornett, USCM President — "Built to Last: A Discussion on the Importance of Local Infrastructure Investment" | A joint forum of the National Association of Counties, National League of Cities and The United States Conference of Mayors where USCM President Mayor Mick Cornett will emphasize the vital importance of protecting tax-exempt bonds as the key tool in supporting local infrastructure investment | NACo Conference Center: 660 North Capitol Street, NW, Washington, DC (10:00 – 11:00 am)

Oklahoma City Mayor Mick Cornett, USCM President — "State and Local Governments Drive America — A Discussion for the Future of Infrastructure Policy" | A "Big 7" state and local government organizations briefing where USCM President Mayor Mick Cornett will further emphasize the importance of protecting tax-exempt bonds for cities, counties and states | 2154 Rayburn House Office Building, Washington, DC (2:00 – 3:15 pm)

May 18

South Bend Mayor Pete Buttigeg — House Transportation & Infrastructure Subcommittee on Water and the Environment hearing on "Building a 21st Century Infrastructure for America: Improving Water Quality Through Integrated Planning" | 2167 Rayburn House Office Building | Washington, DC (10:00 am)

The U.S. Conference of Mayors is the official nonpartisan organization of cities with populations of 30,000 or more. There are nearly 1,400 such cities in the country today, and each city is represented in the Conference by its chief elected official, the mayor. Like us on Facebook at facebook.com/usmayors, or follow us on Twitter at twitter.com/usmayors.

Municipal Debt Crowdfunding Startup Neighborly Quadruples Capital with $25M Series A Round.

The company's latest investment comes from Emerson Collective, 8VC, Govtech Fund and others.

Neighborly, a San Francisco startup that helps cities crowdsource their bond financing, more than quadrupled its investment backing in one fell swoop.

Before May 16, the company had raised about $5.7 million in seed and grant money. Then the company announced a $25 million Series A round led by Laurene Powell Jobs' impact investing entity The Emerson Collective along with 8VC. Ron Bouganim's Govtech Fund also participated in the round.

In a blog post, the company cited President Donald Trump's push to cut massive swaths out of the federal budget as one reason cities might be looking to use Neighborly more.

"This comes at a time when the current administration is getting ready to roll out a number of spending cuts that will drastically reduce the amount of funding available to the nation's communities," the post reads.

While Trump faces a long-standing promise to spend $1 trillion on infrastructure, he has also proposed budget cuts to many federal programs that work with local government.

Neighborly has financed $25 million in debt for local government customers across the country since the beginning of the year. The company also pointed to increased borrowing rates and an increase in public works backlogs as reasons to expect a growing demand for its services.

“The current financial system is set up in a way that disadvantages and costs communities much more than needed,” the blog post reads. “Every basis point in the cost of issuance and borrowing means hundreds of millions of dollars per year that go to paying interest or banker bonuses.

Since the cost of borrowing is so high, municipalities often delay important projects or even forego them entirely. Consequently, our nation’s communities are unable to attend to some of the most underserved causes: Schools resort to cutting critical educational programs, communities do without recreation centers, utilities and energy infrastructure remain dilapidated.”

The company’s solution, as Neighborly pitches it, gives local government access to more capital, allows them to bypass antiquated technology and helps them avoid fees associated with traditional bonds.

This marks the second gov tech investment from the Emerson Collective of the week, with the organization also leading a $30 million Series C round for OpenGov. Neighborly’s previous backers have included Tumml, 500 Startups and the Knight Foundation.

GOVTECH

BY NEWS STAFF / MAY 16, 2017

This Startup Wants to Modernize Public Finance.

When the city of Lawrence, Kan. wanted to borrow $650,000 to pay for a new fire truck for its local fire department, it didn’t use traditional banks and bonds to borrow money. Instead it turned to Silicon Valley upstart Neighborly, a two-year old marketplace that connects cities with investors to fund civic projects like schools, parks, and bridges.

Each year, U.S. cities borrow hundreds of billions of dollars to finance civic projects. This debt is typically in the form of municipal bonds, which investors buy for the monthly interest and relative security. Neighborly is a service for marketing these municipal bonds, an estimated $3.8 trillion market.

