
TAX - IOWA

Acciona Windpower North America, LLC v. City of West Branch, Iowa

United States Court of Appeals, Eighth Circuit - February 7, 2017 - F.3d - 2017 WL 490412

Wind turbine manufacturer brought action against city, alleging breach of tax increment financing (TIF) development agreement for urban renewal project.

After entry of partial summary judgment in manufacturer's favor, bench trial was held. The United States District Court entered judgment in manufacturer's favor, and city appealed.

The Court of Appeals held that:

- City was obligated by TIF development agreement to pay tax rebate to manufacturer once it paid its taxes for given fiscal year;
- Manufacturer did not make judicial admission that rebates were never appropriated;
- TIF agreement did not impermissibly limit city's ability to decline to pay rebates; and
- District court did not abuse its discretion in permitting manufacturer to change its damages calculation on eve of trial and declining to impose sanctions.

Under Iowa law, city was obligated by tax increment financing (TIF) development agreement to pay tax rebate to wind turbine manufacturer once it paid its taxes for given fiscal year, even though agreement provided that all rebate payments were "subject to annual appropriation of the City Council," where agreement specified that city was required to annually certify "amount obligated for appropriation for rebate," and that, if city decided to obligate rebate for appropriation, "rebate shall be paid to [manufacturer] within thirty days of receipt by the City of the incremental taxes paid."

In manufacturer's action against city for breach of tax increment financing (TIF) development agreement, manufacturer's statement in its summary judgment papers that it was undisputed that "City did not appropriate the $265,140 rebate" to be paid to it for fiscal year was best read as poorly worded effort to admit that it is undisputed that rebates were never paid, rather than as judicial admission that rebates were never appropriated, where manufacturer had always argued that rebate was appropriated, just not paid.

Under Iowa law, tax increment financing (TIF) development agreement that required city to pay tax rebate to wind turbine manufacturer once it paid its taxes for given fiscal year did not impermissibly limit city's ability to decline to pay rebates. TIF agreements were clearly authorized by state law and were to be liberally construed.

District court did not abuse its discretion in permitting manufacturer to change its damages calculation on eve of trial and declining to impose sanctions in its action against city for breach of tax increment financing (TIF) development agreement, despite city’s contention that manufacturer revealed too late that it would seek damages for two fiscal years, where manufacturer sought compensatory damages for multiple fiscal years from beginning of its lawsuit, its pretrial clarification that it would seek compensatory damages for both fiscal years was entirely consistent with theory of damages it articulated at outset of case, and damages calculation used by manufacturer appeared to have been based on information in parties’ agreement and documents originally in city’s control.

Why Some Bargain Municipal Bonds Aren't Tax Free.

When individuals invest in municipal bonds they expect 100% tax-free income. Right? Well, many may unknowingly be setting themselves up for a tax bill from the IRS. How can this be? After all, we’re talking munis.

It’s been many years since the municipal bond De Minimis rule was relevant. Here’s how it works in plain English: Say you purchase a low coupon municipal bond for a 2%, 2.25%, 2.50%, or even 3% coupon at a discount from the face value in the secondary market. If that discount breaches the IRS De Minimis threshold, then a portion of that discount can be taxed as ordinary income.

It all depends on how deeply the bond price is discounted. The simple formula to compute the De Minimis threshold is:

De Minimis threshold = Lower of par or original issue discount – (.25% X the years to maturity)

The formula basically stipulates that if you purchase a bond at a discount and the discount is equal to or greater than a quarter of a point per year until maturity, then your gain at redemption is taxed at your ordinary income tax rate rather than the more favorable capital gains rate, which are as low as 15%.

If this sounds like IRS gobbledygook, you are right. The law was created to prevent taxpayers from converting ordinary income into capital gains. Remember the only IRS rule you should commit to memory is: Whatever is best for the government and worst for the taxpayer is the correct rule interpretation .

Here’s an example: Assume you purchased 50 XYZ Unified School District municipals, 2.00% coupon maturing September 1, 2028 originally issued at par, 100. If you purchased the bonds in the secondary market today at 90.288 for a 3.00% yield-to-maturity because rates rose since issuance, you will owe $2,107.50 in tax on $50,000 face value of the bonds.

The market discount cutoff price was $97.25. Okay—paying $2,107.50 in tax on 50 munis isn’t the end of the world. Still, it could blindside you if your weren’t aware of the De Minimis rule.
Your rule of thumb for purchasing municipal bonds should now be: If you want all your return to be tax free then invest in higher coupon bonds at par or a slight premium.

Stay away from market discounted munis. If you’re doing business with a retail broker ask them to run the analytics on Bloomberg. That will quickly compute your tax liability if purchasing at a discounted price.

One caution: If interest rates rise significantly, high coupon premium bonds can decline and breach the De Minimis threshold too.

The De Minimis rule also has a significant impact on your bond price. Should you decide to sell a bond subject to the De Minimis rule your sale of the bond will be at an even deeper discount. The buyer will demand compensation for that portion of their [now] taxable return.

The reason we have not been plagued until recently with the De Minimis rule is that issuers weren't issuing many 2%, 2.25%, 2.50%, or 3% municipal bonds until 2016 when yields touched such low levels. Then post-election muni yields rose and prices declined.

If you buy munis online and your platform does not supply a De Minimis calculator better get out your pencil and paper for hand computations. There are numerous articles online written by Piper Jaffray, Pimco, Schwab, RBC and others explaining the formulas and with grids showing allowable market discounts before treatment as ordinary income kicks in.

Let this column be a red flag warning: The De Minimis rule can bite the incautious. Oh…and if you think no one will notice the discounted price you paid, the 1099s issued by the brokerage industry are extremely accurate in their reporting to the IRS.

FORBES

by MARILYN COHEN

FEB 7, 2017 @ 11:48 AM

Marilyn Cohen is founder and CEO of Envision Capital Management, a Los Angeles fixed-income money manager.

Bigger New York City bond Sale Finds Eager Buyers.

The possibility New York City could lose some federal funding as a result of its status as a haven for undocumented immigrants did not deter investors who snapped up $900 million of the city's bonds on Tuesday.

Underwriters led by Citigroup repriced the AA-rated general obligation bonds, shaving yields by a basis point in a handful of maturities. Yields topped out at 3 percent for bonds due in 2029.

The city's so-called credit spread over Municipal Market Data's benchmark triple-A yield scale widened slightly to 22 basis points for five year bonds and 36 basis points for 10 year bonds from pre-sale secondary market trading levels. MMD attributed the spread widening to the size of the deal, which was increased from $800 million.

"It's too early to know how the market will treat the sanctuary cities," said Daniel Berger, a MMD analyst.

Jack Sterne, a spokesman for the New York City Comptroller's Office, said the deal was increased to $900 million after more than $600 million of bonds were sold to individual investors during a presale period.

"We're pleased investors continue to recognize the city's financial strength and invest in our bonds," he said in a statement.

Ahead of the sale, New York tried to assure potential bond buyers that its status as a so-called "sanctuary city" that shields illegal immigrants should not result in a substantial loss in federal funding due to President Donald Trump's recent executive order.

The Republican president signed an order on Jan. 25 directing the U.S. attorney general and Homeland Security secretary to withhold federal money from cities where local law enforcement refuses to report undocumented immigrants they encounter to federal authorities. Trump's Homeland Security chief told a congressional panel on Tuesday that funding to cities that refuse to cooperate with immigration agents would only be cut on a case-by-case basis.

In the bond deal's preliminary official statement, New York said federal grants related directly to immigration enforcement comprise a small portion of its budget and that grants supporting law enforcement in general would be exempted from the order. The city also vowed to "mount a vigorous legal challenge" against a reduction in federal aid.

In addition to New York, other major cities offering some form of protection to illegal immigrants include Los Angeles, Chicago, Philadelphia, Boston, Denver, Washington, and Seattle. Another sanctuary city, San Francisco, filed a legal challenge to the order last week.

Reuters

Tue Feb 7, 2017 | 4:13pm EST

(Reporting By Karen Pierog; Editing by Tom Brown)

Reports Of Municipal Bonds' Demise Have Been Greatly Exaggerated.

Top earners have traditionally been attracted to municipal bonds for their tax-exempt status at the federal and often state and local levels. In the wake of President Donald Trump's stunning upset victory, however, muni investors were forced to readjust their expectations of fiscal policy going forward. Because Trump had campaigned on deep cuts to corporate and personal income taxes, equities soared while munis sold off, ending a near-record 54 weeks of net inflows. This appears to have been premature, for a couple of reasons.

Tax Reform Unlikely To Happen Anytime Soon

Trump and congressional Republicans are currently butting heads on how best to handle tax reform, with many lawmakers saying it's unlikely they'll get around to it during the new president's first 100 days, and possibly his first 200 days.

According to House Speaker Paul Ryan, Congress will focus instead on replacing the Affordable Care Act (ACA) and funding Trump's $1 trillion infrastructure spending package before it worries about taxes. With an estimated 30 million Americans enrolled on Obamacare exchanges, finding a suitable replacement is of high importance and might take some time. The same goes with negotiating a costly infrastructure deal, which several fiscally conservative lawmakers are hesitant to support.

Besides, we all know how fast Congress operates, even on a good day. Former President Barack Obama took office in January 2009, and even with a Democratic majority in the House and Senate, his signature health care law didn't reach his desk until March the following year.

All of this is to say that it might be premature to start dumping your munis, or withhold an investment in munis, purely on the notion that income taxes are about to get a haircut. We're probably looking at many more months of Obama-era tax rates, including the 3.8 percent Obamacare surcharge on investment income. Other investors have realized this as well, which is why we're seeing positive net inflows back into muni bond funds.

If enacted as conceived, Trump's tax reform plan would indeed be the most significant in decades, simplifying the number of tax brackets from seven to three, lowering the top rate from 39.6 percent to 33 percent and eliminating personal exemptions and filing status options.

One of the unintended consequences of this is that income taxes could actually go up for certain middle-income filers. According to an analysis of Trump's proposal by the independent Tax Policy Center, as many as 8 million American families, including a majority of single-parent households and large families, could end up paying more than they do now (emphasis mine):

> Increasing the standard deduction would significantly reduce the number of filers who itemize. We estimate that 27 million (60 percent) of the 45 million filers who would otherwise itemize in 2017 would opt for the standard deduction. **Repealing personal exemptions and the head of household filing status, however, would cause many large families and single parents to face tax increases.**

But What About Rising Interest Rates?

In December, the Federal Reserve lifted interest rates for only the second time in nearly a decade, and many expect to see up to three additional increases this year. It's important to be aware that when rates rise, bond prices fall because if newly issued bonds carry a higher yield, the value of existing bonds with lower rates declines. This is why I believe investors should take advantage of short- and intermediate-term munis, which are less sensitive to rate increases than longer-term bonds, whose maturities are further out.

Forbes

Frank Holmes, Contributor

FEB 8, 2017 @ 01:26 PM

In Day of Action, More Than 35 State Municipal League Executive Directors and Officers Join NLC to Advocate for City Priorities on Capitol Hill.

WASHINGTON, Feb. 8, 2017 /PRNewswire-USNewswire/ — In a day of action on Capitol Hill, more than 35 executive directors and local leaders from more than 20 state municipal leagues have come to Capitol Hill to advocate for critical city priorities. In 42 meetings today with federal officials, city representatives will work to build local-federal partnerships and tell Congress why city priorities – including infrastructure and protecting municipal bonds – will help to move America forward. The fly in was coordinated by the National League of Cities (NLC), the nation's largest and most representative organization for cities and their leaders.

"With so many new faces on Capitol Hill, it's important that city leaders build relationships with federal officials and tell them why city priorities are critical to the success of our nation," said NLC

President Matt Zone, a councilmember from Cleveland. “We’re proud that our state league partners have come to Washington with a unified voice and a simple message: that the federal government needs to partner with cities to keep our economy growing and to build a national infrastructure that is the envy of the world.”

The day of action included a briefing on Capitol Hill for senators, Members of Congress and their staffs. Rep. Drew Ferguson (GA-3), a former mayor of West Point, Georgia, spoke at the briefing about the need for stronger federal-local partnerships.

“This day of action shows our federal partners that cities need a seat at the table when debating policies that affect cities and our communities,” added NLC CEO and Executive Director Clarence E. Anthony. “We’re excited to build on this momentum leading up to the Congressional City Conference in March, when city officials will meet with more than 250 Senators and Members of Congress to build crucial federal partnerships and make them champions for cities.”

In partnership with the 49 state municipal leagues, NLC represents more than 19,000 cities across America. More than 2,000 city leaders are coming to Washington March 11-15 for NLC’s annual legislative conference, the Congressional City Conference.

The following state league leaders are in Washington today for the fly-in:

Arkansas

Mayor Harry Brown, Stephens, Ark., and president, Arkansas Municipal League
Ken Wasson, director of operations, Arkansas Municipal League

Colorado

Sam Mamet, executive director, Colorado Municipal League

Delaware

Mayor Jermaine Hatton, Dover, Del., and president, Delaware League of Local Governments
Carl Luft, executive director, Delaware League of Local Governments

Florida

Jeannie Garner, deputy executive director, Florida League of Cities
Commissioner Gil Ziffer, Tallahassee, Fla., and first vice president, Florida League of Cities

Georgia

Mayor Boyd Austin, Dallas, Ga., and president, Georgia Municipal Association
Lamar Norton, executive director, Georgia Municipal Association
Becky Taylor, director, Federal Relations & Research, Georgia Municipal Association

Illinois

Brad Cole, executive director, Illinois Municipal League

Iowa

Councilmember Kris Gulick, Cedar Rapids, Iowa, and past president, Iowa League of Cities

Maryland

Mayor Tracy Gant, Edmonston, Md., and president, Maryland Municipal League
Scott Hancock, executive director, Maryland Municipal League

Massachusetts

Geoff Beckwith, executive director & CEO, Massachusetts Municipal Association
Town Administrator Mel Kleckner, Brookline, Mass., and president, Massachusetts Municipal Association

Minnesota

Kevin Frazell, director of Member Services, League of Minnesota Cities
Mayor Rhonda Pownell, Northfield, Minn., and president, League of Minnesota Cities

Mississippi

Mayor Jimmy Clyde, Magee, Miss., and president, Mississippi Municipal League
Shari Veazey, executive director, Mississippi Municipal League

New Hampshire

Selectman Brent Lemire, Litchfield, N.H., and chair, New Hampshire Municipal Association

New York

Peter Baynes, executive director, New York State Conference of Mayors and Municipal Officials
Mayor Tom Roach, White Plains, N.Y., and president, New York State Conference of Mayors and Municipal Officials

North Carolina

Mayor Bob Matheny, Zebulon, N.C., and president, North Carolina League of Municipalities
Paul Meyer, executive director, North Carolina League of Municipalities

Oregon

Mayor Denny Doyle, Beaverton, Ore., and president, League of Oregon Cities

Pennsylvania

Mayor C. Kim Bracey, York, Pa., and first vice president, Pennsylvania Municipal League
Rick Schuettler, executive director, Pennsylvania Municipal League

Tennessee

Margaret Mahery, executive director, Tennessee Municipal League
Charles “Bones” Seivers, president & CEO, Tennessee Municipal League Bond Fund

Virginia

Mayor Robert Coiner, Gordonsville, Va., and president, Virginia Municipal League
Kimberly Winn, executive director, Virginia Municipal League

Washington

Peter King, CEO, Association of Washington Cities

Wisconsin

Jerry Deschane, executive director, League of Wisconsin Municipalities
Village Board President George Peterson, Rothschild, Wis., and president, League of Wisconsin Municipalities

About the National League of Cities
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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City of Riverside Recognized For Excellence in Budgeting by Peers Statewide.

RIVERSIDE, Calif. – For the first time, the City of Riverside has received the Excellence in Budgeting Award from the California Society of Municipal Finance Officers, a statewide organization devoted to promoting best practices among California municipal finance professionals.

The award recognizes the work of the City in preparing the 2016-2018 biennial budget, which was approved by the City Council in June. That budget document covers the next two fiscal years and guides the City's financial decisions.

"Riverside is fortunate to have highly-qualified professionals providing detailed information to drive good decision-making," Mayor Rusty Bailey said. "Our decisions as elected officials are only as good as the data that informs them, so precise budgeting is crucial to our City's financial health."

The 2016-18 budget that was recognized for excellence was the first in recent years to plan the City's financial future for the next two years, instead of just one year, which is most common in local government. Riverside's two-year budget, combined with a five-year financial plan, transformed the way the City of Riverside handles its financial planning.

"Our budgeting process has evolved in a very dramatic way during the past year," Mayor Pro Tem Mike Gardner said. "We now have a much broader scope when looking at our options for utilizing the city's funds in the most responsible way, and our budget is a big part of that."

The California Society of Municipal Finance Officers (CSMFO) promotes excellence in financial management through innovation, continuing education and the professional development of its members. The Excellence in Budgeting Award is the first such recognition the City has received from CSMFO.

"This is a significant accomplishment for the City," said Assistant City Manager Marianna Marysheva, who supervises the Finance Department. "Our staff showed great focus and determination in preparing a budget document that serves as an excellent planning, financial management and public education tool."

Riverside previously has received 13 budgeting awards from another organization, the Government Finance Officers Association (GFOA). The most recent award from the GFOA can be found here.

The Biennial Budget that was recently recognized by CSMFO also was submitted for the GFOA Award, the results of which are pending.

The budget document that was submitted for the award can be found here.

A list of recognitions received by the City's Finance Department can be found here.

inlandempire.us

By Staff – February 9, 2017

Toll Bridge Deals Lead U.S. Municipal Supply Next Week.

A pair of toll bridge deals will lead a U.S. municipal bond calendar next week that features around $5.85 billion in total sales.

California's Bay Area Toll Authority will issue the week's biggest deal, pricing on Tuesday $552 million in negotiated refinancing bonds to reduce borrowing costs.

The Delaware River Joint Toll Bridge Commission, a bi-state agency that operates seven toll bridges in Pennsylvania and New Jersey, will price a $438 million negotiated bond, to fund the bulk of a $512 million reconstruction of the Scudder Falls Bridge.

Both deals are scheduled to price on Tuesday and will be underwritten by Bank of America Merrill Lynch.

The Scudder Falls Bridge, which crosses the Delaware River along Interstate-95 and supports some 60,000 cars a day, will be demolished to address safety concerns, and rebuilt by the Trumbull Corporation, which was awarded the construction contract, according to a road show presentation from the toll bridge commission.

Tree cutting and installation of noise walls are underway, with full construction slated to begin in April and run through August 2021, according to the presentation.

Next week's total muni supply will include $5.575 billion of negotiated and competitive bonds, and another $271 million of notes.

The Long Beach, California, Unified School District will provide the biggest competitive bond deals, issuing $450 million in general obligation bonds, while Rochester, New York, will lead the way in notes, with $72 million in a pair of bond anticipation offerings.

Ongoing political and economic uncertainty could make it difficult for the U.S. Federal Reserve to raise interest rates in the near term, and "lower Treasury rates will certainly help munis," Barclays analysts said in a weekly note on Friday.

Barclays, which projects net negative issuance for February, said "healthy dealer inventories and positive fund flows should also support the market in the coming weeks."

Barclays noted that tax policies of President Donald Trump could also move markets.

Trump on Thursday hinted at an upcoming announcement he said would be "phenomenal in terms of tax," but offered no detail.

Reuters

By Nick Brown

Fri Feb 10, 2017 | 2:31pm EST

(Reporting by Nick Brown; Editing by Bernard Orr)

Policy Uncertainty Is Killing Muni Volume.

After a rough post-election period, municipal bonds are holding up just fine this year. But while index returns are up slightly, volume is way down.

That decline reflects caution among investors about where tax policy is headed. If tax cuts are put in place, munis could become less appealing.

Morgan Stanley muni strategist Michael Zezas writes Monday:

> The tale of the tape, in our view, shows an investor base lacking conviction. Consider, for example, the ratio of bid-wanteds relative to trade volume. While they have recently eased, levels since the beginning of the year are elevated on a combination of lower trade volume and larger bid lists. This suggests an investor base that is testing liquidity and playing it safe.

Zezas says that negative sentiment would normally be a sign to add munis to a portfolio. But in this case he thinks it is appropriate for investors to be cautious.

> We sympathize with the implied caution being expressed for two reasons: 1) policy risks, including existential tax risks, still loom large in the muni market; 2) valuations aren't obviously reflecting that risk.

The benchmark-tracking **iShares National Muni Bond ETF** (MUB) is up 0.1% year to date at $108.34, but is down 3.2% in the past year.

Barron's

By Amey Stone

February 13, 2017, 1:45 P.M. ET

NABL: SLGS Window Likely to Close.

In a little over 4 weeks the federal debt ceiling will return and with it, almost certainly, the SLGS window will close. NABL members who have closings around March 15 should plan for an alternative to purchasing SLGS.

In November of 2015, then-Speaker John Boehner reached an agreement with President Obama that suspended the debt limit through March 15, 2017. This was one of Speaker Boehner's final acts before his resignation.

Absent action by the current Congress and President to increase or further suspend the debt limit before March 15, the Treasury Department can be expected to begin implementation of its "extraordinary measures" to delay the date on which the United States would begin to default on its obligations – not only payments on Treasury bonds but also the federal payroll, payments to contractors, and Social Security benefits, among other things. Generally the first of the extraordinary measures that is implemented is closing the SLGS window.

Continue reading.

What Makes a Bond "Green"?

Most people agree that a "bond" is a financial instrument pursuant to which a creditor (holder of the bond) lends money to a borrower (the issuer of the bond) over a specified period of time in exchange for a periodic interest payment. However, although I occasionally see headlines about green bonds being issued, it was not clear to me what made a bond "green". Since I like to drink clean water and breathe clean air, I thought it would be worth looking into.

Continue reading.

The Public Finance Tax Blog

By Cynthia Mog

February 10, 2017

Squire Patton Boggs

Cincinnati's Streetcar and a Downtown Revival.

By the time the first passengers boarded Cincinnati's streetcar in September, its advocates had already been on a wild 15-year ride that included surviving two ballot initiatives to derail the project.

With political battles now largely in its rearview mirror, the streetcar has arrived at a key time in Cincinnati, where a revival of the city center is already well underway. The streetcar logged its first 250,000 rides in just over two months, helped by curiosity over the streetcar and an ongoing real estate development boom in the neighborhoods along the 3.6-mile (5.8 km) route: the Banks, downtown, and Over-the-Rhine.

"They had the paddles out on the operating table," longtime streetcar advocate John Schneider says of its several near-death experiences. "It's been a long effort to bring rail here. The politics were ugly, but once the politics got out of it, the result was really good."

The Cincinnati Bell Connector—the streetcar's formal name, thanks to that company's ten-year, $3.4 million naming-rights deal signed in August—began clanging through Cincinnati's streets at a time when construction continues ramping up in the city center. There has already been about $1.5 billion in public and private investment along the figure-eight streetcar route in the past five years, says Harry Black, city manager.

"All of these things working together have propelled us to a point of critical mass," Black says of efforts to enliven the city center. "I believe we're just at the beginning of that critical mass. The streetcar is one of those major elements, but it's not the only element."

The $1.5 billion figure includes the $148 million streetcar project, about $45 million of which was funded by federal grants. Long before the city-owned streetcar was a sure thing, other efforts were underway to spruce up the city's core, starting with major investments in the Banks, an area along the Ohio River near the Cincinnati Reds' ballpark and the Bengals' football stadium. That area is on the southern tip of the streetcar line.

Perhaps most dramatic has been the gentrification of Over-the-Rhine, a one-time German enclave that in more recent years had become notorious as one of the nation's most dangerous neighborhoods. It is at the northern end of the streetcar route.

Cincinnati Center City Development Corp., a nonprofit real estate development and finance organization known to locals as 3CDC, has completed $1.1 billion in real estate projects in the past decade in Over-the-Rhine and downtown, says executive vice president Adam Gelter, who oversees all of 3CDC's real estate development. That includes the purchase and rehabilitation of more than 250 dilapidated buildings, many of them with Italianate architecture, as well as larger projects such as a $48 million overhaul of Washington Park.

Over-the-Rhine is now known for breweries, boutiques, Findlay Market, bars, and restaurants. 3CDC and others are focused on attracting a broader range of retail to the area, as well as rehabbing broad areas of Over-the-Rhine still in disrepair.

"The streetcar is a strong complement to efforts we've already been making to build up the retail in Over-the-Rhine," Gelter says. "Being able to get more people here is ultimately what's going to attract retailers."

Cincinnati had been without a streetcar since 1951, and in the decades since many residents moved to areas outside the city's core or to suburbs. Cincinnati became more and more driving-centric.

Schneider, known to many in Ohio's third-largest city as "Mr. Streetcar," has lived downtown for 40 years. He began pushing municipal officials to pursue a streetcar in 2001, and by 2007 the city began formal planning.

Streetcar proponents fought back votes to kill off the idea in 2009 and 2011 and overcame several other obstacles—including Ohio Governor John Kasich pulling $52 million in state funding over doubts about the project's potential economic impact in 2011.

In the early going, the Cincinnati Bell Connector has encountered glitches including difficult-to-use ticket machines, and the initial ridership numbers have declined, particularly on weekdays and as the weather has gotten colder. Because traffic lights are timed for an east–west flow and the streetcar travels north and south, the streetcar also often becomes bogged down in traffic.

While solutions to those issues are examined, longer-term challenges also loom. Cost estimates and potential funding sources for potential expansions of the route have yet to be determined. Expansion likely would be targeted for uphill to the University of Cincinnati or across the river to Newport, Kentucky.

Despite early hiccups, the streetcar's usage rate has been a pleasant surprise, says Derek Bauman, southwest Ohio director and vice chair for statewide transportation advocacy group All Aboard Ohio.

"We've blown projections out of the water, especially on the weekends," says Bauman, who lives in Over-the-Rhine. "It's part of the revival of the city center. There's just a buzz, and people are out on the streets. There are families with strollers, which wasn't the case four or five years ago."

Anecdotally, streetcar riders are a diverse mix that includes young professionals, families, empty-nesters, and out-of-towners staying in nearby hotels, Schneider says.

"It's not all millennials," he says. "A friend told me he's seeing more hip replacements than hipsters on the streetcar."

It is too early to assess the long-term economic impact along the streetcar, but property values already appear to be on the rise, according to commercial real estate brokerage CBRE. In 2012, developers were paying an average of $17 per square foot ($183 per sq m) for adaptive-use buildings in Over-the-Rhine, says retail broker Chris Hodge, a CBRE senior vice president. By late 2015 and early 2016, the average had risen to $78 per square foot ($839 per sq m), he says.

"I think the biggest impact the streetcar has had is in Over-the-Rhine," Hodge says. "The development really started on the east side of Over-the-Rhine, and now it's moving west and north."

Rhinegeist Brewery, which opened in a former Christian Moerlein Brewing bottling plant on Elm Street in 2013, is one business likely cashing in on the streetcar. President and cofounder Bob Bonder says that revenue from visits to the brewery is up more than 30 percent in 2016 from last year.

"I couldn't tell you how much of that increase is due to the streetcar and how much is us being a new, fresh brand three years into existence," Bonder says. "But all you have to do is stand there and watch the streetcar to see that, wow, this is working. It seems like every time the streetcar stops by, it drops off 20 people and picks up ten."

The Urban Land Institute

By Ryan Ori

January 9, 2017

Ryan Ori covers commercial real estate for Crain's Chicago Business.

Heller, Nelson, Kelly and Blumenauer Re-Introduce Bipartisan Public-Private Partnership Bill.

(Washington, DC) – Today, U.S. Senators Dean Heller (R-NV), Bill Nelson (D-FL), Congressman Mike Kelly (R-PA), and Earl Blumenauer (D-OR) released the following statements after re-introducing the *"Public Buildings Renewal Act."* The bill enables communities to establish public-private partnerships (P3s) for needed public infrastructure improvements, such as in schools or public universities, by creating $5 billion in new private activity bonds for public buildings.

“In the past, P3 investment has produced enormous benefits across the nation in the form of transportation and infrastructure improvements. I want to see the same results right here in the Silver State, especially for Nevada’s schools. Now is the time to use the success of P3s in the infrastructure industry as a financing model for Nevada’s public buildings to repair cornerstones in our communities like public schools and libraries. This commonsense idea helps our public schools and universities do even more. By empowering the private sector to address these issues, innovation ensures these projects are completed in a more cost efficient manner,” said Senator Dean Heller.

“This bill will help local governments build schools, libraries, fire stations and other public buildings that serve as the foundation of our communities,” said Senator Bill Nelson.

“Our country’s public buildings are in a historic state of disrepair and in need of a bold solution. That’s where the Public Buildings Renewal Act can come to the rescue. This legislation became more urgent than ever for me after I visited several of our district’s schools last year and saw the unacceptable damage up close. When public places like schools, hospitals, and court houses are allowed to crumble, the people they serve suffer, especially students. Our bill will channel a new stream of P3 financing into local communities for the ultimate goal of restoring public infrastructure from coast to cast. It will take advantage of private sector efficiency to create jobs and save taxpayer money by streamlining the delivery, design, and construction of these projects. I thank my colleagues in both chambers for supporting this commonsense solution and look forward to helping them advance it swiftly,” said Congressman Mike Kelly

“Congress has failed to display the political courage necessary to adequately invest in infrastructure—from roads and light rail to schools and courthouses. Our nation is literally falling apart and falling behind. We need an ‘all of the above’ approach to infrastructure funding, and simple fixes to lower investment barriers are steps in the right direction,” said Congressman Earl Blumenauer (OR-03)

Background:

These newly created private activity bonds mentioned above would provide much-needed financing to cash-strapped states to construct government-owned buildings such as public schools, state colleges, post offices, libraries, prisons and courthouses. Currently, the use of P3s to deliver public buildings is extremely limited because unlike the transportation sector, public buildings are not eligible for private activity bonds. This inhibits public building P3s from combining tax exempt financing with private financing, resulting in an increased cost of financing. Nearly every U.S. transportation P3 project that has moved forward has utilized federal financing, 75% of which have accessed Private Activity Bonds. Over $36 billion in transportation P3 projects have been undertaken since 2010 with a cost savings of nearly 20 percent for each project.

This bill will catalyze the use of P3s in public buildings just as PABs have for transportation. By empowering the private sector to tackle these projects, the bill would make these projects more cost effective, stretching every public dollar further. Additionally, the bill is a fiscally conservative solution to overhauling these public projects with an estimated cost from JCT of less than $50 million over ten years.

The House companion bill is [HR 960](HR 960).

Senator Heller was recently named Chairman of the Senate Committee on Finance’s Subcommittee on Energy, Natural Resources, and Infrastructure. This role will give him the ability to promote *infrastructure projects in Nevada like Interstate 11.*

Bills Would Allow States, Localities to Issue up to $5B of PABs for Public Buildings.

WASHINGTON – House and Senate members have reintroduced companion bills that would allow state and local governments to issue up to $5 billion of private activity bonds to finance the repair or construction of schools and other public buildings under public-private partnership arrangements.

The "Public Buildings Renewal Act" was introduced in the House on Feb. 7 as H.R. 960 by Rep. Mike Kelly, R-Pa., and eight cosponsors, including six members of the House Ways and Means Committee such as Rep. Earl Blumenauer, D-Ore.

The measure in the Senate, which has not been assigned a number yet, is being introduced by Sens. Dean Heller, R-Nev., and Bill Nelson, D-Fla., both of whom sit on the Senate Finance Committee.

The bills they introduced last session were H.R. 5361 and S. 3177.

The legislation would create a new category of tax-exempt PABs that would allow states and localities to construct or renovate government-owned buildings such as public schools, state colleges, post offices, libraries, prisons and courthouses with private parties.

These kinds of projects cannot currently be financed with tax-exempt P3s because there is not a specific qualified PAB category for bonds for public buildings.

"Our country's public buildings are in a historic state of disrepair and in need of a bold solution," Kelly said. "That's where the Public Buildings Renewal Act can come to the rescue."

"Congress has failed to display the political courage to adequately invest in infrastructure – from roads to light rail to schools and courthouses," said Blumenauer. "Our nation is literally falling apart and falling behind. We need an 'all of the above' approach to infrastructure funding and simple fixes to lower investment barriers are steps in the right direction."

The Bond Buyer

By Lynn Hume

February 8, 2017

HFS Committee to Review Muni Regulators, Others.

WASHINGTON – The House Financial Services Committee intends to review municipal bond regulators and other aspects of the capital markets with an eye toward rolling back certain programs, according to an oversight plan from the committee.

The plan, which broadly lays out parameters for the session, "contains oversight initiatives that will be undertaken for the purpose of identifying cuts to or the elimination of programs that are inefficient, duplicative, outdated, or more appropriately administered by state and local government," the committee said.

It specifically mentions the Securities and Exchange Commission the Municipal Securities Rulemaking Board and the Financial Industry Regulatory Authority among other agencies and programs.

The committee said the SEC received $1.605 billion in fiscal year 2016 appropriations even though its authorization lapsed in fiscal 2015. The SEC's Office of Inspector General's authorization lapsed after fiscal year 2011, though it was appropriated $11.3 million in fiscal 2016. The committee said it will perform the necessary oversight to support activities related to reauthorizing the SEC.

It also plans to "monitor all aspects of the [SEC's] operations, activities, and initiatives to ensure that it fulfills its congressional mandate to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation," according to the committee document. The Municipal Securities Rulemaking Board will get similar treatment as the committee intends to review the self-regulator's operations, initiatives, and activities.

Dealers and others have complained about the rising cost of compliance the muni market is now facing as a result of a slew of new rulemaking from the SEC and MSRB to implement the Dodd-Frank Act in recent years. Muni market groups have asked the regulators to better assess how their rules are impacting costs and burdens for market participants, especially smaller dealers and municipal advisor firms.

The Financial Services Committee plan includes a section that broadly outlines the reduction of regulatory burdens as a goal for the congressional session.

The committee has promised to explore financial regulators' implementation of the Volcker Rule and how it has affected the strength and international competitiveness of U.S. capital markets. Muni groups, along with the MSRB, had raised concerns the rule would bifurcate the market by only exempting certain issuers' bonds.

The committee's oversight plan also includes an exploration of bank regulator standards developed in conjunction with the international Basel Committee on Banking Supervision. Muni market participants have complained about bank regulators' liquidity rule, which mandates that banks hold enough high quality liquid assets (HQLA) to deal with periods of financial stress. Except for the Federal Reserve Board, the bank regulators' definition of HQLA does not include any municipal bonds. Legislators introduced two bills last session to try to remedy the exclusion of munis but they never became law.

The committee's oversight plan was released after recent executive orders from President Trump encouraged the SEC, among other agencies, to review the cost of Dodd-Frank mandated and other regulations.

Financial Services Committee chair Rep. Jeb Hensarling, R-Texas, applauded the president's order on Dodd-Frank last week, saying he was "very pleased" that Trump was following through on his promise to dismantle the legislation. Hensarling is reportedly planning to reintroduce his alternative to Dodd-Frank within the next few weeks. The legislation, called the Financial CHOICE Act, would address many of the areas of concern outlined in the Financial Services Committee's oversight plan.

The Bond Buyer

By Jack Casey

February 8, 2017

Senate Panel Told P3s Won't Work for Rural Areas, Tax-Exempts Are Key.

WASHINGTON – Municipal bonds are a “crucial component” of any infrastructure plan and their tax-exempt status must be preserved, a county official from Oklahoma representing the National Association of Counties told members of a Senate committee on Wednesday.

Transportation officials from rural states said during the hearing held by the Senate Environment and Public Works Committee that public-private partnerships won’t work for them. The hearing was on “Modernizing our Nation’s Infrastructure.”

The comments were not exactly an endorsement of President Trump’s $1 trillion infrastructure plan to bring in private investment to help finance the repair and development the nation’s roads, bridges, and other infrastructure projects.

Cindy Bobbitt, a commissioner of Grant County, Okla., who was representing NACo, told committee members that, “Between 2003 and 2012, counties, states and other localities invested $3.2 trillion in infrastructure through long-term, tax-exempt municipal bonds, 2.5 times more than the federal investment.”

Bobbitt, who noted that munis have low default rates and are often approved by both legislatures and the voters, said, “Simply stated, the tax exemption of municipal bond interest from the federal income tax represents one of the best examples of the federal-state-local partnership.”

She pointed out that two thirds of the nation’s 3,069 counties are considered rural with a combined population of 60 million and face challenges such as declining populations and a limited ability to raise revenue for capital projects.

Among her recommendations were that Congress should make federal highway dollars available for locally owned infrastructure. Local governments own 78% of the nation’s road miles, including 43% of federal-aid highways and 50% of the National Bridge Inventory, she said.

Committee chairman Sen. John Barrasso, R-Wyo., asked Bill Panos, the director and CEO of the Wyoming Department of Transportation who also testified, whether rural or smaller states could use Build America Bonds for infrastructure, though they would have to be reauthorized.

“Wyoming has never borrowed for transportation” because its “high cost per capita … discourages borrowing,” Panos said. But he later said the state has issued grant anticipation revenue vehicles, or Garvees.

Barrasso said data from the U.S. Treasury Department shows rural states issued a lot of BABs in 2009 and 2010 when they were authorized by the American Recovery and Reinvestment Act. BABs are taxable bonds for which Treasury makes subsidy payments to issuers equal to roughly 35% of their interest costs.

Panos, who was also speaking on behalf of the transportation departments in Idaho, Montana, North Dakota, and South Dakota, some of which issued BABs, told committee members that P3s and other approaches to infrastructure investment that depend on positive revenue streams from projects “are not a surface transportation infrastructure solution for rural states.”

P3s would be unlikely to attract investors even with tax credits, he said. Part of the problem is that roads in rural states tend to have relatively low traffic volumes, he said.

Panos said Congress must strengthen the Highway Trust Fund, which will no longer be able to support surface transportation programs after 2020, when funding from the Fixing America's Surface Transportation Act (FAST) ends.

He also said certainty is important for transportation planners. He applauded the FAST Act's providing several years of transportation funding, but said Congress' track record of passing continuing resolutions, restricting funds to the previous years' levels, instead of annual appropriations bills, creates uncertainty.

Sen. Deb Fischer, R-Neb., a committee member, said she's proposed legislation (S. 271) to shore up the Highway Trust Fund and to provide states with more flexibility in how federal funding is spent on infrastructure projects. "I think it's really important to look at a federal revenue source without raising taxes," she said during the hearing. Her bill would transfer revenues from U.S. Customs and Border Protection to the HTF.

"If we have certainty we can make better plans" and that will lead to lower costs, said Shailen Bhatt, executive director of the Colorado Department of Transportation, who also testified.

Most of the witnesses agreed with the current funding formulas that divide federal funds between highway and transit programs and urged that they be continued.

While the committee paid particular attention to the needs of rural areas, Bobbitt pointed out that farms and businesses in agricultural-based rural areas need roads and bridges to deliver products to urban areas. "It's not rural vs. urban," she said, adding, "We're all in this together."

The Bond Buyer

By Lynn Hume

February 8, 2017

Outlook Dims for Trump Pledge on Infrastructure Funding.

DALLAS – President Trump's pledge of getting Congress to pass a major infrastructure program in his first 100 days is slipping away as lawmakers focus on health care as their top priority, leaving experts to wonder if the initiative will move forward at all this year.

Infrastructure has become tied to tax reform because of the revenues that would be needed to fund it. House Speaker Paul Ryan, R-Wis., said Thursday that Congress will not take up tax reform until it deals with the repeal and replacement of the Affordable Care Act.

Tax reform, ranging from a comprehensive overhaul of the tax code to attempts to repatriate trillions of dollars in overseas corporate profits, has been the preferred main source of additional infrastructure funding for many lawmakers. Trump's promise of a $1 trillion boost to infrastructure spending has buoyed the stock market since his inauguration.

"It's just the way the budget works that we won't be able to get the ability to write our tax reform bill until our spring budget passes, and then we write that through the summer," Ryan said during an interview on Fox News.

"We feel the need to rescue this system here and that's why we're going with health care first," Ryan said. "And then in the spring we're doing the second budget. That's where tax reform comes."

Trump favors a reduction in the corporate tax rate to 15% from the current 35%, while Ryan's proposal would lower the rate to 20%.

Ryan and Rep. Kevin Brady, R-Texas, chairman of the House Ways and Means Committee, have said that revenue resulting from corporate tax reform should be used for overall tax reforms rather than being dedicated solely to infrastructure.

Rep. Bill Shuster, R-Pa., chairman of the House Transportation and Infrastructure Committee, said last week that Trump's infrastructure program would likely be funded through an overhaul of the federal tax code that Democrats could support.

Infrastructure funding will probably be linked to tax reform, said Sen. John Thune, R-S.D., chairman of the Senate Commerce Committee and third-ranking Republican in the Senate.

"My guess is if that gets done, it probably hitches a ride on tax reform," Thune said last week at the Republican legislative retreat in Philadelphia.

"We've got a very focused agenda, things that we want to get done in the next 200 days," Thune said. "How infrastructure plays into that, we're not sure yet."

Delaying action on infrastructure funding to take care of other issues could mean farewell to hopes for an infrastructure program this year or next, said Norman Anderson, president of consulting firm CG/LA Infrastructure.