On Tuesday, Neighborly revealed exclusively to Fortune that it has raised $25 million in additional funding co-led by Palantir co-founder Joe Lonsdale’s firm, 8VC; and Emerson Collective, the philanthropic organization started by the wife of the late Apple CEO Steve Jobs, Laurene Powell Jobs. Existing investors including Ashton Kutcher’s Sound Ventures, Maven Ventures, Bee Partners, and Stanford University also participated in the funding round. This investment brings the company’s total funding to $35 million.

“We’re modernizing access to public finance,” Neighborly CEO Jase Wilson, said about his company’s business.

Traditionally, cities use brokers and underwriters to find traditional institutional investors to buy bonds like large banks and financial institutions, explained Wilson. His company, a registered broker itself, has put that search online.

It's not just large banks that buy the bonds on Neighborly. It's also people who live in the cities asking for funds. For example, with a Cambridge, Mass. project, residents who live in all five zip codes in the Massachusetts town bought bonds.

It's worth noting that that for some projects, Neighborly can only round up a relatively small amount of capital. For example, in March the city of Cambridge, Mass. borrowed $58 million, of which $2 million came through Neighborly. The rest was raised from investors outside its service.

"There's so many better ways that public finance can work using technology," Lonsdale said, in an interview with *Fortune*. "The old processes are a lot more expensive, and only puts the money in the hands of people on Wall Street."

Neighborly makes money by charging a 1% commission based on the deal size. That compares with the average 2% charged by other companies for most public finance projects, said Wilson. The other benefit, Wilson says, is that city residents can participate in funding their own neighborhood's projects.

Neighborly declined to reveal its revenue.

Kutcher echoed Lonsdale's belief about Neighborly's opportunity in a statement to *Fortune*. "They are doing the right thing. They are returning the opportunity of bonds back to the people that stand to gain from them the most." He continued that he "can see a world where this is not only the best way to get things done, but the only way."

In addition to the Cambridge deal and the Kansas fire truck, Neighborly has helped find $5 million for new bike paths in Burlington, VT. Currently, Neighborly is helping finance an affordable housing project in the San Francisco Bay Area.

However, some financial tech startups that are trying to upend Wall Street have stumbled. Lending marketplace Lending Club was roiled by news last year that the former CEO violated internal lending rules and that it would lay off staff. Meanwhile, LendUp, a payday lending company, was forced to pay fines for allegedly deceptive and misleading practices, including charging incorrect fees and interest rates.

Wilson said that working with regulators and complying with all rules is extremely important to Neighborly. The company's challenge is competition from brokers and underwriters that have handled public financing for decades and have a tight grip on the market.

Neighborly also has its fair share of critics, who don't view the bond market as a place that needs or requires change. But Wilson remains optimistic.

"We see ourselves as being more neighborly with your city's capital," said Wilson.

Fortune

by Leena Rao

May 16, 2017

Municipal Bond Market: A Tech Tipping Point Is Here.

The municipal bond market is reaching a tipping point. E-trading is going to push it over.

When I started in this business back when dinosaurs roamed the earth, all you needed to trade bonds was a phone, the Blue List and a Monroe-Trader bond calculator. For those of you already lost, the Blue List was a booklet, printed on blue paper and stapled together, with the municipal bond offerings of Wall Street dealers and, roughly, at the offering price. To determine what you wanted to bid, you punched the various bond attributes like coupon, maturity, call and so forth into your Monroe-Trader. That was about as high tech as it got.

There were no ubiquitous Bloomberg terminals on every desk. You got on the phone and haggled out a price for a bond based on very limited information. No one knew what anyone else was bidding or asking—the phrase 'price transparency' hadn't been invented. It was a truly an over-the-counter market.

Fast forward to today. Technology is radically changing the financial markets. Goldman Sachs is hiring more computer programmers than traders and BlackRock is replacing portfolio managers with computers. In the municipal bond market we're seeing some similar changes. The transition is a bit slow—this is the muni market after all—but it is coming and it's going to come a lot faster than some might realize.

Currently, there are seven electronic trading platforms currently dedicated to municipals: Tradeweb, MarketAxess, MuniAxis, Bloomberg, MuniBrokers, TheMuniCenter and ClarityBidRate. Some have been around since the inception, others are new entrants. I've either spoken with each firm in detail or used them in live trading. Having seen their interfaces and been taken step-by-step through their features, it's really remarkable how these firms have, each in their own unique way, captured, digitized and electronified the municipal bond trading process. It's akin to video poker in Las Vegas–if they just added an animated graphic of a trader to interact with, you'd swear you were dealing with a real person.

These are very powerful tools each with some very distinct benefits. If you're a municipal bond market professional who hasn't had a demonstration of these yet, you are strongly encouraged to absolutely do that.

The overall impact of these platforms is more important than their specific features and functions. Electronic trading platforms are bringing the municipal bond market to a 'tipping point.' This is having immediate consequences and longer-term effects.

Three Drivers

There are three drivers pushing this forward. The first is basic economics. Currently, the markets are in what seems to be a sustained low-rate environment. Combine that with the fact that asset management is a mature industry oversaturated with mutual funds, ETFs and SMAs (separately managed accounts). That means every basis point counts, either to cut costs or add to profitability or preferably both, from management's point of view. E-trading offers efficiencies both in the trading process and in better price discovery in the trade itself.

Second is the trend toward index investing in the market. The MUB, which is a BlackRock-managed ETF that seeks to track the S&P National AMT-Free Municipal Bond Index, now has just a smidge over $8 billion in assets under management. In fact, if you totaled up all the muni ETFs that are managed to track an index, it's more than $25 billion. Add to that mutual funds that either are explicitly or implicitly managed to an index, the number more than quadruples.

Indexing means more standardization in the market, more categorization and ease of automation. Every portfolio manager and muni trader knows that a bond in the index trades better, is more liquid and has tighter spreads. Index bonds are a clearly established category with fairly standardized characteristics. In other words, perfectly suited for an e-trading platform. Where better to get economies of scale for index bonds?

The third driver is regulatory guidance. I covered this in some detail in the companion piece to this article, Muni-Tech And E-Trading: Opportunities And Considerations For Investors. Each is a designated alternative trading system (ATS) under SEC Rule 600(b)(23). But that just meets the legal requirement. There are market rules bringing e-trading into the fore. For example, MSRB Rule G-18 and the SEC Rule 15c3-5 discuss best execution and management controls, respectively. There are others, such as the Volker Rule 619 and a host of SEC liquidity rules for mutual funds and other pooled investment managers. Between capital requirements, best execution, liquidity and trade transparency, suddenly electronic trading platforms, which can address all of those in one fashion or another, become a lot more attractive.

Those are the big three drivers—economics, indexing and regulations—pushing e-trading forward and also pushing the market closer to a tipping point. These are not meant to be the only factors. There are also market factors such as declining new issue supply and the dramatic increase in SMA asset growth.

Detractors and Skeptics

As with anything new, there are detractors and skeptics, as there always have been during periods of great change. People fear change. Some detractors of e-trading—and fight the tide all you want, but it's here and it's growing—detractors say the muni market defies standardization and automation because it is so variegated and compartmentalized. There are retail markets and institutional markets, bank qualified markets, AMT markets, specialty state markets, high yield markets, discrete sector markets, regional markets, specialty credit-name markets. Then there are the almost mind-numbing variables and attributes differentiating each bond—coupon, maturity, call provisions, sinking funds, security features are just a few.

All that is true—for now. What indexing and e-trading are going to do are organize and standardize the market. That's a big forward looking statement. Even Nobel Prize winning Physicist Neils Bohr warned that "predictions are very difficult, particularly about the future."

But as Shakespeare noted, "What's past is prologue." This automating-organizing-standardizing transformation is exactly what happened in other markets—and not just financial markets—that suddenly found technology disruptors changing how they transacted. The muni market will be no exception.

Others point out, with some legitimacy, that none of these platforms have been through a market meltdown like we saw in 2007 -2008. Can the platforms handle it? For those of us who lived through that period, I can tell you first hand, having people on the trading desks didn't function very well either. Nothing does well in a free fall. There's the old adage that it's only when the tide goes out when you see who's wearing a bathing suit and who isn't. The first time the platforms get hit with a wave of selling, we'll find out who is and who ain't.

The Biggest Impediment

The advisor or Wall Street firm thinking about linking up an e-trading platform is caught in a conundrum. No one wants to be the one installing a platform that doesn't become the market standard. It is a big spend when a firm commits to a trading platform. Putting a new system in place takes a lot of resources—the data feeds for uploading inventory, correct pricing, the trade information capture and storage—there is a lot of middle-office work that requires integrating and testing. Staff have to be trained, from front office trading desk staff to the middle office operations and tech staff. It's great to be on the "cutting edge" so long as you don't get cut.

On the other hand, while no one wants to be the first in the pool, no one wants to be last to the party either. If you don't have it and your worthy competitor does, you better get it or risk falling behind. Call it technological peer pressure.