"President Trump's main promise during the campaign for action on infrastructure in his first 100 days is in danger of not being fulfilled," Anderson said. "It's a big mistake and a very, very bad idea, because if infrastructure is the second or third priority in Washington instead of the first, then nothing will get done."

History has shown that infrastructure programs are passed early in a new administration or not at all, Anderson said.

"It has to be done in the very beginning," he said. "Nobody's been able to do it after the first 200 days."

A bipartisan trio of lawmakers has proposed incentives for corporations to bring an estimated $2 trillion in overseas earnings into the U.S. to spur private sector reinvestment and growth.

Rep. John Delaney, D-Md., one of the sponsors of the Infrastructure 2.0 Act, proposed similar measures in 2014 and again in 2015 with significant bipartisan support, but neither gained traction in Congress.

A Senate bill filed Tuesday by Sen. Deb. Fischer, R-Neb., would provide five years of supplemental federal highway funding, not through tax reform but by diverting Customs and Border Patrol revenues.

Fischer's Build USA Infrastructure Act would move the first $21.4 billion of revenues collected per year from freight and passengers at international borders into the Highway Trust Fund for five years.

The Bond Buyer

By Jim Watts

February 2, 2017

The Week in Public Finance: Battling Over Retirement, Gorsuch on Online Sales Taxes and Fiscal Irresponsibility.

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

GOVERNING.COM

BY LIZ FARMER | FEBRUARY 10, 2017

MSRB Enhances EMMA Alerts Tool.

Washington, DC – Investors and others who track municipal bonds with email alerts from the Electronic Municipal Market Access (EMMA®) website can now further customize their notifications and see more detail about the securities they follow.

As part of an ongoing effort to improve the usability of its EMMA website, the Municipal Securities Rulemaking Board (MSRB) has enhanced EMMA's automated email alerts so that users can specify the types of continuing disclosure filings to trigger a notification. For example, an investor can choose to receive email alerts only when new audited financial statements or notices of bond calls are posted. Previously, users could opt to receive alerts for every financial disclosure or all event filings for one or more securities but could not narrow their selection to specific documents or events.

EMMA's automated alerts have also been improved to include more useful details about the relevant bond and its associated trade activity or filing that triggered the alert.

"Thousands of investors and other EMMA users rely on the alerts feature to stay up to date with the latest available information on their securities," said MSRB Executive Director Lynnette Kelly. "These enhancements allow users to be more selective about the types of alerts they wish to receive and provide more descriptive information about the nature of the alert."

EMMA alerts are available for trade activity and when new disclosure documents are filed for one or more securities. Disclosure filings include annual financial information that provides an updated view of the issuer's financial health and notices of events that can have an impact on the bonds. To access EMMA alerts, create a free MyEMMA account on the EMMA website.

The MSRB is continuing to consider additional changes to the alerts function to support website performance and usability. For unlimited real-time access to trade data and disclosure filings, the MSRB offers paid subscription services.

The MSRB's EMMA website is the official source of data and disclosure documents on more than one million outstanding municipal securities. The MSRB operates the EMMA website in support of its mission to protect investors, state and local governments, and the public interest by promoting a fair and efficient municipal market.

Date: February 8, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
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Munis Could be Caught Up in Revised CHOICE Act's Mandated SEC Reviews.

WASHINGTON – House Financial Services Committee Republicans have floated a revised version of their Financial CHOICE Act that would require the Securities and Exchange Commission to review municipal market and other self-regulatory organizations' inefficiencies as well as reform its enforcement process.

The memo dated Feb. 6 from committee Republicans includes many Dodd-Frank Act and other changes that may be proposed in the new version of the Financial CHOICE Act, which is expected to soon be introduced.

Committee chair Rep. Jeb Hensarling, R-Texas, introduced a version of the CHOICE Act during the last session that was approved by the committee but not taken up by the full House. Democrats have made clear they intend to fight Republican reforms to Dodd-Frank during the session.

Rep. Maxine Waters, the top Democrat on the committee, said Hensarling is trying to destroy protections that stop Wall Street from "ripping off hardworking Americans" and that the changes indicated in the memo show a new Financial CHOICE Act that "is even worse than the original." The committee's Republican staff would not return calls to verify and expand upon the memo.

One proposal in the memo is to have the SEC chair "provide a report within one year on eliminating duplication and inefficiencies amongst the various self-regulatory organizations." Sources said that language could mean exploring possible opportunities to roll back regulations and streamline rulemakings between the Municipal Securities Rulemaking Board and the Financial Industry Regulatory Authority.

Executive orders from President Donald Trump have already directed the SEC to play a role in identifying how Dodd-Frank's implementation has not worked as well as how existing regulations could be streamlined.

Dealer groups have welcomed the attention to rulemaking and enforcement as they have consistently complained about the increasing costs and burdens of the many rules during the last few years that implemented Dodd-Frank provisions. The act subjected non-dealer municipal advisors to federal regulation for the first time and directed the MSRB to protect issuers as well as investors. The memo also proposes to prohibit the SEC from undertaking "rulemaking by enforcement."

One source said a large segment of the muni market saw the SEC's Municipalities Continuing Disclosure Cooperation initiative as rulemaking by enforcement because the commission had not directly spoken to issuers in recent years about their responsibilities under SEC Rule 15c2-12 on disclosure. MCDC promised underwriters and issuers that they would receive lenient settlement terms if they self-reported instances over the last five years where issuers falsely stated in offering documents that they were in compliance with their continuing disclosure agreements.

Another proposal would direct the SEC to establish a “Wells Committee 2.0 to reevaluate its enforcement program.” Sources said the “Wells Committee 2.0” likely refers to a requirement to conduct similar analyses to what the SEC’s Wells Committee did in the 1970s. That committee reviewed commission enforcement activity and recommended, among other things, that the SEC implement the practice of giving an individual or firm that may face a commission civil action an opportunity to explain why the action should not be brought. The notice given to the potential parties in the actions is called a Wells Notice.

There were several muni-related portions of the previously introduced CHOICE Act that are not mentioned in the memo, that sources said may still be in the bill when it is reintroduced.

One would move the SEC’s Office of Municipal Securities back into the commission’s trading and markets division, where it was before Dodd-Frank required it to be independent and report directly to the SEC chairman. Another would divert the funding the MSRB regularly receives from SEC and FINRA enforcement actions over muni rule violations to the Treasury for deficit reduction. Of the MSRB’s roughly $35.4 million in revenue in its fiscal year 2016, $1.2 million came from fines for muni rule violations.

The original CHOICE Act also would have allowed the SEC to triple monetary fines in administrative and civil actions where penalties are tied to illegal profits as well as in enforcement cases dealing with repeat violators of laws and rules.

The Bond Buyer

By Jack Casey

February 10, 2017

How a Corporate `War' Over Covenants May Affect Munis.

PHOENIX – New language designed to protect investors appeared last month in the offering documents of a taxable hospital deal, as the ripple effect of a battle in the corporate bond arena spread to the municipal market.

The language, which appeared in offering documents for a $350 million taxable Children’s Hospital Corporation (Mass.) issuance, makes clear that investors are due a premium in the event of a default. It specifies that investors are due an amount “equal to the make-whole redemption price.” Municipal finance pros said the language appears to have crossed over as a result of a dust-up over corporate bond covenants in late 2016 – though some expressed skepticism that such covenants would take hold in the municipal market.

Adam Cohen, a corporate finance attorney who founded and writes for a research firm called Covenant Review, said the issue arouse in October when corporate borrowers started including provisions in their offering documents that prevented buyers from collecting any kind of premium if the bonds were redeemed early. They started doing so as an effort to “opt out” of court rulings that ordered some corporate borrowers to pay make-whole redemptions after covenant breaches, a move that investors quickly began railing against.

That meant that issuers could voluntarily breach their covenants and only pay out par. An ugly "war" played out over this in the corporate market late last year, Cohen said, leading borrowers to drop their insistence on that provision. The language in the Children's Hospital Corporation deal is the "reverse" of what the corporate borrowers tried to do, Cohen said.

"It's a big deal because this war from corporate bonds leapt over to munis," Cohen said, adding that had personally spoken to some fund managers that said they would want this protective language in future muni deals they bought, but that the majority of the market appears unaware of the issue.

But despite the uproar the deal caused in the corporate world, muni market professionals seem skeptical that the issue is as big in the tax-exempt market. The hospital deal that included the make-whole provision was taxable, and so not representative of the most common type of muni bond issuances.

A bond lawyer who reviewed the offering documents at The Bond Buyer's request but requested anonymity to comment on the deal said he didn't believe that the provision would become commonplace in the muni market, and probably wasn't necessary. The attorney said that taxable deals are generally sold to corporate buyers, and as such reflect the expectations of the corporate market.

"Our clients don't have the same incentives to game the system like corporate players do," the lawyer said. "I'm surprised they had this whole kabuki dance."

Triet Nguyen, managing director and head of public finance credit at NewOak said that he had not seen the provision in a muni deal, and didn't see much utility in including it in a tax-exempt issuance.

"I think it will be hard to enforce in bankruptcy and does not have any direct impact on recovery," said Nguyen. "In a sense, all it does is inflate the bondholders' potential claim."

The Bond Buyer

By Kyle Glazier

February 7, 2017

The Timeline of Tax Reform and the Danger For Munis.

AUSTIN – Federal tax reform efforts will accelerate in just a few weeks, and municipal market participants need to be pushing hard to protect the muni interest exemption right now, lawyers told attendees at a conference here Thursday.

Speaking at The Bond Buyer's Texas Public Finance Conference luncheon, Bracewell attorneys Curtis Beaulieu and Charles Almond warned that the exemption could be in danger very soon despite President Donald Trump's apparent support for leaving that part of the tax code unchanged. Republicans have been pushing to lower corporate and individual income tax rates, a goal that puts the muni exemption in danger of being limited or eliminated.

The momentum will pick up about six weeks from now, Beaulieu said, when House Ways and Means Committee chair Kevin Brady, R-Texas, releases the first draft of tax reform legislation. This draft, called the "chairman's mark," is crucial for the future of the muni exemption, said Almond. If the mark comes out and does not include a tax exemption for municipal bond interest, the lawyer warned, that means someone on the committee will then have to work to get it in.

"You really want things taken care of in the chairman's mark," Almond said, urging conference attendees to begin lobbying their representatives now if they hadn't already, warning them against waiting weeks to do so. Almond said that the "House blueprint" for tax reform that has already been publicly circulated could already be interpreted as limiting the tax exemption, and proposed eliminating "special-interest" deductions and credits.

A September estimate released by the Treasury pegs federal "tax expenditures" for tax-exempt bonds issued by state and local governments at about $565 billion over the 10-year period from 2017-2026. While that ranks only 15th on Treasury's list of tax expenditures, Almond said it still provides lawmakers with a potentially appealing way of helping to lower tax rates without adding to the deficit.

"To get those rates down, they're going to go searching for other places to raise revenues," said Almond.

Beaulieu said that even if the tax exemption is on the table, legislation would still be very unlikely to include a retroactive change to the status of outstanding tax-exempt bonds.

"Republicans typically do not support retroactive tax increases," Beaulieu said. "So there's probably no chance."

Almond downplayed the comfort that market participants can take in then President-Elect Trump's comments to the U.S. Conference of Mayors in December, during which Trump spoke about his proposed $1 trillion ten-year infrastructure plan and said that he plans to maintain the tax-exempt standing of municipal bonds.

"I don't think you can rely on anything until it's Tweeted," joked Almond.

Beaulieu said that Republicans can pass tax reform legislation on a partisan basis in the House, where they GOP maintains a sizeable majority. But when the discussion moves over to the Senate, he said, Republicans will likely need to abandon their partisan approach and get some Democrats on board. Republicans control 52 Senate seats, but the upper chamber's rules essentially require 60 votes to pass a bill because of the ability of Senators to filibuster and more easily amend bills they dislike.

"Everything slows down in the Senate," said Beaulieu.

The Bracewell lawyers' estimated timeline includes consideration of tax reform legislation by the full House by August. The full Senate could consider it by the end of 2017, and a conference report could produce a joint product by spring 2018.

The Bond Buyer

By Kyle Glazier

February 9, 2017

States, Localities Could Issue $5B of PABs for Public Building P3s.

WASHINGTON – Companion bills introduced in the House and Senate would allow state and local governments to issue up to $5 billion of private activity bonds to finance the repair or construction of public buildings under public-private partnership arrangements.

The "Public Buildings Renewal Act" was introduced in the House on Feb. 7 as H.R. 960 by Rep. Mike Kelly, R-Pa., and eight cosponsors, five of whom besides Kelly are members of the House Ways and Means Committee.

The measure in the Senate, which has not been assigned a number yet, is being introduced by Sens. Dean Heller, R-Nev., and Bill Nelson, D-Fla., both of whom sit on the Senate Finance Committee.

The bills they introduced last session were H.R. 5361 and S. 3177.

The legislation would create a new category of tax-exempt PABs that would allow states and localities to partner with private parties to construct or renovate qualified government buildings, which would be governmentally owned.

These could include public buildings, schools, state colleges or universities, public libraries, and courthouses, according to the bills' text. They could also include government-owned hospital, health care, laboratory or research facilities and public safety facilities such as police stations or firehouses.

The bonds could not be issued to finance buildings or facilities for retail food and beverage services, private golf course or country clubs, or other sports or entertainment facilities, according to the text.

These kinds of projects cannot currently be financed with tax-exempt PABs because there is not a specific qualified PAB category for bonds for public buildings.

Jessica Giroux, Bond Dealers of America's general counsel and managing director, said the bills, "fit the administration's call for more infrastructure spending."

"There has been a fair degree of interest and a few transactions done as P3s for what is called social infrastructure" such as courthouses and government office buildings, Giroux said. "The downside is that it's hard to do these economically if you can't use tax-exempt bonds. So this sort of thing would be a fix for that."

Emily Brock, director of the Government Finance Officer's Association's federal liaison center, said the bills are in line with GFOA policy.

"The GFOA has a long-standing policy that encourages Congress and the Department of the Treasury to consider easing private activity restrictions on public use facilities," she said. "We look forward to working with the bill sponsors to discuss how this concept can augment the financing toolkit for state and local governments, which also must include the full preservation of the municipal bond interest exemption.

Michael Decker, managing director at the Securities Industry and Financial Markets Association and co-head of its muni division, said, "Private activity bonds can provide an efficient mechanism for financing the debt portion of infrastructure projects. It's appropriate for governments who determine that public-private partnerships are the most efficient financing model to be able to tap the tax-exempt, private-activity bond market to finance the project. This principle should apply to public buildings, as Sens. Heller and Nelson and Congressman Kelly have proposed, and other infrastructure projects as well."

Rep. Kelly said in a release on the bill pending in the House, "Our country's public buildings are in a historic state of disrepair and in need of a bold solution. That's where the Public Buildings Renewal Act can come to the rescue."

Blumenauer added, "Congress has failed to display the political courage to adequately invest in infrastructure – from roads to light rail to schools and courthouses. Our nation is literally falling apart and falling behind. We need an 'all of the above' approach to infrastructure funding and simple fixes to lower investment barriers are steps in the right direction."

The other House and Ways and Means Committee members co-sponsoring the bill in the House are: Reps. Carlose Curbelo, R-Fla., Lynn Jenkins, R-Kan., James Renacci, R-Ohio, and Ron Kind, D-Wis. Reps. Lee Zeldin, R-N.Y., Will Hurd, R-Texas, and Scott Perry, R-Pa., are also co-sponsors.

The Bond Buyer

By Lynn Hume

February 9, 2017

House Resolutions Introduced to Undo State, City Secure Choice Rules.

Resolutions to block Department of Labor rules allowing states to set up private-sector retirement savings programs were introduced Wednesday by two members of the House Education and the Workforce Committee.

The Department of Labor issued final rules on Aug. 25 granting states a safe harbor to set up payroll deduction individual retirement accounts for private-sector workers who do not have access to workplace retirement savings programs. On Dec. 19, the DOL issued similar final rules for cities and other large political subdivisions. The rules remove concern over being pre-empted by federal regulators by clarifying that such programs would not be covered by ERISA.

H.J. Res. 66, introduced by Rep. Tim Walberg, R-Mich., who chairs the Subcommittee on Health, Employment, Labor and Pensions, would remove the safe harbor for states, and H.J. Res. 67, introduced by committee member Rep. Francis Rooney, R-Fla., would block the rules for cities.

Both measures, called resolutions of disapproval, take advantage of the Congressional Review Act, which allows Congress to legally prevent a federal agency from implementing a rule or issuing a substantially similar rule without congressional authorization.

"Our nation faces difficult retirement challenges, but more government isn't the solution," Mr. Walberg said in a statement. Mr. Rooney, in the same statement, said the rules would force people into government-run plans with fewer protections and less control, and present employers with "a confusing patchwork of rules" that could result in fewer retirement plans being offered.

In a letter to House Speaker Paul Ryan, R-Wis., the ERISA Industry Committee, which represents large employers on benefits issues, said its members "are discouraged by recent proposals at the state and local level that unnecessarily disrupt active employer-sponsored retirement plans that are already in full compliance with federal law and regulations," particularly those that operate across state lines.

"Rules that are too onerous or restrictive can chill an employer's commitment to offer a retirement plan," the ERIC letter said.

A vote on the joint resolutions has not been scheduled, but is expected to happen as early as next week.

PENSIONS & INVESTMENTS

BY HAZEL BRADFORD | FEBRUARY 8, 2017 3:19 PM | UPDATED 4:47 PM

— Contact Hazel Bradford at hbradford@pionline.com | @Bradford_PI

SIFMA Survey Projects Slip in Long-Term Muni Issuance this Year.

WASHINGTON – Long-term municipal bond issuance is expected to fall to $417.5 billion this year from $423.8 billion last year, according to a survey released by the Securities Industry and Financial Markets Association on Wednesday.

Total muni issuance is expected to rise to $461 billion in 2017, with increases in short-term munis, but a decline in refundings, the survey of six municipal market firms showed.

SIFMA conducted its 2017 Municipal Bond Issuance Survey between Nov. 14 and Feb. 3 based on the median values of figures submitted from: Bank of America-Merrill Lynch; Hilltop Securities; J.P. Morgan Chase & Co.; RBC Capital Markets; Stoever Glass; and Wells Fargo Securities.

The $461 billion of total muni issuance would be up from $459.4 billion in 2016. That increase is tied to an expected jump in short-term issuance to $43.5 billion from $35.6 billion in 2016, according to the survey results. The participating firms said long-term issuance would reach anywhere from $320 billion to $450 billion for 2017, the median of which is $417.5 billion. Long-term tax-exempt muni issuance is expected to reach $375 billion in 2017, a 2.1% drop from the $383.1 billion in 2016. The firms expect taxable issuances to rise to $30 billion in 2017 from $28.5 billion in 2016, a 5.2% increase. Alternative minimum tax issuance is also expected to rise to $12.5 billion in 2017 from $12.2 billion in 2016.

Of the total issuances, only 41% are expected to be refundings in 2017 compared to the 51% in 2016.

Michael Decker, managing director and co-head of munis for SIFMA, said the lower number of refundings is likely due to the expectations of further Federal Reserve Board rate increases and the fact that 2007 was a relatively weak year for issuance. "Many bonds are issued with ten-year par calls so one of the driving factors for refunding volume is … the new money issuance volume ten years ago," Decker said. "2007 was a relatively weak year so there will be relatively fewer issues that come up for refunding in 2017. That, compounded with the rate increase we saw toward the end of last year and maybe a smaller uptick in rates throughout this year, will together cause refunding volume to be lower than it has been."

The Fed's Federal Open Market Committee raised the federal funds target rate to 0.50% to 0.75% in December. The federal funds rate is expected to rise from 0.62% by the end of March 2017 to 0.94% by the end of December 2017, according to the survey. Most survey respondents said the largest sector of new munis would be general purpose for the next year. The balance will be evenly split between transportation, education, and public facilities, they said. General purpose has traditionally been the largest issuing sector by gross amount in past years.

The most likely event that would have the greatest effect on the muni market during the year is the possible curtailment of the tax exemption for municipal bond interest, the survey participants said. Muni groups have been actively lobbying legislators and federal government officials about the importance of maintaining the tax exemption for munis. Regulatory and compliance burdens dealers and others continue to experience will also have a large impact on the market in 2017, according to the surveyed firms.

The firms also said they expect the number of issuers that will default in 2017 to range from 20 to 25, comprising a par value that could range from $400 million to $26 billion. The survey defined default as the occurrence of a missed interest or principal payment or a bankruptcy filing.

The Bond Buyer

By Jack Casey

February 8, 2017

Trump Executive Order Encourages SEC to Review Cost of Regulations.

WASHINGTON – President Donald Trump's executive order to decrease regulations and the costs they impose encourages independent agencies like the Securities and Exchange Commission to review their rules, even though the order does not directly apply to them, according to guidance issued Monday.

Trump's order, signed on Jan. 30, mandates executive departments and agencies to repeal two rules for the adoption of every new rule that imposes costs. It requires the savings from the repealed rules to fully offset the costs of the new action, according to the guidance published by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA).

OIRA makes clear in its guidance that independent agencies are not covered, but notes that "nevertheless, we encourage independent regulatory agencies to identify existing regulations that, if repealed or revised, would achieve cost savings that would fully offset the costs of new significant regulatory actions."

The Jan. 30 executive order is connected to another order Trump signed on Feb. 3 that directs the Treasury secretary to meet with major financial regulators, including the SEC, and report within 120 days on what Dodd-Frank Act provisions are working and not working.

Municipal market participants have consistently said they are concerned about the high cost of implementing and complying with the slew of regulations that the Municipal Securities Rulemaking Board and SEC have adopted over the last several years, many of which implemented Dodd-Frank provisions. The act put non-dealer municipal advisors under a federal regulatory regime for the first time and also made the MSRB responsible for protecting issuers as well as investors.

Bond Dealers of America welcomed the Feb. 3 order as a chance for a "critical reassessment" of Dodd-Frank regulations and the Securities Industry and Financial Markets Association commended the Trump administration for taking the action.

"It is imperative to ensure that our financial regulatory framework does not unnecessarily impede capital formation that drives job creation, economic growth and investor opportunity in this country," SIFMA president and CEO Ken Bentsen said in a release late last week.

The SEC is currently working with only two commissioners, but Trump has nominated Jay Clayton, a Wall Street lawyer, to succeed Mary Jo White as chair. Market participants see Clayton as someone who will work with the Trump administration to focus on deregulation where possible, suggesting he will likely follow the Jan. 30 executive order.

In announcing his nomination of Clayton as SEC chair in early January, Trump said the administration needs to "undo many regulations which have stifled investment in American businesses, and restore oversight of the financial industry in a way that does not harm American workers."

The Senate has yet to schedule a hearing for Clayton but several Senate Republicans have released statements and tweets about successful meetings with the nominee.

The Bond Buyer

By Jack Casey

February 6, 2017

S&P: For Illinois, Having A Plan Beats No Plan.

A bipartisan package of proposed budget legislation recently unveiled in the Illinois State Senate could mark a breakthrough in the state's nearly two-year-long budget impasse. The legislation, which includes appropriations for the remainder of fiscal 2017 and increased tax rates, offers the potential for the semblance, at least, of a shift toward fiscal stabilization.

Continue reading.

Feb. 6, 2017

S&P U.S. Public Finance Team Comments On Emerging Trends For 2017.

In January, S&P Global's U.S. Public Finance Ratings team published their 2017 sector outlooks. In this CreditMatters TV segment, Managing Director Robin Prunty provides us with an overview of the key themes, credit risks, and opportunities in the municipal finance sector this year.

Watch video.

Feb. 9, 2017

S&P: Although Risks Remain, Global Toll Road Operators Can Expect Credit Stability In 2017.

S&P Global Ratings' 2017 outlook for business conditions and credit quality for rated toll road facilities around the world is generally stable. The exception is the U.S., where the overall outlook is positive.

Continue Reading

Feb. 8, 2017

Rainy Day Funds Show States Are More Vulnerable to Next Downturn.

- Median reserves of expenses among states slipping in 2017
- Lack of budgetary cushion in past recession heightened woes

More states are failing to sock away cash for the next rainy day.

The number without budget reserves has doubled to four from last year, according to data from the National Association of State Budget Officers. And discipline in building up cushions has slipped, with the median balance 4.9 percent of expenditures in fiscal 2017, down from 5.1 percent, Bank of America Merrill Lynch analysts said in a note to clients.

The number of states with rainy day funds of less than 1 percent of expenses rose to five from three in fiscal 2017, while those with balances of up to 5 percent declined to 17 from 19, the budget officers' report showed.

Skimpier reserves risk exacerbating the effect of a national slowdown, as well as that from federal policies. President Donald Trump has pledged to repeal the Affordable Care Act, which would likely hit state budgets, and any overhaul that reduces taxes may curb demand for tax-free municipal bonds, which could make it more costly for localities to borrow.

Investors have punished states with low reserves. Of the four with none — Illinois, New Jersey, Nevada and North Dakota– Illinois and New Jersey must pay the highest premiums over benchmark debt among 20 states surveyed by Bloomberg. The two, which grapple with chronic budget deficits and elevated pension costs, are also the lowest-ranked U.S. states.

Other states have learned their lessons. California is enjoying its highest credit rating since the turn of the century, thanks partly to bolstering its rainy-day funds.

Lawmakers in California and in capitols across the country weren't prepared for the last recession. In 2009, when it ended, budget gaps totaled $117 billion, about twice the level of reserves, according to Pew Charitable Trusts.

Analysts don't expect a recession soon. The economy will probably expand through at least the first quarter of 2018, according to analysts surveyed by Bloomberg.

Even so, some state officials are girding for the eventual decline. Half of states expect to pad their reserves in fiscal 2017, according to the budget officers' group. That includes California, where

Governor Jerry Brown wants to further lift the savings account to $7.9 billion in fiscal 2018 from $6.7 billion this year.

"Saving now would allow the state to spend from its rainy day fund later to soften the magnitude and length of any necessary cuts," California's budget said.

Bloomberg

by Romy Varghese

February 7, 2017, 2:01 AM PST

Universities Found Way to Keep Debt Off Books in Dorm Arms Race.

- Colleges tapping developers to finance, build dormitories
- Partnership with Kean University selling $43 million of bonds

New Jersey's Kean University is joining a growing number of colleges tapping outsiders to finance dorms, a step that holds down debt as they cope with declining state aid and pressure to limit tuition increases.

Kean, the fourth-largest public university in the Garden State, located about 20 miles (32 kilometers) southwest of Manhattan, is working with a Baton Rouge, Louisiana-based non-profit to finance a new 385-bed dorm on campus. Provident Group-Kean Properties LLC is planning to sell $43.3 million municipal bonds Wednesday to pay for the project.

Rendering of new Kean University dorm building.Source: Kean University
"We're able to, rather than tacking on more debt to the university directly, have this partner share in the burden," said Felice Vazquez, Kean's associate vice president for strategic initiatives.

Kean, the University of Massachusetts Boston, and Texas A&M are among universities that in the last year turned to separate non-profits to build dorms backed solely by revenue from the projects. That preserves universities' capacity to borrow for classrooms and labs while reducing the risks of constructing new housing facilities that are a selling point to prospective students.

"Some universities are choosing a strategy of sticking to their knitting and divesting itself of anything that's not purely academic," said Jessica Matsumori, an analyst with S&P Global Ratings. In addition, "developers are seeing quite a bit of opportunity in this space and they're getting much more aggressive in their marketing and pitching to universities."

While such deals don't officially add to a university's debt, Matsumori said the company considers them contingent liabilities, given that administrators may want to spare their schools the stigma of a default.

"We believe if the project were distressed, they would likely be compelled to step in and assist – as it would affect their students, possibly their campus, and potentially their reputation," Matsumori said.

Kean enrolled about 15,500 students for the current academic year, with about 2,000 living on campus. The university, which offers admission to about three-quarters of applicants, has adopted a strategic plan that calls for more rigorous academic programs and decreasing the share of students living off campus.

"When you're here, 7 days a week, 24 hours a day, you do better and you're more likely to graduate in four years," said Vazquez.

With about $340 million in outstanding debt carrying an A- rating, Kean isn't on the hook to pay debt service for the new dorm, which is replacing half-century-old residence halls and will include a 2,000 square foot bistro once it's finished in August 2018.

Kean will treat the new dorm as part of its student housing program and won't build and operate another unless there's demand enough to keep them filled, according to an S&P rating report. In addition, Kean, which is managing the residence hall, agreed to reduce the number of spaces elsewhere so the new project will have enough students to meet debt-service coverage requirements.

S&P rates the bonds BBB-, the lowest investment grade and three steps below the university's bonds.

Kean's partner, Provident Resources Group, was founded in 1999 by a former public finance lawyer. The non-profit owns student housing at Montclair State University in New Jersey, Towson University in Maryland, and North Carolina State University.

In October, Provident partnered with the UMass Boston to finance a 1,080-bed residence hall, the commuter school's first. Provident Commonwealth Education Resources, Inc. priced about $130 million of bonds rated BBB- for yields of as much as 3.74 percent on securities due in 32 years, or about 2 percentage points more than top-rated debt, according to data compiled by Bloomberg. With interest rates having risen since, the bonds traded for an average yield of about 4.4 percent this week.
Provident Commonwealth will own the dorm. Birmingham, Alabama-based Capstone Companies will develop and manage the facility. UMass Boston will get about $1 million per year in rent after bondholders are paid.

"We don't have any housing on the campus right now, so it just really makes sense to bring in a private operator," said Patricia Filippone, executive director of the University of Massachusetts Building Authority. She said the financing will help the university preserve debt capacity for projects that don't directly generate revenue.

The project is being done as a "design-build" in which design and construction are contracted to single entity. Advocates say better coordination allows problems to be solved faster. Governments benefit from contracting with a single entity responsible for guaranteeing price and schedule.

"This is just a more efficient delivery method," said Filippone.

Bloomberg

by Martin Z Braun

February 8, 2017, 2:00 AM PST

Puerto Rico Collapse Casts Bond-Market Pall Over Pacific Island.

- Territory of Guam's bonds lose since Congress acted on crisis

- Guam still investment grade as other territories cut to junk

The bond-market gales that battered U.S. territories in the Caribbean are reaching a Pacific Ocean island more than 7,000 miles away.

As Puerto Rico stumbles through record-setting defaults and the U.S. Virgin Islands contends with a building fiscal crisis, Guam is being penalized by investors even though it's kept an investment-grade rating. The island's debt has lost 4.4 percent since the end of June, following the unprecedented U.S. rescue of Puerto Rico, compared with a 2.5 percent loss in the broader municipal market, according to S&P Dow Jones Indices.

"They are all struggling financially," said Dan Solender, head of municipals at Lord Abbett & Co., which hold about $100 million of Puerto Rico bonds and isn't buying territory debt. "As an investor, you don't know what your downside is anymore. You don't know if the terms you agreed to when you originally loaned them the money will be the terms that will be used to handle the situation if something goes wrong."

Investors' confidence in America's territories has been undermined by the U.S. effort to save Puerto Rico. That law, enacted in June, gave the government legal powers to cut its debts in bankruptcy-like proceedings, setting a precedent that Congress could extend to other cash-strapped territories.

The territories are wrestling with pension bills, heavy debt loads and economies dominated by a few key industries. The Virgin Islands since December has twice delayed a bond sale that it was counting on to help pay bills, and Monday its water and power company debt was downgraded to a few notches above securities already in default. Last month, Moody's Investors Service said it may cut American Samoa deeper into junk, in part because of the economic hit caused by the closing of a tuna-packing plan.

Star Territory

But Guam has avoided falling into junk-bond status. In July, S&P Global Ratings graded the island's bonds BBB+, the third-lowest investment grade, after deciding not to change its assessment in light of the Puerto Rico legislation. While Moody's Investors Service doesn't rate all of Guam's bonds, it grades the power authority's securities Baa2, two steps above junk.

Guam is the "shining star of the territories," said Ken Kurtz, an analyst with Moody's. "It's not on the edge of a cash crisis like the Virgin Islands is. Guam could deal with its issues if it chooses to."

Governor Eddie Calvo on Jan. 31 proposed a $722 million budget for the next fiscal year that he said balances after setting aside money for tax refunds and using $14.7 million to pay down the deficit. Guam, with about 170,000 residents, had about $2.6 billion of debt outstanding as of May — or about $15,000 per capita, according to bond documents.

"The governor has always taken the stance that we don't need federal assistance when it comes to our financial situation because we will pay our debts no matter what," said Jay Rojas, administrator for the Guam Economic Development Authority. "It's in the budget for us to be able to take care of all the debt service that's required."

The island's reliance on military bases, which occupy one-third of its territory, could be bolstered by President Donald Trump's promise of increased military spending. International tourism is another major industry. Rojas said the governor's office is looking at opportunities to expand into the shipping industry or the high-tech space.

"Diversification is always good," said Rojas. "Right now we have a two-legged stool. If we add a third leg — which would be, you know, the creation of a new economy or a new industry on the island — it would make us even more secure."

Bloomberg Markets

by Jordyn Holman

February 9, 2017, 2:00 AM PST

Bloomberg Brief Weekly Video - 02/09

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

Watch video.

Bloomberg

February 9, 2017

Fitch: Alaska Power Pool Is Likely Credit Positive.

Fitch Ratings-New York-07 February 2017: Public power utilities in Alaska's recently announced power pool should benefit from greater efficiencies, lower costs and a potential reduction in capex over the long term, Fitch Ratings says. To the extent that projected savings are used to build cash reserves, fund capital expenditures or reduce outstanding debt, credit quality among the participating utilities could improve. However, if the savings are passed back to the rate payers, creation of the power pool would likely be credit neutral.

The proposed power pooling and joint dispatch agreement between Chugach Electric Association, Inc., Anchorage Municipal Light and Power (ML&P), the Municipality of Anchorage, and Matanuska Electric Association was filed with the Regulatory Commission of Alaska (RCA) on Jan. 30. The proposed power pool expands on earlier efforts by Chugach and ML&P.

The pool will benefit the utilities by reducing the cost of power, increasing efficiencies and lowering the use of natural gas and emissions of carbon dioxide. The pool's goal is to meet the combined needs of the systems at the lowest possible cost by dispatching the most efficient resource, regardless of ownership, to meet the combined need. This approach allows for the better utilization of existing resources serving the region and reduces the need to develop and construct redundant resources, lowering capital costs over the long term.

The expanded power pool would include significant hydroelectric resources; two recently built natural-gas-fired combined cycle baseload plants, and quick-start peaking resources. By dispatching the most efficient resources across the pool, the utilities project savings of $12 million to $16 million annually in fuel and operation and maintenance costs. The increased efficiency and reduction in natural gas use would also extend the life of current supplies and reduce carbon dioxide emissions by an estimated 90,000 to 120,000 tons per year.

The proposal is currently considered an informational regulatory filing, providing the general framework for the pool's operation and goals. The participating utilities are still working out details regarding the power pool's operation and settlement process. A final, long-term agreement is expected to be filed with the RCA in 2018.

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Fitch Downgrades Illinois Ratings to 'BBB'; Negative Rating Watch Maintained.

Fitch Ratings-New York-01 February 2017: Fitch Ratings has downgraded the following ratings of the state of Illinois:

–Issuer Default Rating (IDR) to 'BBB' from 'BBB+;
–$25.9 billion in outstanding general obligation (GO) bonds to 'BBB' from 'BBB+';
–$431 million Illinois Sports Facilities Authority sports facilities bonds (state tax supported) to 'BBB-'from 'BBB';
–$2.6 billion Metropolitan Pier and Exposition Authority McCormick Place expansion project bonds to 'BBB-' from 'BBB';
–$267.8 million city of Chicago motor fuel tax revenue bonds to 'BBB-' from 'BBB'.

The Rating Watch Negative is maintained.

SECURITY
GO bonds are general obligations, full faith and credit of the state of Illinois.
State statutory mechanisms include an irrevocable and continuing appropriation for all GO debt service, and continuing authority and direction to the state treasurer and comptroller to make all necessary transfers from any and all revenues and funds of the state. The state funds debt service in advance by setting aside 1/12 of principal and 1/6 of interest every month for payments due in the ensuing 12 months.

The Sports Facilities Authority, Metropolitan Pier and Exposition Authority, and motor fuel tax bonds require state appropriation for the payment of debt service, resulting in a rating one notch below the state's IDR.

KEY RATING DRIVERS

The downgrade of Illinois's IDR and related ratings reflects the unprecedented failure of the state to enact a full budget for two consecutive years and the financial implications of spending far in excess of available revenues, which has resulted in increased accumulated liabilities and reduced financial flexibility. Even if the current attempts at a resolution to the extended impasse prove successful, Fitch believes that the failure to act to date has fundamentally weakened the state's financial profile.

The Negative Watch reflects Fitch's expectation that the state's implementation of a solution, whether temporary or permanent, will be a challenge in the current political environment and that in the interim the state will continue to delay and defer payments in lieu of balancing the budget. While Fitch acknowledges that there is a plan being developed in the state Senate that contains elements that could ultimately resolve the impasse, its passage is uncertain and the timing of implementing solutions is unknown. Fitch expects to resolve the Rating Watch within the next six months based on an assessment of the state's fiscal trajectory as it starts fiscal 2018. If the state continues on the current path, a further downgrade would be warranted.

Illinois has failed to capitalize on the economic growth of recent years to bolster its financial position. Rather, the decision to allow temporary tax increases to expire and the subsequent failure to develop a budget that aligns revenues with expenditures have resulted in a marked deterioration in the state's finances during this time of recovery. Once again, the state has displayed an unwillingness to utilize its extensive control over revenues and spending to address numerous fiscal challenges.

The 'BBB' rating continues to reflect the strengths inherent in a state's independent ability to control its budget, which remain substantial in Illinois despite policy decisions over a long period that have reduced expenditure flexibility. The rating also incorporates the state's elevated but still moderate liability burden, even considering its accumulated budgetary liabilities. These factors are offset by a history of notable fiscal management weakness that manifests itself in weak operating performance throughout the economic cycle.

Economic Resource Base
The state benefits from a large, diverse economy centered on the Chicago metropolitan area, which is the nation's third largest and is a nationally important business and transportation center. Economic growth through the current expansion has lagged that of the U.S. as a whole.

Revenue Framework: 'aa' factor assessment
Illinois' broad revenue base, primarily income and sales taxes, captures the diversity in its economy and has shown modest growth since the end of the recession. Fitch expects revenue performance to continue to track slow economic growth. The state has unlimited legal ability to raise revenues.

Expenditure Framework: 'a' factor assessment
Illinois has adequate expenditure flexibility despite elevated carrying costs for debt service and retiree benefits, with much of the broad expense-cutting ability common to most U.S. states. However, it is unlikely that reductions in state spending alone would be sufficient to achieve budgetary balance given the magnitude of the current budget gap. Funding demands associated with retiree benefits will continue to be a pressure, as these benefits are constitutionally protected.

Long-Term Liability Burden: 'a' factor assessment
Liabilities are an elevated but still moderate burden on Illinois' resource base, even when considering the large and growing accounts payable backlog that the state has accumulated. The state has very limited flexibility with regard to pension obligations following a May 2015 Illinois

Supreme Court decision that found 2013 pension reform unconstitutional.

Operating Performance: 'bbb' factor assessment
Illinois' operating performance, both during the great recession and in this subsequent period of economic growth, has been very weak. The failure to address a long-standing structural budget gap with permanent and comprehensive solutions, whether revenue or expenditure, has left the state with an gaping hole in its operating budget and increasing budgetary liabilities.

RATING SENSITIVITIES
BUDGET SOLUTIONS: Failure to enact a balanced budget for fiscal 2018 would result in a further downgrade. Successful implementation of measures to enact a structurally balanced budget and reduce accumulated budget liabilities would stabilize the credit.

LIQUIDITY: The rating is sensitive to a material reduction in the state's ability to manage within available revenues through discretionary payment deferrals. Furthermore, failure of the state to make its statutorily required debt service transfers as scheduled, 12 months in advance on a rolling basis, would result in an immediate downgrade of the rating to below investment grade because it would suggest that the state's liquidity pressures are presenting a risk to bondholder interests that has not been evidenced to date.

CREDIT PROFILE

Illinois is a large, wealthy state at the center of the Great Lakes region. It benefits from a diverse economy centered on the Chicago metropolitan area. Illinois' economy has gradually shifted, similarly to the U.S. in general, away from manufacturing to professional business services. The remaining manufacturing sector does include more resilient non-durables, and is less concentrated in the auto sector than surrounding states, but remains vulnerable to cyclical downturn. By most measures the economy has grown slower than the nation for many years and population levels have been stagnant to declining.

Revenue Framework
Illinois has a reasonably diversified revenue base. It relies most heavily on personal income taxes (close to half of general fund revenues) and sales tax. The balance consists of corporate income tax, lottery and gaming revenues, and a variety of other smaller taxes and transfers. The state has a flat personal income tax rate of 3.75%, which was temporarily increased to 5% between 2011 and 2015 from the prior flat rate of 3% to close post-recession budget gaps and reduce accumulated liabilities.

Historical revenue growth, adjusted for the estimated impact of policy changes, has been slightly above inflation but has somewhat lagged national economic growth. With Illinois' economic performance also lagging national growth, Fitch expects a continuation of this trend of flat-t--modest real revenue growth.

Illinois has no legal limitations on its ability to raise revenues through base broadenings, rate increases, or the assessment of new taxes or fees.

Expenditure Framework
As with most states, Illinois' spending is largely for social services and education, although its carrying costs for debt service and pension payments are comparatively high.

Spending growth, absent policy actions, is likely to be higher than revenue growth, driven mainly by increasing pension costs. Illinois has chronically underfunded its pension system based on a statutory formula that permitted a slow incremental build-up to higher pension funding and targeting only 90% of full actuarial funding. Pension costs are unusually large and continuing to grow, crowding out other spending. As with most states, other spending drivers include Medicaid and education.

The fiscal challenge of Medicaid is common to all U.S. states. Federal action to revise Medicaid's programmatic and financial structure appears likely, although the magnitude and timing of changes for state budgets remain unknown. Both the new presidential administration and congressional leadership support significant Medicaid policy shifts. As one of the largest parts of state budgets and by far the biggest source of federal funding to the states, federal decisions could have significant implications for states' ability to manage this key budget item.

Despite carrying costs that are among the highest of the states, Fitch believes that Illinois retains adequate expenditure flexibility that could be used in the budget process. Illinois funds a broad range of services for its citizens and did not significantly reduce spending during the recession. This leaves the state with ongoing capacity to make spending reductions. However, Illinois has no ability to unilaterally modify retiree benefits following the May 2015 Illinois Supreme Court decision that found 2013 pension reforms unconstitutional.

During the current budget impasse, almost 90% of spending continued to be funded in fiscal 2016 at the 2015 rate, based on continuing appropriations, consent decrees, and court orders, as well as the enacted education budget. A similar partial general funds budget was enacted for fiscal 2017, including full-year appropriations for K-12 education and other state and federal funds; however, the partial budget expired Jan. 1, 2017 and the state is again operating without a full budget in place. There is little flexibility to control spending outside of the budget process in part because the governor cannot unilaterally make many changes without legislative participation.

Long-Term Liability Burden

Illinois' long-term liabilities, particularly pension liabilities, are very high for a U.S. state. Illinois is the weakest of the states in terms of its ratio of debt and unfunded pension liabilities to personal income, at 23% as of 2016, well above the 5.1% median for states. The state's three largest pension systems, covering teachers, universities, and state employees, have low funded ratios driven by a history of weak contribution practices.

In addition to its long-term liabilities, the state has a sizeable accounts payable balance that has accumulated through multiple years of operating at a deficit. As of the end of fiscal 2016, the accounts payable balance totaled $7.6 billion and it has increased since with the ongoing budget impasse. If the senate proposal to issue bonds to reduce or eliminate this budgetary liability proceeds, Illinois' debt levels would be further elevated but would remain within the moderate range.

Short-term borrowing is allowed, subject to a limitation of 5% of appropriations for revenue anticipation purposes, which must be repaid by the close of the fiscal year, and 15% to meet revenue failure, which must be repaid within one year. The state has no short-term borrowing currently outstanding or planned, although notes were issued during the downturn.

Operating Performance

Illinois is poorly positioned to address a future economic downturn. While it has substantial theoretical capacity to weather a downturn, in terms of both revenue-raising potential and spending flexibility, it has not demonstrated the political capacity to achieve a long-term solution to its chronic budget deficits. During the great recession, the state largely maintained spending but delayed payments to address lower revenues. It accrued, as a result, an accounts payable balance that at its peak, reached 20% of the operating budget. In the absence of a change in management's approach to state finances, it is Fitch's expectation that future deficits would also be addressed by deferring state payments and increasing accumulated liabilities, although this approach is made more challenging by the state's already significant and growing deferrals during this period of economic growth.

Illinois' budget management during the current period of expansion has been especially weak. Temporary increases in personal and corporate income tax rates in place for four years, from Jan. 1, 2011 through Dec. 31, 2014, closed or partially closed the budget gap across five fiscal years. However, with their expiration, and the failure to enact a spending plan within expected revenues, the budget gap has ballooned. As a result, the state finds itself with a current operating deficit, structural budget deficit, cash crunch, and accumulation of accounts payable that will surpass its highest level at the depth of the recession.

The governor and state legislature could not come to agreement on a realistic spending and revenue plan for either the fiscal year that ended June 30, 2016 or the current fiscal year. With spending that far exceeded available revenues in fiscal 2016, the state's accounts payable balance grew to an estimated $7.9 billion at year-end, a significant portion of which was for the state employee health insurance plan. Similarly unable to enact a full-year balanced budget for fiscal 2017, the governor proposed, and the legislature enacted, a partial budget to fund operations while continuing negotiations over the budget and the governor's proposed reform agenda, which addresses issues separate from the budget. The partial budget has now expired, and if spending continues in the current year without approval of new revenues or the enacting of severe budget reductions, which seem unlikely, the state is on course to once again run a sizeable deficit that would flow through to the accounts payable bottom line.

The state Senate has put forth a series of bills that have the potential to lead to a compromise that will resolve the impasse. The Senate bills include raising the state income tax and other revenue measures, debt issuance to reduce accumulated budgetary liabilities, pension reforms, aid to Chicago public schools, and non-budgetary reforms sought by the governor, including a freeze on property taxes, workers compensation reform, and some form of term limits. These proposals, if they proceed through the full legislature and are signed by the governor, have the potential to meet the requirements to stabilize the Illinois IDR and related ratings. However, their passage is uncertain as is the timing of the implementation of any solutions.

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Fitch: California School Downgrades Outpace Upgrades.

Fitch Ratings-San Francisco-07 February 2017: Most California school district ratings have been affirmed under Fitch Ratings’ new criteria, though the bulk of rating changes have been downgrades, in contrast to the local government portfolio in general, which has seen significantly more upgrades than downgrades with the criteria change.

Fitch is currently conducting a portfolio review of California school districts under its revised U.S. tax-supported criteria, which was released in April 2016. Eighty percent have been affirmed to date.

CRITERIA HIGHLIGHT FINANCIAL RESILIENCE THROUGH THE CYCLE
Downgrades to date reflect certain common features of California school district credits that play a greater role in the rating analysis following the criteria revision. The revised criteria emphasize an issuer’s revenue framework and financial resilience in light of an issuer’s sensitivity in downturns. California school districts have little independent legal control over revenues, which are primarily driven by relative enrollment rather than the local economy, and comparatively high revenue volatility due to the state’s funding framework. Expectations for elevated volatility increase the financial cushion necessary to offset future declines. This inherent volatility, when compounded by a trend of thinning reserves observed in some districts, weakens the assessment of financial resilience through the cycle.

ENROLLMENT DRIVES REVENUE GROWTH PROSPECTS
The revised criteria highlight the significance of average daily attendance (ADA) to growth prospects for California school district revenues, as total per-student revenue from state and local sources is set by the state’s Local Control Funding Formula (LCFF). Most districts have experienced solid revenue growth in recent years due to LCFF’s funding mechanism, which is also tied to the state’s solid revenue performance. However, LCFF is near full implementation, and given the state’s constitutional school funding formula, future district revenue growth is expected to be more closely tied to local ADA trends relative to overall state revenue and enrollment performance.

PROP 13 LIMITS REVENUE FLEXIBILITY
California school districts’ ability to independently raise revenues is constrained by constitutional limitations under Prop 13. Districts may not raise the operating property tax rate under any circumstance, and may only raise a parcel tax with a vote of the people. In districts with ADA declines, the confluence of limited revenue flexibility and weaker revenue growth prospects has been the central credit factor in many downgrades. This includes situations where the local tax base and economy are strong but enrollment is declining due to factors such as demographic changes and competition from charter schools.

VOLATILITY AND RESERVE DECLINES HINDER FINANCIAL RESILIENCE
Fitch’s assessment of financial resilience, which considers financial reserves in the context of expected revenue volatility and budgetary flexibility in the event of a typical economic downturn, has also driven some downgrades. State school aid in California historically has been notably more

volatile than typical municipal revenues because of the state's tax structure and funding framework. California's funding framework is governed by Prop 98, which ties school funding, in part, to year to year changes in state revenue (with a minimum guarantee of 40% of the state budget), thereby linking volatility in the state tax structure to local districts. While the state's tax structure remains more volatile than most (and can be exacerbated for a district by declining ADA), Fitch believes that the institutional reforms implemented during and coming out of the great recession may reduce school funding volatility somewhat going forward.

Higher expected volatility increases the level of reserves necessary to offset declines in Fitch's scenario analysis; however, the state's reforms moderate to a limited degree Fitch's expectation for districts' future volatility. Furthermore, many districts have been drawing down high fund balances to more historical levels in the improving state revenue environment, which Fitch believes reduces their financial flexibility in the event of an economic downturn.

California school districts benefit from a very strong financial oversight framework under AB 1200. For districts with limited gap-closing capacity, where financial operations could otherwise become distressed in the event of a revenue downturn in Fitch's scenario analysis, Fitch expects support by the state oversight mechanism to ensure that finances return to stable operations and recover financial flexibility. This strong oversight system supports an overall operating performance assessment that is slightly higher than the level suggested by Fitch's scenario analysis alone.

SPECIAL REVENUE ANALYSIS YIELDS STRONG RATINGS
Fitch continues to rate the general obligation securities of certain California school districts above the level of the issuer rating based on our assessment that bondholders are legally insulated from any operating risk of the district. (See 'California School Districts: Special Revenue Analysis Yields Strong Ratings' dated Sept 30, 2016.) In these cases, the general obligation bond rating is based on a dedicated tax analysis without regard to the district's financial operations because there is a reasonable basis for concluding that the tax revenues levied to repay the bonds would be considered pledged special revenues in the event of a district bankruptcy.

Fitch sets a high bar for considering local government tax-supported debt to be secured by special revenues, which provide security that survives the filing of a municipal bankruptcy (in preservation of the lien) and benefit from relief from the automatic stay provision of the bankruptcy code. Fitch gives credit to special revenue status only if, in its view, the overall legal framework renders remote a successful challenge to the status of the debt as secured by special revenues under Section 902 (2) (e) of the U.S. Bankruptcy Code. No such ratings have been affected by implementation of the revised criteria.

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Connecticut Gov. Proposes School Funds Move from Wealthy Towns to Poor Ones.

The plan is the governor's first attempt to address disparities in school funding after a court ruled that the current system is unconstitutional

Connecticut Gov. Dannel Malloy is seeking to redistribute funds for education from affluent towns like Greenwich and Groton to poor cities like Bridgeport and Hartford, as part of his $18 billion budget proposal revealed Wednesday.

Under Mr. Malloy's plan, education funding to municipalities, including for special education, would increase 8% to $2.19 billion for the fiscal year beginning July, but wealthier towns would get less money while poor cities would get more.

Under the new system, the state would reduce funding to the town of Groton for schools and special education by 33% to $16.8 million while the Hartford school system would receive an 11% increase to $221 million. School funding is largely derived from local property taxes.

The proposed changes are the governor's first attempt to address disparities in school funding after a Connecticut judge ruled in September that the current system is unconstitutional. The state Supreme Court is reviewing that order.

“I agree that we are not meeting our constitutional requirement of a fair and equitable public education system—one that guarantees every student the opportunity for success,” Mr. Malloy, a Democrat, said during a budget address in Hartford.

The changes to education funding come as the governor tries to close a projected $1.7 billion budget deficit in the coming fiscal year. To deal with the shortfall, Mr. Malloy proposed $256 million in cuts to spending by state agencies for higher education, mental health and addiction services and other measures. It also increases tax revenue by $205 million by eliminating a property tax credit and raising levies on cigarettes.

The governor's budget also assumes $700 million in savings from unstated concessions from state employees. If the state and public-sector unions can't come to an agreement on concessions, up to 4,200 state employees could be laid off under the governor's plan.

Mr. Malloy also wants to shift about $408 million in teacher pension costs from the state to cities and towns.

The proposal, if approved, would result in 31 towns and cities receiving more funding in the coming fiscal year than the current one, according to the state budget office. The state's remaining 138 towns in the state would get funding cuts.

“That's a lot of municipalities that are losing under this budget,” said Elizabeth Gara, executive director of the Connecticut Council of Small Towns. Local governments will be forced to raise property taxes to make up the shortfall in state funding, she said.

Benjamin Barnes, the state's budget chief, said the changes are being driven by the fact that many towns are in good financial shape while others have poor finances.

"We've tried to restack our municipal aid program to reflect that and to provide more concentrated relief to the communities that desperately need it," Mr. Barnes said.

Mr. Malloy's education funding proposal would change the metric used to determine poverty levels in schools from the number of children receiving free and reduced lunches to the number of students on Medicaid, which the governor says is a more accurate measure of poverty.

The change would also takes into account a school district's current enrollment levels as well as its financial strength.

Mark Waxenberg, executive director of the Connecticut Education Association, the state's largest teachers union, said the governor's proposal would hurt middle-class communities.

"You are basically creating a winners-and-losers system," Mr. Waxenberg said. "That's just not a good way to fund public education in Connecticut."

Mr. Waxenberg said the state should increase funding for education so that towns don't lose what they currently receive rather than reallocating money from affluent communities to low-income school districts. He said lawmakers should consider raising new tax revenue to make that possible.

Jennifer Alexander, chief executive of Connecticut Coalition for Achievement Now, an advocacy organization that supports charter schools, said it welcomed the governor's efforts to give more financial resources to students with greatest learning needs.

"I think that the governor's proposal reflects the harsh reality of Connecticut's budget—that there are no new dollars to add into the system," Ms. Alexander said.

But the funding cuts coupled with potentially new teacher pension obligations would put pressure on towns and school districts to trim expenses, said Patrice McCarthy, general counsel of the Connecticut Association of Boards of Education.

That could lead to increased class sizes, less investment in technology and fewer paraprofessionals to support teachers and students, she said.

THE WALL STREET JOURNAL

By JOSEPH DE AVILA

Feb. 8, 2017 5:27 p.m. ET

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

Michigan Leads Effort to Shift Workers Away From Pensions.

LANSING, Mich. — Struggling under the weight of pension and health care obligations, Michigan lawmakers appear ready to take another whack at public employee benefits — a move that reflects renewed determination to shift workers to 401(k)-style retirement systems, even if it happens in baby steps.

Other states have made more modest changes, but the latest push shows that conservatives want to approve big reforms 20 years after Michigan became the first state to close pensions to future state workers. Republican Gov. Rick Snyder is pressing to address $14 billion in unfunded liabilities, mostly from retiree medical costs, spread across more than 330 communities.

“As a state, we cannot get ahead if too many of our local communities have problems,” he said.

The proposals could serve as a national blueprint, and they will provoke a pitched battle with public unions that are desperate to preserve traditional benefits.

Michigan is taking a leading role because of its size and the fact that GOP legislators and Snyder turned what was once a stronghold of organized labor into a right-to-work state. They also forced teachers and state employees to contribute a portion of their paychecks to avoid receiving smaller pensions in retirement.

After ending pensions for new state workers in the late 1990s, Republican legislators are now considering moving all newly hired teachers and local government workers to 401(k)-type plans and cutting municipal retiree health benefits. Just one other state, Alaska, has ended teacher pensions.

The governor, a former accountant and venture capitalist, has not outlined specific retirement proposals other than to be cool to shifting new teachers away from pensions because of the large upfront costs. But he warns that if nothing is done, retiree obligations — especially medical costs — will squeeze city budgets further and jeopardize basic services.

Influential conservatives point to Detroit, where thousands of people had their pensions cut by 4.5 percent in the bankruptcy. Annual cost-of-living increases were eliminated, and health coverage was replaced with a monthly stipend to buy insurance through the federal exchanges.

“If any more of the cities go bankrupt, their workers are not going to get what they were promised. That’s just not fair,” said John Kennedy, president and CEO of Autocam Medical in Grand Rapids, who led an informal task force that Snyder formed to study the issue. He is also a board member at the West Michigan Policy Forum, a group of business leaders and GOP donors that has listed unfunded retirement costs as its top priority.

Municipal officials are eager to see changes, too.

“This is essentially a mortgage crisis. We can’t afford our payments, and they’re ballooning,” said Port Huron City Manager James Freed, who worries that his town of 29,000 people an hour’s drive outside of Detroit will have to cut spending by up to 20 percent in coming years if nothing is done.

“We’ve already gone through 10 years of budget cuts,” Freed said. “At this point we’re not talking about cutting services. We’re talking about eliminating services.”

Options that may be considered in the Legislature include prohibiting retiree health benefits from being a subject of collective bargaining, capping how much local governments pay toward retiree medical insurance and eliminating traditional coverage in retirement for new workers in favor of contributions toward tax-deferred accounts, which is already in effect for new teachers and state employees.

Critics say the state should not intervene in local labor contracts and describe the push as an attack on police and firefighters who risk their lives and typically must retire earlier than other workers.

“We thought what we had was bought and paid for,” said 56-year-old Monty Nye, who retired from the Meridian Township Fire Department outside Lansing two years ago.

An officer in the statewide union, Nye said some new hires have already ceased to qualify for health care in retirement and will receive smaller pensions. Veteran firefighters agreed to smaller pay raises to keep intact the size of their pension, he said.

Nye said he pays $800 a month for his family's health insurance — half of the premium. He also challenged a contention by Republicans that millennial workers prefer 401(k) systems because the plans are portable from job to job.

"That might be people that are looking to move around in the corporate world," Nye said. "But the people that go to fire departments go there for the stability of the job."

A pension, he said, lets first responders retire no matter how the stock market is faring.

"You don't want some 65-year-old firefighter trying to drag your butt out of a burning house," he said.

Oklahoma and Alaska are the only other states besides Michigan where new state employees are in mandatory 401(k)-style plans, which have been common in the private sector for many years.

If Michigan were to shift all new local workers and teachers to 401(k)-style plans, "it would be the first large state that's taken that kind of action. People would certainly look closely at it," said Greg Mennis, who studies public-sector retirement systems for the Pew Charitable Trusts.

The drive comes as President Donald Trump's administration explores how to implement at the federal level parts of a Wisconsin law that all but eliminated collective bargaining for public-sector unions in that state, according to Gov. Scott Walker.

Michigan conservatives are determined to take action.

"At some point, the political resolve needs to be applied to this problem," said Sen. Phil Pavlov, a Republican from St. Clair, north of Detroit.

Democrats say they are willing to talk about easing long-term liabilities but not without also discussing cuts in state revenue that have contributed to local budget woes.

Senate Minority Leader Jim Ananich of Flint said it would be foolish to rush bills while there is so much uncertainty over the future of the federal health care law and Medicare in the GOP-controlled Congress.

"You can't talk about cutting benefits for teachers and firefighters … and expect the federal government to come in," he said. "After what their plans are, people are going to be more economically insecure."

By THE ASSOCIATED PRESS

FEB. 5, 2017, 12:27 P.M. E.S.T.

Follow David Eggert on Twitter at https://twitter.com/DavidEggert00 . His work can be found at http://bigstory.ap.org/author/david-eggert .

Iowa Lawmakers Champion Bill to Limit Public-Sector Unions.

(Reuters) – Iowa lawmakers considered legislation on Wednesday to limit the powers of public-sector unions to negotiate for state and local employees, restrictions similar to those enacted in Wisconsin and Michigan despite huge protests.

Republicans in Iowa have gained an important advantage in pushing for legislation to rein in public-sector salaries and benefits after gaining control of the state Senate in last November's election. Republicans also control the state House of Representatives.

Iowa Republican Governor Terry Branstad supports the legislation, which if approved, would see Iowa join Wisconsin and Michigan in imposing restrictions on public-sector unions in the past decade. Branstad said the measure was needed to save money for the state.

Many Southern states have long limited collective bargaining by public-sector workers.

Union members protested the measure at the state capitol on Tuesday, according to local media.

The American Federation of State, County and Municipal Employees has said the measure, supported by the billionaire Koch Brothers' political spending group Americans for Prosperity, would gut collective bargaining rights.

Ross Eisenbrey, a vice president at the left-leaning Economic Policy Institute, said the measure was in line with efforts by conservative lawmakers to overrule minimum-wage increases adopted by cities and push for lower wages for construction workers on state projects.

The Iowa measure would lift mandates that require the state and local governments to negotiate with public-sector unions on how much employees receive in health benefits, according to a text of the legislation.

Instead, mandated negotiations would center on wages. Public safety employees, including police and firefighters, would be exempted from those provisions.

The legislation also would make it easier to dismiss certain state and local employees, including teachers, who are deemed by their supervisors to be poor performers.

The measure was heard by House and Senate subcommittees on Wednesday, according to the legislature's website. It was not immediately clear when the state House and Senate might vote on the measure.

Branstad told a news conference on Tuesday that state employees covered by public-sector unions typically pay $20 a month for their health coverage, leaving taxpayers on the hook for over $22,000.

"This is wrong and it's certainly out of whack with what everybody else in the state has to pay," he said.

By REUTERS

FEB. 8, 2017, 6:15 P.M. E.S.T.

(Reporting by Alex Dobuzinskis in Los Angeles; Editing by Peter Cooney)

- GASB Issues Guidance on Fiduciary Activities.
- Fitch Disagrees with Moody's Legal Analysis on Chicago Public Schools.
- Fitch Calls Out Moody's on Chicago Schools Analysis.
- MSRB Plans to Codify CUSIP Requirements for Private Placements.
- Making Sound Cost Decisions in Pay for Success Projects.
- GASB Webinar: Financial Reporting Model Improvements – Governmental Funds.
- Exploring the Impact of GASB 77: CDFA // BNY Mellon Development Finance Webcast
- *U.S. Bank National Association v. Podes* – In action to recover damages in connection with defaulted bonds, appeals court holds that expert's damage report – which calculated the value of the bonds as simply the interest rate on the face value of the bonds held to maturity – did not constitute an impermissible net opinion.
- And finally, a devastating blow was dealt this week to trolls residing under bridges everywhere via *Doug Garber Construction, Inc. v. King*, in which Bernice Garber appealed the award of $112k for property taken by the state for a new freeway interchange, opining that the property was in fact worth $347 million in lost profits as the new location of the freeway would have allowed her to asses a $2 toll on each vehicle entering the city. The Supreme Court of Kansas responded with this exceedingly polite, deadpan gem: "Even if we ignored the speculative character of Ms. Garber's envisioned "Golden Gateway" to Lawrence, and even if a private citizen could lawfully collect tolls from drivers on a public roadway, such testimony is inadmissible to establish property valuation."

EMINENT DOMAIN - KANSAS

Doug Garber Construction, Inc. v. King

Supreme Court of Kansas - January 27, 2017 - P.3d - 2017 WL 383342

Eminent domain proceeding was commenced regarding property condemned by Secretary of Transportation in order to facilitate construction of highway.

The District Court awarded property owner $112,000 as compensation, and property owner appealed.

The Supreme Court of Kansas held that:

- Street relocation and wetland reclamation project, for which property was taken, was contingent upon highway construction project such that projects had to be treated as one for valuation purposes, and
- Property owner's lay testimony that taken half-acre plot was worth $40 million was not based on permissible considerations.

Street relocation and wetland reclamation project, for which property was taken, was contingent upon highway construction project which destroyed wetlands such that projects had to be treated as one for valuation purposes and project influence rule prohibited expert's testimony as to valuation of taken property based on its proximity to new intersection of highway and relocated street. Expert's report treated the completion of the highway and street as a unified project that would catalyze commercial development, and report based its fair market value calculation on new land use opportunities that would arise after the highway was constructed and the relocated street served as a new gateway to city.

Property owner’s lay testimony that taken half-acre plot was worth $40 million was not based on permissible considerations and thus was inadmissible to determine value in eminent domain proceeding. Valuation was based on miles of highway in other states which had been sold for billions of dollar, and required property owner to be able to lawfully collect tolls from road users.

ZONING & PLANNING - CALIFORNIA

San Jose Unified School District v. Santa Clara County Office of Education

Court of Appeal, Sixth District, California - January 24, 2017 - Cal.Rptr.3d - 2017 WL 345136

School district and neighbor of proposed charter school site petitioned for writ of mandate challenging county board of education’s issuance of zoning exemption for charter schools.

The Superior Court granted writ of mandate. County board of education and charter school operator appealed.

The Court of Appeal held that county boards of education have no authority to issue zoning exemptions under the statute granting such authority to a “governing board of a school district.”

STORMWATER FEES - FLORIDA

City of Key West v. Key West Golf Club Homeowners' Association, Inc.

District Court of Appeal of Florida, Third District - January 26, 2017 - So.3d - 2017 WL 384338

Landholders brought action against city, challenging legality of stormwater utility fees.

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

The District Court of Appeal held that:

- Landholders on island were nonusers or minimum users of city’s stormwater services, and therefore, city’s stormwater utility fee was arbitrary and discriminatory as applied; and
- Landholders were entitled to refund of fees paid.

Landholders on island were nonusers or minimum users of city’s stormwater services, and therefore, city’s stormwater utility fee was arbitrary and discriminatory as applied; culverts under one road were the only public infrastructure serving the landholders’ stormwater for both pollution and flood control purposes, and such culverts were naturally scoured from tidal action and city had never performed any maintenance on them.

Landholders’ payment of stormwater utility fees was involuntary, and therefore, after fees were found unlawful, landholders were entitled to refund of fees paid; stormwater ordinance imposed severe penalties for nonpayment.

LABOR & EMPLOYMENT - ILLINOIS

[Village of Bartonville v. Lopez]

Supreme Court of Illinois - January 20, 2017 - N.E.3d - 2017 IL 120643 - 2017 WL 243398 - 208 L.R.R.M. (BNA) 3175

Village brought declaratory judgment action seeking stay of arbitration of grievance filed by police officer and police officers' union.

The Circuit Court granted summary judgment to village. Officer and union appealed. The Appellate Court reversed and remanded. Village petitioned for leave to appeal.

After grant of leave, the Supreme Court of Illinois held that:

- Officer and union implicitly waived labor contract right, if any, to arbitrate grievance regarding officer's termination;
- Portion of Municipal Code providing for arbitration as an alternative or supplemental form of due process for a dispute regarding suspension or discharge of civil service employee did not allow officer and union to have proceedings before administrative board and arbitration proceedings operate in conjunction with one another;
- Res judicata barred further litigation, through arbitration, of officer's grievance regarding termination.

Police officer and police officers' union implicitly waived any right under labor contract to arbitrate grievance regarding officer's termination, where officer and union participated in hearing, on complaint for termination, before Board of Fire and Police Commissioners, including cross-examining witnesses and giving a closing argument, and officer and union never questioned Board's jurisdiction to conduct the hearing based upon defendants' right to grievance arbitration under the parties' labor contract.

Portion of Municipal Code providing for arbitration as an alternative or supplemental form of due process for a dispute regarding suspension or discharge of civil service employee did not allow police officer and union to have proceedings before administrative board and arbitration proceedings operate in conjunction with one another. Allowing combination of jurisdictional proceedings and mixed tribunals would have provided opportunity for a higher level court to be overruled by a lower level proceeding.

Board of Fire and Police Commissioners' decision, following hearing on complaint for termination of police officer, was a final judgment on the merits, as would support finding that res judicata barred further litigation, through arbitration, of officer's grievance regarding termination, where there was an adversarial hearing conducted under oath and on the record, officer testified at hearing, and counsel for officer and police officers' union presented evidence, cross-examined witnesses, and made a closing argument.

MUNICIPAL ORDINANCE - MINNESOTA

[State v. Vasko]

Supreme Court of Minnesota - January 18, 2017 - N.W.2d - 2017 WL 239945

Defendant was convicted following bench trial in the District Court of violating city's municipal ordinance, which prohibited residents from keeping junked or abandoned vehicles on their property for longer than 30 days without special use permit.

Defendant appealed. The Court of Appeals reversed. State petitioned for review, which the Supreme Court granted.

The Supreme Court of Minnesota held that:

- Court of Appeals was required to determine meaning of city's municipal ordinance in order to determine whether defendant's conviction was supported by sufficient evidence;
- City's municipal ordinance did not require city to give notice of the vehicle to resident violating the ordinance;
- Defendant's car was an "abandoned vehicle" under city's municipal ordinance; and
- Defendant's abandoned car was kept in her yard for longer than 30 days without special use permit in violation of city's municipal ordinance.

COUNTY CHARTER AMENDMENT - MISSOURI

Pepper v. St. Charles County, Missouri

Missouri Court of Appeals, Eastern District, Division Five - January 24, 2017 - S.W.3d - 2017 WL 362607

Cities and taxpayers brought action against county and county director of elections, challenging validity of amendment to county charter prohibiting use of "red-light cameras" throughout county and contesting election that resulted in the amendment's approval.

After taxpayers who supported the amendment intervened as defendants, the Circuit Court, granted defendants' motion for summary judgment, and plaintiffs appealed.

The Court of Appeals held that:

- Statutes concerning cities' authority over traffic regulations and city streets did not limit county's authority to prohibit red-light cameras;
- Amendment did not violate any statewide public policy;
- Amendment satisfied all requirements for exercise of countywide legislative power under state constitution;
- County did not exceed its own authority under county charter;
- Amendment did not impermissibly interfere with judiciary's powers; and
- Ballot proposition satisfied constitutional requirements.

BONDS - NEW JERSEY

U.S. Bank National Association v. Podes

Superior Court of New Jersey, Appellate Division - December 20, 2016 - Not Reported in A.3d - 2016 WL 7369027

Following bankruptcy and default, holders of Multifamily Housing Revenue Bonds brought action against Property Manager. The Bondholders' complaint alleged that negligent management of the property and its breach of the requirements under the Forbearance Agreement led to a default, preventing Bondholders from receiving the full value of the bonds.

To support their complaint, the Bondholders submitted three expert reports. Two reports addressed liability, and the third addressed damages. Prior to trial, the Property Manager moved in limine to bar the testimony of Bondholders' damages expert. In his report, the damages expert stated the amount realized were the bonds held to maturity based on an interest rate of "24.56% of par, or $1,228.06 for each $5,000.00 face bond." He then calculated the difference between that sum and what was realized by selling the bonds prior to maturity, concluding the loss amounted to $2,862,000.

The Property Manager's argument challenged the expert opinion as an inadmissible net opinion principally because the bonds were a speculative investment when purchased and there was no support for an assumption the bonds would reach maturity entitling the Bondholders to full face value. Other deficiencies included: (1) the expert failed to account for present value of the monies received on redemption or interest realized on the reinvestment of the sums received on redemption; (2) there was an absence of explanations describing a bond or how market value is calculated; and (3) the report assumed the bonds would be held to maturity allowing recoupment of full face value. As a result, the Property Manager asserted that the expert's analysis amounted to a mere arithmetic calculation of the difference in two numbers.

The trial judge granted the Property Manager's in limine motion to strike, finding that the report constituted a net opinion. The lack of an expert precluded the Bondholders from proving damages; therefore, the judge in turn granted the Property Manager's motion for summary judgment and dismissed the complaint. Reconsideration was denied, and this appeal followed.

The Appeals Court reversed, ordered reinstatement of the expert opinion, and remanded.

The Court began with a blanket rebuke of the misuse of in limine motions filed on the eve of trial, and emphasized that such motion tactics shall not be utilized to secure summary judgment resulting in the dismissal of a plaintiff's case or the suppression of a defendant's defenses.

"Following our review, which is guided by these standards, we conclude the judge mistakenly barred Hawk's testimony as net opinion. First, there is no challenge to Hawk's qualifications; the depth of experience in municipal bond purchasing, selling and research, as well as his experience with numerous transactions similar to this matter, demonstrated his expertise."

"Second, Hawk's report contained the foundation for his opinion, stating it was based on the bond documents establishing the price of the bonds, their maturity date, and interest rates. Further, he referenced the loan agreement, Indenture of Trust, and Forbearance Agreement to describe the transaction. The documents of record served as the foundation of Hawk's damage conclusion, from which he provided "the why and wherefore" of his calculations."

"The net opinion rule "does not mandate an expert organize or support an opinion in a particular manner, which opposing counsel deems preferable. Further, an expert's proposed testimony should not be excluded merely 'because it fails to account for some particular condition or fact which the adversary considers relevant.' " Townsend, supra, 221 N.J. at 54 (quoting Creanga, supra, 185 N.J. at 360). In this regard, it cannot be ignored that Hawk's opinion addressed damages, not liability. His assumption the Podeses would have held all bonds to maturity may be attacked and even shown to be flawed, but that premise does not erase the factual basis for his damage calculation."

"Simply because the opinion may be subject to attack on cross-examination for not including other meaningful considerations also does not make it a net opinion."

EMINENT DOMAIN - NORTH CAROLINA

Wilkie v. City of Boiling Spring Lakes

Court of Appeals of North Carolina - December 30, 2016 - S.E.2d - 2016 WL 7976113

Property owners brought inverse condemnation by the city after city raised level of a lake and caused flooding on their property.

The Superior Court entered an order concluding that property owners were entitled to damages from city's taking of their property, and city appealed.

The Court of Appeals held that:

- Appeal was properly before Court of Appeals;
- Action taken by city was not inverse condemnation; and
- Property owners had a direct claim against city under state constitution.

City's appeal of order that concluded that city had taken property through inverse condemnation when it raised the water level of a lake and flooded their property, was properly before Court of Appeals. Although the order was interlocutory, it was issued pursuant to the public condemnation statute, addressed the area taken by city, and affected a substantial right.

Action taken by city in which it raised water level in city owned lake, which resulted in the flooding of property owners' property, was not inverse condemnation, and thus property owners did not have remedy through an inverse condemnation action. City's action to raise lake water level was intended to benefit property owners whose lots bordered lake, which was a private, rather than public, use.

Property owners, who had their property flooded after city took measures to raise water level of city owned lake, had a direct claim against city under state constitution. Property owners had no adequate state law remedy, and alleged that the city caused the damage to their property, that city took property belonging to them, and that city affected their property rights in violation of their constitutional rights.

LABOR & EMPLOYMENT - OREGON

American Federation of State County and Municipal Employees v. City of Lebanon

Supreme Court of Oregon, En Banc - February 2, 2017 - P.3d - 360 Or. 809 - 2017 WL 445082

City sought judicial review of the Employment Relations Board's (ERB) decision that city had engaged in an unfair labor practice when a city council member urged city employees to decertify their union.

The Court of Appeals reversed. Union petitioned for review, which was accepted.

The Supreme Court of Oregon held that a public employer may be liable for the unfair labor practices of an individual if employees reasonably believe that the individual acted on behalf of the employer.

EMINENT DOMAIN - PENNSYLVANIA

Alpha Financial Mortgage, Inc. v. Redevelopment Authority of Fayette County

Commonwealth Court of Pennsylvania - December 22, 2016 - A.3d - 2016 WL 7405777

Property owners filed petitions for appointment of viewers to ascertain just compensation for properties condemned by county redevelopment authority.

Authority filed preliminary objections, asserting that the petitions were untimely under one-year statute of limitations set out in Urban Redevelopment Law (URL).

The Court of Common Pleas sustained authority's preliminary objections. Property owners appealed.

The Commonwealth Court held that enactment of general six-year limitations period for eminent domain challenges did not repeal one-year period provided in URL.

Enactment of statute providing a six-year statute of limitations for filing a petition for appointment of viewers after a declaration of taking did not repeal and supplant the one-year statute of limitations under the Urban Redevelopment Law (URL) for challenging redevelopment authority's estimation of just compensation; legislation that created the six-year limitations period did not explicitly refer to URL statute setting out the one-year limitations period, the URL statute was not repugnant to six-year limitations period, just as it had not been repugnant to prior five-year limitations period, and legislation applied generally to all condemnations, whereas URL applied exclusively to redevelopment authorities.

SECURITIES - PUERTO RICO

Fernandez v. UBS AG

United States District Court, S.D. New York - December 7, 2016 - F.Supp.3d - 2016 WL 7163823

Investors in Puerto Rico tax-free closed-end mutual funds brought putative class action against broker-dealers, investment advisors, administrator of funds, and officers of one of the broker-dealers, alleging breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and breach of contract.

Defendants filed motions to dismiss for lack of subject matter jurisdiction and failure to state a claim.

The District Court held that:

- Investors had Article III standing to assert claims on behalf of putative class;
- Securities Litigation Uniform Standards Act (SLUSA) did not preclude any of investors' claims;
- Publication of reports of lawsuits and administrative proceedings against broker-dealer triggered limitations period for breach of fiduciary duty claim against same broker-dealer;
- Publication of reports of lawsuits and administrative proceedings against broker-dealer triggered limitations period for breach of fiduciary duty claim against different broker-dealer;
- Puerto Rico Uniform Securities Act's (PRUSA) two-year statute of repose applied to claims alleging breach of fiduciary duty and breach of implied covenant of good faith and fair dealing;
- PRUSA's two-year statute of repose did not apply to claims alleging breach of an express

contractual provision imposing an obligation to conduct a suitability analysis;
- Claims alleging breach of implied covenant of good faith and fair dealing, and breach of fiduciary duty, failed to plead fraud with sufficient particularity; and
- Only those investors whose contracts contained a provision obligating defendants to perform a suitability analysis sufficiently stated a claim for breach of contract.

Investors in Puerto Rico tax-free closed-end mutual funds had Article III standing to assert breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and breach of contract claims against broker-dealers, investment advisors, and fund administrator, on behalf of putative class of investors in Puerto Rico tax-free closed-end mutual funds administered by same party; while not all investors had invested in same funds, the underlying allegations regarding defendants' misconduct applied to all of the funds, and the funds were all alleged to be structured the same way and to hold the same types of assets by the same defendants.

Securities Litigation Uniform Standards Act (SLUSA) did not preclude any of investors' claims, in putative class action alleging breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and breach of contract claims, regardless of whether the claims sounded in fraud, because no misrepresentations were alleged to have been made in connection with the purchase or sale of covered securities.

Investors discovered or reasonably should have discovered broker-dealers' alleged breach of their fiduciary duty, triggering Puerto Rico's one-year limitations period for tort claims, when reports of lawsuits and administrative proceedings against broker-dealer, which were probative of alleged breach of fiduciary duty, were publicized.

Publicized reports of lawsuits and administrative proceedings against broker-dealer, and accompanying media coverage, did not put investors on notice of their breach of fiduciary duty claims against a second broker-dealer, as would trigger Puerto Rico's one-year limitations period for tort claims, where second broker-dealer was not explicitly named in reports or media coverage.

Investors' claims against broker-dealer, alleging breach of fiduciary duty and breach of implied covenant of good faith and fair dealing, sounded in fraud, rather than mere negligence, and thus Puerto Rico Uniform Securities Act's (PRUSA) two-year statute of repose applied, where the main thrust of the claims was that broker-dealer misrepresented the risks involved in investing in Puerto Rico tax-free closed-end mutual funds and pushed investor to invest in the funds in order "to line their own pockets," without disclosing all of their conflicts of interest and without assessing the suitability of the investments for their clients, when broker-dealer knew or should have known how risky the funds were because it helped underwrite the bonds that comprised the bulk of the funds.

Investors' breach of contract claims against broker-dealers, which were premised on an alleged breach of an express provision imposing an obligation to conduct a suitability analysis, were not subject to Puerto Rico Uniform Securities Act's (PRUSA) two-year statute of repose, as such breach of contract claims did not rely on allegations of fraudulent conduct.

General allegations that broker-dealer pushed investors to invest in Puerto Rico tax-free closed-end mutual funds, by representing that they were safe when they were actually risky, did not plead fraud with sufficient particularity, as required to state claims of breach of fiduciary duty and breach of implied covenant of good faith; allegations did not include the required who/what/where/why/when of the alleged misrepresentations or omissions.

Blanket allegations that broker-dealer and fund manager breached implied covenant of good faith and fair dealing, based on misrepresentations and omissions, did not satisfy rule requiring fraud be pled with particularity; investors failed to attribute the purported misrepresentations and omissions to any particular defendant, and it was unclear as to when, where, or by whom the alleged misrepresentations or omissions were purportedly made.

Under Massachusetts law, investor whose contracts contained a provision obligating broker-dealer to perform a suitability analysis sufficiently stated a claim for breach of contract based on failure to conduct such analysis.

Under Puerto Rico law, investor whose contract did not contain a provision obligating broker-dealer to perform a suitability analysis failed to state a claim for breach of contract based on broker-dealer's failure to conduct such analysis.

MSRB Plans to Codify CUSIP Requirements for Private Placements.

WASHINGTON – The Municipal Securities Rulemaking Board plans to propose codifying its long-time regulatory interpretation that dealers are required to apply for CUSIP numbers when conducting private placements.

MSRB executive director Lynnette Kelly told reporters on Monday that the board, during its quarterly meeting here late last week, decided to issue the proposal and seek comment on it within the next few months.

The proposed changes to MSRB Rule G-34 on CUSIP numbers would harmonize the definition of underwriter in that rule with the definition under MSRB Rule G-32 on disclosure in connection with primary offerings. The definition of underwriter in G-32 tracks the one used in Securities and Exchange Commission Rule 15c2-12 on disclosure. Whether bank loans are included as private placements that need CUSIP numbers would still depend on whether they are considered loans or securities, MSRB staff said.

The rule changes to G-34 will be the first proposed amendment coming from the MSRB's multi-year initiative to review primary market practices. Kelly said the review of dealer rules in the primary market will continue.

The MSRB is also planning to file a continuing education requirement for municipal advisors with the SEC after receiving requests from MAs to more carefully evaluate and explain the requirements the board had previously circulated for comment. The circulated requirements would create a single-pronged approach similar to one of the two prongs that dealers are currently required to satisfy for their continuing education requirements. All associated persons of MAs who engage in MA activities as well as those who manage, direct, or supervise the firm's municipal advisor activities and its associated persons would be required to participate.