And Winner Is…

To mis-paraphrase Pogo, we have met the winner and it is us. E-trading means better access, liquidity and transparency for all market participants. There is more visibility to find bonds, better price discovery, and more bids on selling bonds. Where better to find offerings than on e-trading platforms where dozens—heck, hundreds—of dealers, institutions, advisors are all listing bonds? Where you can screen for bonds by specific attributes in only a few clicks?

Focusing on liquidity, if you sum up all the trading volume each platform claims, apparently more than 180% of all muni trades clear over e-trading platforms. That's a bit of chest thumping bravado; the real number is closer to 20%. They can't be faulted for a bit of braggadocio—no clear winner has emerged just yet and each wants to claim an early lead. However, the overall point is taken: e-trading improves liquidity.

Another prospective winner is the borrower. E-trading may up-end the entire underwriting process. If you're a big borrower, a high grade borrower issuing into a standardized market with transparent components, do you really need investment bankers to the degree you do now? Research has shown, again and again, that the competitive bidding process for new issues is more efficient for borrowers. Now with an algorithmized (is that even a word?) and electronified market, a forward-looking borrower with even a modicum of tech-savvy can bypass the middleman and go straight to investors in an open-auction process. Those that can, will. They have already. Look at the initial work of Neighborly. That's just one model. Others are coming.

Plus, the more e-trading gets adopted and integrated, the more borrowers in the market—and some municipalities are getting pretty sophisticated in tech—will be advised by their bankers and advisors to conform their structures to market standards set by e-trading and indexing. It is entirely possible the rating agencies will contribute to creating some conforming rules as well.

Last, but hardly least, is the data collection and artificial intelligence applications emerging from e-trading. Data is dollars and big data is big dollars. Yes, big data is everyone's shiny new toy these days. However, as we've seen, big data and statistical analysis can find patterns and relationships that we mere humans with our intrinsic biases just can't see or just don't want to. Using that information to create algorithms to trade or set risk levels or any other number of things is where artificial intelligence comes to the muni market.

One market participant made the snarky comment that this may be the first time "intelligence" and "muni market" were used in the same sentence. He can crack wise all he wants, but it's widely known that at least one top-bracket firm has been collecting retail trade data since the late 1990s. Now their muni retail trading process is fully algorithmic. Every trade in a certain band size gets bid or offered based on the data and the algorithm. No need for a retail desk. It's all done through AI.

The Tipping Point

E-trading and indexing are going to be the drivers that tip the municipal bond market from the old over-the-counter model to what other markets already are and have been—an exchange-based model. No, the municipal bond market is not changing into the New York Municipal Bond Exchange, nor will it become fully automated with everything traded by AI driven bots. The muni market is and always will be a credit risk market. At some level, there will always be a need for a banker, a salesman, a research analyst, a trader and a portfolio manager. But as large parts of the market are going to become far more exchange driven, it's just not likely to need as many of them.

Make no mistake, the tipping point is here: the traditional, over-the-counter market with liquidity by appointment-only simply cannot be maintained in the faster, tech driven investing world we are in.

Forbes

by Barnet Sherman, Contributor

May 16, 2017

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My thanks to Cathleen M. Rittereiser founder/Uncorrelated, LLC, Richard Brasser, CEO/RFactr and Meera Balakumar director/Sterling Analytics for their insights and tech-savvy guidance in the preparation of this article. They were invaluable.

Barnet Sherman is the Senior Managing Partner of The Tenbar Group, a financial services consulting firm advising on successful strategies to manage the credit risk in municipal bond portfolios.

Fitch: Seventy-Four Percent of Public Finance Issuers Affirmed Under New Criteria.

Fitch Ratings-New York-19 May 2017: Fitch has concluded its review of all credits covered by the new U.S. tax-supported criteria, resulting in 74% affirmations, 18% upgrades, and 8% downgrades, according to a new Fitch Ratings report.

"The high level of affirmation was expected. The criteria revision was focused on communicating Fitch's opinions more clearly, providing tools that facilitate a more forward-looking approach to ratings, and clearly expressing expectations for financial performance throughout the economic cycle," said Laura Porter, Managing Director. "Fitch's ratings continue to be based on the judgement of a team of experienced analysts rather than model-based outcomes."

The most common reason for upgrades was the more focused consideration of the economic base and financial resilience in the revised criteria.