The National Association of Municipal Advisors had emphasized the need for the MSRB to keep small MAs in mind as it pursues the requirements so that there isn't an overwhelming economic or administrative burden on those MAs.

Kelly said that the proposed amendments, which would require MAs to conduct annual needs analyses and develop a written training plan, would call for the analyses to be customized to the size and scope of a firm's business activities. She said the board expects that customization to mitigate negative effects on small MAs. The board will also be giving examples of needs analyses as part of its effort to help guide implementation.

The MSRB also plans over the next few months to create a new MA advertising Rule G-40 that would apply the core principles of current MSRB Rule G-21 for dealers on advertising in aiming to ensure accuracy and balance in promotional materials, according to the MSRB.

Kelly said the board will ask for comments on the proposal, which will also include updates to the dealer rule. The board felt that there were enough differences in the ways that dealers and MAs advertise that two separate rules made the most sense, Kelly said.

Two days of the three-day meeting were devoted to strategic planning for the next two to four years, according to Kelly. The strategic planning discussion included numerous letters the self-regulator got from market participants after it circulated a call for comments in October on where it should focus moving forward. The commenters made suggestions like asking the MSRB to improve its EMMA system, increase transparency of board operations and costs, do more cost-benefit analyses of its rulemaking, and study the complexities and burdens that have arisen from the board's rulemaking over the last several years.

EMMA has drawn attention recently as seven municipal bond groups sent a letter on Jan. 23 asking the MSRB to improve the system's accessibility and usefulness. The recommendations fell into four areas: searchability; ease of data imputing and uploading; improving linkages among related data; and the ability to correct information already on the EMMA platform.

Some suggestions included: permitting the search of a borrower and a project; standardized templates for the submission of financial information, customized by sector; and a quality assurance process or enhanced uploading processes to reduce categorization errors.

One other area the board touched on during its meeting was the way it could help to improve continuing disclosure in the market. Continuing disclosure has been discussed often in recent years. It was the focus of the SEC Enforcement Division's Municipalities Continuing Disclosure Cooperation initiative, which promised underwriters and issuers would receive lenient settlement terms if they self-reported instances over the last five years where issuers falsely said in offering documents that they were in compliance with their continuing disclosure agreements.

The MSRB said it is evaluating how it can do more to help issuers meet their disclosure obligations in a timely way. It is expecting to update a report issued in May 2015, which, among other things, detailed the amount of time it takes issuers to file their disclosures.

The Bond Buyer

By Jack Casey

January 30, 2017

[Fitch Disagrees with Moody's Legal Analysis on Chicago Public Schools.]

Fitch Ratings-New York-01 February 2017: Moody's Investor Services (Moody's) has issued a report discussing:

–Legal options available to the Chicago Public Schools (CPS) to address its operating deficit, suggesting CPS can divert state aid to support operations to get around a restriction on a certain tax levy; and

–Bondholder protections provided by CPS' dedicated capital improvement tax bonds series 2016 (CIT bonds), minimizing the special revenue status while crediting a 'lock box' device as a real enhancement.

Fitch Ratings disagrees with Moody's on both points.

State Aid Not Available for Budget Relief

Moody's report "Chicago Public Schools, IL Frequently Asked Questions", released on Jan. 12, states "the district could elect to use unrestricted [general state aid] GSA for operations instead of debt service" on alternate bonds issued under the Illinois Local Government Debt Reform Act (the Act). Unless by 'elect' Moody's is referring to a successful ballot referendum, a plain reading of the Act indicates this is not the case. Section 15(e) of the Act clearly indicates that CPS must apply available alternate revenues {state aid} to debt service. As there is no option in the law to apply alternate revenues to operations, Fitch believes any attempt to do it would draw a successful challenge in litigation opposing an attempt to levy taxes while alternate revenues were available for debt service.

The law (Section 15(e)) is pretty clear in our opinion, as it states: "[t]he …revenue source ..shall be in fact pledged to the payment of the alternate bonds; and the governing body shall covenant, to the extent it is empowered to do so, to provide for, collect AND APPLY [emphasis added] such …revenue source …to the payment of the alternate bonds." It further states "The pledge …as provided in this Section for alternate bonds, shall constitute a continuing obligation of the governmental unit … and a continuing appropriation of the amounts received. All covenants relating to alternate bonds and the conditions and obligations imposed by this Section are enforceable by any bondholder of alternate bonds affected, any taxpayer of the governmental unit, and the People of the State of Illinois acting through the Attorney General … The intent is that such revenue source, shall be …applied to the payment of debt service on such alternate bonds so that taxes need not be levied, or if levied need not be extended, for such payment."

Alternate Bonds Not Same as Other ULTGOs

Fitch believes this constraint on extending property taxes absent a referendum is consistent with the Property Tax Extension Limitation Law (PTELL), which limits growth in the property tax extension to the lesser of 5% or CPI in the prior calendar year unless the increase is approved by voters. Debt service is limited to the "debt service extension base", which is based on the 1994 property tax extension for debt service, increased annually at the lesser of 5% or CPI, unless approved by voters. The Act exempts alternate bonds from this limitation. If an entity could readily opt to extend the property tax instead of paying debt service from the identified revenue source (GSA, in this case) despite the availability of the alternate source, the PTELL's constraint on the rate of property tax growth for debt service would be ineffective. Fitch believes that the only way CPS could extend the ad valorem tax for debt service would be an insufficiency of pledged state aid revenues, which of course would create other serious financial challenges.

Lockbox Does Not Enhance Credit Quality

Unlike Moody's, Fitch does not give rating uplift for the presence of a third-party lockbox structure absent other legal considerations. A lock box is a simple security device that loses its effectiveness upon a bankruptcy filing as a consensual lien on revenues generally does not continue once bankruptcy begins. There are two exceptions: bonds secured by pledged special revenues and bonds secured by a statutory lien. In a Chapter 9 bankruptcy, Fitch does not believe such a structure would insulate ordinary pledged revenues from an automatic stay. Therefore bonds utilizing that structure but not secured by pledged 'special revenues' as defined under section 902(2) of the code or by a statutory lien on pledged revenues could not be rated above the Issuer Default Rating (IDR).

No Statutory Lien Under Bankruptcy Code

Fitch also does not agree that the CIT bonds are secured by a statutory lien, which is defined in Section 101(53) of the Code as a lien arising automatically, by force of statute, on specified circumstances or conditions. This lien is in contrast to a consensual lien (or security interest [defined in Section 101(51) of the Code]), in which a lien is created by agreement, where both parties to a financing agree to a certain security structure and document that agreement in an indenture or loan document. The Debt Reform Act does not provide a statutory lien for bondholders as defined in the bankruptcy code. It gives effect to a consensual lien without any further requirement for filing or notice and is a protection against other lien holders.

Bankruptcy Protection Arises from Special Revenue Designation

Fitch believes that the pledged CIT revenues would be considered 'pledged special revenues' in the event of a CPS bankruptcy. As Moody's points out, one of the differences between the alternate and CIT bond structures is that the former are "ultimately a general obligation of the district, which pledged its full faith and credit to their repayment." The CIT bonds are "payable from the CIT tax levies only." Fitch believes that this distinction is precisely the reason the CIT bonds can be considered to be secured by special revenues under 902(2)(E) of the code. As stated in Fitch's rating action commentary discussing our 'A' rating/Outlook Stable on the bonds: "Fitch sets a high bar for considering local government tax-supported debt to be secured by special revenues, which provide security that survives the filing of a municipal bankruptcy (in preservation of the lien) and benefit from relief from the automatic stay provision of the bankruptcy code. We give credit to special revenue status only if, in our view, the overall legal framework renders remote a successful challenge to the status of the debt as secured by special revenues under Section 902 (2)(E) of the U.S. Bankruptcy Code.

"Fitch has identified a number of elements we consider sufficient to reduce the incentive to challenge the special revenue status given the definitions outlined in the bankruptcy code. These include clear statutory restrictions on the use of pledged revenues to finance identified projects and clear separation from the entity's operations. Fitch has undertaken an extensive review of the statutory provisions that govern the use of the CIT. Those provisions, along with the legal documents governing the bond issuance, and related bankruptcy opinions provide sufficient strength for Fitch to rate the CIT bonds higher than the IDR.

"The bonds are secured by a first priority lien on CIT revenues. The board is authorized under the Illinois School Code to levy the CIT on all taxable property within the district, which is coterminous with the city of Chicago. State statute limits the permitted uses of CIT revenues to include construction, acquisition and equipping of school and administrative buildings, and site improvements. The board has identified specific capital projects in the bond resolution that may be funded either by bond proceeds or by residual CIT revenues. Any amendments to the project list must be passed by board resolution. The revenues legally cannot be used for general operations of the board."

CIT Bonds Not Same as Detroit's DSA Bonds

Revenue ownership is crucial. Moody's likens the CIT bonds to Detroit's distributable state aid (DSA) bonds, as in both cases the trustee receives the pledged revenues directly from a third party. However, Fitch views as a crucial distinction that the DSA revenues were not property of the city of Detroit, thus not included in the city's bankruptcy estate. In the case of CPS, however, the CIT revenues are clearly property of the district. Were they not, Fitch's rating would have been based on the credit quality of Cook County, which collects the revenues and remits them to the trustee. Fitch's IDR on Cook County of 'A'/Stable Outlook, does not cap the CPS rating.

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Fitch Calls Out Moody's on Chicago Schools Analysis.

CHICAGO – Fitch Ratings in a report Wednesday criticized Moody's Investors Services' recent assessment of Chicago Public Schools' new credit structure and the legal options available to ease its distress.

The report titled "Fitch Disagrees With Moody's Legal Analysis On Chicago Public Schools" was published to counter arguments laid out by Moody's in special credit profile reports published Jan. 12 about the city and CPS.

Fitch's public dissection of another rating agency's opinions was described as "highly unusual" by several market participants.

"This is uncharted. Very rarely except on panels at conferences would you have this sort of open debate or defensiveness," said Howard Cure, director of municipal research at Evercore Wealth Management, LLC. Cure worked for Moody's until 1994.

Moody's has not been asked to rate new deals by either issuer, but maintains junk ratings on their older debt.

Some suggested that Fitch's motive for publicly calling out a peer rating agency may stem from market questions received after Moody's released its commentary.

Fitch said that wasn't the case.

"We read it and we didn't feel all the information was correct and felt it would helpful to the market if we posed our reasons as to why we disagreed," said the report's co-author, Amy Laskey, a Fitch managing director.

"Our goal is to clearly articulate an opinion, and often that means openly disagreeing with other market participants. We may publish those comments if there is strong investor interest, or if we feel our view is meaningfully different from another," said Daniel Noonan, Fitch's global head of corporate communications.

Fitch outlines its disagreement with Moody's on several aspects of its legal assessment of CPS' new capital improvement tax-backed bonds. The district used the new property tax levy for the first time on a $730 million sale in December.

The deal garnered an A rating from Fitch based on analysts' confidence in its bankruptcy-remote structure.

CPS asked only Fitch and Kroll Bond Rating Agency to review the bonds. Kroll assigned its BBB rating in line with its GO ratings of BBB and BBB-minus.

Fitch rates CPS GO debt B-plus, with a stable outlook. The other two rating agencies also rate CPS GOs at junk.

Fitch countered Moody's suggestion that triggering the ad valorem tax pledge used on most of its $6 billion of debt offered one option for CPS to free up revenue for operations.

Fitch quoted Moody's report suggesting that the district could elect to use unrestricted general state aid for operations instead of debt service on its alternate bonds issued under the Illinois Local

Government Debt Reform Act.

Under the state's alternate revenue structure, an ad valorem tax levy is imposed to repay bonds but it is typically abated as the "alternate" revenues are tapped. About $373 million in CPS state aid will go to such bond repayments this year.

"We believe that the most likely scenario for CPS is that the district will levy for debt service on GO alternate revenue bonds in order to free up state aid for operations," Moody's wrote. "The district could elect to use unrestricted GSA for operations instead of debt service."

"Unless by 'elect' Moody's is referring to a successful ballot referendum, a plain reading of the act indicates this is not the case," Fitch countered, arguing that the act "clearly" indicates that CPS must apply available alternate revenues to debt service.

"As there is no option in the law to apply alternate revenues to operations, Fitch believes any attempt to do it would draw a successful challenge in litigation opposing an attempt to levy taxes while alternate revenues were available for debt service," Fitch wrote in the report, co-authored by Laskey and lead CPS analyst Arlene Bohner.

Fitch also countered Moody's position on various features of the district's capital improvement tax structure. Moody's had written that features like a "lockbox" on revenues helped "lessen but do not eliminate the risk of bondholder impairment in a future bankruptcy."

"Unlike Moody's, Fitch does not give rating uplift for the presence of a third-party lockbox structure absent other legal considerations," its report said.

A lockbox is a security device that loses its effectiveness in bankruptcy, Fitch said, because a consensual lien on revenues generally does not continue unless the bonds are secured by pledged special revenues or they qualify as bonds secured by a statutory lien.

"In a Chapter 9 bankruptcy, Fitch does not believe such a structure would insulate ordinary pledged revenues from an automatic stay," analysts wrote. "Fitch also does not agree that the CIT bonds are secured by a statutory lien."

Fitch's belief that the bonds would be protected in Chapter 9 stems from opinions that they meet the bankruptcy code's designation of "pledged special revenues" which offers some insulation from impairment.

The belief stems from structural features such as the fact that the bonds are payable solely from segregated CIT revenues that can be used only for capital projects or CIT bond repayment and not for operations.

"We give credit to special revenue status only if, in our view, the overall legal framework renders remote a successful challenge to the status of the debt as secured by special revenues," Fitch wrote.

In its January report, Moody's had written that it viewed the new structure "to be at least as strong as, if not modestly stronger than, CPS's GO bonds."

State law would have to change to allow the school district to file for bankruptcy.

Moody's spokesman David Jacobson had no direct response to the Fitch report, saying his agency's Jan. 12 speaks for itself.

Cure said Moody's opinion "carries weight with the market."

He noted that the city of Chicago's recent GO deal priced at junk levels, even though Moody's is the only rating agency to rate Chicago at junk. CPS' 30-year CIT bond – despite the Fitch A rating and BBB from Kroll – landed 309 basis points over the Municipal Market Data's top-rated benchmark, 243 basis points over the single A benchmark, and 207 basis points over the BBB benchmark.

Moody's January reports were released ahead of Chicago's $1.16 billion GO sale and followed the city's disclosure that it had asked Moody's to withdraw all of its city ratings in December. Moody's declined to withdraw.

The Bond Buyer

By Yvette Shields

February 1, 2017

[Trump Order on Dodd-Frank Opens Possibility for Muni Rule Review.]

WASHINGTON – President Trump's executive order to scale back the Dodd-Frank Act could initiate what dealers see as a "critical reassessment" of the slew of muni rules implementing the act, although any substantive changes to the act would have to be left to Congress, market participants said.

The executive order, signed Friday, directs the Treasury secretary to meet with major financial regulators and deliver a report within 120 days detailing what provisions are working and not working with Dodd-Frank. The report would also make recommendations about legal and regulatory changes that should be made to the law. Observers see the order, which cannot overturn portions of the statute, as the start to Trump's stated goal of dismantling the law, which was enacted in July 2010 as a response to the financial crisis.

While the Securities and Exchange Commission is an independent agency and farther removed from executive orders than executive branch agencies, the order could still spur the SEC to re-evaluate its muni market rules implementing Dodd-Frank, sources said. However, they added, it remains to be seen whether those regulations will warrant a review.

Dodd-Frank was responsible for numerous regulatory developments in the muni market, including imposing a fiduciary duty on municipal advisors (MAs) and creating a federal regulatory framework for MAs. The act required MAs to register with both the SEC and Municipal Securities Rulemaking Board. Dodd-Frank's fiduciary duty requirement and MSRB authority are not affected by Friday's order, but the SEC has the ability to review how it undertook the directives and implemented them, participants said. Those reviews could focus on decisions that were made while carrying out the act's directives, such as creating the Independent Registered Municipal Advisor exemption for dealers. The IRMA exemption allows dealers to give advice to issuers without having to register as an MA if the issuer has proof that it has an IRMA.

John Vahey, managing director of federal policy for Bond Dealers of America, said BDA members "believe a critical reassessment of the regulations associated with Dodd-Frank and the fiduciary duty rule is a welcome first step" but added that attention to other rules outside the scope of Dodd-Frank are also necessary.

“For smaller broker-dealers, it is absolutely necessary to assess the negative impact on competition that has been caused by the onslaught of regulations, like best execution, retail confirmation disclosure rules, and other rules that are outside the scope of Dodd-Frank, but threaten to bury non-systemically risky U.S. firms with tremendous compliance burdens,” Vahey said.

Susan Gaffney, executive director of the National Association of Municipal Advisors, said NAMA believes the SEC’s MA Rule and other MA regulations stemming from Dodd-Frank “are appropriate and should stay in place” as Trump and others contemplate changes to the wide-ranging law.

“The idea that all regulations would go away a) is hard to believe and b) would have a significant impact on both practice and costs for MA firms to have to readjust,” she added, referring to the significant costs firms incurred coming into compliance with Dodd-Frank’s requirements. “Those seem to be issues that are cropping up but as an organization we have not yet discussed.”

The order is a pre-cursor to the Financial CHOICE Act that House Financial Services Committee chairman Jeb Hensarling, R-Texas, is expected to reintroduce in revised form later this month. The CHOICE Act is Hensarling’s alternative to Dodd-Frank and was approved by the committee during the last congressional session. The legislation contains multiple provisions that would affect the muni market, including a requirement to move the SEC’s Office of Municipal Securities from directly reporting to the SEC chair to instead fall within the commission’s trading and market division. It also would prevent the MSRB from obtaining some of the revenues collected by the SEC and Financial Industry Regulatory Authority from enforcement actions over muni rule violations.

The CHOICE Act would also allow certain municipal securities to qualify as high quality liquid assets (HQLA) for purposes of banking regulator liquidity rules.

It would additionally repeal the Volcker Rule, which prohibits banks from trading on a proprietary basis and restricts their investments in hedge funds and private equity. Muni groups and the MSRB warned at the time the Volcker Rule was proposed that it would bifurcate the market by exempting bonds issued by states, counties, cities, and other units of general government from the rule while not exempting bonds issued by entities like water and sewer districts, school districts, and housing authorities.

Hensarling said Friday that he is “very pleased” that Trump signed the executive action that “closely mirrors provisions that are found in the Financial CHOICE Act.”

“Dodd-Frank failed to keep its promises, but President Trump is following through on his promise to the American people to dismantle Dodd-Frank,” he said. “That’s not what Wall Street wants, but it is what hardworking Americans need to have a healthy economy with more opportunities so they can achieve financial independence.”

Any changes to Dodd-Frank are likely to meet heavy resistance from Democrats in Congress.

Senate Minority Leader Chuck Schumer, D-N.Y., said in a statement Friday that Democrats will do everything in their power not to let Dodd-Frank be repealed, “no ifs ands or buts.”

“The President’s attempts to repeal Wall Street reform will be met with a Democratic firewall in Congress,” he said.

Sen. Elizabeth Warren, D-Mass., said in a Friday statement that Trump’s order makes it easier for investment advisors to cheat investors out of their retirement savings and puts two former Goldman Sachs executives in charge of gutting the rules that protect investors from financial fraud and economic meltdown.

“The Wall Street bankers and lobbyists whose greed and recklessness nearly destroyed this country may be toasting each other with champagne, but the American people have not forgotten the 2008 financial crisis – and they will not forget what happened today,” Warren said.

The Bond Buyer

By Jack Casey

February 3, 2017

[New York City, Other Municipal Bond Issuers Warn Investors on Trump Policies.]

CHICAGO – President Donald Trump’s agenda to repeal the Affordable Care Act and punish ‘sanctuary cities’ for resisting him on immigration is making its presence felt in the $3.8 trillion municipal bond market.

Municipal bond sales next week from New York City, the state of Oregon and a California health care provider worth nearly $1.7 billion include warnings to potential buyers that Trump’s policies could pose a financial risk to these issuers.

The Republican president signed an order on Jan. 25 directing the U.S. attorney general and Homeland Security secretary to withhold federal money from cities that adopted sanctuary policies for undocumented immigrants.

Trump is also pushing to repeal and replace the Affordable Care Act also known as Obamacare, reform the tax code and roll back some or all of the Dodd-Frank financial regulation law.

New York City on Tuesday told potential investors for its upcoming $800 million bond sale that its sanctuary city status should not result in a substantial loss in federal funding due to Trump’s recent executive order.

While sanctuary city is not an official designation, it represents policies adopted by municipalities where local law enforcement refuse to report undocumented immigrants they encounter to federal authorities. Municipalities have said this does not apply in the case of an undocumented immigrant involved in such things as violent crimes.

Self-proclaimed sanctuary cities say they have identified legal holes in the Trump Administration’s arguments saying it cannot cut funding for health care and education.

In the preliminary official statement for the general obligation bonds pricing through Citigroup, New York said federal grants related directly to immigration enforcement comprise a small portion of its budget and that grants supporting law enforcement in general would be exempted from the order.

“If implementation of the executive order results in the reduction of federal aid to the city, the city expects that it would mount a vigorous legal challenge,” the disclosure said. “However, there can be no guarantee that implementation of the executive order will not result in a significant reduction or delay in receiving such aid.”

In addition to New York, other major cities offering some form of protection to illegal immigrants include Los Angeles, Chicago, Philadelphia, Boston, Denver, Washington, and Seattle.

Another sanctuary city, San Francisco, filed a legal challenge to the order this week. Billions of dollars in federal aid to those cities could be at risk.

Trump and the Republican-controlled Congress also have the repeal of the Affordable Care Act on their agenda.

Oregon, which is selling $491 million of general obligation bonds through Citigroup, pointed to uncertainty surrounding the Affordable Care Act and its financial support for expanded numbers of Medicaid recipients. Any kind of repeal or replacement of the act "could have a material adverse effect on the financial condition of the state."

The California Municipal Finance Authority also warned investors in a $405 million conduit debt offering prospectus for a nonprofit health care provider, Community Medical Centers. The document said federal tax reform, the rollback of Dodd-Frank, or replacing the ACA "could have a material impact on the Obligated Group's operations and financial results."

By Karen Pierog and Hilary Russ • Reuters Feb 3, 2017

FINRA Expels BD, Bars CEO for Fraudulent Muni Bond Sales.

Robert Lawson transferred millions of dollars from a deceased client's trust to hide muni-bond borrowers' poor financial conditions and the bonds' risks

The Financial Industry Regulatory Authority said Thursday that it expelled Phoenix-based Lawson Financial Corp. from the organization and barred CEO and President Robert Lawson from the securities industry due to fraud.

Lawson and others with his firm sold millions of dollars of municipal revenue bonds to clients, which were underwritten by LFC and related to an Arizona charter school and two assisted living facilities in Alabama — borrowers that Robert Lawson and LFC knew faced financial difficulties.

For the fraudulent transactions, Lawson transferred millions of dollars to the borrowers and associated parties from a deceased customer's trust account, according to FINRA, in order to hide the borrowers' financial conditions and the risks associated with the bonds.

When LFC clients bought the bonds, LFC and Lawson "hid the material fact that Lawson was improperly transferring millions of dollars from the trust account to various parties when the borrowers were not able to pay their operating expenses or required interest payments on the bonds," according to FINRA.

In addition, the regulatory body found that Lawson and his wife Pamela, who was LFC's chief operating officer, were co-trustees of the trust account — in violation of FINRA rules, since they acted as trustees and engaged in self-dealing with the trust account. Robert Lawson also misused client funds.

Robert Lawson was in the securities industry for 40 years, according to FINRA BrokerCheck. He had nine disclosures during this time, including payments of damages to clients of about $238,000 in 2009 and $295,000 in 2001.

FINRA suspended Pamela Lawson from associating with any FINRA member firm for two years and fined her $30,000. Her BrokerCheck records show that she has been in the industry for 30 years.

This disciplinary action settles a May 2016 complaint filed against LFC, Robert Lawson and Pamela Lawson. In the complaint, FINRA explains that one muni-bond sale was for a $10.5 million offering in October 2014; the size of secondary market bond sales between January 2013 and July 2015 were not disclosed.

Pamela Lawson's BrokerCheck records show that complaint involved making payments of $14 million from a trust account for which she was a co-trustee.

In settling the matter, LFC, Robert Lawson and Pamela Lawson neither admitted nor denied the charges, but consented to the entry of FINRA's findings.

Calls to LFC were not returned as of press time.

THINKADVISOR

FEBRUARY 2, 2017

Puerto Rico Says it Will Miss Some Feb. 1 Debt Payments.

Puerto Rico's government said it will miss some debt payments due on Wednesday, including another payment on general obligation (GO) bonds backed by the U.S. territory's constitution.

In a statement on Wednesday, the Fiscal Agency and Financial Advisory Authority (FAFAA) said the island will miss the GO debt payment; payments owed at Puerto Rico's public finance and infrastructure agencies; and $279 million owed by its Government Development Bank.

Puerto Rico has been defaulting on debt periodically for more than a year, including on GO debt, and the missed payments were expected.

FAFAA said Puerto Rico will make full payments due Wednesday on so-called COFINA debt, which is backed by sales tax, as well as payments owed by the island's retirement system, water authority, municipal finance authority and industrial development agency.

Puerto Rico is facing $70 billion in total debt, and nearly half its 3.5 million residents live in poverty. New Governor Ricardo Rossello, sworn in on Jan. 2, on Sunday signed a law to ensure the government continues to provide essential services.

Rossello has said paying debt is also crucial, and has proposed a number of measures to reduce government spending to free up cash for debt payments.

Still, the island likely cannot afford to pay its debt in full, and is in talks with bondholders to restructure.

Reuters

By Nick Brown

Wed Feb 1, 2017 | 1:08pm EST

House Transportation and Infrastructure Committee Hearing: "Building a 21st Century Infrastructure for America"

On February 1, the House Transportation and Infrastructure Committee held a hearing on the future of infrastructure, focused largely on the funding of infrastructure projects.

Ranking Member Peter DeFazio (D-Ore.), as well as numerous members of the committee from both parties, expressed support for user fees and other dedicated revenue streams to pay for certain infrastructure projects. The only mention of municipal bonds came from Ranking Member DeFazio, who suggested that 30-year federal infrastructure bonds should be considered as a possible funding option for infrastructure projects.

Witnesses included Frederick W. Smith, Chairman and Chief Executive Officer of the FedEx Corporation; David W. MacLennan, Chairman and Chief Executive Officer of Cargill; Ludwig Willisch, President and Chief Executive Officer of BMW of North America; Mary V. Andringa, Chair of the Board of the Vermeer Corporation; and Richard L. Trumka, President of the AFL-CIO.

SIFMA's Hearing Summary

TAX - CONNECTICUT

Kettle Brook Realty, LLC v. Town of East Windsor

Supreme Court of Connecticut - January 24, 2017 - A.3d - 324 Conn. 544 - 2017 WL 194255

Property owner filed municipal tax appeal seeking reduction in property's assessed value.

The Superior Court granted town's motion to dismiss. Property owner appealed. The Appellate Court affirmed. Property filed petition for certification to appeal, which was granted.

The Supreme Court of Connecticut held that appeal was commenced when property owner served appeal documents on municipality, which was outside of two-month deadline, and not when appeal documents were filed with Superior Court, which was within two-month deadline, and thus appeal was untimely.

TAX - NEW HAMPSHIRE

Bishop of Protestant Episcopal Diocese in New Hampshire v. Town of Durham

Supreme Court of New Hampshire - December 9, 2016 - A.3d - 2016 WL 7177763

Church appealed town's assessment of property tax on 24 spaces in church parking lot that church leased to state university students. The Superior Court, Strafford County, Houran, J., entered summary judgment for town, and church appealed.

The Supreme Court of New Hampshire held that spaces in church's parking lot leased to state university students were not exempt from property tax.

Spaces in church's parking lot leased to state university students were not "used and occupied directly for religious purposes," within meaning of statutory exemption from property tax for "houses of public worship, buildings, and the lands appertaining to them owned, used and occupied directly for religious training or for other religious purposes by any regularly recognized and constituted denomination"; university students were using parking spaces for their own private and secular purposes, i.e., parking for about six hours each week, plus special event days and during snow plowing and repair operations, and church did not argue that leasing spaces to university students was reasonably necessary to carry out its mission.

GASB Webinar: Financial Reporting Model Improvements – Governmental Funds.

GASB is hosting a webinar specifically designed for users of governmental financial information like you.

The topic is the GASB's recently published Invitation to Comment that considers several major changes to how state and local governments report their general fund and other governmental funds. Among the potential changes are three alternative recognition approaches that could replace the modified accrual basis of accounting and current financial resources measurement focus now used in governmental fund financial statements. The Invitation to Comment also discusses potential improvements to the format of those financial statements.

The focus of the webinar will be on the kinds of financial information that governments would report under each of the alternative approaches, and how the different approaches would differ from existing reporting and each other.

The webinar is on **Wednesday, February 22, 2017—2:00-3:00 pm EST**, and features David R. Bean, GASB Director of Research and Technical Activities, and Dean Michael Mead, GASB Senior Research Manager.

Register for the GASB webinar.

MSRB Mark-up Disclosure Webinar: Replay

In Case You Missed It: Mark-up Disclosure Webinar

The MSRB's free webinar on "Amended MSRB Rules G-15 and G-30 on Required Disclosure of Mark-ups and Mark-downs to Retail Customers on Certain Transactions and to Provide Guidance on Prevailing Market Price" is available on demand for one continuing education credit.

The webinar covers key provisions of the recently approved amendments to MSRB Rule G-15 on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers and MSRB Rule G-30 on prices and commissions related to disclosure of mark-ups and mark-downs on certain customer confirmations and guidance on prevailing market price.

Bond Math Bootcamp.

March 20-21, 2017
New York City, 14 CPE Credits

See Full Agenda   Register

The Bond Math Boot Camp program is a two-day training program delivered via interactive lecture format. The BootCamp is facilitated in a fashion that encourages group participation with numerous leading/rhetorical questions to draw the audience into focused discussions. The course concepts and methodologies discussion will be supplemented by in-class hands-on exercises as well as optional homework. This seminar will provide an in-depth exposure to yield, pricing and interest rate conventions for fixed income securities. The session begins with an introduction to such fundamental concepts as time value of money, interest/discount rates as well as the compounding and day count conventions upon which market measures are based.

The balance of the class will be devoted to exploring how these concepts are applied to the determination of price, yield, interest/discount rates, rates of return, accrued interest, etc.

The presentation will incorporate the mechanics of the calculation: formula or methodology for determining a numeric value; source and nature of inputs into formula; implicit or explicit assumptions being used. This discussion of conventional calculations will be augmented by an introduction to the interpretation and application of the numbers – how market participants use the numbers for investment/market insights. We strongly recommend that you bring an HP12c calculator or a similar model to ensure you get the benefit of the hands-on activities during this two-day class.

Concepts and measures will be addressed in a pertinent fixed income market context, illustrating these ideas with a discussion of their use by bond traders and portfolio managers when assessing risk and return. The approach taken to address each of the major topics:

First, explain the concept and the related market intuition, what does the concept/number attempt to quantify and how do market participants interpret the number regarding any insight into market conditions/securities valuation.

Second, review the specific methodology by which the measure/concept is quantified, what is the structure of the computation or process by which the number is determined, what are the inputs for the computation/process and how are they obtained as well as any implicit assumptions used in the calculation.

Third, illustrate the computation/process using current market data, taking values/rates/contract details of treasury, corporate and mortgage-backed securities. To the extent possible the presentation will be guided by participant questions.

GASB Issues Guidance on Fiduciary Activities.

The Governmental Accounting Standards Board (GASB) has issued guidance for state and local governments regarding what constitutes fiduciary activities for financial reporting purposes, how fiduciary activities should be reported, and when liabilities to beneficiaries should be recognized.

Governments currently are required to report fiduciary activities in fiduciary fund financial statements. Existing standards are not explicit, however, about what constitutes a fiduciary activity for financial reporting purposes. Consequently, there is diversity in practice with regard to identifying and reporting fiduciary activities.

GASB Statement No. 84, *Fiduciary Activities*, establishes criteria for identifying fiduciary activities of all state and local governments. The criteria generally focus on:

- Whether a government is controlling the assets of the fiduciary activity, and
- The beneficiaries with whom a fiduciary relationship exists.

Separate criteria are included to identify fiduciary component units and postemployment benefit arrangements that are fiduciary activities.

An activity meeting the criteria in Statement 84 should be reported in a fiduciary fund in the basic financial statements. Governments with activities meeting the criteria should present a statement of fiduciary net position and a statement of changes in fiduciary net position.

Statement 84 describes four types of fiduciary funds that should be reported, if applicable. The Statement clarifies the definitions of the three existing fiduciary funds associated with trusts that meet specific criteria:

- Pension (and other employee benefit) trust funds
- Investment trust funds
- Private-purpose trust funds, and
- Custodial funds.

Activities now reported in agency funds will be classified as custodial funds when Statement 84 is implemented.

KBRA Comments on Stress Cases Applied to Puerto Rico Insured Debt.

Kroll Bond Rating Agency (KBRA) rates three bond insurers with exposure to Puerto Rico totaling $9.3 billion of outstanding bonds issued by several Commonwealth issuers. In KBRA's view, recent developments have had potentially significant effects upon Puerto Rico's credit profile notwithstanding its continuing defaults. KBRA uses stress case loss assumptions for Puerto Rico issuers to address the continuing uncertainty in these exposures when rating bond insurers.

In KBRA's view, the ability of the three bond insurers to satisfy these assumed stress case losses supports their strong rating levels. Further details regarding the stress case loss assumptions are presented in the comment linked below.

Please click here to access the full comment.

Mayors Fight to Keep Municipal Bonds Tax Free.

Mayors present and past swear by the value of municipal bonds, while also swearing by the tax deduction for investing in them.

Hence their ongoing battle to preserve that tax benefit as Congress considers changes that could cut the deduction or trim it back in some way as part of an overall tax overhaul, despite some whispered assurance that the century-old exemption won't get touched.

Advocates don't want to take anything for granted.

Still, it doesn't hurt that they have easy allies on the House Ways and Means Committee, where legislative changes to the U.S. tax code begin. Multiple GOP members are former mayors who are fighting opposition to the tax break.

"As we go through the tax reform debate, I will be a voice in that camp," said Rep. Tom Reed (R-N.Y.), who ran City Hall in Corning, N.Y., in 2008 and 2009.

Municipal bonding is critical to building infrastructure such as roads, he told Bloomberg BNA, adding that no financing alternatives exist. That echoes a point raised by members of the U.S. Conference of Mayors in an effort to keep the tax benefit.

The group recently launched a formal campaign to ensure the status quo.

Local and state governments financed nearly $1.7 trillion in infrastructure projects through tax-exempt municipal bonds from 2003 to 2012, but would have paid nearly $500 billion more if investors couldn't use the deduction over that decade, according to data from the mayors' group.

That kind of impact would have caused higher taxes and job losses, a number of mayors argued at a recent gathering in Washington for their 85th winter meeting.

$195 Billion

The tax benefit for municipal bonds adds up to an estimated $195 billion in lost revenue from the 2016 federal fiscal year through 2020, according to an analysis released Jan. 30 by the Joint Committee on Taxation.

That federal subsidy for state and local outlays represents wasteful spending that accrues to top-income taxpayers, said Chris Edwards, director of tax policy studies at the libertarian Cato Institute. He has recommended repealing the provision because it favors government infrastructure over the private sector.

"It's a distortion because it discourages state and local governments from making privatization reforms," Edwards told Bloomberg BNA, repeating a message he has delivered directly to Ways and Means Chairman Kevin Brady (R-Texas) and committee staff.

Private ownership of airports, seaports and highways is much more common in countries like Canada and the U.K., Edwards said, adding that it is more efficient than government-run infrastructure.

But new water and sewer infrastructure would be imperiled without municipal bond financing in South Carolina's state capital, Columbia, said its mayor, Steve Benjamin.

The project, which he said should service 300,000 people in the region when completed, hasn't required higher taxes. In fact, the city hasn't raised taxes in a decade and has ended five of the last six years with a budget surplus, Benjamin said.

"We don't need rate increases simply based on the unavailability of additional capital," he told

Bloomberg BNA. “That’s the concern here. Certain cities will always be able to access the market. But if in fact we saw the tax exemption go away, or any other jolts to the muni market, there are several cities that wouldn’t be able to access markets.”

Trump Support

President Donald Trump agrees with keeping the tax benefit, according to Benjamin, who in December met with Trump in New York along with New Orleans Mayor Mitch Landrieu and Oklahoma City Mayor Mick Cornett, president of the U.S. Conference of Mayors.

Behind the scenes, some Ways and Means Republicans don’t expect change, according to two sources close to the talks who spoke on condition of anonymity so they could speak freely about the ongoing discussions, but the tax exemption’s defenders don’t feel safe.

“That alarms us because we know that that cuts directly into the amount of infrastructure that we’re able to finance in our nation’s cities,” Cornett said at a news conference during the group’s Washington meeting.

Several mayors had meetings with Ways and Means members and staff, Benjamin said, without providing specifics. He stayed in town through Trump’s inauguration, but didn’t have another meeting with the president.

“I can tell you it’s one of the potential things to look at as far as replacing and simplifying the tax code,” said Rep. James B. Renacci (R-Ohio), another former mayor among Ways and Means’ GOP roster.

Committee members are being petitioned on a host of tax benefits that could be on the chopping block as part of tax reform, for which legislation is being developed based on the loose framework released in June by Brady and House Speaker Paul D. Ryan (R-Wis.).

“Being on the front line of that debate previously, I think mayors—and myself included—tend to understand the need for municipal bonding, and if you don’t have it, how difficult it would be to meet the needs of local communities,” Reed said.

Still Waiting

Renacci has pushed back against the opposition, and like Reed, would prefer to maintain the tax exemption. But the former mayor of Wadsworth, Ohio, admitted that such decisions remain out of his hands for now.

“We don’t know what’s in or what’s out; we haven’t seen the bill in writing,” Renacci told Bloomberg BNA. “It’s the same old answer—we just have to continue to wait and see what the committee staff puts in writing and we’ll have a better answer.”

Other former mayors on Ways and Means include Reps. Kenny Marchant (R-Texas), who said bonding was an essential ingredient to funding municipal projects during his tenure running Carrollton, Texas.

Ways and Means ranking member Richard E. Neal (D-Mass.), the former mayor of Springfield, Mass., said bonds’ guarantees are essential for communities and investors, and that he couldn’t imagine changing tax policy to alter their attractiveness.

“It’s a public good,” Neal told Bloomberg BNA. “I don’t think that’s a difficult one.”

But the tax overhaul blueprint needs revenue to minimize more red ink on the federal ledger, something Brady has pledged to ensure when estimating economic upside that would come from the myriad tax cuts involved in the plan.

Both Reed and Renacci cautioned that changes to tax-exempt municipal bonds remain a possibility. But Reed said he won't hold back his opinions.

"To me, it's a tool that's worked for years and years and years," he said. "And as we go through tax reform I'm about fixing the broken parts of the tax code, but for the provisions that work, we're a voice to say let's continue that."

Bloomberg BNA

By Aaron E. Lorenzo

February 6, 2016

To contact the reporter on this story: Aaron E. Lorenzo in Washington at aaron@bna.com

To contact the editor responsible for this story: Meg Shreve at mshreve@bna.com

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[Exploring the Impact of GASB 77: CDFA // BNY Mellon Development Finance Webcast]

Exploring the Impact of GASB 77

March 14, 2017
@ 1:00 pm Eastern

This past December marked the official start of GASB 77, a new accounting standard requiring all government agencies to report tax abatements as lost revenue. How do these changes affect development finance agencies, audit requirements, and the negotiation of future tax abatement deals? During this installment of the CDFA // BNY Mellon Development Finance Webcast Series, our expert speakers will provide an in depth look into the implications of this new accounting standard.

Speakers:

Rena Nakashima, Moderator
Senior Product Manager
The Bank of New York Mellon

Click here to confirm your participation and receive login information. Registration is free and open to all interested stakeholders.

2017 – What lies ahead?

The year 2017 promises, and threatens, to be a potentially momentous one for public finance in the United States. The Trump Administration and the 115th Congress may put in place tax reforms and infrastructure programs that will have transformative consequences for the financing of public projects in all sectors and at all levels. These are only a few of the issues that state and local officials and public finance professionals will be following closely in the coming year:

- Will income tax rates be reduced and, if so, will lower rates reduce the relative attractiveness of tax-exempt municipal bonds?
- Will new restrictions be placed on the purposes for which tax-exempt bonds may be issued or on the manner in which they may be sold, or how their proceeds may be invested?
- Will the new Administration pursue the trillion-dollar, ten-year infrastructure program that President Trump proposed during the campaign? Will Congress approve it? If so, which categories of infrastructure improvements will be given priority?
- How will any major infrastructure program be paid for? As a candidate, President Trump indicated that he would propose new tax credits as a funding method. If enacted, would those tax credits enhance or undermine traditional municipal bond financing?
- Will the Alternative Minimum Tax be eliminated and, if so, will that increase the relative attractiveness of "AMT Bonds" (e.g., exempt facility bonds) commonly issued to finance certain types of large infrastructure projects?

Continue reading.

Squire Patton Boggs

The Public Finance Tax Blog

By Joel Swearingen, Johnny Hutchinson and Bob Eidnier on February 3, 2017

NCPPP, ULI Publishes Report: "Enabling Infrastructure Investment: Leveling the Playing Field for Federal Real Property"

NCPPP and the Public Development and Infrastructure Council of the Urban Land Institute have published "Enabling Infrastructure Investment: Leveling the Playing Field for Federal Real Property," a report that explores opportunities and options for responsible infrastructure reform specifically through the lens of re-evaluating the federal real estate project scoring rules and using reform of those rules as a testing ground for developing new practices in similar areas.

The beginning of a new presidential administration and Congress provides a novel opportunity to reconsider existing practices and develop a framework for funding federal infrastructure projects outside of traditional funding models. With this in mind, NCPPP urges the incoming administration to prioritize reform of the budgeting and financing of federal real estate investments while widening avenues for private and commercial investment in these projects starting with revisiting the existing mechanisms for scoring and operating capital investment to eliminate existing loopholes.

The authors made the following four recommendations for the new White House to address this issue:

- The Office of Management and Budget (OMB) should test an alternative approach to scoring real property transactions that eliminates exceptions which allow the budgeted cost of investment to be spread over multiple fiscal years.

- Federal investments in real estate assets should be evaluated on a life-cycle cost basis with up-front funding provided for the net present value of long term costs for all investment.
- OMB should develop and evaluate a model for scoring the "cost of doing nothing" through calculating the long term cost of deferred maintenance of federally owned real estate.
- The new administration and Congress should convene a Commission on Budget Concepts to review the efficacy of the current model and develop new paradigms for assessing the cost and value of capital investments.

The full report can be downloaded here.

February 2, 2017

S&P Webcast Replay: 2017 U.S. State and Local Government Credit Outlook.

S&P Global Ratings U.S. Public Finance held a live Webcast and Q&A on Tuesday, January 24th, 2017 at 3:30 p.m. Eastern Time for discussion on our 2017 U.S. State and Local Government Credit Outlook.

View The Webcast Replay

Jan. 24, 2017 | New York

IRS Opens Probe Into Financing for Statler Redevelopment.

The Internal Revenue Service is investigating a deal that raised millions of dollars for the redevelopment of the Statler Hotel and Dallas Central Library, according to lawyers involved in the financing.

The *Dallas Morning News* recently signed a lease agreement to move into the old library building once it has been renovated. The library and 19-story hotel are on Commerce Street across from the Main Street Garden Park.

The IRS is examining a complex financing that raised $26.5 million for the $221 million project. Mehrdad Moayedi, a real estate developer known for building residential communities in North Texas, is spearheading the project though Commerce Statler Development LLC.

The financing to help pay for the redevelopment involved tax-exempt bonds, which are regulated by the IRS.

The bonds were sold by an agency in Wisconsin and were backed by future tax grants to the project from the city of Dallas. Local experts called that structure unusual when it was announced in August.

Lawyers involved in the tax-exempt bond sale published a notice Monday telling investors that the IRS is examining the deal because of concerns "that the debt issuance may fail one or more provisions" of the tax code. The notice said the concerns may have been raised by "external sources."

The agency did not respond to requests for comment Monday night.

The Public Finance Authority in Wisconsin "believes the bonds complied with all applicable provisions of the Internal Revenue Code," according to the law firm that posted the disclosure, Orrick, Herring & Sutcliffe. The firm declined to comment to *The News*.

The city of Dallas approved the bond sale based on the future payout of the tax incentives.

Moayedi's spokeswoman referred questions about the IRS inquiry to Kirk Wilson, a financial consultant for the project. Noting that the developer has not received any information directly from the agency, he said that the IRS is simply asking for more information in a routine audit.

The bonds are backed by so-called tax-increment financing, in which the city promises to give developers tax breaks over time for developing in designated areas. City representatives did not immediately respond to requests for comment.

The Dallas Morning News

by Terri Langford

Miles Moffeit contributed to this story

CDFA Agenda Includes Pushing for Bond Bills, Supporting Tax Exemption.

WASHINGTON – The Council of Development Finance Agencies this year will work to obtain separate bills that would ease certain tax restrictions for manufacturing bonds and remove water and sewer bonds from the private activity bond volume cap.

The goals are in the 2017 policy agenda the group is circulating to its members.

The CDFA also will work to preserve and strengthen tax-exempt bonds in general, obtain increased funding for the Water Infrastructure Finance and Innovation Act (WIFIA) and promote the launching of a federal urban tax increment finance program, among other things.

"The bond issues outlined in our agenda are our primary focus in 2017, said Toby Rittner, CDFA's president and chief executive officer. "Working with our partners in Congress to get MAMBA passed would be a great victory for issuers, and for our industry as a whole. Our efforts to protect the tax-exempt status of municipal and private activity bonds are also important. With tax reform likely coming this year, it's essential that we make sure members of Congress are fully aware of the importance of the tax exemption, and that they protect it at all costs."

MAMBA is the acronym for "Modernizing American Manufacturing Bonds Act," companion bills introduced by House and Senate members last year and the year before that would have loosened tax law restrictions for qualified small issue manufacturing bonds. These bonds are used to finance facilities for small and mid-sized manufacturers. They are also called industrial development bonds (IDBs). The bill (S. 3416) in the Senate was offered on Sept. 28 of last year by Sens. Sherrod Brown, D-Ohio, and David Perdue, R-Ga., The one (H.R. 2890) in the House was introduced on June 25, 2015 by Reps. Randy Hultgren, R-Ill., Richard Neal, D-Mass., and James Renacci, R-Ohio. Neal is now the top Democrat on the House Ways and Means Committee. The two congressmen had offered the bill the previous year as well.

The House and Senate bills would have made two tax law changes that had been put into effect in

2009 and 2010 under the American Recovery and Reinvestment Act. They would have expanded the definition of manufacturing facility to include intangible property, such as software, as well as tangible facility. The bills also would have allowed IDBs to be used to finance facilities that are functionally related and subordinate to the production of tangible or intangible property, such as warehouses that temporarily store materials and laboratories that test raw materials.

Additionally, the measures would have made two other tax law changes. They would have increased the maximum size of an IDB issue to $30 million from $10 million. The limit hasn't increased since 1979 and hasn't ever been indexed to inflation.

They also would have increased the capital expenditure limitation for IDBs. Currently, a manufacturer can only issue IDBs if their capital expenditures, including the bond proceeds, are not more than $20 million in the six-year period beginning three years before the date of the proposed new issue and ending three years after that date. Under the bills, that capital expenditure limitation would have increased to $40 million.

On tax-exempt financing in general, CDFA's agenda said, "The administration must commit to preserving and protecting tax-exempt bonds under any and all circumstances. The restriction, capping, and/or eliminating of the tax-exempt status for municipal and private activity bonds should be dismissed outright."

In addition, the group said, any tax reform measures considered by Congress should take into account the importance of private-sector led investment and "the critical role that tax-exempt bonds play in generating private investment."

CDFA also wants to push for the reintroduction of legislation that would remove PAB volume caps for water and sewer bonds. A bill (S. 2606) was introduced in the Senate on Feb. 29 last year by Sens. Robert Menendez, D-N.J. and Mike Crapo, R-Idaho. The one (H.R. 499) in the House was introduced by Reps. John Duncan, Jr., R-Tenn., and Bill Pascrell, DN.J., the year before in January.

In addition, the group wants increased funding for WIFIA, which provides credit assistance in the form of loans for large water infrastructure projects.

The group's agenda also calls for the launch of a Federal Urban Tax Increment Finance Program that would allow local governments to redirect specific estimated tax revenue to finance urban revitalization efforts. Currently state and local governments set up TIF districts and use the revenue to back tax exempt bonds.

CDFA called for the creation of a State Clean Energy Finance Initiative (SCEFI) pilot program with the Treasury Department that would be authorized for five years with a onetime $5 billion appropriation. The program would leverage an additional $50 billion of private investment nationally for clean energy projects.

The two-plus-page agenda calls for other initiatives as well.

The Bond Buyer

By Lynn Hume

February 2, 2017

Making the Case for the High Efficiency of the Tax Exemption - It's in the Numbers.

As tax reform takes shape, a key challenge for the municipal market in maintaining full access to the tax exemption stems from a factually flawed methodology utilized by the Joint Committee on Taxation.

Over a long period of time, we have been told, “don’t try arguing with Joint Tax methodology, their methodology is accepted by Congress, the Administration and staff as being gospel.” However, what if the problems with the Joint Tax analysis stem not primarily from methodology, but from factual inaccuracies in the data underpinning the analysis?

Under its analysis, the JCT comes to three conclusions:

1. That municipal yields as a percentage of taxable yields are high;
2. That this high ratio results in the marginal tax rate of the marginal investor in municipals being low; and,
3. That, as a consequence, everyone in a higher tax bracket received a “windfall”—a higher yield than would be needed to needed to attract them to buy municipals.

Under their methodology, long-term municipal yields as a percentage of corporate yields are indeed quite high – roughly 94% on long-term A1/A+-rated paper. However, the high ratio vanishes when two simple but essential adjustments are made to the calculation: The first adjustment is to compare municipals to corporate bonds that are actually similar, which the Joint Tax report demonstrably did not. We stress that this adjustment does not reflect a change in methodology relative to the JCT. It simply makes sure that the analysis involves an “apples vs. apples” comparison.

The second adjustment is to increase municipal yields to the levels that would be needed to clear the market if these municipals came as taxable bonds. That is a higher yield than that which would show on corporate indices, because as currently constructed, municipals have certain disadvantages that would force them to pay a higher yield than corporate bond indices suggest, if they came in the taxable market. These disadvantages include weaker call provisions, lower liquidity on smaller maturities, and a weaker disclosure regime than on corporate bonds. Having shown how these two adjustments would look, we then discuss two other factors, which provide important pieces of evidence that the conclusions of Joint Tax are incorrect—the functioning of the market for “Private Activity Bonds” subject to the Alternative Minimum Tax, and the pattern during the second half of 2009 and 2010, when taxable “Build America Bonds” were available as an alternative to tax-exempts.

The bottom line is that in our view, the 2012 report out of Joint Tax on their methodology for determining the efficiency of the tax-exemption was severely factually flawed:

- Triple-A corporates were compared to A1/A+ municipals using the Bond Buyer 20-Bond Index (BBI);
- The fact that the BBI severely overstates actual borrowing costs in the municipal bond market was ignored;
- The fact that municipals with shorter maturities compare much more favorably than longer bonds in comparison with taxable bonds was ignored; and,
- The more favorable structure of corporate bonds with respect to call provisions, liquidity and disclosure, which reduces their borrowing cost relative to the likely cost of fully taxable municipals

was ignored.

All of the above factors create an illusion the JCT analysis that muni yields as a percentage of corporate bond yields are much higher than they are in the real world.

Finally, the underlying assumption that, if tax-exempts did not exist, investors would only buy fully-taxed corporates as an alternative, is simply incorrect, as Joseph Poterba at MIT has shown. At the maximum 40% tax rate on corporate bond interest, a vast number of investors would, if they could not buy tax exempts, seek out an alternative with a lower Federal tax rate, such as the 20% maximum rate on dividends and capital gains.

Working Through the Numbers

In our analysis, we start with the yield ratio we would expect JCT to derive using its flawed data. Using this starting point, we would have a tripleA corporate bond index of roughly 3.50%, and a yield on the Bond Buyer 20-bond Index of roughly 3.87%. This provides a starting point ratio of roughly 107%.

Adjusting for the factual inaccuracies in the data as shown by JCT in its own analysis works out as follows:

1. Currently, municipal yields are inflated to a degree by tax risk fears. In our estimation, long-term municipal yields would be at least 30 basis points lower under "normal" conditions. Since the election, investors have become reticent to put cash to work in the municipal market as a result of fears that tax reform would damage the value of municipals by sharply cutting tax rates or putting a cap on the value of the tax-exemption. Pressures on the municipal market are shown in municipal bond fund flows, which have been a whopping negative $15 billion since the election. Adjusting for tax risk fears, and the ratio declines to 3.57% vs. 3.50%, or 102%.
2. Different quality bonds are being compared. A Triple-A rated Corporate Bond index is compared to the A1/A+ Bond Buyer Index. Use of comparably rated bonds would reduce the ratio on municipal yields to corporate yields considerably. (3.57% /3.60% would become 3.57%/4.10%). The yield ratio would thus move down from 102% to 87% – still very high, but wait…
3. The greatly inflated yield on the BBI. The Bond Buyer Index utilized by the JCT in their analysis ALWAYS yields considerably more than actual municipal bonds, as it did over the entire time period included in the JCT report. During their measurement period, the difference typically ran 80120 basis points. Now, with lower yields in all sectors, the difference still runs 50 basis points for similarly rated bonds due in 20 years. So, the 3.57% to 4.10% comparison above becomes 3.07% to 4.10% when real-world yield levels are used instead of the massively inflated BBI, and the ratio declines to 75%.
4. Differences in call provisions, liquidity and disclosure between A1/A+ corporates and A1/A+ municipals are ignored. To be sold in the taxable market without corporate-like attributes, we estimate that municipals would have to have roughly 40-basis-point higher yields than like-rated corporates, and 60 basis points more for smaller, less liquid issues. Differences include the lack of call risk on corporate bonds versus the ten-year call on nearly all municipals, stronger liquidity resulting from higher per-maturity issue size, and stronger disclosure requirements. So, the comparable ratios become 3.37% to 4.50%, and 3.37% to 4.70%, or the 74.9% to 73% range.
5. A focus on long maturities. As we discuss below, municipal yields as a percentage of taxable yields tend to be dramatically lower on bonds 11 years and shorter than they are on longer-maturity paper. By our estimate, the ratio in the 10year range would be at least 7 percentage points lower in 10years than it is in the 20-year bonds used in the JCT analysis, and on 5year paper would be another 7 percentage points lower. Using an average of a 10 percentage point drop for paper inside 10 years, and the ratio declines to from 64.9% to 63%.

6. Evidence for a very high clearing marginal tax rate on shorter maturities comes from BABs. During the period from mid-2009 through the end of 2010, nearly 40% of new issues came as Build America Bonds – fully taxable to the investor, but with a 35% subsidy provided to the issuer. Issuers thus had a choice: accept the reduced yield provided by access to the tax exemption, or accept a 35% subsidy. The two choices would essentially be break even when munis yielded exactly 65% as much as taxable BABs. In terms of measuring the efficiency of the tax exemption, here is the interesting result: during that period, a very large proportion of bonds with a maturity longer than roughly 11 years came as BABs, but nearly all bonds with a maturity inside 11 years came in the tax-exempt market. As far as the efficiency of the tax exemption is concerned, the implications are clear: inside roughly 11year maturities, municipal bonds were clearing with a ratio to taxable bonds lower than 65%. This compares with the implied tax rate for municipals during 2009 in the Joint Tax analysis of 13.2%. We estimate that the ratio actually stayed above 30% as far out as roughly 15 year maturities, a sizable component of the entire municipal market – roughly 60%-70%.
7. Thus, simply comparing apples to apples—similarly rated and structured municipals and corporates under current conditions takes the clearing marginal tax rate up from 8% to 34%-38.5%. However, even this purely factual analysis based upon current market conditions ignores an important invalid assumption in the Joint Tax Analysis: That investors who could no longer buy tax exempts would only buy taxable bonds taxed at their maximum income tax rate as an alternative. The problems with the assumption that taxable bonds are the only alternative in the absence of tax-exempts, is shown in the work of Joseph Poterba and teammates at MIT. (Example: *Portfolio Substitution and the Revenue Cost of the Federal Income Tax Exemption for State and Local Government Bonds*, Poterba, James M. and Verdugo, Arturo Ramírez, National Tax Journal, June 2011.)

It's Not Just Municipals vs Taxable Bonds

Having adjusted the yield comparison to provide an apples-versus-apples comparison, we arrive at an adjusted yield ratio of municipal yields to corporate yields, at various spots along the yield curve. While this adjustment suggests a marginal tax rate for the marginal buyer that is vastly higher than the JCT suggests, we then explain why the assumption that this ratio represents a complete comparison of the two markets is highly flawed. This assumption has been deconstructed by Poterba at MIT, among others.

In reality, in the absence of a tax-exemption, most investors would not buy taxable bonds taxed at their maximum marginal rate; they would hold more cash/nearcash (they currently hold 6X as much cash as the do municipals), or they would buy investments with a lower effective tax rate. Currently, dividends and capital gains are taxed at a maximum rate of 20%. With longterm corporate yields around 4.25%, investors in roughly the 40% tax bracket would earn roughly 2.50%, after-tax. As Drs. Poterba and Verdugo note, lacking access to tax-exempts, many of these investors would choose dividend paying stocks, or invest for a longterm capital gain, rather than buying fully taxable bonds. The idea that the difference between the ratio of municipal yields to corporate yields and investors' maximum tax brackets represents a "windfall" to the high bracket investor is simply incorrect, because investors have other choices.

Impact of a Cap on the Tax Exemption—Evidence From the Market for Bonds Subject to the AMT

Our message in the above is that, when comparisons between munis and corporates are measured properly, municipal yields as a percentage of taxable yields are vastly lower than that shown in the Joint Tax analysis. Quite simply, the low marginal efficiency of the tax-exempt market described by Joint Tax in its analysis results from inaccurate data. We do not attack the methodology, we simply show that the clearing marginal tax rate for municipals, properly measured, is quite high under most market conditions.

In addition, the question has come up as to what the impact would be of a 28% cap on the tax-exemption.

In our view there is already evidence of the impact from the functioning of the market for PABs subject to the AMT.

These bonds are subject to a “surtax” on the interest, but only for investors who pay the AMT. For other investors, the AMT has no effect. Even with this limited target for the surtax, bonds subject to the AMT cost issuers roughly 30 basis points more than nonAMT paper. To investors who do not pay the AMT, the extra yield is a “windfall” that provides no tax revenue to the Treasury. Now consider what would occur if all municipals were subject to a surtax in the form of a 28% cap: we would expect the cost of borrowing in the municipal market to rise substantially more than 30 basis points. In our estimate, the impact would range from 50 basis points to 75 basis points or more for the entire market. Please note that when municipals and corporates are compared properly, the clearing ratio of yields generally put the marginal tax rate above 28%. As a consequence, in our view, a 28% cap would be quite damaging the in the form of higher borrowing costs.

The Bottom Line

Decision makers often cite the Joint Tax methodology in explaining why they believe the tax exemption to be an inefficient subsidy. To a very significant degree, we believe that the JCT analysis is flawed, not because its methodology is incorrect, but because its data is wrong: its comparison is a clear “apples to oranges” comparison. When the data is adjusted to compare similar bonds in both sectors, we discover that muni yields as a percentage of corporate bonds actually provide a marginal tax rate that is impressively high. In addition, we site one comparison from the work of Joseph Poterba et al at MIT: we believe, as he does, that if the tax-exemption were eliminated, many investors would substitute other investments with a tax rate roughly half of that on full taxable bond interest. Given all of this, the premise that the muni market clears through investors with a low marginal tax rate—thereby giving a windfall to high bracket investors – is simply incorrect.

The Bond Buyer

By George Friedlander

February 1, 2017

George Friedlander is a managing partner at Court Street Group Research.

As Gas-Tax Profits Decline, More States May Turn to Tolls.

Some states are seeking to fill funding holes and potholes with toll money. But it’s an uphill battle.

Tolls have been a fact of life in Indiana for at least 60 years, but state Rep. Edmond Soliday thinks there will have to be more of them if the state wants to keep its roads in good shape.

Soliday, a Republican who chairs his chamber’s transportation committee, said the most expensive part of the state's transportation network are the heavily trafficked interstates that are filled with out-of-state trucks. Federal law, however, prevents states from tolling existing interstates without a waiver.

"I say to citizens and my fellow legislators: How much do the citizens of Indiana owe to provide an infrastructure to folks who don't even stop for a Snickers bar?" said Soliday. "It's irresponsible not to take a look at how much of it are Hoosiers willing to pay so that others can use it."

So Soliday introduced an ambitious road-funding bill earlier this month that would instruct the Indiana Department of Transportation to apply for a federal waiver and to study how tolls could be added.

As traditional sources of transportation revenue, like gas taxes, have declined, tolling has increasingly become a part of everyday life for many Americans.

The miles of managed lanes with tolls on them has quadrupled since 2010. The number of drivers using toll facilities increased by 7 percent in just a single year, from 2014 to 2015. That growth could continue if lawmakers in places like Connecticut or Wisconsin move ahead this year with long-stalled plans to introduce tolling in their states.

There's been a lot of discussion about whether a federal infrastructure stimulus from the Trump administration could help alleviate states' fiscal pressures on transportation. But Soliday said he isn't depending on help from Washington. Besides, he said, the longer the state waits for help from the federal government, the worse its roads get in the meantime and the more expensive they get to fix.

Tolls may be an expedient source of revenue in the near term, but Soliday's real case is that they'll become even more vital in the years ahead.

Thanks to increasing federal fuel standards, auto manufacturers will soon have to start producing more fuel-efficient vehicles. That could lead to an even bigger drop in gas tax revenue. The firm Cambridge Systematics predicted that, after accounting for inflation, the $450 million in revenue that Indiana's gas tax produced in 2015 will bring in only about $300 million a decade from now.

"We have this huge hole starting in 2021," said Soliday. "The issue is: How do you plug the hole if you can't do it with a reasonable amount of gasoline tax? Tolling is clearly how we're filling that gap starting in the 2021 era in the plan."

But tolling existing interstates, as Soliday proposes, won't be easy.

GOP Gov. Eric Holcomb is reportedly against the idea, and the Senate president has called it a "hard sell." The trucking industry, which opposes most toll increases, will also likely push back.

In addition to upping the number of tolls, Soliday's bill would also increase gas taxes, levy new fees for electric vehicles and hike vehicle registration fees. But raising the state's gas tax would be hard, too.

Indiana voters are unlikely to accept a gas tax increase of more than 10 cents per gallon, said Soliday. Even if they did, a hike that size would only make up for the revenue lost to inflation since Indiana last raised its gasoline tax in 2003 and its diesel tax in 1998.

To improve local roads, Soliday's bill would use the revenue raised from higher registration fees to build on a program created by Indiana lawmakers that set up matching grants for localities that would fund 50 percent of a project's costs up to $1 million. According to Purdue researchers, 26 percent of city roads, 29 percent of town roads and 40 percent of county roads are in poor condition — and it would take $773 billion just to keep the road quality the same over the next decade. To make sure no roads were in poor condition, it would cost the state $1.6 trillion.

The bottom line, said Soliday, is that Indiana can't achieve its goals without tolling or something else that will bring in that kind of revenue.

"If you take anything out of the package, then you've got to put something in, or you've got to lower expectations," he said. "It's a closed system."

GOVERNING.COM

BY DANIEL C. VOCK | JANUARY 30, 2017

Breaking Down the Financial Impact of Self-Driving Cars.

They would be mostly — but not all — good for state and local revenues.

The expectations over driverless cars are stratospherically high. For one, there's the fascination with the technology and the presumption of an easier commute: The self-driving car will take us to work while we surf the Internet, read files and review emails. Once it drops us off, it returns home where others in our household can use it — until it's time to call it to pick us up and take us home again.

There's more to this futuristic concept than creature comforts, though. With self-driving cars anticipated to be in wider use on our roads within four years, there are promises of extraordinary impacts on state and local finances — most of them positive; a few not. Several reports from some of the biggest names in banking put startling numbers on the effects wrought by a changeover to driverless driving.

Let's start with Morgan Stanley. Its new report, Autonomous Vehicles & Municipal Bonds, puts the net positive impact on municipal budgets in excess of half a trillion dollars. That number takes into account more efficient roadway use and a dramatic reduction in parking garages and parking spaces. With parking facilities no longer needed, those properties can be turned into higher-level development, which would provide municipalities with a boost in property taxes. Offsetting those gains, Morgan Stanley foresees losses of roughly $1.3 billion from such revenue sources as fuel taxes, license fees, parking fees, speeding tickets and personal property taxes.

Barclays, the British banking and financial services company, notes that transportation in the U.S. is the second highest average household expenditure and that the average car is parked 95 percent of the time. It estimates that the average U.S. household will reduce its car ownership from today's 2.1 vehicles to 1.2. (A figure also cited in a University of Michigan Transportation Research Institute study.) For states and localities, such a reduction could signal an end to what Barclays calls "the fretting" about investing in additional highway lanes or new roads.

That lack of fretting would have quite an effect on infrastructure and the municipal bonds that finance it. The impact starts with this forecast from several researchers: A single self-driving car could replace up to 12 regular vehicles. If that happens, it would affect some of the existing $3 billion in dedicated tax-exempt state and local parking revenue bonds. It would also affect airport revenue bonds. Airports currently generate 28 percent of their operating revenue from rental cars, parking and ground transportation — revenue that could be at risk from the cascading parking effects of self-driving cars.

The influence on general obligation bonds would be significant in a more positive way. The greater efficiency of self-driving cars and the ability to fit triple the amount of traffic in existing lanes could sharply reduce current projected needs for infrastructure and therefore the need to borrow money to build new roads.

There are other revenue savings. Self-driving cars are predicted by the National Transportation Safety Board to save "many, if not most, of the 33,000 lives lost to traffic fatalities every year on our streets and highways." If true, this would lead to a major benefit via the $18 billion annual health-care costs from emergency room visits related to motor vehicle injuries, injuries that currently average 15 percent of hospitalized injuries — not to mention the costs to local emergency responders.

Then there's this: For many police departments, 42 percent of police contacts are initiated during a traffic stop — with driving under the influence of alcohol being the second highest cause. Self-driving cars would render DUIs virtually obsolete. That would be a signal benefit not only — and most important — on innocent lives saved, but also in a diminution of emergency medical and police costs.

No wonder Morgan Stanley came up with a half-a-trillion dollar figure.

GOVERNING.COM

BY FRANK SHAFROTH | JANUARY 2017

Deferred Public Spending: The Credit Card From Hell.

Kicking the can down the road is always tempting. But for infrastructure, innovative public-private partnerships offer a prudent alternative.

When infrastructure maintenance is deferred or a pension contribution is skipped, critics of imprudent public spending are quick to label it as "kicking the can down the road." But that doesn't really capture the essence of the practice. It's a form of borrowing. More cash is available in the current period, but a future obligation in the same amount, plus accrued costs, is created. Just like a loan.

If done infrequently in small amounts and reversed quickly, borrowing by kicking the can is probably benign or even beneficial. State and local governments face many fiscal rules and limits; these constraints impose good discipline in the long run but can make it hard to square the circle when growth is uncertain and revenues are volatile. So a bit of slack can help hard-pressed public-sector officials cope with uncertainty and make better choices.

But the results are far from benign when this tactic morphs into a year-over-year budget gimmick that can accrue large and insidiously expensive liabilities without any plan for paying them. Kicking the can then becomes not a temporary coping strategy but an addictive credit card from hell. Deferred maintenance and underfunded pensions appear to be the high-limit platinum cards of this set, but there are others, including underfunding of future health-care obligations and delaying obviously valuable public-sector investment.

Infrastructure is a sitting duck for fiscal can-kicking. Existing infrastructure bears the brunt of maintenance deferral. New infrastructure projects, no matter how badly they are needed, don't happen because the loss of value in delaying them is rarely as obvious as the cash saved by doing so.

Infrastructure spending is also an impetus for kicking the can, not just a target. The significant fixed and non-delayable obligations of public infrastructure can intensify fiscal constraints and increase pressure to defer critical spending elsewhere in the budget. Spending on an infrastructure asset's basic operations, for example, might crowd out a more-or-less optional police pension contribution when a city's budget is squeezed.

Using credit cards from hell for fiscal management is obviously unwise. But revenue volatility and low growth appear to be the new normal for the public-sector's fiscal environment. The pressure to delay essential spending will remain or even increase. It's easy to criticize poor choices in tough situations, but it's more useful to ask: what better tools are available?

When infrastructure is involved, emerging forms of public-private partnerships (P3s) are a promising answer to that question. Availability-Payment P3s, for example, cut up the deferred-maintenance credit card by requiring adherence to an optimal schedule based on a project's whole-life costing. Design-Build P3s incorporate an efficient project development and completion process that can operate outside the sometimes overly restrictive constraints of traditional procurement.

But using P3s for disciplined maintenance or faster delivery means that fixed-infrastructure payments will be higher and arrive sooner. In effect, current-generation P3s may simply shift the budget pressure away from infrastructure toward crowding out something else. Not much is gained if lower levels of deferred maintenance and delayed investment result in higher levels of underfunded pensions and health-care obligations. And the fear of being put in an even tighter budget corner, combined with the allure of yet another round of can-kicking, may cause public-sector officials to hesitate on P3s, which may be one explanation for their disappointingly slow uptake in the United States.

In this complex and frustrating situation, private-sector innovation could be transformative. The objective should be to improve P3s with respect to real-world fiscal and budget concerns. Achieving this should not be difficult given the high credit quality of most state and local governments and the excellent collateral value of infrastructure assets. For example, an Availability-Payment P3 that permits lower payments when a budget shortfall occurs but requires higher make-up payments when revenues are back to normal is financially feasible.

The value proposition for innovation is straightforward. There's clearly enormous potential for improvement over the public sector's current set of opaque, costly and dangerous credit cards from hell. It's realistic to expect that next-generation P3s could go a long way toward replacing them with transparent, cost-effective and prudent alternatives.

GOVERNING.COM

BY JOHN RYAN | JANUARY 31, 2017

Despite Budget Shortfalls, Some Governors Call for Tax Cuts.

About half of the states are facing budget shortfalls this fiscal year, but many governors are still pushing to cut taxes in their proposed 2018 budgets.

The proposals vary in scope but generally fall within two categories: comprehensive and targeted.

Nebraska Gov. Pete Ricketts' proposal is of the comprehensive variety and may be the most aggressive call for tax cuts so far. He is asking for property and personal income tax cuts to be phased in beginning in 2019 — even as the state faces a $900 million budget gap. Property taxes would be reduced via a new valuation formula and income tax breaks would kick in incrementally and only in years when state revenue grows by more than 3.5 percent.

On the whole, most of the comprehensive proposals are part of ongoing efforts.

"Many of these ideas are either follow-ons to things they've already done," said John Hicks, the National Association of Budget Officer's executive director. "Or they are things they hoped to do and haven't been able to yet."

For instance, Maine Gov. Paul LePage is again proposing to expand the state's sales tax on services as a way to pay for income tax cuts. In the latest version, LePage has extended his sales tax proposal to include streaming services like Netflix and rental platforms like Airbnb.

South Carolina Gov. Nikki Haley, who, if approved, will be vacating her office to take over as the United Nations ambassador for the Trump administration, is pushing for a pared-down version of a previous income and corporate tax cut proposal.

In Alaska, which faces a $3 billion budget shortfall, Gov. Bill Walker has toned down his previous efforts to overhaul the state's finances. He still wants to reduce citizens' annual bonus checks from the Alaska Permanent Fund and divert some of the fund's investment earnings into the state budget each year. But he has backed off previous proposals for a new state income tax, instead leaving a $900 million budget gap in his proposal for the legislature to fill.

Meanwhile, some governors are taking a more targeted approach.

Indiana Gov. Eric Holcomb wants to exempt veterans' pensions from the income tax; Arkansas Gov. Asa Hutchinson would cut taxes for low-income workers; and New York Gov. Andrew Cuomo wants to preserve planned tax cuts for the middle class.

Cuomo is renewing his proposal for a millionaire's tax hike, which would help pay for that state's $3.5 billion budget deficit. In Montana, which is also facing a shortfall, Gov. Steve Bullock has proposed a tax hike on his state's wealthiest residents. And Washington Gov. Jay Inslee is proposing a new tax on capital gains to help pay for the state's court-mandated education funding increases.

Outside of raising income taxes, some states are looking to excise or sin taxes to fill needs or budget deficits.

Governors in California, Indiana and Tennessee have floated raising the gas tax to fund transportation projects. In recent years, roughly 20 other states have approved gas tax hikes to raise sorely needed money for infrastructure and overdue maintenance. Governors in Colorado and Nevada have pitched raising marijuana taxes, while Kansas Gov. Sam Brownback is proposing an alcohol and cigarette tax hike.

In both Colorado and Kansas, the tax increases would help cover projected budget deficits. That can be a dangerous habit, said Meg Wiehe of the progressive-leaning Institute on Taxation and Economic Policy, because such tax increases tend to discourage consumption.

"Politically speaking they're low-hanging fruit," she said. "The problem in relying on this is it is a very unsustainable increase. When you increase taxes on cigarettes, smoking declines. If the motivation is for public health, then that's a different story. But if you're looking to address a short, medium or long-term budget hole … it's a bad proposition."

GOVERNING.COM

BY LIZ FARMER | JANUARY 25, 2017

The Week in Public Finance: States Vulnerable to NAFTA Changes, New Amazon Taxes and a Credit Ratings Spat.

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

GOVERNING.COM

BY LIZ FARMER | FEBRUARY 3, 2017

With Less State Aid, Localities Look for Ways to Cope.

In much of the country, states are offering localities less financial help than they were before the recession. That won't change anytime soon.

The fire department in Springfield, Ohio, has grown accustomed to frugal times. Calls for service keep climbing, but staff levels are frozen. Firefighters themselves fix vehicles and breathing equipment in order to save money on repair contracts. Recently, when a fire engine's generator failed and they couldn't afford to replace it, they had to mount a portable generator and rig it to work.

Springfield's revenue is below the levels of a decade ago, not even counting inflation. The city has responded by eliminating administrative staff, deferring maintenance and taking other measures intended to be least burdensome for residents. "The last five or six years has been nothing but one cut after another," says Warren Copeland, the city's mayor. "We've reached the point where any of the cuts we make from here on out are much more noticeable."

Continue reading.

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BY MIKE MACIAG, J.B. WOGAN | FEBRUARY 2017

Making Sound Cost Decisions in Pay for Success Projects.

Abstract

In Pay for Success projects, the government repays project costs only to the extent that agreed-upon

outcomes are achieved — and in so doing, seeks to achieve high-priority outcomes rather than simply buying outputs. Yet identifying the cost of achieving these outcomes can be a significant hurdle. Cost issues are particularly important for PFS projects because of the contractual nature of cost responsibilities and how project cost estimates inform outcome pricing. A number of potential cost elements need to be identified and estimated. These range from initial PFS project development costs, the cost of the evaluation, one-time and periodic investment costs (such as updating equipment), and annual operating and maintenance costs. While challenging, the steps and guidance provided in this report will help stakeholders (and particularly governments) with this process.

Download the paper.

The Urban Institute

Harry P. Hatry, Matthew Eldridge, Arden Kreeger, Reed Jordan

February 1, 2017

GFOA: Best Practices in School Budgeting Framework Aligns Resources and Student Outcomes.

GFOA's best practices in school guidelines are centered on a comprehensive budget process framework focused on academic and finance collaboration to best align resources and desired student outcomes. The framework represents the culmination of a multi-year effort led by GFOA, with input from numerous school district officials and other experts in education finance to develop guidelines for better budgeting tailored specifically for school districts.

The recommended framework is not limited to financial topics. A robust budget process should engage and communicate with stakeholders, along with prioritizing goals, allocating resources, and tracking progress. The budget process is a plan, a tool for transparency, and a structure for ensuring accountability.

Budgeting—the process by which programs and services are planned and funds are allocated to accomplish their goals— is crucial to any organization's success. The need for better budgeting is ever more pressing given the constant pressure to provide high-quality services with limited resources. This is especially true in school districts, where budget decisions can affect the education of future generations.

GFOA's best practices in school budgeting framework begins with guidelines for district-wide communication and collaboration, including setting baseline expectations for what the budget process will achieve. The focus then shifts to developing robust goals and integrating the process with the district's strategic plan, including developing a comprehensive package for implementing a district's goals, or instructional priorities. Also included are guidelines on how to develop a strategic financial plan and a budget document that communicates not only the district's financial plan but also student learning objectives. To help assess and improve programs, services, and the budget process, recommendations for incorporating continuous improvement principles are embedded throughout the framework.

The framework is organized around five major steps or phases: 1) plan and prepare; 2) set instructional priorities; 3) pay for priorities; 4) implement plan; and 5) ensure sustainability. Included within each of the five major steps are more specific sub-steps, which provide details on how to implement the best practices, including supporting evidence and research on their effectiveness. Each of the 15 sub-steps include a highlight of recommendations, the key points, and also how the recommendations meet the criteria related to GFOA's Award for Best Practices in School Budgeting.

Districts can find additional resources that complementing the best practices in school budgeting—including tools for implementing recommendations and case studies on districts use of the framework—www.smarterschoolspending.org.

Wednesday, February 1, 2017

MSRB Holds Quarterly Board Meeting.

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) held its quarterly meeting January 24-26, 2017 where it engaged in strategic planning and discussed several initiatives aimed at protecting investors and municipal entities, and promoting a fair and efficient municipal securities market.

The Board periodically conducts formal strategic planning to ensure that decisions regarding its priorities and resource allocation are informed by an analysis of market risks, trends, enforcement actions and other developments. At its meeting, the Board began to establish strategic goals for the next two to four years, consistent with its mission. The Board's planning session included discussion of comments received following a 2016 public request for comment on long-term priorities and initiatives, as well as strategy considerations for enhancements to market transparency and information provided primarily through the Electronic Municipal Market Access (EMMA®) website. The Board and staff will refine input from the strategic planning session and develop a road map to ensure the MSRB continues to fulfill its mission.

Municipal Advisor Rulemaking
Consistent with the MSRB's mandate under the Dodd-Frank Wall Street Reform and Consumer Protection Act to develop a comprehensive regulatory framework for municipal advisors, the Board advanced two rules related to municipal advisors. The rules are part of the MSRB's mission to help ensure that the state and local governments and other municipal entities for whom municipal advisors provide services are adequately protected in their engagements with those municipal advisors.

One new rulemaking focuses on the content and accuracy of municipal advisor advertising. Municipal securities dealers have since the 1970s been subject to an advertising rule that seeks to ensure accuracy and balance, among other things, in promotional materials. The Board agreed to seek to apply the core principles of the MSRB's dealer rule to municipal advisors while adding specific provisions tailored to municipal advisors. The Board also agreed that the existing dealer rule, MSRB Rule G-21, on advertising, merits updating as well as harmonization with certain of the provisions contained in the advertising rules of other financial regulators.

The next step in the rulemaking process will be a request for comment on new draft Rule G-40, on municipal advisor advertising, and draft amendments to Rule G-21.

The Board also advanced its plan to amend MSRB Rule G-3, on professional qualification requirements, to establish continuing education requirements for municipal advisors. The proposed amendments would require municipal advisors to annually conduct a needs analysis and develop a written training plan based on that analysis. The analysis would be customized to the size and scope of the firm's business activities, among other things, which would serve to mitigate the burdens of training requirements on small municipal advisors. The next step in the rulemaking process will be a proposed rule filing with the Securities and Exchange Commission.

Dealer Rulemaking
In another rulemaking matter, the Board discussed the first step in a multi-year initiative to review dealer rules on primary offering practices. The Board discussed the MSRB's longstanding interpretation that dealers, under MSRB Rule G-34, must apply for CUSIP numbers when conducting private placements—including direct purchase transactions—of municipal securities. The Board agreed to seek public comment on amendments to Rule G-34, on the assignment of CUSIP numbers, to, among other things, further codify that interpretation and harmonize the definition of underwriter with that contained in Rule G-32, on primary market disclosures. The MSRB will continue its holistic review of primary offering practices rules with a view to enhancing existing protections for investors and issuers.

Continuing Disclosure
In addition to its rulemaking work, the Board discussed market transparency issues, specifically municipal market disclosure practices and how the MSRB might facilitate improved timeliness of annual financial and operating information submitted to the MSRB's EMMA website. The Board plans to continue to evaluate what the MSRB might do further to assist issuers in meeting their disclosure obligations, in addition to its existing outreach, education and email reminders for issuers.

Date: January 30, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
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Muni Volume Jumped in January.

Municipal bond volume in January jumped ahead of last year's pace, as a spike in new money deals made up for a drop in refinancing transactions.

Monthly Volume

Total volume for the month rose 22.8% to $31.59 billion in 661 transactions from $25.73 billion in 831 transactions in January 2016, according to data from Thomson Reuters. The gain, which followed a record year for issuance in 2016, was due in part to some large transactions, said Natalie Cohen, managing director of municipal securities research at Wells Fargo Securities.

"New issue volume is starting off 2017 strong, with numerous large deals in the market," she said. "We note that the number of transactions is down in January 2017 compared with January 2016, a reflection of these larger deal sizes. This is despite the significant drop in refunding activity following the second Federal Reserve rate hike in December 2016."

Among the month's biggest new money transactions were: Washington State's sale of $473.42 million of various purpose general obligation bonds; the Metropolitan Government of Nashville and Davidson County's $457.25 million of GO improvement bonds; and Los Angeles County Metropolitan

Transportation Authority's sale of $455.71 million of Proposition C Sales Tax Revenue Bonds Senior Bonds. Some other of the larger monthly transactions were combined refunding and new money deals, like Chicago's $1.16 billion deal for example.