About half of the downgrades were to school districts, most commonly in California and Ohio. The revised criteria highlight the significance of the state school funding and policy framework to the financial prospects and position of school districts in the state.

None of the eight state ratings changed were the result of criteria alone.

Ninety-five percent of rating changes were one or two notches, less than a full rating category.

For more information, a special report titled “US Tax-Supported Criteria Implementation Results” is available on the Fitch Ratings web site at www.fitchratings.com or by clicking on the link.

Contact:

Laura Porter
Managing Director
+1-212-908-0575
Fitch Ratings, Inc.
33 Whitehall Street
New York, NY 10004

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

Media Relations: Elizabeth Fogerty, New York, Tel: +1 (212) 908 0526, Email: elizabeth.fogerty@fitchratings.com.

Additional information is available on www.fitchratings.com

Puerto Rico's Bankruptcy: Template For Other Troubled Cities.

“What–Me Worry?” are famous words from the fictitious Alfred E. Newman. It’s great to have a positive attitude in life. But there are times when investors need to observe and grasp the gravity of situations. That’s where we are with Puerto Rico.

Puerto Rico will soon become a legal catfight. It will be a lulu: General obligation bondholders versus sales tax revenue (Cofina) bondholders; AMBAC versus MBIA versus Assured Guaranty. This brawl won’t be a heavy weight fight. It will be a cage match because the hedge funds are vicious, wily beasts.

Even if you don’t invest in municipal bonds, as a taxpayer there are multiple lessons to be learned. First off, remember when we were taught that a state or territory cannot file for bankruptcy? Until it does. Puerto Rico, with help from Congress, filed for Title III, which is an in-court restructuring mechanism modeled after Chapter 9. No matter what you call it, it’s still bankruptcy.

I project this bankruptcy will become the template for all the cities, counties and a few states whose budgets, unfunded pension and health care liabilities are out of control. As a matter of fact, many of us in Bondland have a new word: Illi-Rico.

That’s right. Illinois, the state that is $14 billion in arrears paying its bills, two years without a budget, with under funded pensions like you wouldn’t believe. The Illinois Policy Institute estimates $203 billion total debt for state and local retirement benefits and oh—as the Institute points out, “the $203 billion includes only the unfunded liabilities of the state’s five retirement systems, which ignores bonds issued to tide over the pension funds and debt taken on to provide retired government workers with generous health insurance.” And this doesn’t include all the bonds outstanding that the poor taxpayers are responsible for.

Certainly Illinois, Alaska, Hawaii, New Jersey, Connecticut et al are not carbon copies of Puerto Rico. Yet their crushing debt and liabilities look eerily similar.

So all you conservative municipal bond investors dig into your municipal open-end, closed-end or exchange-traded funds. Study the composition of your portfolio. If it's too laden with general obligation bonds from states and cities that will one day have to actually deal with their problems—get out. Investors had years to get out of Puerto Rico bonds. Bond fund managers did too—yet many of them held on. After all, it was your money, not theirs.

It's true, the worst offenders must pay significantly higher interest on their new bonds but it hasn't yet reached the frenetic levels that concern or scare investors. If they keep up their incompetent bad behavior it will. Then we'll be staring another Puerto Rico in the face. As we learned from the recent bankruptcies like Detroit, bondholders lose to pensioners who vote. Puerto Rico will be a carbon copy.

So reassess your portfolio. Make certain the percent of good quality revenue municipal bonds far outweighs your general obligation holdings. The old rule of a GO issuer having the unlimited ability to tax its electorate no longer holds. We have learned issuers lose their ability and willingness to pay us bond investors. Just watch the Puerto Rico bond carnage to come.

Load up with airport revenue bonds from major hubs, the senior liens only. Names like Atlanta International Airport, Los Angeles, Dallas/Ft. Worth, JFK, San Francisco, Denver, Charlotte Douglas, McCarran International and Miami, to name a few. Stay away from the majority of small regionals. Invest in issues whose revenue stream is easily understood and underfunded pensions are not a consideration.

Keep it simple, keep it safe. Stay on top of the Puerto Rico news. It will matter.

Forbes

by Marilyn Cohen, Contributor

MAY 22, 2017 @ 01:23 PM

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

Fitch: US States Taking on Transportation Funding Gap

Fitch Ratings-New York-16 May 2017: States will continue to increase transportation taxes and fees and seek alternative financing mechanisms to meet infrastructure challenges as federal investment remains uncertain, Fitch Ratings says. However, hurdles to realizing the full benefit of such measures include political risk, lower gas consumption, and resistance to creating and raising tolls.