Refundings, which market participants expected slow primarily due to rising interest rates, slid to $7.44 billion in 223 deals from $10.10 billion in 362 deals in January 2016.

"I was not surprised to see year-over-year volume in January increase, but I do not place much stock in first-month volume," said Alan Schankel, managing director at Janney Capital Markets. "We expect refunding volume to drop by about 10% in 2017, so the large falloff in January is ahead of our expectations," he said. "The sharp rise in rates in the month following the election led to several refinancing deals being placed on day-to-day status. If rates were to fall in coming weeks, opening a refinancing window, I would expect strong refunding volume in February."

New money issuance easily picked up the slack from the lack of refundings, increasing 37% to $14.43 billion in 371 deals to account for almost 50% of the months' issuance. This is up from $10.53 billion of new money volume in 407 deals in January 2016.

Combined new-money and refunding issuance almost doubled to $9.72 billion from $5.09 billion. Issuance of revenue bonds gained 25.7% to $17.71 billion, while general obligation bond sales rose 19.3% to $13.88 billion.

Negotiated deals were up 38.9% to $24.73 billion and competitive sales increased by 2.9% to $6.83 billion.

Taxable bond volume more than doubled to $3.29 billion from $1.42 billion, while tax-exempt issuance increased by 13.5% to $27.49 billion. Minimum tax bonds increased to $816 million from $84 million.

"Taxables have been popular in the higher education and healthcare sectors for a while, but healthcare volume is likely to remain light given the volatility of changes to the Affordable Care Act," said Cohen. "Higher education institutions sold a number of large deals in January, a reflection of relatively tight spreads between taxable and tax exempt, greater flexibility with the use of proceeds in the taxable markets. Also, long-dated high quality higher education issues have appeal to a broad buyer base."

The volume of deals wrapped with bond insurance fell 16% to $1.29 billion in 104 deals from $1.53 billion in 120 deals. The industry expects to see improvement as interest rates continue to climb.

Six of the 10 sectors saw year-over-year increases, as transportation jumped up 161% to $4.83 billion from $1.85, development improved 80.1% to $1.33 billion, public facilities grew 45.9% to $608 million, general purpose increased 43.8% to $6.62 billion, education gained 24.5% to $12.65 billion and housing saw a 7.5% increase to $951 million.

The other four sectors declined at least 5.1% with the biggest drops posted by health care, which was at $1.88 billion compared with $3.66 billion, and utilities which slid to $1.71 billion from $2.29 billion.

As for the different types of entities that issue bonds, five of the seven were in the green. Colleges and Universities improved the most, with volume rising to $3.72 billion from $1.55 billion. Local authorities produced a 127.9% increase, to $5.61 billion.

On the other end of the spectrum, volume for the other six types of entities slid at least 13.8%, led by countries and parishes, with a declined 33.3% to $1.02 billion from $1.53 billion.

Just as it did after the first month of the year in 2016, Texas has the most issuance among states so far in 2017.

The Lone Star State has issued $6.07 billion, getting a decent sized lead ahead of the state which finished 2016 with the most issuance, California.

The Golden State is second with $3.58 billion, while New York State is third with $2.67 billion. Illinois captured the fourth spot with $2.16 billion and Pennsylvania is very close behind with $2.11 billion.

"I expect volume in 2017 to about equal last year's pace," Schankel said. "February volume should be strong, perhaps exceeding last year's $31 billion total. The fly in the ointment is the uncertainty surrounding the administration's plans for infrastructure investment and tax reform. Until more clarity is achieved, many issuers will be cautious about new issuance."

Cohen agreed, saying that going into February, she thinks that volume will continue to be healthy when compared with 2016, given the slow start in 2016. Volume may slow down later in the year, she said. "given the expectation that refunding activity will make up a smaller proportion of total volume in 2017."

The Bond Buyer

By Aaron Weitzman

January 31, 2017

N.C. House Again Attempts Eminent Domain Constitutional Amendment.

The NC House is considering a bill that would result in an eminent domain amendment to the NC Constitution. House Bill 3 would place the amendment on the November 2018 ballot. The bill would not allow private property to be taken by eminent domain, or to be condemned, except for public use. The bill does not define public use. The US Constitution and many states have similar requirement.

Another bill adds communications and natural gas facilities and pipelines to those projects for which eminent domain is allowed for infrastructure projects. In cases where public use is permitted, HB 3 would require "just compensation" be paid and the amount determined by a jury if requested.

The NC House has submitted similar bills at least five previous times since a the 2005 U.S. Supreme Court Kelo decision. However, none were enacted by both houses.

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.

Last Updated: January 30 2017

Article by David B. Snyder

Fox Rothschild LLP

Three More States and San Francisco Sue Trump Over Orders.

- Healey calls Trump's immigrant ban 'harmful, discriminatory'
- San Francisco files first sanctuary city case against Trump

New York, Massachusetts and Virginia joined lawsuits challenging President Donald Trump's executive order temporarily banning immigration from seven Middle Eastern countries, adding legal firepower and resources to litigation bound to have national impact.

Also on Tuesday, San Francisco became the first U.S. city to sue Trump over another executive order threatening funding cuts to so-called sanctuary cities, claiming it violates immigrants' rights and that the municipality is protected by the 10th amendment to the Constitution, which guarantees state rights.

"President Trump's executive action is unconstitutional, unlawful and fundamentally un-American," New York Attorney General Eric Schneiderman said in a statement, adding that the implementation of the order was "hasty and and irresponsible," with "families caught in the chaos."

Schneiderman and Massachusetts Attorney General Maura Healey said separately that they're joining lawsuits filed in their states by rights groups claiming the president's Jan. 27 order violates the Constitution. Virginia Attorney General Mark Herring will also join a case challenging the order, spokesman Micheal Kelly said in an e-mail. All three officials are Democrats, as is Washington state Attorney General Bob Ferguson, who filed a suit on Monday.

Trump's Jan. 27 directive indefinitely suspended U.S. entry Syrian refugees and all other refugee resettlement for 120 days. It also banned entry for 90 days of nationals from seven predominantly Muslim countries: Syria, Iraq, Iran, Sudan, Libya, Somalia, and Yemen. Trump has said the move will improve security by preventing potential terrorists from slipping into the country

Central Claim

A central claim in the lawsuits is that Trump's order discriminates against Muslims based on their religion. Trump has maintained that it isn't a Muslim ban, but rather a ban against specific regions where terrorism is a threat. The order's implementation slowed the entry of just 109 people at U.S. airports out of 325,000 people coming into the country on Jan. 28, White House spokesman Sean Spicer said, although by other calculations tens of thousands of people were affected.

Massachusetts joined a lawsuit filed on behalf of detained refugees by the state's branch of the American Civil Liberties Union. Carol Rose, executive director of the ACLU in Massachusetts, said lawyers are amending the complaint to add additional plaintiffs.

Mohamad Ali, chief executive officer of Boston-based Carbonite Inc., also condemned the executive order at the Massachusetts' press conference, calling it "morally and ethically beneath our America's values."

San Francisco alleges that a Jan. 25 executive order is a "severe invasion" of the city's sovereignty. Claims against Trump, U.S. Secretary of the Department of Homeland Security John Kelly and Acting Attorney General Dana Boente boil down to San Francisco's rights to determine how to handle its population of undocumented residents.

"San Francisco faces the imminent loss of federal funds and impending action if it does not capitulate the president's demand that it help enforce federal immigration law," the city said in the complaint filed in San Francisco federal court. "The Executive Branch may not commandeer state and local officials to enforce federal law."

Federal Funding

San Francisco receives more than $1.2 billion in federal funds annually, accounting for 13 percent of the city's budget. The president's threat to federal funds is preventing the city from producing a budget for the new fiscal year, according to the filing.

Prices for municipal bonds issued by San Francisco show investors are demanding more to own its debt, a sign of increased risk. City bonds due in 2029 were trading at yields of 0.53 percentage point over benchmark municipal debt, data compiled by Bloomberg show, compared with 0.39 percentage point on Jan. 23.

Two of the people who were detained at Logan International Airport in Boston because of the order are professors at the University of Massachusetts Dartmouth, on their way home from an engineering conference abroad, Healey said. "They are training the next generation of Massachusetts engineers," she said. "But with the waive of a pen, the president's executive order kept them and thousands of others from coming home."

Bloomberg Politics

by Erik Larson and Kartikay Mehrotra

January 31, 2017, 10:41 AM PST January 31, 2017, 2:46 PM PST

Muni Tobacco Bonds Rally as Buyers Swoop in After Trump Selloff.

- Fundamentals remain solid, according to Barclays strategist
- Cigarette shipments declined 3.5% in 2016, Altria says

State and local government tobacco-settlement bonds are bouncing back from the drubbing they took in November as investors pick up the debt on the cheap and cigarette consumption declines remain moderate.

The securities, which are repaid with payments from tobacco companies under a 1998 settlement, returned 7.7 percent over the past two months, four times more than investment-grade debt, according to Bloomberg Barclays indexes. That rebound pared a 9.2 percent loss in November, when fund managers sold the securities — which are among the most liquid high-yield munis — to meet redemptions during the bond-market rout that erupted after Donald Trump's presidential victory.

"There was really no reason for tobacco to get hammered in November," said Mikhail Foux, head of municipal strategy in New York at Barclays Plc. "People just sell what they can, not what they should."

The settlement payments that back the tobacco bonds are based on cigarette shipments, which have declined at a slower pace as the low price of gasoline leaves consumers with more money to spend.

Altria Group Inc., which sells Marlboro brand cigarettes in the U.S., reported on Feb.1 its domestic shipment volume declined about 3.5 percent in 2016, in line with its competitors. From 2007 to

2014, shipments fell an average of 4.7 percent annually, according to data from the National Association of Attorneys General, which monitors the settlement.

Jeffrey Burger and Dan Barton, who co-manage the Dreyfus High Yield Municipal Bond fund, expect shipments to fall 3.5 percent in 2017. The $162 million fund, the best performing open-end high-yield muni fund this year, had about 13 percent of its assets invested in tobacco bonds as of Dec. 31, according to data compiled by Bloomberg.

One cloud on the horizon: California, which accounts for more than a tenth of the tobacco industry's sales, on April 1 is raising cigarette taxes by $2 per pack, which may crimp sales 0.6 percent or 0.7 percent, Barton said. Dreyfus factors state cigarette-tax increases, including California's, in its financial models, he said.

IHS Global, an econometric consultant, forecasts consumption to decline about 3.5 percent per year through 2020, according to an offering statement for a New York City tobacco bond issue last month.

"We would expect to see more state tax increases going forward as states look to balance their budgets," Barton said. Six states raised cigarette taxes in 2016, while 10 increased their rates in 2015.

A federal excise tax increase, which would have a greater impact on consumption, isn't imminent, given the Trump administration's push to reduce taxes and cut regulation, Burger said. When the federal government raised cigarette taxes 62-cents-a pack in 2009, sales fell 9.2 percent.

"There's no indication that a Trump administration would ever pass through any kind of federal excise tax increase," Burger said.

Moreover, if Trump and the Republican-controlled Congress enact policies to expand manufacturing, lower income taxes and possibly raise the minimum wage, discretionary income and demand for cigarettes should increase, helping to offset the drop in sales anticipated from the California measure, Foux said.

Bloomberg Markets

by Martin Z Braun

February 3, 2017, 8:58 AM PST

What's Ahead for Munis? Forecasters Who Got It Right Make Calls.

- MacKay Shields' Loffredo, DiMella offer guidance for 2017
- The muni debt chiefs made prescient predictions for 2015, 2016

John Loffredo and Robert DiMella, co-directors of municipal debt investments for MacKay Shields, have been reliable guides to what the coming year will bring in the state and local government bond market.

The two money managers, whose company oversees about $94.5 billion, have issued annual forecasts for the past two years that largely proved prescient, correctly anticipating that tobacco-settlement bonds would rally, transportation-related debt would outperform and any price drops would be exaggerated by a pullback in money from the market. During the last three years, shares in their MainStay Tax Free Bond Fund have delivered annual returns of about 4.9 percent, beating some 86 percent of their peers, according to data compiled by Bloomberg.

Here's their major market predictions for 2017:

Liquidity Improves

The amount of money flowing in the market is likely to pick up, they say, amid a rollback of financial regulations and oversight. President Donald Trump this week said, "we're going to be doing a big number on Dodd-Frank," the law Congress enacted to prevent a repeat of the 2008 market meltdown. There are signs that liquidity is increasing, with trading volume rising last year and brokerage firms boosting their exposure to the market, according to regulatory data.

High-Tax, High Returns

Loffredo and DiMella predict that debt sold by governments in higher-tax states will outperform those from states where residents' incomes aren't taxed as much. Why? If federal levies are reduced, as Trump plans, those bonds will still be sought out because they're exempt from state income-taxes, too. That would mark a shift from 2016: Debt from California, which has the highest marginal rates, returned 0.28 percent last year, about half as much as those from Texas, which has no income tax at all, according to S&P Global Ratings indexes.

Beating Treasuries

MacKay's money managers say that municipals will outperform Treasuries as uncertainty about the size and scope of Republican tax-cut plans subsides. While lower rates on individuals would decrease the relative value of municipals, Trump has expressed support for keeping intact the federal tax breaks given to buyers of state and local debt, according to mayors who met with him before he took office. If municipals outperform, the yields — which move in the opposite direction as price — would decline relative to Treasuries.

Bloomberg Markets

by Jordyn Holman

February 1, 2017, 8:59 AM PST

Bloomberg Brief Weekly Video - 02/02

Taylor Riggs, a contributor to Bloomberg Briefs, talks with Siobhan Wagner about this week's municipal market news.

Watch the video.

Bloomberg

February 2, 2017

Fitch: FACT Shows Improving Enplanements as Leverage Drops for U.S. Airports.

Fitch Ratings-New York-30 January 2017: More travelers are flying, which is good news for U.S. airports, according to Fitch Ratings in its latest interactive peer study for standalone U.S. airport credits.

Large hubs and international gateways were primarily responsible for the steady upward trajectory year-over-year. Median enplanement value for Fitch-rated U.S airports rose over 4% to 4.16 million in 2015 (from 3.99 million in 2014).

"Several airports have sizeable capital programs with additional debt coming online, though median cost per enplanement is still relatively flat at approximately $9," said Senior Director Seth Lehman. "Additionally, both net debt and available cash flow have improved, reflecting the strength of the airports' use and lease agreements to recover costs. It also indicates that increased concession spending has helped build liquidity."

The Fitch Analytical Comparative Tool (FACT) contains key financial information for Fitch-rated standalone airport issuers in the U.S.; a graphical plotting function for four-year annual and median performance; and a radar chart that indicates key risk levels. FACT also features a peer analysis tool, which allows users to review and compare summary credit profiles for selected individual issuers. The median charting tool allows users to generate a graphic representation of how specific metrics for individual airports compare to sector medians.

'Fitch Analytical Comparative Tool – U.S. Airports' is available at 'www.fitchratings.com'. Fitch will also be rolling out an interactive map further detailing the financial profiles of its rated U.S. airports in the coming days.

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Fitch: 2016 U.S. Public Finance Upgrades Were Highest in Over 10 Years.

Fitch Ratings-New York-30 January 2017: For the third time since 2008, 2016 upgrades outpaced downgrades for U.S. public finance, with upgrades at their highest level in over 10 years, according to a new Fitch Ratings report.

Eighty-one percent of 2016 rating actions were affirmations.

"The high level of upgrades and downgrades are largely the result of the new state and local rating criteria implemented in the spring of 2016," said Jessalynn Moro, Managing Director of the U.S. Public Finance Group. "Credits have clearly benefited from the revised criteria's more focused concentration on the economy."

Upgrades totaled 332, a significant increase from 148 in 2015. Upgrades represented 9.6 percent of all rating actions and the par value totaled $211 billion.

Downgrades totaled 153 in 2016 versus 65 in 2015. Downgrades represented 4.4 percent of all rating actions and the par value totaled $141.1 billion.

At year-end, both Negative Rating Outlooks and Watches slightly increased by four to 118 and 20, respectively. Positive Rating Watches remained unchanged, while the number of Positive Rating Outlooks decreased to 91 from 124.

Five states were downgraded, reflecting budget and economic challenges. Three states were upgraded due to fundamental improvement.

The largest downgrade by par amount in the fourth quarter was Trinity Health Credit Group at approximately $5 billion. The downgrade reflects the system's thinner operating margins in fiscal 2016.

For more information, a special report titled "U.S. Public Finance Annual Rating Actions 2016" is available on the Fitch Ratings web site at www.fitchratings.com.

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Fitch Downgrades Illinois Ratings to 'BBB'; Negative Rating Watch Maintained.

Fitch Ratings-New York-01 February 2017: Fitch Ratings has downgraded the following ratings of the state of Illinois:

–Issuer Default Rating (IDR) to 'BBB' from 'BBB+;
–$25.9 billion in outstanding general obligation (GO) bonds to 'BBB' from 'BBB+';
–$431 million Illinois Sports Facilities Authority sports facilities bonds (state tax supported) to 'BBB-'from 'BBB';
–$2.6 billion Metropolitan Pier and Exposition Authority McCormick Place expansion project bonds to 'BBB-' from 'BBB';
–$267.8 million city of Chicago motor fuel tax revenue bonds to 'BBB-' from 'BBB'.

The Rating Watch Negative is maintained.

SECURITY
GO bonds are general obligations, full faith and credit of the state of Illinois.
State statutory mechanisms include an irrevocable and continuing appropriation for all GO debt service, and continuing authority and direction to the state treasurer and comptroller to make all necessary transfers from any and all revenues and funds of the state. The state funds debt service in advance by setting aside 1/12 of principal and 1/6 of interest every month for payments due in the ensuing 12 months.

The Sports Facilities Authority, Metropolitan Pier and Exposition Authority, and motor fuel tax bonds require state appropriation for the payment of debt service, resulting in a rating one notch below the state's IDR.

KEY RATING DRIVERS

The downgrade of Illinois's IDR and related ratings reflects the unprecedented failure of the state to enact a full budget for two consecutive years and the financial implications of spending far in excess of available revenues, which has resulted in increased accumulated liabilities and reduced financial flexibility. Even if the current attempts at a resolution to the extended impasse prove successful, Fitch believes that the failure to act to date has fundamentally weakened the state's financial profile.

The Negative Watch reflects Fitch's expectation that the state's implementation of a solution, whether temporary or permanent, will be a challenge in the current political environment and that in the interim the state will continue to delay and defer payments in lieu of balancing the budget. While Fitch acknowledges that there is a plan being developed in the state Senate that contains elements that could ultimately resolve the impasse, its passage is uncertain and the timing of implementing solutions is unknown. Fitch expects to resolve the Rating Watch within the next six months based on an assessment of the state's fiscal trajectory as it starts fiscal 2018. If the state continues on the current path, a further downgrade would be warranted.

Illinois has failed to capitalize on the economic growth of recent years to bolster its financial position. Rather, the decision to allow temporary tax increases to expire and the subsequent failure to develop a budget that aligns revenues with expenditures have resulted in a marked deterioration in the state's finances during this time of recovery. Once again, the state has displayed an unwillingness to utilize its extensive control over revenues and spending to address numerous fiscal challenges.

The 'BBB' rating continues to reflect the strengths inherent in a state's independent ability to control its budget, which remain substantial in Illinois despite policy decisions over a long period that have reduced expenditure flexibility. The rating also incorporates the state's elevated but still moderate liability burden, even considering its accumulated budgetary liabilities. These factors are offset by a history of notable fiscal management weakness that manifests itself in weak operating performance throughout the economic cycle.

Economic Resource Base
The state benefits from a large, diverse economy centered on the Chicago metropolitan area, which is the nation's third largest and is a nationally important business and transportation center. Economic growth through the current expansion has lagged that of the U.S. as a whole.

Revenue Framework: 'aa' factor assessment
Illinois' broad revenue base, primarily income and sales taxes, captures the diversity in its economy and has shown modest growth since the end of the recession. Fitch expects revenue performance to continue to track slow economic growth. The state has unlimited legal ability to raise revenues.

Expenditure Framework: 'a' factor assessment
Illinois has adequate expenditure flexibility despite elevated carrying costs for debt service and retiree benefits, with much of the broad expense-cutting ability common to most U.S. states. However, it is unlikely that reductions in state spending alone would be sufficient to achieve budgetary balance given the magnitude of the current budget gap. Funding demands associated with retiree benefits will continue to be a pressure, as these benefits are constitutionally protected.

Long-Term Liability Burden: 'a' factor assessment
Liabilities are an elevated but still moderate burden on Illinois' resource base, even when considering the large and growing accounts payable backlog that the state has accumulated. The state has very limited flexibility with regard to pension obligations following a May 2015 Illinois Supreme Court decision that found 2013 pension reform unconstitutional.

Operating Performance: 'bbb' factor assessment
Illinois' operating performance, both during the great recession and in this subsequent period of economic growth, has been very weak. The failure to address a long-standing structural budget gap with permanent and comprehensive solutions, whether revenue or expenditure, has left the state with an gaping hole in its operating budget and increasing budgetary liabilities.

RATING SENSITIVITIES
BUDGET SOLUTIONS: Failure to enact a balanced budget for fiscal 2018 would result in a further downgrade. Successful implementation of measures to enact a structurally balanced budget and reduce accumulated budget liabilities would stabilize the credit.

LIQUIDITY: The rating is sensitive to a material reduction in the state's ability to manage within available revenues through discretionary payment deferrals. Furthermore, failure of the state to make its statutorily required debt service transfers as scheduled, 12 months in advance on a rolling basis, would result in an immediate downgrade of the rating to below investment grade because it would suggest that the state's liquidity pressures are presenting a risk to bondholder interests that has not been evidenced to date.

CREDIT PROFILE

Illinois is a large, wealthy state at the center of the Great Lakes region. It benefits from a diverse economy centered on the Chicago metropolitan area. Illinois' economy has gradually shifted, similarly to the U.S. in general, away from manufacturing to professional business services. The remaining manufacturing sector does include more resilient non-durables, and is less concentrated in the auto sector than surrounding states, but remains vulnerable to cyclical downturn. By most measures the economy has grown slower than the nation for many years and population levels have been stagnant to declining.

Revenue Framework
Illinois has a reasonably diversified revenue base. It relies most heavily on personal income taxes (close to half of general fund revenues) and sales tax. The balance consists of corporate income tax, lottery and gaming revenues, and a variety of other smaller taxes and transfers. The state has a flat personal income tax rate of 3.75%, which was temporarily increased to 5% between 2011 and 2015 from the prior flat rate of 3% to close post-recession budget gaps and reduce accumulated liabilities.

Historical revenue growth, adjusted for the estimated impact of policy changes, has been slightly above inflation but has somewhat lagged national economic growth. With Illinois' economic performance also lagging national growth, Fitch expects a continuation of this trend of flat-t--modest real revenue growth.

Illinois has no legal limitations on its ability to raise revenues through base broadenings, rate increases, or the assessment of new taxes or fees.

Expenditure Framework
As with most states, Illinois' spending is largely for social services and education, although its carrying costs for debt service and pension payments are comparatively high.

Spending growth, absent policy actions, is likely to be higher than revenue growth, driven mainly by increasing pension costs. Illinois has chronically underfunded its pension system based on a statutory formula that permitted a slow incremental build-up to higher pension funding and targeting only 90% of full actuarial funding. Pension costs are unusually large and continuing to grow, crowding out other spending. As with most states, other spending drivers include Medicaid and education.

The fiscal challenge of Medicaid is common to all U.S. states. Federal action to revise Medicaid's programmatic and financial structure appears likely, although the magnitude and timing of changes for state budgets remain unknown. Both the new presidential administration and congressional leadership support significant Medicaid policy shifts. As one of the largest parts of state budgets and by far the biggest source of federal funding to the states, federal decisions could have significant implications for states' ability to manage this key budget item.

Despite carrying costs that are among the highest of the states, Fitch believes that Illinois retains adequate expenditure flexibility that could be used in the budget process. Illinois funds a broad range of services for its citizens and did not significantly reduce spending during the recession. This leaves the state with ongoing capacity to make spending reductions. However, Illinois has no ability to unilaterally modify retiree benefits following the May 2015 Illinois Supreme Court decision that found 2013 pension reforms unconstitutional.

During the current budget impasse, almost 90% of spending continued to be funded in fiscal 2016 at the 2015 rate, based on continuing appropriations, consent decrees, and court orders, as well as the enacted education budget. A similar partial general funds budget was enacted for fiscal 2017, including full-year appropriations for K-12 education and other state and federal funds; however, the partial budget expired Jan. 1, 2017 and the state is again operating without a full budget in place. There is little flexibility to control spending outside of the budget process in part because the governor cannot unilaterally make many changes without legislative participation.

Long-Term Liability Burden
Illinois' long-term liabilities, particularly pension liabilities, are very high for a U.S. state. Illinois is the weakest of the states in terms of its ratio of debt and unfunded pension liabilities to personal income, at 23% as of 2016, well above the 5.1% median for states. The state's three largest pension systems, covering teachers, universities, and state employees, have low funded ratios driven by a history of weak contribution practices.

In addition to its long-term liabilities, the state has a sizeable accounts payable balance that has accumulated through multiple years of operating at a deficit. As of the end of fiscal 2016, the accounts payable balance totaled $7.6 billion and it has increased since with the ongoing budget impasse. If the senate proposal to issue bonds to reduce or eliminate this budgetary liability proceeds, Illinois' debt levels would be further elevated but would remain within the moderate range.

Short-term borrowing is allowed, subject to a limitation of 5% of appropriations for revenue anticipation purposes, which must be repaid by the close of the fiscal year, and 15% to meet revenue failure, which must be repaid within one year. The state has no short-term borrowing currently outstanding or planned, although notes were issued during the downturn.

Operating Performance
Illinois is poorly positioned to address a future economic downturn. While it has substantial theoretical capacity to weather a downturn, in terms of both revenue-raising potential and spending flexibility, it has not demonstrated the political capacity to achieve a long-term solution to its chronic budget deficits. During the great recession, the state largely maintained spending but delayed payments to address lower revenues. It accrued, as a result, an accounts payable balance that at its peak, reached 20% of the operating budget. In the absence of a change in management's approach to state finances, it is Fitch's expectation that future deficits would also be addressed by deferring state payments and increasing accumulated liabilities, although this approach is made more challenging by the state's already significant and growing deferrals during this period of economic growth.

Illinois' budget management during the current period of expansion has been especially weak. Temporary increases in personal and corporate income tax rates in place for four years, from Jan. 1, 2011 through Dec. 31, 2014, closed or partially closed the budget gap across five fiscal years. However, with their expiration, and the failure to enact a spending plan within expected revenues, the budget gap has ballooned. As a result, the state finds itself with a current operating deficit, structural budget deficit, cash crunch, and accumulation of accounts payable that will surpass its highest level at the depth of the recession.

The governor and state legislature could not come to agreement on a realistic spending and revenue plan for either the fiscal year that ended June 30, 2016 or the current fiscal year. With spending that far exceeded available revenues in fiscal 2016, the state's accounts payable balance grew to an estimated $7.9 billion at year-end, a significant portion of which was for the state employee health insurance plan. Similarly unable to enact a full-year balanced budget for fiscal 2017, the governor proposed, and the legislature enacted, a partial budget to fund operations while continuing negotiations over the budget and the governor's proposed reform agenda, which addresses issues separate from the budget. The partial budget has now expired, and if spending continues in the current year without approval of new revenues or the enacting of severe budget reductions, which seem unlikely, the state is on course to once again run a sizeable deficit that would flow through to the accounts payable bottom line.

The state Senate has put forth a series of bills that have the potential to lead to a compromise that will resolve the impasse. The Senate bills include raising the state income tax and other revenue measures, debt issuance to reduce accumulated budgetary liabilities, pension reforms, aid to Chicago public schools, and non-budgetary reforms sought by the governor, including a freeze on property taxes, workers compensation reform, and some form of term limits. These proposals, if they proceed through the full legislature and are signed by the governor, have the potential to meet the requirements to stabilize the Illinois IDR and related ratings. However, their passage is uncertain as is the timing of the implementation of any solutions.

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In addition to the sources of information identified in the applicable criteria specified below, this action was informed by information from Lumesis and InvestorTools.

Applicable Criteria
U.S. Tax-Supported Rating Criteria (pub. 18 Apr 2016)

Additional Disclosures
Dodd-Frank Rating Information Disclosure Form
Solicitation Status
Endorsement Policy

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Connecticut Governor Seeks to Shift Teacher Pension Costs to Towns, Cities.

Gov. Dannel Malloy's proposal comes as state faces budget shortfall; measure could force local governments to raise property taxes

Connecticut Gov. Dannel Malloy said Friday he wants to shift more than $400 million in annual teacher pension costs from Hartford down to cities and towns, as the state wrestles with ways to balance its budget.

If adopted, the measure could force local governments to find new ways such as property-tax hikes to offset the new costs.

Mr. Malloy's proposal comes as the state faces a budget deficit of about $1.7 billion for the fiscal year that begins in July. The governor, a Democrat, plans to submit his budget plan to close that shortfall on Wednesday.

"I'm going to ask for a lot of additional sacrifices," Mr. Malloy said at a news conference Friday.

The state currently pays about $1.2 billion annually toward the pension system for teachers across the state. Towns and cities don't pay into the system. Mr. Malloy's proposal, which would have to be approved by the Legislature, wouldn't reduce pension benefits for teachers, who pay 6% of their of their salary into the pension fund.

Fairfield First Selectman Michael Tetreau said his town would have to pay $27.5 million toward teacher pensions under governor's plan. Mr. Tetreau, Fairfield's top municipal officer, said the town would have to raise property taxes by 10% to cover that.

"I'm in totally disbelief that anyone would even propose that," Mr. Tetreau said. "It merely transfers the tax burden from the state to the town, but it's still the same taxpayers that are paying for it."

Joe DeLong, executive director of the Connecticut Conference of Municipalities, called Mr. Malloy's proposal a "colossal cost transfer." He said local governments would urgently need to tap new revenue streams in order to make these pension payments. His group has called for the creation of a 1% local sales tax for all of Connecticut's cities and towns to bring in new cash.

"It's a full-frontal assault on local taxpayers," said Peter Tesei, the first selectman of the town of Greenwich. It will "further drive local taxpayers to move elsewhere," he said.

Mr. Malloy said the state currently pays into the retirement system based on factors it can't control, such as how many teachers a town can afford to hire and how much they pay them. It is not based on student enrollment or need, Mr. Malloy said.

Under the current system, that means towns that can afford to hire the most teachers and pay them the highest salaries get the most pension funding, he said. "The current system results in vast disparities," Mr. Malloy said.

By comparison, the state is scheduled to pay $24 million for the pensions of teachers in Greenwich, a wealthy town. For New Britain, one of the state's low-income districts, that figure is $18 million.

Officials in Bridgeport, another low-income district, estimate the change could cost the city between $12 million and $13 million. Av Harris, director of legislative affairs and public policy for Bridgeport, said those additional costs would be significant. But he noted that Mr. Malloy has called for additional municipal aid and public-school funding for cities like Bridgeport.

THE WALL STREET JOURNAL

By JOSEPH DE AVILA

Feb. 3, 2017 5:29 p.m. ET

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

S&P: Credit Ratings For Sanctuary Jurisdictions Unlikely to be Affected in the Short Term, Preliminary Analysis Shows.

The president's recent executive order that would make so-called "sanctuary jurisdictions" ineligible for federal funding in certain circumstances is unlikely to result in changes to credit ratings, at least in the near term.

[Continue reading.](#)

Feb. 1, 2017

[GFOA: Executive Order on Sanctuary Cities Raises Questions and Concerns among Local Governments](#)

On January 25, 2017, President Trump issued the executive order, [Enhancing Public Safety in the Interior of the United States](#). An executive order is an official statement from the president that directs federal agencies as to how they are to expend their resources within the laws that are established by Congress and the Constitution. Technically, while an executive order is considered binding, it is subject to legal review and cannot be used to create new law or appropriate new funding from the U.S. Treasury. And while the use of executive orders is common, this particular executive order has drawn concern from finance officers in various jurisdictions because of a potential loss of federal grant funding for failure to comply with the order. Legal arguments against the executive order have been identified and are in development. As a member of the State and Local Legal Center, GFOA will continue to monitor the implementation of this executive order and will update GFOA members as developments occur.

Almost immediately after its publication, the executive order raised questions and caused confusion as jurisdictions debated on how broadly to interpret its language. Aside from the political debate the order generates on federal immigration policy, most of the remaining concern is because the order threatens to withhold federal funding from so-called “sanctuary cities.” Although there is no specific legal definition for a sanctuary city, in general, the term refers to cities, counties, and states that chose not to cooperate with federal efforts to deport undocumented immigrants.

The issues primarily revolve around the extent and scope of the executive order, particularly as it relates to the restriction of federal funding. Sec. 2(c) broadly states that jurisdictions that fail to comply with federal law will not receive federal funds, and Sec. 9(a) seems to narrow the focus of the order to denying federal grant funding to the sanctuary jurisdictions. Even if the restriction just applies to federal grant funding, the language still raises the question of whether the order is imposing new conditions on grants that have already been appropriated or on future grants. In either scenario, some legal scholars are noting this could raise constitutional issues because “new” conditions on federal grant funding fall under the authority of Congress and not the president.

There will likely be a number of legal challenges in the coming weeks and months, as some local government leaders have already declared their intention to fight the order. Some of the current discussion on challenging the executive order has identified previous U.S. Supreme Court decisions as possible defenses. For example, in *South Dakota v. Dole* (1987), the Supreme Court upheld prior case law that restrictions on federal grants would not be valid “if they are unrelated to the federal interest in particular national projects or programs” and must also be to promote “general welfare.” And two decisions that will likely receive significant attention are *Nat’l Fed’n of Indep. Bus. v. Sebelius* (2012) and *Printz v. US* (1997). In both cases, the Supreme Court focused on the federal government compelling states to take certain action or administer a federal regulatory program, and the court ruled against the federal government because the actions violated the Tenth Amendment and undermined the principles of federalism.

Wednesday, February 1, 2017

Sanctuary Cities Are Safe From Trump, Fitch Ratings Says.

But not from the new president's promise to repeal Obamacare.

Donald Trump had city dwellers up in arms last week, when he signed an executive order to cut off federal funding to "sanctuary cities," a loosely defined group of municipalities that don't enforce federal immigration law.

Big cities such as Chicago, Los Angeles, and New York, whose mayors have pledged to maintain their sanctuary status in the face of the president's threats, get millions of dollars a year from the federal government, which helps pay for everything from education to law enforcement to public transportation. Small cities get less but can be just as reliant on federal funding to provide such services.

The order to defund sanctuary cities didn't come as a surprise. Trump often targeted them during his campaign for president, arguing that local governments were putting citizens at risk by failing to share information with federal immigration authorities. The cities typically responded that the threat was exaggerated and that their police departments depend on working relationships with immigrant communities marked by trust.

Worries about the executive order are probably misplaced, a note published on Monday by Fitch Ratings said. A lot of the federal money that cities depend on flows through states, counties, and school districts, according to the credit rater, making it harder to cut off. Cities, meanwhile, can be expected to mount constitutional challenges to any attempt to cut funding.

The White House hasn't yet responded to a request for comment.

Fitch didn't expound on potential legal challenges, but there are decades' worth of case law limiting the federal government's ability to make funding contingent on local policy. Congress can make highway dollars dependent on traffic safety laws, for example, but tying school funding to health-care policy would be less likely to pass muster.

In any case, President Trump's executive order is unlikely to affect the bond ratings of sanctuary cities, Fitch said, meaning that a city's immigration policy is unlikely to threaten its ability to borrow.

The new president presents other problems for municipal budget makers, Fitch said. Repealing the Affordable Care Act could heap additional costs on local health care facilities, while changing the way that Medicare funding is dispersed could ultimately reduce the amount of money that local governments receive.

Bloomberg

by Patrick Clark

January 30, 2017, 1:11 PM PST

Sanctuary City Funding Cuts Less of a Concern Than Medicaid: Fitch

SAN FRANCISCO — President Donald Trump's executive order last week to cut federal funding to self-proclaimed sanctuary cities would likely not result in an impact to cities' bond ratings, Fitch Ratings reported on Monday.

Instead, a push to convert Medicaid to a block grant would likely result in a more significant effect on state and local government finances, Fitch noted.

Federal funding represents only a small portion of local revenues and most of the funding is restricted to specific programs, such as Temporary Assistance for Needy Families (TANF) and school lunch subsidies, Fitch reported. In general, federal funding does not support cities' general operations.

Sanctuary status is not an official designation. Still, cities across the country have vowed some sort of protection to undocumented residents, including New York, Los Angeles, San Francisco, Boston and Chicago.

Much of the federal funding spent at the municipal level flows to states, counties and school districts, rather than cities.

A Reuters analysis of the nation's ten largest cities that shield illegal immigrants found that the presidential order could strip municipalities of $2.27 billion annually.

"Direct funding is limited," reported Fitch. "Moreover, civil and constitutional challenges appear likely to impede the implementation of the executive order."

Last week's executive order exempted federal dollars used for law enforcement, sparking opponents to say that a judge could strike down that section of the order as unconstitutional.

Fitch noted that President Trump's push to repeal the Affordable Care Act, also known as Obamacare, without a replacement could have a more meaningful impact on state and local government finances.

The Kaiser Family Foundation estimates a repeal of Obamacare and a cap on federal Medicaid spending, such as through a block grant or a per capita cap, could cut Medicaid funding by 41 percent over the next decade. That would likely handicap states' ability to respond to larger enrollments during recessions.

By REUTERS

JAN. 30, 2017, 4:09 P.M. E.S.T.

(Reporting by Robin Respaut; Editing by Andrew Hay)

Connecticut Governor Calls for Expanded Municipal Oversight System.

NEW YORK — Connecticut Governor Dannel Malloy called on Thursday for an expansion of the state's system for municipal intervention to help avert a crisis in cities struggling with fiscal problems.

The Municipal Accountability Review Board that Malloy plans to introduce in his Feb. 8 budget speech would create four tiers of oversight with increasing levels of review and intervention, based on municipalities' fiscal condition and the amount of state aid they get, the governor said in a statement.

Factors that go into the determination would include bond rating, fund balances and state aid as a percentage of budget, the statement said.

"With this system, the state will be poised to intercede early to put struggling local governments on a path to sustainable fiscal health before they are on the brink of a fiscal crisis," he said.

It would build on the state's existing Municipal Finance Advisory Commission. As part of the state's two-year budget proposal, the plan would have to be passed by the time lawmakers end their session on June 7, though they could be called into a special session.

Such a program could not come soon enough for the capital city itself, Hartford, rated in junk territory at Ba2 with a negative outlook by Moody's Investors Service.

Hartford could need "extraordinary assistance" to avoid insolvency, according to a January report from the Yankee Institute for Public Policy.

The state's other three big cities – Bridgeport, New Haven and Waterbury – have also had to cut services and dip into reserves amid pension pressures and other fiscal challenges, the report found.

Many U.S. states have such programs, but the degree and scope of intervention can vary widely.

By REUTERS

FEB. 2, 2017, 4:18 P.M. E.S.T.

(Reporting by Hilary Russ; Editing by Tom Brown)

- MSRB Files Minimum Denomination Rule With SEC.
- MSRB Files Standalone Minimum Denomination Rule With SEC.
- City Announces First Minibond Issuance, Invites Residents to Directly Invest in Cambridge.
- Revenue Procedure 2017-13: Management Contracts – Still Trying To Get It Right.
- IRS Clarifies New Management Contract Safe Harbors.
- IRS Modifies Safe Harbor Guidance and Deadlines for Section 45 and 48 Energy Credits: Grant Thornton
- CDFA // BNY Mellon Development Finance Webcast: Opportunities and Advancements in Water Finance
- And finally, Putting the Ordnance in Municipal Ordinance is brought to us this week by *Ohioans for Concealed Carry, Inc. v. Oberlin*, in which advocacy group successfully challenged local ordinance banning firearms in public parks and recreation areas. Where to even begin? "Say hello to my little friend!"   "You can take my binkie when you pry it from my cold, dead fingers."   "Hasta la vista, baby."   "Heck, I'd settle for a well-regulated diaper." "Wanna play shotgun tag?" "Watch out for that little Burr kid."

ZONING & LAND USE - CALIFORNIA

Hernandez v. Town of Apple Valley

Court of Appeal, Fourth District, Division 2, California - January 5, 2017 - Cal.Rptr.3d - 2017 WL 56338 - 2017 Daily Journal D.A.R. 97

Objector brought action against town for declaratory, injunctive, and writ relief alleging violations of the Ralph M. Brown Act for actions taken at the town's council meeting, and alleging that the initiative approving a commercial development named a "private corporation to perform any function or to have any power or duty" in violation of the state constitution.

The Superior Court granted summary judgment for objector. Town and developer appealed.

The Court of Appeal held that:

- Town council violated the Brown Act in omitting from the council agenda the developer's gift of funds for the election, but
- Initiative did not improperly name a private corporation to receive a "power or duty."

Town council's decision to put an initiative approving a commercial development on a special election ballot violated the Ralph M. Brown Act's requirement that "each item of business" must be on the agenda, where the agenda and the attached agenda packet failed to state that the town would consider a memorandum of understanding (MOU) to accept a gift from the developer in order to pay for the special election, and it was conceivable the gift was a major factor in the decision to send the matter to the electorate.

A ballot initiative approving a retail development did not violate the provision of the state constitution prohibiting naming any "private corporation to perform any function or to have any power or duty," even though the subject property was owned by a single developer that was a private corporation and was familiar to the electorate, where the initiative did not specify the name of the developer, and the initiative would grant the same rights to any new developer or owner if the property was sold.

TAX - ILLINOIS

Oswald v. Hamer

Appellate Court of Illinois, First District, Fourth Division - December 22, 2016 - N.E.3d - 2016 IL App (1st) 152691 - 2016 WL 7436113

Real property taxpayer brought action against Department of Revenue and the Director of Revenue, seeking declaration that statute governing property tax exemptions related to access to hospital and health care services was facially unconstitutional for granting a property tax exemption to a hospital applicant without regard to whether property was used exclusively for charitable purposes.

The Circuit Court granted summary judgment for defendants. Taxpayer appealed.

The Appellate Court held that statute was facially constitutional.

Statute governing property tax exemptions related to access to hospital and health care services was facially constitutional under state constitution's provision permitting exemption from taxation for properties used exclusively for charitable purposes. Statute's use of term "shall" was directory, rather than mandatory, and, thus, did not require an exemption without regard to whether property at issue was used exclusively for charitable purposes, General Assembly did not intend for satisfaction of statute to ipso facto warrant an exemption, but intended for requirements of the statute to considered on a case-by-case basis, and absence of exclusivity language in statute did not mean the statute was to be read separately from constitutional requirements.

ASSESSMENTS - IOWA

Pieper, Inc. v. Green Bay Levee and Drainage District No. 2

Court of Appeals of Iowa - December 21, 2016 - Slip Copy - 2016 WL 7395742

Landowner filed writs of certiorari, asserting annexation and assessment by levee and drainage district was illegal.

The District Court annulled writs. Landowner appealed.

The Court of Appeals held that:

- District was not required to serve notice to affected landowners prior to meeting at which board voted to adopt revised partial assessment roll, in light of notice of prior meeting, and
- District was not required to assess annexed land using scale of benefits method.

Levee and drainage district was not required to serve notice to affected landowners prior to meeting at which board voted to adopt revised partial assessment roll, where board had served notice prior to meeting held approximately one month earlier, at which board adopted proposed partial assessment roll, and at prior meeting, board made clear that its work was not yet completed and that there could be modifications at subsequent hearing.

Statute referring to assessment of annexed levee and drainage district lands "in a graduated scale of benefits," did not apply to require levee and drainage district to assess annexed land using scale of benefits method, where district was originally formed by mutual agreement, and such agreement simply provided that landowners would be assessed five cents per acre.

IMMUNITY - MINNESOTA

Ariola v. City of Stillwater

Court of Appeals of Minnesota - January 23, 2017 - N.W.2d - 2017 WL 279573

Father, as next of kin and trustee of son's estate, brought wrongful death action against city after son died from primary amoebic meningoencephalitis (PAM) following exposure to naegleria fowleri while swimming in lake located in city.

The District Court, Washington County, dismissed action. Father appealed, and the Court of Appeals reversed and remanded. On remand, the District Court granted summary judgment to city. Father appealed.

The Court of Appeals held that:

- Notary public's certification that appointment petition and consent, for father as trustee, were "sworn to and subscribed" did not satisfy requirement of wrongful death statute that a person appointed as trustee file an oath before commencing duties;

- As a matter of first impression, statute's requirement that a person appointed as trustee file an oath before commencing duties is not jurisdictional;
- A municipality's actual, rather than constructive, knowledge of an artificial condition likely to cause death or serious bodily harm is required to establish the adult trespasser exception to recreational use immunity; overruling *Noland v. Soo Line R.R.*, 474 N.W.2d 4;
- Fact that county was aware that lake located in city had tested positive for naegleria fowleri amoeba did not establish that city had actual knowledge of a condition that was likely to cause death or serious bodily injury, as required under adult trespasser standard to establish exception to city's recreational use immunity from; and
- Father could not be taxed individually with costs of action.

EMINENT DOMAIN - MISSISSIPPI

City of Tupelo v. Patterson

Supreme Court of Mississippi - January 19, 2017 - So.3d - 2017 WL 238410

Property owners brought inverse condemnation action against city under the Takings Clause of the state constitution, seeking compensation for both personal injuries and property loss arising out of erosion of city drainage ditch that caused significant property damage and mold-related health issues.

City filed motion for summary judgment. The Circuit Court denied motion. City filed interlocutory appeal.

The Supreme Court of Mississippi held that:

- The general three-year limitations period applies to claims under the state constitutional Takings Clause;
- Action accrued, for limitations purposes, at the latest, when property owner filed his first formal claim against city, acknowledging the injury and his right to sue;
- Physical takings under the Takings Clause are not continuous in nature, for statute of limitations purposes; and
- Property owners could not recover for personal injury under Takings Clause.

Property owner's inverse condemnation action against city under the Takings Clause of the state constitution, seeking compensation for loss arising out of erosion of city drainage ditch that caused significant property damage, accrued, for purposes of applicable three-year limitations period, at the latest, when property owner recognized his walls were pulling apart and his home was taking on water and then filed his first formal claim against city, acknowledging the injury and his right to sue.

Damage levied on private property outside of city's prescriptive rights, as the result of erosion of city drainage ditch due to heavy rain, was compensable under state constitutional Takings Clause.

If property owner obtaining recovery in a takings action alleges additional damage to his property, that damage will be included under the original complaint so long as the harm suffered was the predictable result of the government's action, and the description of the damage incurred is pleaded sufficiently to include the extended damage.

Property owners' personal-injury claims against city, alleging mold-related health issues arising out of water damage to property caused by erosion of city drainage ditch, were rooted in the common law and could not be recovered for under state constitutional Takings Clause.

MUNICIPAL ORDINANCE - MISSOURI

City of Kansas City v. Kansas City Board of Election Commissioners

Supreme Court of Missouri, en banc - January 17, 2017 - S.W.3d - 2017 WL 164461

City brought action seeking to have proposed ordinance establishing minimum wage for city removed from ballot.

The Circuit Court entered judgment for city. Committee supporting ordinance appealed.

The Supreme Court of Missouri held that city's challenge to ordinance was premature.

City's challenge to proposed ordinance on ballot establishing minimum wage for city was premature. City's argument that ordinance would be invalid because it conflicted with statute prohibiting local governments from enacting local minimum wage requirements greater than those imposed by state and federal laws in its judgment and argument by committee supporting ordinance that statute was constitutionally invalid remained hypothetical unless and until voters adopted ordinance, after which court could entertain such arguments, and city did not contend that committee failed to meet all of procedural requirements imposed by city charter for putting proposed ordinance before city voters.

EMINENT DOMAIN - OHIO

Am. Metal Works, L.L.C. v. Waverly

Court of Appeals of Ohio, Fourth District, Pike County - January 6, 2017 - N.E.3d - 2017 WL 168858 - 2017 -Ohio- 135

Property owner brought action against village seeking to require village to establish a street, to declare that property owner had access as a member of the general public over the street, or to require the village to compensate it for its denial of access to the street.

The Court of Common Pleas granted summary judgment in favor of village. Property owner appealed.

The Court of Appeals held that:

- Trial court lacked statutory authority to establish municipal street outside of municipal corporation limits;
- Federal regulations did not prohibit use of community development block grant (CDBG) funds for assistance to for-profit business; and
- Village's actions did not result in common law dedication of private access road for public use.

Court lacked statutory authority to establish municipal street outside municipal corporation limits. Applicable statute allowed court to order the establishment or vacation of a street or alley in the immediate vicinity of a person owning a lot in the municipal corporation if it would be conducive to the general interests of the municipality.

Federal regulations did not prohibit recipient of community development block grant (CDBG) funds from providing assistance to for-profit businesses, and therefore use of funds for purchase of property that included private access road did not render private road a public highway.

Village’s approval of lot split did not result in common law dedication of private access road to the public, where there was no expressed intention by the village to dedicate the private access road for public use, no actual offer on the part of the village to make that dedication, and no acceptance of the offer on behalf of the public.

MUNICIPAL ORDNANCE - OHIO

Ohioans for Concealed Carry, Inc. v. Oberlin

Court of Appeals of Ohio, Ninth District, Lorain County - January 9, 2017 - N.E.3d - 2017 WL 74977 - 2017 -Ohio- 36

Nonprofit gun rights advocate group filed suit against city, seeking declaratory and injunctive relief, and award of costs and attorney fees, based on challenge to constitutionality, under Home Rule Amendment, of ordinances prohibiting possession of firearms in city parks and recreation areas.

While suit was pending, ordinances at issue were repealed. The Court of Common Pleas entered summary judgment for city and denied group’s motion for award of attorney fees and costs. Group appealed.

The Court of Appeals held that:

- Amended city ordinance prohibiting “unlawful” possession, use or discharge of any type of a firearm within city park or recreation area was appropriate exercise of city’s police power;
- No justiciable controversy remained after offending ordinances were repealed;
- Fact issues precluded summary judgment for city on group’s request for attorney fees and costs; and
- Trial court lacked jurisdiction over claim, raised for first time on summary judgment, that codified ordinance was unconstitutionally vague.

Amended city ordinance prohibiting “unlawful” possession, use or discharge of firearm within city park or recreation area complemented, rather than conflicted with general law protecting right of citizen to possess and carry firearm, and thus, was appropriate exercise of its local police power, within meaning of Home Rule Amendment.

TAX - NEW YORK

Congregation Ateres Yisroel v. Town of Ramapo

Supreme Court, Appellate Division, Second Department, New York - January 18, 2017 - N.Y.S.3d - 2017 WL 189197 - 2017 N.Y. Slip Op. 00287

Landowner, a religious not-for-profit corporation, brought action against town, town assessor, and Board of Assessment review, seeking declaration that owner’s real property was exempt from real property taxes.

The Supreme Court, Rockland County, granted defendants’ motion for summary judgment.

The Supreme Court, Appellate Division, held that landowner’s use of real property violated town zoning law, and thus landowner was prohibited from receiving real property tax exemption.

Use of real property owned by landowner, a religious not-for-profit corporation, violated town zoning law, and thus landowner was prohibited from receiving a real property tax exemption. Landowner had illegally erected two trailers on property without obtaining proper permits, and had used primary structure on property as a dormitory and living quarters for over 20 students in contravention of its certificate of occupancy.

TAX - ILLINOIS

Hertz Corporation v. City of Chicago

Supreme Court of Illinois - January 20, 2017 - N.E.3d - 2017 IL 119945 - 2017 WL 243395

Car rental companies brought declaratory judgment actions against city, asserting that ruling by city's department of revenue as to tax on use of vehicles leased by city residents was unconstitutional.

The Circuit Court declared ruling facially unconstitutional and entered permanent injunction. City appealed. The Appellate Court reversed. Companies sought to appeal, which was allowed.

The Supreme Court of Illinois held that city department of revenue ruling regarding applicability of personal property tax to cars rented from agencies outside of city violated home rule article of state constitution.

Ruling had an extraterritorial effect, and therefore city department of revenue ruling determining that suburban car rental agencies located within three miles of city were responsible for paying tax on use of personal property within city borders unless lessee was exempt from paying tax based upon use of leased vehicle outside of city violated home rule article of state constitution. No part of the transactions took place within city's borders, and 100 percent of the cost of a car's rental was taxed even though ruling required that the car be driven in city for only 50 percent of the time to be subject to the tax.

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MSRB Files Minimum Denomination Rule With SEC.

The Municipal Securities Rulemaking Board (MSRB) today filed with the Securities and Exchange Commission (SEC) a proposed new rule, Rule G-49, on Transactions Below the Minimum Denomination of an Issue. The proposed new rule incorporates from MSRB Rule G-15(f) the existing prohibition regarding below-minimum denomination transactions with customers, without substantive amendment, and the two exceptions to the prohibition, with certain amendments.

Proposed Rule G-49 includes a new third exception to permit a dealer to sell a below-minimum denomination position to one or more customers that have a position in the issue and any remainder to a maximum of one customer that does not have a position in the issue. Proposed Rule G-49 also would significantly amend, in the existing exception regarding dealer sales to customers, the requirement that a dealer determine, by receipt of a written statement provided by the party from which the dealer purchases the below-minimum denomination securities position, that the position acquired from such dealer and being sold to a customer is the result of a customer's liquidation of its entire below-minimum denomination position (the "liquidation statement").

Regarding the liberalization of that requirement, proposed Rule G-49 would apply restrictions to inter-dealer transactions in below-minimum denomination positions. Proposed Rule G-49 would also eliminate, for a narrowly defined group of below-minimum denomination transactions, a dealer's obligation to provide a minimum denomination sale disclosure to its customer on or with the confirmation of the transaction. Based on the organization of these related provisions in proposed Rule G-49, the existing minimum denomination provisions in Rule G-15(f) would be rescinded. Read the SEC filing.

MSRB Filing with the SEC

Revenue Procedure 2017-13: Management Contracts – Still Trying To Get It Right.

For the third time in less than three years, the IRS has issued major guidance – Revenue Procedure 2017-13 — on the safe harbor rules for management or service contracts to avoid private business use. The new revenue procedure follows closely behind the total rewrite of the safe harbor rules that the IRS issued as Rev. Proc. 2016-44 in August 2016, which was the subject of several of our posts (here, here, and here). A cynic might think the IRS was just looking for an excuse to renumber the management contract revenue procedure as 97-13 plus 20 years. But in fact there are some important modifications in the new revenue procedure.

Continue reading.

By Bob Eidnier on January 25, 2017

Squire Patton Boggs

S&P: Oil-Producing States See Deepening Economic Weakness.

A reliance on oil production remains a key indicator of credit stress in the U.S. state sector as of early 2017. Energy producing states account for five of the 11 states on which S&P Global Ratings maintains negative rating outlooks.

Continue reading.

Jan. 24, 2017

S&P USPF Housing Enterprise 2017 Outlook: Ratings Remain Stable Despite Economic Challenges And Uncertain National Policy Direction.

S&P Global Ratings expects ratings in the municipal housing sector to remain stable in 2017, with just a small number of downgrades within the tax-exempt bond ratings universe. Following the downgrades that began in 2008, the sector turned this trend around and has had ongoing stability in the new decade.

Continue reading.

Jan. 24, 2017

Hawkins Advisory (Final Issue Price Regulations)

This issue of the Hawkins' Advisory is dealing with Final Treasury Regulations regarding "issue price", which were published in the Federal Register of December 9, 2016.

12/27/2016

Trump Orders Rapid Review for High-Priority Infrastructure.

DALLAS - President Donald Trump's executive order to streamline the environmental permitting process for high-priority infrastructure projects will allow roads and bridges to be built more quickly, according to Rep. Bill Shuster, R-Pa., chairman of the House Transportation and Infrastructure Committee.

Trump signed an executive order this week that requires the chairman of the White House Council on Environmental Quality to coordinate "expedited procedures and deadlines for completion of environmental reviews and approvals" for infrastructure projects designated as a high priority by a governor or the head of a federal department or agency.

"Too often, infrastructure projects in the United States have been routinely and excessively delayed by agency processes and procedures," the order said. "These delays have increased project costs and blocked the American people from the full benefits of increased infrastructure investments."

Shorter delays with a more rapid environmental permit review would result in road and bridge projects being operational years earlier than now and at a lower cost, Shuster said during an interview Wednesday on Fox Business News.

"This is what we need to do with these reforms in Congress," Shuster said. "We need to make sure these projects move faster because time is money."

Once the request for high-priority status is received, the council's staff has 30 days to decide whether the project qualifies for an expedited approval process. If the deadline is missed, the head of the agency must provide a written explanation for the delay to the council chair.

A certified project would go to the top of the priority list of the federal agencies required by law to review and approve it.

Trump said the executive order will help streamline a “cumbersome, long, horrible permitting process” that has held up some infrastructure projects for years.

“We can’t be in an environmental process for 15 years if a bridge is going to be falling down or a highway is crumbling,” he said during the signing ceremony in the Oval Office.

“If it’s a no, we’ll give them a quick no, and if it’s a yes, it’s like ‘Let’s start building,'” Trump said. “The regulatory process in this country has become a tangledup mess, and very unfair to people.”

The order shows that Trump sees infrastructure as an important function of government and that the review process is often too cumbersome, said Nick Goldstein, vice president of regulatory affairs at the American Road and Transportation Builders Association.

“It’s certainly a good thing, although we don’t know yet who is going to head the environmental council,” Goldstein said. “One of our priorities always has been a more rational environmental review process.”

Trump’s executive order is an endorsement of the regulatory reforms that construction contractors have been seeking for years, said Brian Turmail, senior executive director of public affairs at the Associated General Contractors of America.

“Despite significant reforms we have helped get enacted in recent surface transportation measures that have cut some time from the federal review process, it still takes too long to get a final decision out of the federal government,” Turmail said.

“These delays needlessly inflate the cost of many infrastructure projects and undermine public confidence in the federal government’s ability to get the job done,” he said.

It’s too early to tell how the order will affect project delivery, said Lloyd Brown, director of communications at the American Association of State Highway and Transportation Officials.

“We’re going to work with federal and state officials to make sure we understand the process and get projects delivered as quickly as possible,” Brown said. “AASHTO supports regulatory streamlining but we also take very seriously our environmental responsibilities.”

The Bond Buyer

By Jim Watts

January 26, 2017

IRS: Unspent Proceeds, Refunding Will Not Cause Loss of BABs' Subsidy.

WASHINGTON – Unspent proceeds at the time of a current refunding will not cause Build America Bonds to lose their qualified status for Treasury subsidy payments, the Internal Revenue Service recently found in a recent private letter ruling.

The private letter ruling (PLR) was written in response to a BAB issuer that sought a ruling on whether a proposed current refunding would cause the bonds to fail to meet a requirement that 100% of the proceeds, beyond those put into a reasonably required reserve, be used for capital expenditures.

In a current refunding, the issuer refunds previously issued bonds within 90 days from the issuance of the refunding bonds. The IRS concluded in the ruling that, based on the issuer's representations, "the existence of the unspent proceeds on the redemption date of the bonds will not retroactively cause the bonds to lose their status as 'qualified bonds.'"

Because of this, the IRS said, the issuer would not lose any credit under Section 6431 of the Internal Revenue Code for the bonds for the period prior to the date of redemption. IRS officials said the ruling is contingent on the issuer not spending any of the unspent proceeds for anything other than capital expenditures.

The four-page PLR, signed by IRS senior counsel Timothy Jones, states that the bonds in question were used to finance certain capital projects for an unidentified city. The bonds were to be treated as direct-pay BABs, and the issuer agreed to spend 100% of project proceeds of the bonds for capital expenditures. By an unspecified date, a percentage of the available project proceeds of the bonds remained unspent.

The names of all parties involved in the issuance were withheld in the PLR, which was released on Jan. 13. Both the issuer and city intended to refinance the BABs by issuing tax-exempt bonds.

The IRS also stated in the PLR that it was not expressing any opinion about whether the BABs could be considered reissued upon the deposit of the refunding bond proceeds into an escrow fund to pay principal and interest on the bonds at redemption.

Linda Schakel, a partner with Ballard Spahr in Washington, said she agrees with the ruling, especially considering that the BAB legislation was different than other tax credit subsidy bonds, which required proceeds be spent within three years of the issue date on permitted costs.

"I think this is definitely a very reasonable approach to the question of what happens when you have unspent proceeds at the time you do a refunding, particularly unspent proceeds more than three years after the bonds are issued," she said.

However, Schakel said the ruling does not provide details regarding what might have delayed expenditure or what factors confirm the issuer still expects to expend proceeds.

"I take [this] to mean that the ruling is not conditioned as being extraordinary circumstances justifying the outcome," Schakel said.

Tom Vander Molen, a partner at Dorsey and Whitney in Minneapolis, said he believes that the ruling is correct. He said that although he is not aware of this particular request for a PLR, this issue has come up in different contexts.

"Sometimes in audits, the IRS says maybe it's a problem if you don't spend proceeds before you refund," Vander Molen said. "My position has always been it doesn't matter as long as you use the proceeds you were going to in the time you were going to."

"I think this is very consistent with that," he said. "I think this ruling is exactly right."

Created under the American Recovery and Reinvestment Act, roughly $181 million of BABs were issued to finance infrastructure during 2009 and 2010 before the program expired for new issuances.

The Bond Buyer

By Evan Fallor

January 19, 2017

CDFA // BNY Mellon Development Finance Webcast: Opportunities and Advancements in Water Finance

Opportunities and Advancements in Water Finance

February 21, 2017
@ 1:00 pm Eastern

Financing for water infrastructure, public utilities, and drinking water has become an important area for development finance agencies as concerns about water quality and aging management systems have increased. With the U.S. EPA's recent announcement about the Water Infrastructure Financing and Innovation Act (WIFIA) making $1 billion available for credit assistance, new opportunities are emerging to address the nation's critical investment needs in water and waste water. During this installment of the CDFA // BNY Mellon Development Finance Webcast Series, learn from expert speakers as they discuss developments in the water finance space and how different financing mechanisms like bonds, RLFs, P3s, and other tools are being used to address today's water infrastructure projects.

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IRS Modifies Safe Harbor Guidance and Deadlines for Section 45 and 48 Energy Credits: Grant Thornton

The IRS has issued new guidance (Notice 2017-04) updating and modifying deadlines and rules for the safe harbors for establishing that construction has begun and is continuous on projects qualifying for the renewable electricity production tax credit (PTC) under Section 45 and the energy investment tax credit (ITC) under Section 48.

The guidance extends the date by which a project can be placed in service and qualify for the continuity safe harbor, adds an effective date to a restriction on combining begin-construction safe harbor methods, and clarifies which expenses from a retrofitted facility are included in the 5% safe harbor calculation.

The Protecting Americans from Tax Hikes (PATH) Act of 2015 extended both the PTC and ITC credits. Under the bill, construction on qualified PTC projects must now have begun before the end of 2016 to be eligible for the full credit. The PTC will also be available at reduced rates for wind facilities if construction begins in 2017 (80% of normal credit), 2018 (60%) or 2019 (40%). Taxpayers may also elect to take the ITC in lieu of the PTC, but any PTC rate reductions will apply to the ITC.

In addition, the 30% ITC for commercial solar projects was extended. The rate was set to fall to 10% if construction began after 2016, but the full 30% rate will now be available if construction begins by the end of 2019. A 26% credit is available if construction begins in 2020, and a 22% credit is available if construction begins in 2021 and the facility is placed in service by the end of 2023. The credit is otherwise 10%.

Under guidance issued previously (Notices 2013-29, 2013-60, 2014-46, and 2016-31) the IRS said that taxpayers can establish that construction has begun by either satisfying a test showing "physical work of a significant nature" has begun or by incurring 5% or more of the total cost of the facility under a safe harbor. Taxpayers can aggregate multiple facilities based on the relevant facts and circumstances, but then disaggregate them for applying the placed-in-service deadline for the continuity safe harbor.

However, Notice 2016-31, issued last year, does not allow taxpayers to use two different beginning construction tests in alternate years to establish construction has begun in different years for the purpose of the separate begin-construction and continuity deadlines. Newly issued Notice 2017-04 limits this restriction only to projects that began after June 6, 2016 (the day Notice 2016-31 was issued).

Notice 2016-31 also provided that a retrofitted energy project can qualify if the used property represents less than 20% of the value. Notice 2017-04 clarifies that only costs related to new construction in these projects are included in the calculation for the 5% safe harbor.

Once construction is considered to have begun, taxpayers must make continual progress toward completion. The IRS created a continuity safe harbor to satisfy this standard, last modifying it under Notice 2016-31. Taxpayers are generally considered to have made continual progress toward completion if a facility is placed in service within four calendar years of the calendar year in which construction began. Notice 2017-04 now provides that a taxpayer will also fall under this safe harbor if the project is completed before Dec. 31, 2018, even if this more than four years after construction began.

Taxpayers who don't use the continuity safe harbor must generally use a facts-and-circumstances analysis to determine if construction is continual. Notice 2017-04 does not update the nonexclusive list of allowable disruptions. The following disruptions remain excusable:

- Severe weather conditions
- Natural disasters
- Certain licensing and permitting delays
- Delays at the written request of government for safety, security or similar concerns
- Transmission interconnection issues
- Labor stoppages
- Supply shortages

- Delays in manufacturing custom components
- Inability to obtain specialized equipment
- Financing delays
- The presence of endangered species

Notice 2017-04 also does not update the list of preliminary activities under Notices 2013-29 and 2016-31 that don't qualify as physical work of a significant nature. The following preliminary activities do not qualify:

- Planning or designing
- Securing financing
- Exploring
- Researching
- Conducting geologic mapping and modeling
- Obtaining permits and licenses
- Conducting geophysical, gravity, magnetic, seismic and resistivity surveys
- Conducing environmental and engineering studies
- Performing activities to develop a geothermal deposit prior to discovery
- Clearing a site
- Test drilling of a geothermal deposit
- Test drilling to determine soil condition
- Excavation to change the contour of the land (as distinguished from excavation for footings and foundations)
- Removing existing turbines, towers, panels or other components

Last Updated: January 24 2017

Article by Dustin Stamper

Grant Thornton 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.

States Add 300 Projects to Trump's Infrastructure Wish List.

DALLAS – More than 300 road, rail, bridge, and port projects have been submitted to the Trump administration by 43 states as prime candidates for funding in the new president's proposed $1 trillion infrastructure program.

The large list was compiled by the National Governors Association, which asked governors in December to provide information to the Trump team on projects suitable for inclusion in the plan that relies on private investments to help rebuild the nation's infrastructure.

"They seek examples of priority infrastructure projects that might be incorporated into a future infrastructure investment program," the NGA said in the letter dated Dec. 16, more than a month before Trump was sworn in. "Specifically, the transition team is looking for three to five project suggestions from each state that they would vet for inclusion in a new program."

The submissions to the initial information-gathering request are non-binding, the letter noted.

“The initial spend on these projects for 2017 is expected to be $150 billion, and the transition team hopes that this type of project will be continued over the next two years,” NGA said.

The compilation of project information is still going on, said Elena Waskey, a spokeswoman for the NGA.

A preliminary list of 50 high-priority “Emergency & National Security Projects” across the nation includes a high-speed rail line between Dallas and Houston, Maryland’s Purple Line light rail system, airport upgrades, and interstate highway expansions.

Total cost of the 50 projects on the list is $137.5 billion, with 50% of the funding coming from private investors, according to documents obtained by McClatchy’s Kansas City Star and The News Tribune.

The origin of the project list is unclear. The 50-project list is almost identical to a spreadsheet circulated in December by the NGA among state officials, with only two projects not found in both.

The McClatchy report said the list was provided to the NGA by the Trump transition team. However, Brigham McCown, chairman of the Alliance for Innovation and Infrastructure and a former member of the Trump transition, has denied that the team developed the project list.

Several of the projects have been completed and others don’t meet Trump’s criteria for significant private investments, McCown said.

The 50-project list is “not an official White House document,” Trump spokeswoman Lindsay Walters said Wednesday.

The first project on the list is the $12 billion Gateway Program to rebuild the rail infrastructure between New York City and Trenton, N.J.

Other projects on the priority list include a $2 billion expansion of Seattle-Tacoma International Airport and a $1 billion redevelopment of Chicago’s Union Station.

Texas Central Rail said it is pleased that its 240-mile bullet train system between Houston and Dallas was included in the high-priority list.

“Texans are looking for safe, reliable, and productive transportation options,” the company said. “The high-speed train answers that call for the region, state and country.”

Trump should reject the Texas Central project, said Kyle Workman of Texans Against High-Speed Rail.

“We are confident that President Trump will identify projects of worth and benefit to America and this will not be one of them,” he said.

The list also includes a 68-mile light rail line proposed by Dallas Area Rapid Transit from the far northern suburbs of Dallas to the west side of Fort Worth, with a stop at Dallas-Fort Worth International Airport.

DART has no plans to seek private investment in the $2.8 billion project, said spokesman Morgan Lyons.

“We are always supportive of ways to inject additional federal dollars into long-term transportation infrastructure, but have not been contacted to help develop this list," Lyons said.

The Bond Buyer

By Jim Watts

January 25, 2017

MSRB Files Standalone Minimum Denomination Rule With SEC.

WASHINGTON – The Municipal Securities Rulemaking Board is asking the Securities and Exchange Commission to approve its slightly revised proposal for a standalone minimum denomination rule that is designed to help liquidity and respond to concerns from dealers.

The new standalone MSRB Rule G-49 would contain requirements added to Rule G-15 in 2002 that prohibit dealers from engaging in transactions with customers in amounts below the minimum denominations of municipal securities that are set by issuers. It would also include two exceptions to the prohibition added in 2002, as well as one more exception proposed in April 2016.

The April proposal originally contained two new added exceptions to the rule, but subsequent concerns from the Securities Industry and Financial Markets Association that one was redundant led the MSRB to only include one of the new exceptions in its SEC filing. That exception would allow a dealer that has bought a customer's liquidated position in an amount less than the minimum denomination to sell those bonds to one customer with no prior holdings of the bonds and to any customers who already have positions in the bonds.

The other, more restrictive exception that the MSRB chose to eliminate would have allowed a dealer to sell bonds to any customer with a prior position as long as the sale brings the customer to, or past, the minimum denomination. The dealer would then have been able to sell the remaining below-minimum position to any number of customers that already held the bonds.

The MSRB said its filing keeps the purpose of the existing rule and exceptions – to decrease the number of customers holding minimum denomination positions while maintaining liquidity. The filing also helps dealers by eliminating a prior requirement they had said hurt trading in below minimum positions, the board said.

The minimum denomination is the lowest amount of bonds that can be bought or sold, as determined by the issuer in its official statement for the bonds.

The MSRB's SEC filing met with some resistance from dealers.

Mike Nicholas, chief executive officer of Bond Dealers of America, said BDA is opposed to the MSRB's "complex rule filing" that will "harm the very investors it is purportedly designed to protect and impose entirely unnecessary compliance costs on overburdened small and medium-sized dealers."

"We look forward to having the opportunity to convey our views to the commission," he said.

Leslie Norwood, managing director and co-head of municipal securities with SIFMA, said the group is still reviewing the rule filing but is "disappointed that at first blush the amendments appear to eliminate flexibility in the rule regarding transactions with dealers." She added that SIFMA anticipates filing a comment letter with the SEC responding to the MSRB's filing.

Rule G-49 would eliminate the current requirement that a dealer, in some situations, must obtain a "liquidation statement" from a party that isn't its customer but rather the party from which the dealer purchased the securities. The liquidation statement must be obtained before the sale of securities to another customer and confirm that the original selling customer fully and completely liquidated its below-minimum position.

The liquidation statement is key to one of the existing exceptions adopted as part of Rule G-15. Under that exception, a dealer could sell a below-minimum denomination amount of a bond to a customer if the sale is a result of another customer liquidating his or her entire position in the bonds.

The elimination of the liquidation statement requirement would also affect the new exception that the MSRB proposed in April and decided to keep in the version of the rule filed with the SEC.

The MSRB's proposal to eliminate the liquidation statement follows prior comments from dealers to the MSRB that said the requirement can be an impediment to using alternative trading systems or broker's brokers to sell below-minimum denomination positions.

Dealers were concerned that they could be subject to disciplinary action if they could not prove a liquidation had occurred. They would need to rely on another dealer, an ATS, or a broker's broker to obtain such a statement and were wary of such reliance. They were also concerned it discourages traders from bidding on below-minimum positions.

While the MSRB is proposing to delete the requirement for liquidation statements, it makes clear in its proposal that it would still require a dealer purchasing a below minimum position from one of its customers and selling it to another to confirm that the selling customer has fully liquidated its position.

The MSRB has also proposed a new "safeguard" in light of its liquidation statement changes. The safeguard would prohibit a dealer engaged in an interdealer trade from selling less than all of a below-minimum denomination position that the dealer acquired either from a customer that fully liquidated its below-minimum position or from another dealer. That prohibition would satisfy the MSRB's goal by preventing the creation of additional below-minimum denomination positions, the MSRB has said.

The other current exception to the MSRB's minimum denomination rule would not be affected by the liquidation statement changes. That exception allows dealers to buy munis below the minimum denomination from customers if the dealer determines, based on the customer's account information or written statement, that the customer is selling its entire position in the bonds.

The proposed rule now filed with the SEC carries over provisions that applied to past exceptions and requires a dealer to use account records it has or written statements the customer provides when the dealer is buying from or selling to a customer. Dealers will also still be required to give or send to purchasing customers written statements telling them that the quantity of securities being sold is below the minimum denomination for the bonds and that its below-minimum nature may adversely affect the liquidity of the customer's position.

However, the MSRB is also changing its proposed rule by not requiring a dealer to make such a written statement to a customer who is brought up to, or past, the minimum denomination for the municipal issuance in a transaction. The requirement would otherwise not make sense as a customer in that situation would no longer have a below-minimum position and would not have the accompanying potential consequences.

The Bond Buyer

By Jack Casey

January 24, 2017

Senate Democrats Challenge Trump with Their Own $1T Infrastructure Plan.

DALLAS — Senate Democrats have countered President Trump with their own 10-year, $1 trillion infrastructure package that calls for more direct federal funding rather than incentives for private investments.

The proposal outlined Tuesday by Senate minority leader Chuck Schumer, D-N.Y., would provide $210 billion for roads and bridges, $180 billion for rail and bus systems, $110 billion for water projects, $75 billion for schools, $65 billion for ports and airports, $20 billion for projects in national parks and tribal lands, $20 billion for expanding wireless broadband service, and $10 billion for Veterans Affairs hospitals.

It would expand the Transportation Investment Generating Economic Recovery (TIGER) grant program by $10 billion and provide major increases in clean water and drinking water state revolving funds.

The proposal also includes a $200 billion Vital Infrastructure Projects (VIP) program that will direct major federal investments to the most critical national projects.

"It's a challenge to the president," Schumer said in an online interview with USA Today. "We're challenging the president — he talked about in his campaign — to join with us. If he does, we'll work with him on this."

Trump's 10-year plan unveiled by his campaign in late October relies on $137 billion of federal tax incentives to leverage private investments in revenue-producing projects.

Public-private partnerships are the wrong approach in most cases, Schumer said.

"Some people have talked about doing this as a tax break for wealthy people. We don't believe that works," he said.

"We would pay for it out of the Treasury," Schumer said. "It's a stimulus program. We need more and better-paying jobs."

The Democrats' proposal would create 15 million jobs, he said.

Democrats will discuss and negotiate with President Trump about how to pay for the infrastructure plan, Schumer said.

"There will be no cuts to education or healthcare programs," Schumer said. "Are the tax cuts for the rich going to be paid for?" he asked, adding, "I doubt it."

Trump's infrastructure program will likely be funded through an overhaul of the federal tax code that Democrats could support, according to Rep. Bill Shuster, R-Pa., chairman of the House Transportation and Infrastructure Committee.

"The bitter pill for Democrats is tax reform," Shuster said at a Tuesday event sponsored by the Republican Main Street Coalition. "But the sweet chaser is infrastructure dollars. So I think they're willing to go along if they're finding those dollars."

Trump would need Democratic support to pass an infrastructure program, Schuster said.

"We Democrats have always been behind this but we've been stymied by Republicans in the Senate over and over again," Schumer said. President Trump "is going to have to work with us. To get this done, Trump may have to break with those doctrinaire people who are out of touch with what Republicans and Democrats in America have always supported: The federal government should assist in building roads and bridges and tunnels."

Sponsors of the infrastructure legislation include Schumer and Sens. Thomas Carper from Delaware, Bill Nelson from Florida, Ron Wyden from Oregon, Sherrod Brown from Ohio, Bernie Sanders and Patrick Leahy from Vermont, and Maria Cantwell from Washington.

"Senate Democrats have unveiled this blueprint because we need a wide-sweeping infrastructure plan, and we need it now," Schumer said.

Trump's infrastructure plan may face resistance from congressional Republicans who are concerned about how to pay for it, said Richard LeFrak, a New York developer appointed by the president to a panel that will oversee it.

Trump "has to come up with a financing plan, and I think there's going to be a little bit of a tug of war between the conservatives in the Republican party who are concerned about deficits and the president who's concerned about jobs," he said Monday on CNBC. "I think [Trump] he will prevail, ultimately, because he wants to put people to work."

Trump supports a $1 trillion plan but the final price tag may be lower, LeFrak said. "He'd like it to start with a "t," but I think the number I've heard tossed around is about $550 billion," LeFrak said.

The Bond Buyer

By Jim Watts

January 24, 2017

Muni Groups Push for EMMA Improvements.

WASHINGTON – Seven municipal bond groups are urging the Municipal Securities Rulemaking Board to improve the accessibility and usefulness of its Electronic Municipal Market Access (EMMA) platform for market participants.

"The MSRB has made great strides from its initial goal of establishing a central repository for municipal bond disclosure and EMMA has become an indispensable tool for all industry market participants" the dealer, issuer, bond lawyer and analyst groups said in a five-page letter sent on

Monday to Colleen Woodell, the MSRB's chair.

But they added, "We believe the MSRB can improve the user interface for how information is searched and displayed."

The groups suggested the board hire "technology and user-experience professionals" to work with market participants to design "a more efficient and intuitive front end" for information providers, such as issuers and their designees, as well as end users, including investors and others.

The groups made suggestions for improvements in four areas: searchability; ease of data imputing and uploading; improving linkages among related data; and the ability to correct information already on the EMMA platform.

They suggested the MSRB improve EMMA's search function, such as by permitting a search of a borrower and a project as well as implementing a "standardized naming convention" to account for variations of names of issuers and borrowers.

The groups also want the MSRB to provide standardized templates for the submission of financial information, customized by sector.

The groups also asked for specific descriptive information in alerts that would also be included on the issuer homepage. For variable rate demand obligations (VRDOs), they asked the board to attach CUSIP numbers for investors who did not have the related letter of credit numbers.

The board should implement a quality assurance process or enhanced uploading processes to reduce categorization errors, the groups said. They said there is some inconsistency in names for issuers and borrowers.

The groups also want the MSRB to correct erroneous information that is already on the system. For example, some audited financials have been filed under event notices rather than in the "Audited Financials" category.

They recommended the MSRB create a linkage between a VRDO issue and subsequent remarketings so they can be tracked on EMMA. They asked the board to improve the way EMMA handles archived filings. Some issuers have reported that filings older than several years do not appear to be available.

They also want EMMA to provide an option for taxable municipal securities to be excluded from trade activity inquiries.

The groups want to be able to download data from EMMA. They also asked that MSRB change the platform to provide rating histories in addition to current bond ratings of issuers and borrowers.

The groups included the Government Finance Officers Association, the National Association of State Treasurers, the National Association of State Auditors, Comptrollers and Treasurers, the National Federation of Municipal Analysts, the National Association of Bond Lawyers, Bond Dealers of America and the Securities Industry and Financial Markets Association.

The Bond Buyer

By Lynn Hume

January 23, 2017

MSRB Holds Quarterly Board Meeting.

Washington, DC – The Board of Directors of the Municipal Securities Rulemaking Board (MSRB) held its quarterly meeting January 24-26, 2017 where it engaged in strategic planning and discussed several initiatives aimed at protecting investors and municipal entities, and promoting a fair and efficient municipal securities market.

The Board periodically conducts formal strategic planning to ensure that decisions regarding its priorities and resource allocation are informed by an analysis of market risks, trends, enforcement actions and other developments. At its meeting, the Board began to establish strategic goals for the next two to four years, consistent with its mission. The Board's planning session included discussion of comments received following a 2016 public request for comment on long-term priorities and initiatives, as well as strategy considerations for enhancements to market transparency and information provided primarily through the Electronic Municipal Market Access (EMMA®) website. The Board and staff will refine input from the strategic planning session and develop a road map to ensure the MSRB continues to fulfill its mission.

Municipal Advisor Rulemaking
Consistent with the MSRB's mandate under the Dodd-Frank Wall Street Reform and Consumer Protection Act to develop a comprehensive regulatory framework for municipal advisors, the Board advanced two rules related to municipal advisors. The rules are part of the MSRB's mission to help ensure that the state and local governments and other municipal entities for whom municipal advisors provide services are adequately protected in their engagements with those municipal advisors.

One new rulemaking focuses on the content and accuracy of municipal advisor advertising. Municipal securities dealers have since the 1970s been subject to an advertising rule that seeks to ensure accuracy and balance, among other things, in promotional materials. The Board agreed to seek to apply the core principles of the MSRB's dealer rule to municipal advisors while adding specific provisions tailored to municipal advisors. The Board also agreed that the existing dealer rule, MSRB Rule G-21, on advertising, merits updating as well as harmonization with certain of the provisions contained in the advertising rules of other financial regulators.

The next step in the rulemaking process will be a request for comment on new draft Rule G-40, on municipal advisor advertising, and draft amendments to Rule G-21.

The Board also advanced its plan to amend MSRB Rule G-3, on professional qualification requirements, to establish continuing education requirements for municipal advisors. The proposed amendments would require municipal advisors to annually conduct a needs analysis and develop a written training plan based on that analysis. The analysis would be customized to the size and scope of the firm's business activities, among other things, which would serve to mitigate the burdens of training requirements on small municipal advisors. The next step in the rulemaking process will be a proposed rule filing with the Securities and Exchange Commission.