Federal grants play an important role in building and maintaining highways and other transportation projects. However, federal policy inertia on transportation (and infrastructure in general) has been augmented by recent uncertainty about the current administration's funding plans.

States are likely to increase their direct investments in transportation projects by leveraging recent revenue increases. Six states (CA, MT, IN, TN, SC, WY) have raised gas taxes and fees to fund transportation projects in 2017. Six others are considering bills that would increase gas taxes to raise transportation revenues (CO, WV, MN, OR, WI, ME). Most states are only catching up as gas tax revenues have grown more slowly than inflation for decades, according to the U.S. Census Bureau Annual Survey of State Government Tax Collections. Most recently, South Carolina's House voted last week to override the governor's veto of a bill that includes a gas tax hike and some fee increases. This is the first increase in gas taxes in the state in 26 years. The state's inflation-adjusted gas tax revenues have risen by just 4.1% since 2000.

Higher gas taxes and fees could face risk from higher fuel efficiency. The Corporate Average Fuel Economy (CAFE) standards are set to raise the national fleetwide average mpg to 54.5 in 2025 from 35.5 in 2016. The current administration has called for a midterm review of the standards. However, regardless of how the regulations evolve technological advances will likely raise average MPG over the next several years.

Some states are also discussing adding tolls or raising existing tolls to meet capital demands. For example, last month Indiana approved funding to direct $1.2 billion to state roads by 2024 from higher gas taxes and fees. The bill also requires the state to apply to the federal government for a waiver to toll currently un-tolled interstates within. Fitch expects to see other states take similar approaches as tolling the interstates is a viable option.

Tolling and other user fees could be a viable and meaningful component of highway funding if they are carefully implemented. Tolls can be adjusted with inflation with minimal adverse economic or political implications, provided the system is well operated and maintained. For example, the "first-mover disadvantage" can be limited by implementation across the system as raising tolls on one highway near an untolled road can hurt toll revenues.

In addition, PPP-enabling legislation is rising and could be another financing alternative in certain situations. In 2016 three states (KY, TN and NH) enacted PPP legislation, according to the National Conference of State Legislatures. PPPs used in the right circumstances allow governments to effectively transfer many project risks to the private sector and provide certainty in forecast costs, though they aren't a panacea for all funding shortfalls. In addition, issues of public perception, including a perceived loss of public control and a lack of understanding of potential long-term benefits, can make implementation of PPPs challenging.

Contact:

Scott Zuchorski
Senior Director, Global Infrastructure & Project Finance
+1 212 908-0659
Fitch Ratings, Inc.
33 Whitehall Street, New York, NY

Eric Kim
Director, U.S. Public Finance
+1 212 908-0241

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

Media Relations: Elizabeth Fogerty, New York, Tel: +1 (212) 908 0526, Email: elizabeth.fogerty@fitchratings.com; Sandro Scenga, New York, Tel: +1 212-908-0278, Email:

sandro.scenga@fitchratings.com.

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The Week in Public Finance: Recalculating Pension Debt, Hartford Discusses the 'B' Word and Prudent Rainy Day Policies.

A roundup of money (and other) news governments can use.

GOVERNING.COM

BY LIZ FARMER | MAY 19, 2017

Fresh Off Another Downgrade, Connecticut Has a Plan to Lower Borrowing Costs.

But observers disagree about whether it will work.

Besieged by budget shortfalls, Connecticut’s credit rating was downgraded in recent days by Fitch Ratings and Moody’s Investors Service. The downgrades were the state’s fourth and fifth in the past year alone. But if State Treasurer Denise Nappier gets her way, that credit hit might not matter the next time Connecticut goes to sell bonds.

Nappier wants the state to start offering investors revenue bonds that are paid back directly from the state’s income tax revenues. Called tax-secured revenue bonds, these new bonds would be offered in place of general obligation bonds, which are backed by the state’s general revenue collections. Nappier’s office believes the dedicated income stream would mean the bonds would fetch ratings as high as AAA, resulting in a better interest rate and lower debt service costs.

The idea has received mixed reviews.While some observers call it a product that will offer comfort to bondholders wary of Connecticut’s troubles, others say it’s a “financial engineering gamble” designed to game the market. “To create something out of nothing — they’re not being more fiscally responsible by doing it this way,” says Municipal Market Analytics’ Lisa Washburn.

In the past year, Fitch has downgraded the state’s credit rating twice, and Kroll, Moody’s and S&P Global Ratings have each downgraded it once. The latest action puts the credit rating at A+. It is the result, in part, of the state’s third straight budget shortfall. Currently, Connecticut is facing a $2 billion hole over the next two fiscal years. The deficits, caused mainly by weak income tax revenues and burdensome debt costs, have all but drained the state’s rainy day reserve and made it difficult to keep up with its mounting pension obligations.

Deputy Treasurer Lawrence A. Wilson says the tax-secured bonds will insulate investors from the budget and pension concerns they have expressed. Instead, the bonds are “focusing on one of our highest credit positives, which is the high wealth of our state.”

If approved by the General Assembly, the state would issue about $2 billion in revenue bonds a year. Any interest rate savings would be directed into the state's rainy day fund. Wilson says he expects those savings to total $980 million in fund deposits over 12 years.

When asked if state lawmakers would be tempted to keep raiding the rainy day fund, given the state's deficit struggles, Wilson acknowledged that was a possibility. "This is the part we can control," he says. "It's still a positive contribution."

Revenue bonds are common with lower levels of government and with housing and transit authorities, but are rarer at the state level. In 2001, New York state created a revenue bond program for streamlining purposes. Rather than having a handful of state authorities individually issuing tax-backed debt, New York's program created sales and income tax-backed bonds for them.

When it comes to assuring investors they'll be paid back, most states tend to opt for statutory or constitutional pledges. Illinois, for example, hasn't passed a budget in two years and has also suffered multiple ratings downgrades. But its constitution contains a "non-impairment" clause that prohibits action by the General Assembly that would damage the state's ability to pay back bondholders. State law also allows bondholders to sue the state to compel payment.

Belle Haven Investments' Tamara Lowin says Nappier's proposal is simply another way to assure investors they'll get their money back with interest. "This market loves the transparency of being able to see a direct revenue stream," she says. "It's a way to offer a credit designed with the ratings agencies in mind."

But Washburn isn't so sure that potential investors will be reassured by the new bonds and be willing to take a lower interest rate on the debt. "The likelihood that Connecticut will ever default and be in a situation where you have to test the structural provisions is really, really low," she says. "But would I want to give it a pricing benefit as an investor? It's definitely questionable."

GOVERNING.COM

BY LIZ FARMER | MAY 17, 2017

[Hidden Debt, Hidden Deficits: 2017 Edition.]

A new analysis by Josh Rauh at Stanford University's Hoover Institution – [Hidden Debt, Hidden Deficits: 2017 Edition] – says state and local governments' collective unfunded pension liabilities are actually about three times the amount they claim. Rauh, a finance professor who has long been a critic of public pension accounting, arrived at his figure by assigning pension plans a much lower assumed investment rate of return.

Pension plans in 2015 collectively reported about $1.3 trillion in unfunded liabilities. In other words, they have about 72 percent of the assets they need to meet their estimated total liabilities. That figure assumes plans will earn an average of 7.4 percent each year on their investments.

Rauh, pointing to the wild swings of the stock market and the fact that pensions are putting more of their assets into volatile, alternative investments, says that assumption is too risky. He argues it's more responsible to consider a rate of return closer to what long-term bonds earn: slightly less than 3 percent. Under those assumptions, Rauh says unfunded U.S. public pension liabilities would roughly triple to $3.8 trillion, or less than half-funded.

The Takeaway: Rauh is arguing for accounting responsibility. And to be sure, the underwhelming returns of pension plans over the last two years bolster his case. Several pension plans have already acknowledged that their investment return assumptions likely won't hold up in the long term and have lowered their assumed rates of return to 7 or 6.5 percent. But to drastically lower return assumptions would be devastating for governments and impair their ability to provide services to constituents.

Rauh even cites those consequences in his research. In the worst example, Illinois in 2015 put a whopping 11 percent of its own revenue into its pension plan. Even though that's a far higher share than other states, Illinois' payment was still short — it actually needed to contribute more than 16 percent. Under Rauh's approach, Illinois would have to contribute more than 23 percent of its revenue to avoid a rise in liabilities. That would dwarf education spending and make pensions second only to Medicaid as the state's highest single expense.

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