Dealer Rulemaking
In another rulemaking matter, the Board discussed the first step in a multi-year initiative to review dealer rules on primary offering practices. The Board discussed the MSRB's longstanding interpretation that dealers, under MSRB Rule G-34, must apply for CUSIP numbers when conducting private placements—including direct purchase transactions—of municipal securities. The Board agreed to seek public comment on amendments to Rule G-34, on the assignment of CUSIP numbers,

to, among other things, further codify that interpretation and harmonize the definition of underwriter with that contained in Rule G-32, on primary market disclosures. The MSRB will continue its holistic review of primary offering practices rules with a view to enhancing existing protections for investors and issuers.

Continuing Disclosure
In addition to its rulemaking work, the Board discussed market transparency issues, specifically municipal market disclosure practices and how the MSRB might facilitate improved timeliness of annual financial and operating information submitted to the MSRB's EMMA website. The Board plans to continue to evaluate what the MSRB might do further to assist issuers in meeting their disclosure obligations, in addition to its existing outreach, education and email reminders for issuers.

Date: January 30, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
202-838-1500

[IRS Clarifies New Management Contract Safe Harbors.]

In August, 2016, the IRS issued Revenue Procedure 2016-44, the first comprehensive revision of its management contract safe harbors since Revenue Procedure 97-13. Rev. Proc. 2016-44 built upon and amplified principles laid out in private letter rulings issued over many years and in Notice 2014-67. Now, less than six months later, the IRS has published [Revenue Procedure 2017-13], which clarifies and supersedes Rev. Proc. 2016-44 but does not materially change the safe harbors described therein. The clarifications are in response to questions received with respect to certain types of compensation protected under earlier safe harbors, incentive compensation, timing of payments, treatment of land when determining useful life, and approval of rates.

Tuesday, January 24, 2017

[City Announces First Minibond Issuance, Invites Residents to Directly Invest in Cambridge.]

The City of Cambridge is pleased to announce that it intends to offer Cambridge residents the chance to invest directly in Cambridge infrastructure by purchasing minibonds. Minibonds enable residents to earn tax-exempt interest and invest for the future while supporting the Cambridge capital budget.

A minibond is similar to a traditional municipal bond in which investors loan money to a city or public agency for an agreed period of time, receive interest on the investment, and get their loan paid back when the bond matures. The City will use minibond proceeds to support capital projects such as school building renovations, municipal facility upgrades, and implementation of the Complete Streets plan.

All municipal bonds previously sold by the City were sold in denominations of $5,000 or more. Minibonds are different because residents can purchase them for as little as $1,000, making them more accessible than traditional municipal bonds for potential investors.

The City is working with Neighborly Securities* to issue the minibonds. Neighborly is not affiliated with the City of Cambridge in any way, other than as the broker-dealer for this sale of minibonds.

The City expects to sell up to $2 million of minibonds in its first minibond sale, which will take place from February 17-23, 2017. Each Cambridge resident may purchase up to 20 minibonds for a total possible investment of $20,000 (20 x $1,000/minibond). The interest rate on the 2017 minibonds will be determined on February 17, 2017 and interest will be paid semiannually. Principal on the 2017 minibonds will be paid in five years in 2022.

Minibonds will only be offered to investors following release of a Preliminary Official Statement of the City that will describe the terms of the minibonds and provide other financial information concerning the City. The City expects to issue a Preliminary Official Statement by February 13, 2017.

Residents who are interested in buying Cambridge minibonds will need to create an account through Neighborly.com before the order period ends or purchase minibonds through their own broker. Once a minibond order is submitted through Neighborly, Neighborly's investment team reviews it for approval and allocation. If the order is approved, minibonds will then be allotted and filled on a first-come, first-serve basis. Neighborly representatives will be at Cambridge City Hall on Wednesday, February 15 from 6-8pm and Tuesday, February 21 from 6-8pm to provide assistance and discuss the minibond process.

For questions about setting up an account with Neighborly to purchase minibonds, please contact Neighborly at (866) 432-1170, support@neighborly.com, or www.neighborly.com/cambridge.

For general questions about Cambridge minibonds, please visit minibonds.cambridgema.gov or contact the City's Budget Office at minibonds@cambridgema.gov or (617) 349-4270.

[Sign up today.]

**Minibonds will only be ordered through Neighborly Securities, member FINRA, SIPC & registered with MSRB, pursuant to a preliminary and final official statement to be made available during the ordering period. This information does not constitute an order to sell or the solicitation of an order to buy any securities. You will be responsible for making your own independent investigation and appraisal of the risks, benefits, and suitability of any securities to be ordered and neither the City of Cambridge nor Neighborly Securities is making any recommendation or giving any investment advice.*

1/23/2017

MacKay Municipal Managers Announces Top Five Municipal Market Insights For 2017.

PRINCETON, N.J., Jan. 26, 2017 /PRNewswire/ — MacKay Municipal Managers™, the municipal bond team of fixed income investment management firm MacKay Shields LLC, today delivered its top five municipal market insights for 2017. Key highlights include:

1. **Innovative Financing Accelerates:** We believe Public-Private Partnerships (P3) projects, a popular infrastructure financing structure outside of the U.S., will gain increasing momentum. The faster development pace of P3 projects combined with tax credit incentives will align well with the new administration's infrastructure development agenda. While P3 financing may displace some traditional tax-exempt issuance, we believe that the acceptance of P3 projects will be a net positive for additional two-way flow in the municipal market. P3 projects should introduce a multitude of new entrants, including private equity, developers, and non-traditional buyers to the municipal market. We expect that these entities will be enticed by municipal financing attributes, including attractive yields (for both borrower and lender), exposure to long duration, low correlation, cash flow stability, and low default rates.
2. **Liquidity Improves in the Municipal Market:** The team expects federal regulations and oversight of U.S. banking institutions will ease. As a result, we believe these entities will increase the amount of capital committed to trading activities, including the municipal bond market. However, we anticipate that a greater awareness of liquidity and capital costs will motivate those institutions to show greater preference for bonds rated by at least one rating agency. Therefore, we believe that the liquidity of non-rated municipal bonds will continue to decline.
3. **High Tax States Outperform:** We believe states with high income tax rates will outperform states with marginal to zero income tax. As federal tax rates are reduced, we expect municipal investors to become more keenly aware of the benefit of double exemption. We believe that demand for bonds in high income tax states will be even greater for those fiscally responsible state and local issuers that have maintained their credit strength. Outperformance of states benefiting from population growth momentum and underlying economic stability should protect investors against possible volatility from both legislative and market uncertainty.
4. **Municipals Outperform Treasuries and Lower-Rated Credit Outperforms Investment Grade:** The team believes that municipal to treasury yield ratios will decline during 2017, as tax policy uncertainty subsides. The relative value of municipal bonds, when compared to the taxable market, will move back to more normal historical levels. We expect that this outperformance will provide municipal bond investors with an offset against any negative impact of federal income tax rate reductions. Additionally, spread widening in the fourth quarter of 2016 in the BBB and lower-rated categories offers investors tremendous yield and potential total return opportunities in an uncertain market, where rates will likely be more volatile. Historically, lower-rated, revenue-backed bonds have outperformed general obligation and higher quality bonds in rising rate environments, as underlying fundamentals improve, spreads tighten, and ratings are upgraded.
5. **Alpha Generation from Active Trading and Timely Execution:** We believe the uncertainties of new legislation at the federal level will cause swings in perceived value across many sectors, especially healthcare and education. As such, we believe that security selection and buy/sell execution will be key to outperforming. In these types of markets, a nimble active management style should be better positioned to generate strong relative performance. Investors employing a buy and hold strategy or investments in funds that have become too large to maneuver effectively will not be able to adequately adjust to the market changes and may underperform in our view.

The MacKay Municipal Managers™ team is led by John Loffredo and Bob DiMella, co-heads and executive managing directors. For over 20 years, the pair has worked together on portfolio strategy and municipal credit. In those two decades, the team has grown to include portfolio managers Scott Sprauer, David Dowden, Michael Petty and Frances Lewis.

"Uncertainty is abound in 2017. The new administration will usher in the possibility of new federal legislation that, if implemented, could impact the municipal market. Hesitation regarding these changes and the resulting impact on state and local governments could delay the budget processes, capital projects, and debt issuance of many municipalities. However, state and local governments with strong budget controls, long-term capital planning processes, and accumulated reserves will remain strong during this time, and we believe that value will rise to the top in this uncertain market," explained John Loffredo and Robert DiMella, co-heads of the MacKay Municipal Managers Team™.

To view the full year outlook, please visit: https://mainstayinvestmentsblog.com/2017/01/top-fiv--municipal-market-insights-for-2017/

About MacKay Shields LLC and MacKay Municipal Managers™ Team
MacKay Shields is a fixed-income focused investment management firm with $94.5 billion in assets under management as of December 31, 2016. MacKay Shields manages fixed income strategies for high-net worth individuals, institutional clients, mutual funds and other commingled vehicles. Its investment strategies include unconstrained bond, global high yield, high yield, high yield active core, municipal high yield, short duration high yield, low volatility high yield, municipal short term, core investment grade, municipal investment grade, core plus, core plus opportunities, convertibles, emerging markets credit, and bank loans. MacKay Municipal Managers™ is the investment team within MacKay Shields focused on municipal bond solutions and offers a number of specialized offerings designed to meet the unique needs of investors. The team currently manages approximately $20 billion in municipal bond mandates.

MacKay Shields LLC and MacKay Shields UK LLP (collectively, "MacKay Shields") are indirect wholly-owned subsidiaries of New York Life Insurance Company. MacKay Shields LLC is a registered investment adviser and is regulated in the United States by the U.S. Securities & Exchange Commission. MacKay Shields UK LLP is authorized and regulated in the United Kingdom by the U.K. Financial Conduct Authority. For more information please visit MacKay's website at www.mackayshields.com.

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Muni, State, Local Groups Worry About Tax Reform, Sanctuary Cities, ACA.

WASHINGTON – Republican lawmakers' aggressive 200-day agenda to overhaul the tax code by August and to repeal the Affordable Care Act, with some replacement by March or April, is certain to worry and mobilize muni market and state and local groups.

House Speaker Paul Ryan, R-Wis., and Senate Majority Leader Mitch McConnell, R-Ky., who laid out the agenda at the GOP retreat in Philadelphia and a follow-up news conference this week, acknowledge the schedule is ambitious. The Senate is currently tied up with confirmations of Trump's nominees for Cabinet positions. The chamber also needs at least 60 votes to limit debate and push through any legislation and has only 52 Republicans. The exception is a reconciliation bill that can be passed with only 50 votes and is therefore being considered as a vehicle for repeal of the ACA.

Ryan said the sweeping tax reform bill will lower individual and corporate rates, broaden the tax base and be revenue neutral, noting that will upset lobbyists.

"I think it's a cause of great alarm," said Emily Brock, director of the federal liaison center for the Government Officers Finance Association, referring to the timeline. "We are storming the Hill as we speak."

"This thing is moving," said Jessica Giroux, general counsel and managing director of Bond Dealers of America.

Muni market groups, which have been vigorously lobbying members of Congress about the importance of tax-exempt bonds, worry that a tax reform bill will eliminate or restrict tax exemption for certain kinds or all munis.

The Republican blueprint for tax reform proposed eliminating "special-interest" deductions and credits. The comprehensive tax reform plan proposed in 2014 by former House Ways and Means chair Dave Camp, who has some former staff still on the committee, would have imposed a 10% surtax on muni bond interest for high-income households retroactively and eliminated advance refundings, bank-qualified bonds, and private activity bonds, including 501(c)(3) bonds for hospitals, universities and other nonprofits.

Reps. Randy Hultgren, R-Ill., and C. A. Dutch Ruppersberger, D-Md., co-chair of the Municipal Finance Caucus, are circulating a draft letter for signatures that will be sent to leaders of the House Ways and Means Committee to stress the "vital role of tax-exempt bonds" as tax reform legislation is drafted. The letter points out that nearly two thirds of core infrastructure investments in the U.S. are financed with municipal bonds, including $400 billion of munis in 2015 alone.

Meanwhile, state and local groups are up in arms about the executive orders recently issued by President Trump to block federal grants from cities serving as sanctuaries for undocumented immigrants and repeal the Affordable Care Act – both of which could seriously hurt their finances.

Trump's Jan. 25 executive order: "Enhancing Public Safety in the Interior of the United States," directed the Secretary of the Department of Homeland Security to designate jurisdictions as sanctuary cities. The Attorney General would deny them federal grants, except for law enforcement purposes.

Tom Cochran, executive director of the U.S. Conference of Mayors (USCM), along with the Major Cities Chiefs Association president Thomas Manger of Montgomery County, Md., said in a release: “Cities that aim to build trusting and supportive relations with immigrant communities should not be punished because this is essential to reducing crime and helping victims, both stated goals of the new administration.”

Mayors in many of the nation’s cities, including New York, Chicago, Los Angeles, Denver, Syracuse, and Austin opposed the executive order, with some of them, such as New York’s Bill de Blasio and Denver’s Michael Hancock stating or suggesting they will sue to block implementation of it.

The nation’s 10 largest cities could lose an estimated $2.27 billion of federal grants, according to Reuters. But Trump’s order does not include definitions of sanctuary cities or federal grants, as many mayors, the USCM, and some muni market participants pointed out.

Would the order affect federal subsidy payments for direct-pay bonds such as Build America Bonds or federal allocations of private activity bonds to states? Probably not, said sources, adding that there are many unknowns, according to the mayors and some market participants.

“I would say that a BAB payment is not a federal grant, it is a tax credit. But what will the Trump administration say?” asked Bill Daly, director of governmental affairs for the National Association of Bond Dealers. Daly pointed out that Trump cannot override legislation that provides federal grants. Congress would have to change the legislation.

“There’s going to be a lot of litigation over this,” said Daly. “It’s going to be very unclear for a while what this means.”

The USMC and MCCA suggested the executive order is illegal. “The U.S. Supreme Court has held that denying federal funds to cities to coerce compliance with federal policies may be unconstitutional,” they said.

Trump’s executive order on repeal of the ACA: “Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal,” was issued on Jan. 20. It orders the Secretary of Health and Human Services and other federal agencies, “to the maximum extent permitted by law” to “waive, defer, grant exemptions from, or delay implementation of” any provision or requirements of the Act that “would impose a fiscal burden on a state of a cost fee, tax, penalty, or regulatory burden” on families, individuals, and health care providers, insurers, and others.

The USCM sent a letter to Congress urging members “to build upon, not tear down the progress that has been made to our healthcare system and to ensure that none of the 20 million newly covered individuals is left without health care coverage.” The group said the costs and effects of repealing the ACA “will be felt most heavily at the local level” because “it is the cities and counties that will see increases in indigent care costs for our hospitals, in uninsured rates and uncompensated care costs.” The mayor said they also strongly oppose efforts to convert Medicaid to block grants.

The Bond Buyer

By Lynn Hume

January 26, 2017

U.S. Muni Bond Market Sales Drop to $4.4 bln Next Week.

U.S. states, cities, schools and other issuers in the municipal market are expected to sell about $4.4 billion of bonds and notes next week, down from about $7 billion this week, according to preliminary Thomson Reuters data.

Infrastructure deals rank high on next week's sales, led by $478.5 million of revenue and refunding bonds from the Oklahoma Turnpike Authority. New York City Municipal Water Finance Authority plans to sell $330 million of water and sewer system second generation resolution revenue bonds. There's also $300 million of District of Columbia Water and Sewer Authority public utility senior lien revenue bonds.

Large education deals will also go to market next week. There's $381 million of Board of Regents of Texas Tech University System taxable refunding and improvement bonds, and $323.6 million of general obligation bonds from North Clackamas School District No. 12. The University of Colorado Hospital Authority plans to sell $300 million of revenue bonds.

All of the top sales next week come from the negotiated calendar, which in total is expected to bring $3.4 billion to the market. An estimated $1 billion will hail from the competitive calendar.

The municipal market was a bit weaker on Thursday as munis posted losses in various spots along the yield curve, reported Janney Fixed Income on Friday. The benchmark 10-year and 30-year rates each increased by 1 basis point to finish at 2.39 percent and 3.19 percent. Municipal fund inflows were positive for the third consecutive week.

Reuters

Fri Jan 27, 2017 | 11:28pm IST

(Reporting By Robin Respaut; Editing by Bernard Orr)

Michigan Municipal League Proposes Cost-Control, Investment Legislation.

With the goal of fixing what they see as Michigan's broken municipal finance system, the Michigan Municipal League announced this week that they would now be offering proposals aimed at changing the situation.

The league, a coalition dedicated to educating officials, assisting administration and innovating in Michigan communities, is pushing the value of placemaking–a concept promoted by Gov. Rick Snyder during his State of State address–and trying to tear down impediments to it. Placemaking is the concept of revitalizing and modernizing downtown and neighborhood areas.

"Michigan's current system for funding municipalities is clearly broken," Dan Gilmartin, executive director and CEO of the Michigan Municipal League, said. "From 2002-2012, we were the only state in the nation where municipal revenue actually fell, and there has been little improvement since then. That means cities have laid off first responders and been unable to maintain roads and infrastructure, let alone provide the services that attract college graduates, the lifeblood of today's middle class."

Part of the problem facing municipalities, according to the league, are that its finance system fails to track the economy, which has actually seen revenue sharing cut by $7.5 billion since 2002 while state policy limits local governments' ability to control many of their own costs.

"Gov. Snyder has called for our state to grow its population back to the 10 million mark, and we agree that 'true' growth is the answer," Gilmartin said. "We must recognize that won't happen if our cities continue to be burdened by archaic state policies."

The league has advocated for state-authorized efforts to help cities contain costs so they can continue providing benefits to retirees, enhancements to existing infrastructure and a recommitment to revenue sharing.

Published on January 27, 2017 by Peninsula Reports

How Healthy Are Your Hospital Bonds?

Bonds for health care systems have long been a staple of the high-yield municipal bond market. I believe that they are closer to low-risk tax-backed and utility revenue bonds, which have extremely low default rates which approximate .5% an issue over the entire life of those bonds.

Bonds for senior living communities, development district "dirt bonds", tobacco bonds and corporate "industrial development bonds can have default rates over the life of those bonds that range from 8%-15%. It is estimated that hospital bond defaults in range between 3%-4% over their life.

There is a wide spectrum of health care bonds. Bonds issued by large multi-state issuers have the lowest risk, because no single hospital default would drag down the rest of the system. Lower risk however means lower yields. Then then there is an array of single site hospitals, with varying degrees of risk. I prefer hospitals that have national or international demand, perhaps because of the specialty they may offer such as state-of the art pediatric, heart and/or cancer services. I also look for balance sheets containing at least 150-200 days of cash on hand to meet recurring monthly expenses, and cash equaling or exceeding outstanding debt.

Finally, there are "Critical Access Hospitals", small units in rural areas where patients cannot reach acute care facilities within driving distance. These hospitals obtain special subsidies to allow for their operation under sparse resources.

Risks in this sector are considerable because competition from new hospitals can drain resources from older hospitals. However, health care represents a vital public service, and will continue unless technology provides an alternative. At this point, it is fruitless to ascertain changes to ObamaCare until the President and Congress "show their cards."

Dick Larkin, Credit Analyst for Stoever Glass

6:00 a.m. Monday, Jan. 23, 2017

Dick Larkin is a former Chief Municipal Rating Officer for S&P. Stoever Glass is a 54 year-old Investment firm specializing in Municipal Bonds located in New York & Florida. A registered Broker/Dealer, Member FINRA, SIFMA, & SIPC. Advisory Services through Stoever Glass Wealth Management, Inc., a registered advisory firm.

Mnuchin Says He'll Work to 'Enhance' PABs for Infrastructure Projects.

WASHINGTON – President Trump's nominee for Treasury Secretary Steven Mnuchin told lawmakers in writing that he plans to "enhance" private activity bonds so that they can be used to encourage more private investment in infrastructure projects.

In written responses to questions from members of the Senate Finance Committee who will decide whether to recommend the Senate confirm him, Mnuchin also said that he would help administration officials consider all options to ensure the long-term solvency of the Highway Trust Fund.

In addition, he promised committee chair Sen. Orrin Hatch, R-Utah, who is very displeased with Treasury's Office of State and Local Finance, that he will evaluate the office and its activities.

Mnuchin's comments about private activity bonds came after Sen. Sherrod Brown, D-Ohio, asked him what steps he would take to modernize private activity bonds (PABs).

"There are areas where we can improve [PABs], including changing volume caps for certain types of projects," Mnuchin responded. "If confirmed, I plan to review ways to enhance [PABs] with the goal of driving more private investment into American infrastructure."

The Treasury nominee was less specific about governmental tax-exempt bonds. When asked by Sen. Maria Cantwell, D-Wash., if he considers the tax exclusion for municipal bond interest a "special interest deduction," Mnuchin said, "The President is committed to rebuilding America's infrastructure. If confirmed, I will work with Congress to determine the role of tax exempt financing vehicles under that plan and as part of broader tax reform."

Trump and Republican lawmakers have vowed to eliminate special interest deductions as part of tax reform.

Sen. Mark Warner, D-Va., asked the Treasury nominee if he would commit to work to identify potential revenue sources to bring long-term solvency to the Highway Trust Fund (HTF).

Mnuchin responded, "As Treasury Secretary, I will help the administration consider all options for increasing investments in infrastructure and ensuring the long-term solvency of the [HTF]."

State highway officials have been worried that Trump's proposed $1 trillion infrastructure proposal obscures the need to find a long-term source of federal funding for the HTF, which supports almost all federal highway and transit funding.

The HTF, which contains revenues from federal gas, diesel and other taxes, is anemic and will only remain solvent through 2020, according to the Congressional Budget Office. Those revenues have been dropping because cars are more fuel efficient and, during the Great Recession, families and individuals drove less.

Mnuchin promised to review Treasury's Office of State and Local Finance at the request of Hatch who noted the office was established in April of 2014 "without notification or discussion" with him when he was ranking minority member of the committee.

"That office has engaged many of its activities in recent years to lobbying Congress for bankruptcy authority for Puerto Rico, including what in my view has been highly politicized rhetoric concerning 'austerity' versus creditor 'haircuts,' where many creditors happen to be innocent residents of

Puerto Rico who purchased bonds issued by numerous component units of the Puerto Rico government," he said.

The committee chairman noted that while the office was authorized to provide 'technical assistance' to Puerto Rico, it "recently tried to expand that authority" by requesting appropriation committee members to authorize it to give the same kind of assistance to states and municipalities.

Hatch said the office has been unresponsive to requests from his staff for briefings on the "technical assistance" it's providing Puerto Rico "and why at least one Treasury official has signed confidentiality agreements with component units of the Puerto Rico government, including a bond-issuing unit."

Hatch raised this issue last June in a letter to Treasury Secretary Jacob Lew, warning the agreements signed with the Puerto Rico Electric Power Authority (PREPA) "have the potential of granting select federal officials access to possibly market-sensitive information."

Lew responded that the agreements were a "typical arrangement" that helped Treasury officials better understand Puerto Rico's financial condition and that Treasury staff had provided the agreements to the committee.

Hatch, in his written questions, said, "troubling press reports" suggest the office's activities may be "more political than what Congress would reasonably expect to be 'technical' assistance."

Mnuchin responded, "I will be pleased to look into the Office of State and Local Finance and evaluate both its focus and effectiveness as you suggest."

As for the Internal Revenue Service, Mnuchin told Warner that he "will seek to adequately staff and modernize" it. "I do not have access to all of the information, but it is likely that further cuts to the IRS will indeed hamper our ability to collect revenue," he said.

The Bond Buyer

By Lynn Hume

January 25, 2017

Should Tax Collectors Be Loan Collectors?

Investors love a federal green-energy program for property owners. But if there's a backlash, localities could be caught in the middle.

As proof that no good deed goes unpunished, a well-intentioned federal green-energy program has put local governments into a new alliance with finance companies, sparking a small frenzy on the bond market and turning county tax collectors into de facto home-loan servicers in 34 states and the District of Columbia.

Property Assessed Clean Energy (PACE) is an Obama-era Department of Energy program designed to help residential and commercial property owners finance renewable-energy systems and energy-efficiency improvements. PACE, according to The Wall Street Journal, has become the nation's fastest-growing loan category. Along the way, the property-tax assessment and payment system has morphed into a home equity loan repayment process, posing new perils for property owners and localities alike.

PACE works like this: Contractors offer special home-equity loans to homeowners to go green. Once the green upgrades are completed and the loan documents are signed, the loans are packaged with thousands of similar loans and sold to investors in the form of bonds. Any observer of the last great boom-and-bust cycle — along with any fan of the 2015 film “The Big Short” — will recognize the process.

But here’s the rub: PACE loans aren’t repaid like a car loan or a mortgage. Instead, localities serve as the middlemen by collecting payments once or twice a year as an assessment in the property owner’s tax bill. Localities earn a fee and then forward the proceeds to finance companies.

The premise is a good one, at least in theory. It incentivizes property owners to make environmental upgrades, requiring no cash up front. The *Harvard Business Review* named the concept as one of 10 “Breakthrough Ideas for 2010,” and *Scientific American* profiled the concept’s creator.

Institutional investors are devouring the bonds because of their high credit ratings and green status. The first PACE program bond, structured by Deutsche Bank and issued in 2014, was awarded an AA credit rating by the Kroll Bond Rating Agency. The interest rate — the “coupon” in bond-speak — was 4.75 percent.

Recently the largest ever PACE bond was issued. It contained 13,432 assessments on homes in 31 California counties. The assessments had an average balance of about $24,400, an average interest rate of 7.96 percent and an average term of 14.95 years. This suggests an additional annual tax-bill payment averaging about $3,200 per property owner.

Critics in the banking industry argue that the PACE model gives these assessments priority lien status over mortgages. To placate lenders in California, which has been a laboratory for the concept and where PACE loans are known as HERO loans, a $10 million mortgage-loss reserve was established in 2014. Still, the banks don’t like it.

Other critics contend that the program has been developed as fodder for the bond market and that environmental aims are secondary. PACE financing has been used to purchase everything from furnaces to pool covers to artificial turf. The National Consumer Law Center has reported abuses with the program, including some in which elderly homeowners were victimized.

From a public-policy standpoint, proponents see little difference between PACE and a locality paving a street and then assessing homeowners for the cost. PACENation, an industry group, argues that the increased investment has created stable work for local contractors — often family-owned businesses that have served their communities’ needs for heating, air-conditioning, plumbing, roofing and landscaping for decades.

In the middle of all of this are participating localities, which sometimes deal with reports of abuse by contractors selling the loans with scant oversight, and homeowners, some of whom are shocked when their tax bills double or triple.

Even worse, localities fear that, if the home market goes bust again, they may be forced into wide-scale foreclosure proceedings, possibly leaving taxpayers on the hook to cover resulting loan-repayment shortfalls. And if and when a backlash comes from taxpayers or investors, it’s likely to be local governments, the middlemen in all of this, that will have to deal with it.

GOVERNING.COM

BY JEREMY BAGOTT | JANUARY 25, 2017

Study: More Corrupt States Have Higher Public Debt.

The link between corruption and debt is particularly prominent for private projects, such as stadiums.

Corruption might not just land politicians in jail. It could also cost taxpayers more money.

According to new research published in the journal *Public Administration Review*, states with more public corruption convictions have greater levels of government debt. Fighting corruption, the authors argue, can help governments limit debt and lower the higher borrowing costs they're subject to.

"Public corruption is far from a victimless crime. It costs money," said John Mikesell, an Indiana University professor who co-authored the study.

Researchers found that the 10 most corrupt states would have owed an average of 9 percent less, or $249.35 per capita, if they cut levels of corruption to the 50-state average.

A link between public debt and corruption may exist for a number of reasons. Compared to operating budgets, issuance of debt typically isn't as closely scrutinized. And, the report authors say, stealing a fraction of money from a large deal is often more profitable than siphoning dollars from a single line item in the budget.

From 1977 to 2008, the study found the relationship between corruption convictions and debt to be strongest for long-term debt issued for private purposes. Debt issued for private purposes typically involves more private-sector players, opening up more opportunities for corruption. For instance, deals involving private parking garages or stadiums — where profits are a major consideration — are more ripe for corruption than construction of new schools, said Mikesell.

There's also a relationship between corruption and how governments spend their money. According to related research published in the journal Economics of Governance, developed countries with more corrupt political environments invest more in housing and physical capital projects than schools and health.

Interestingly, the new study didn't find a relationship between corruption and short-term debt, which is typically due within a year. That's because, according to the authors, short-term debt is generally subject to greater scrutiny.

To approximate levels of corruption, the study relied on numbers of convictions reported by the U.S. Department of Justice. One limitation of the study is that this data does not distinguish between public officials and all other types of government employees, such as postal workers and administrative staff caught stealing. The study further controlled for multiple political and demographic factors, such as incomes and the competitiveness of elections.

Governments can try to curb mounting debt levels, but it's difficult.

The report found some measures — such as limiting tax expenditures and general obligation debt, and giving governors strong veto powers — showed no significant effects on public debt.

Other research suggests rating agencies disincentivize corruption by giving lower credit ratings to bonds issued by governments viewed as more corrupt. Despite that, lower credit ratings, and thus higher borrowing costs, aren't shown to curb corruption either.

But it's likely, the report notes, that some legal determinants are easily avoidable when corrupt officials possess the will to do so.

Still, this doesn't mean that deterrents are futile. Other safeguard measures not studied might be more effective. Mikesell cited efforts such as aggressive internal audits, requirements for more than one person to sign checks and regular personnel rotations.

"It's very important to have robust systems in place to prevent the impact of public corruption as much as possible," said Mikesell. "Little things could prevent fairly massive theft."

GOVERNING.COM

BY MIKE MACIAG | JANUARY 24, 2017

The Week in Public Finance: What We Don't Know About Sanctuary Cities' Funding, New Reasons to Save and More.

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

GOVERNING.COM

BY LIZ FARMER | JANUARY 27, 2017

Coming Soon to 6 States: Online Sales Taxes From Amazon.

Online retail giant Amazon will begin collecting sales tax in Missouri next month, as it does in dozens of other states.

The collection of state sales tax in Missouri will begin Feb. 1, Amazon spokeswoman Jill Kerr said in an email to the Post-Dispatch. The state sales tax rate in Missouri is 4.225 percent.

Items sold by Seattle-based Amazon.com and its subsidiaries already are subject to sales tax for merchandise shipped to more than 30 states. Amazon will also begin collecting sales tax on Feb. 1 in Mississippi, Rhode Island, South Dakota and Vermont, and in Wyoming in March.

Amazon does not yet have facilities in the state of Missouri, and online retailers aren't required to collect sales tax where they don't have a physical presence. Amazon charges sales tax in Illinois, where it has multiple distribution facilities, including in Edwardsville.

Amazon announced this month that it planned to hire 100,000 fulfillment employees nationwide over the next 18 months, leading to speculation that the company will open distribution facilities in Missouri. Amazon declined to comment on its distribution facility expansion plans.

"I gather they will be expanding in Missouri because there is a lot of warehouse space here," said

David Overfelt, president of the Missouri Retailers Association, a Jefferson City-based trade group that supports requiring online retailers to charge sales tax.

"This is going to be good for Missouri and good for our communities because we provide a lot of services and finding resources is getting tougher and tougher," Overfelt said of Amazon's collection of sales tax. "This is a long time coming. We can't continue down the way we are without hurting Main Street businesses."

Several states and retail groups have pushed for years for Amazon to begin charging sales tax, arguing brick-and-mortar retailers that must charge sales tax are unfairly disadvantaged.

In 2013, a new tax law in Missouri required online retailers to collect sales tax if the company received business referrals from an affiliate in Missouri. After the law was passed, Amazon ended its Associates Program in Missouri that paid advertising fees to web entrepreneurs for customers referred to Amazon.com

Stephen Weiss, owner and president of Creve Coeur Camera, said he welcomed Amazon's announcement that it would begin charging sales tax. Shoppers often come to his eight stores to look at equipment but buy on Amazon because no sales tax is collected, making the purchase $50 or even more than $100 cheaper than buying at his stores, a practice retailers call "showrooming."

"It makes a huge difference," Weiss said about competing against Amazon's prices that don't include sales tax, which he said is an unfair disadvantage. "It kills us."

Creve Coeur Camera, a St. Louis County-based chain, is closing its Edwardsville store at the end of this month and is considering shuttering another store in part due to lost sales that Weiss blames on Amazon. Up until four months ago, Creve Coeur Camera sold some lenses through Amazon, but Amazon recently went directly to the manufacturer to supply the lenses, Weiss said.

Adding sales tax to goods sold in Missouri will help level the playing field for retailers, he said. "I think it'll help, no question."

A Missouri Department of Revenue spokeswoman did not immediately respond to requests for comment about the amount of new tax revenue that will be generated.

Carl Davis, research director for the Washington, D.C.-based think tank Institute on Taxation and Economic Policy, estimated the state of Missouri could collect between $30 million and $34 million annually from Amazon sales, based on an analysis of revenue generated in other states.

"We're supporters of sales tax being collected on online purchases in the same way they're collected at brick-and-mortar stores," Davis said.

Some Missouri Amazon customers criticized the decision on social media Wednesday, saying it could make merchandise more expensive.

Judith Stallmann, a professor at the University of Missouri who studies state and local public finance and rural and economic development, said the change may prompt cost-conscious shoppers to shift their buying habits.

"This means you're going to be paying sales tax on things you didn't before," Stallmann said. "There may be some people for whom paying sales taxes could weigh on their decision."

BY TRIBUNE NEWS SERVICE | JANUARY 27, 2017

By Lisa Brown

S&P: U.S. Public Transportation Issuers Maneuver Around Obstacles To Maintain Stability In 2016.

The U.S. public transportation sector dealt with a lot of uncertainty in 2015, stemming from uncertain federal funding, fluctuating transaction volumes, and a continued slow economic recovery. Standard & Poor's Ratings Services believes the sector will continue to face some minor turbulence and bumps in the road in 2016, and with perhaps some positive news for certain grant anticipation revenue vehicle (GARVEE) bonds.

We define the transportation sector as consisting of seven categories. The three largest, by the number of entities that Standard & Poor's rates, are airports, toll roads and bridges, and ports. Other categories include bonds secured by parking systems, transit systems, special facilities (such as cargo or passenger airline terminals, as well as fuel farms at airports), and GARVEES, which are bonds backed by direct federal payments for highway and transit programs (GARVEES are grant anticipation revenue vehicles). Standard & Poor's expects 2016 to be another year of stable credit quality for the Transportation sector. The GARVEE category, however, is bifurcated as bonds rated 'AA' and higher are stable and 'A' rated credits may have upside potential.

Continue reading.

12-Jan-2016

How San Diego's Taxpayer Won by Letting the Chargers Bolt.

- Moody's: voters' rejection of new stadium credit positive
- Largest city-owned site could be redeveloped in better deal

The departure of a professional football team from San Diego means the city may not need to pay out $11.7 million annually from its general fund on the stadium for much longer.

The National Football League's Chargers are decamping for a new Los Angeles area stadium after voters in November rejected a measure that would have pledged $1.1 billion in public backing for a new arena. Not only did residents dodge a debt burden, they now have a chance to see redevelopment of the city's largest piece of real estate available. One proposal would bring a soccer franchise without public subsidies.

The ballot proposal, pushed by the Chargers, would have increased hotel taxes to 16.5 percent from 10.5 percent to pay for a new stadium and a convention center expansion. But analysis by consultants highlighted the uncertainty of the $1.8 billion price tag. Since the city would have borne any cost overruns and infrastructure improvements, the rejection of the measure by 56 percent of the voters was a credit positive, Moody's Investors Service said.

"We've had a history of bad deals as a city," said City Councilman Chris Cate, who opposed the ballot measure. "I firmly believe that taxpayers paying for a stadium has no economic benefit whatsoever to the city or the region."

San Diego still owes $38 million in municipal bonds on the stadium, data provided by the city show. Debt service next year through 2027 will total about $4.7 million annually, which won't be covered by the team's $12.5 million payment to the city for breaking its lease. Still, it would be a "minimal" impact to the city's general fund, said Kristina Alagar Cordero, a Moody's analyst.

Investors in the city's debt don't appear to be put off by the loss of the football team. A San Diego 5.25 percent coupon 2040 revenue bond, callable in 2020, is trading at a 31 basis point spread to the BVAL AA Muni 5-Year Revenue Curve, compared to 28 basis points just before Election Day and 52 basis points on the day the Chargers made their departure official on Jan. 12.

Thanks to rebate agreements and legal settlements, San Diego actually ended up paying the Chargers to play for the past decade. "If anything, there will likely be a cost savings to the city by not having to provide public safety services" during games, said Craig Gustafson, a spokesman for Mayor Kevin Faulconer, in an e-mail.

The Chargers, who ended the season last in its division and with a home attendance that was second-worst in the league, will join the Rams in a new stadium in Inglewood, outside of Los Angeles, when it opens in 2019. Until then the team, renamed the Los Angeles Chargers, will play in a smaller complex in Carson.

Other leases, such as with San Diego State University, oblige the city to keep the stadium open through 2018. After then, it's up in the air. Since the facility is costing the general fund and also needs $90 million in upgrades, municipal officials are evaluating "the financial feasibility of continuing stadium operations beyond that point," Gustafson said.

The departure could yield a chance for long-term positive impact if the 166-acre site is redeveloped. "It does provide the city an opportunity," Cordero said.

Bloomberg Technology

by Romy Varghese

January 27, 2017, 2:00 AM PST

–With assistance from Eben Novy-Williams.

Bloomberg Brief Weekly Video - 01/27

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

Watch the video.

Bloomberg

January 27, 2017

Bond Dealers of America Launches Small Firm Division.

The BDA, in partnership with Hilltop Securities Clearing, is pleased to announce the formation of the BDA's Small Firm Division which will provide direct, tangible advocacy for smaller broker-dealers and banks active in the US fixed income markets and which, until today, had no voice and no representation in Washington, DC. It's time Federal policy makers understand and appreciate the issues facing "Main Street" issuers, investors and dealers. The BDA's Small Firm Division will facilitate this direct advocacy.

Hilltop Securities Clearing is the 2017 sponsor of the Small Firm Division and has been instrumental in the Division's formation and leadership.

2017 leadership of the Small Firm Division:

Lana Calton, Chair
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Members of the Small Firm Division (SFD) will be given a forum to identify issues of common interest – whether regulatory, legislative or market practice – and together with BDA staff will work with DC policy makers on common sense, market driven solutions which benefit "Main Street" investors, issuers and tax-payers. SFD members will also be invited to all BDA events including the BDA's National Fixed Income Conference which has become the "must-attend" event for fixed income leadership at middle-market, regional and small firms headquartered nationwide.
For more information on the BDA's Small Firm Division please contact Mike Nicholas at mnicholas@bdamerica.org or 202-204-7900, or go to the BDA website at www.bdamerica.org.

Bond Dealers of America

January 26, 2017

What Everyone Should Know about Their State's Budget.

Get under the hood of your government and learn not just how much a state spends, but what drives that spending.

Access the interactive app.

Puerto Rico Creditors Open Checkbooks in Debt Negotiations.

Hedge funds holding Cofina bonds have offered emergency financing to struggling U.S. territory

Some of Puerto Rico's creditors are offering financing to the indebted U.S. territory as they jockey for top status in the renegotiation of its debts, according to people familiar with the matter.

The federal board installed to supervise Puerto Rico's debt restructuring met last week with major creditor groups, some of which are sizing up whether the island's government needs an immediate infusion of liquidity, and if so, how much, these people said.

Hedge funds holding senior bonds backed by sales-tax revenues, called Cofinas, have offered roughly $800 million in emergency financing to alleviate a potential cash crunch, these people said. As recently as last week, Franklin Advisers and OppenheimerFunds Inc., the territory's two largest mutual-fund creditors, separately offered to extend financing to Puerto Rico, a person familiar with the matter said.

A spokesman for the oversight board on Monday declined to comment on specific financing proposals.

With $70 billion in bond debt, crippling out-migration and high unemployment, Puerto Rico is in the midst of a financial crisis that has led it to seek concessions from creditors. Last week, departing Treasury Secretary Jacob Lew warned that Puerto Rico may be unable to renew contracts with health care providers without financial relief before April.

Congress passed a rescue law for Puerto Rico last summer to install the board and establish two debt-restructuring mechanisms, one of which allows for consensual settlements with creditors. If negotiations fail, Puerto Rico can petition a court to initiate a quasi-bankruptcy process known as Title III and potentially force creditors to accept unfavorable repayment terms.

The Puerto Rico Oversight, Management and Economic Stability Act, or Promesa, also temporarily freezes litigation against the government. In a letter sent last week to new Gov. Ricardo Rossello, the oversight board said it was "favorably inclined" to extend the litigation stay from Feb. 15 to May 1 to give him time to develop a fiscal plan. The board also warned him not to accept any "short-term liquidity loans or near-term financings that could restrict fiscal options."

Elias Sánchez, Mr. Rossello's representative on the board, responded in a letter Sunday that the governor would "face the upcoming operational and budgetary challenges through structural reforms and spending cuts during the stay period." While an extension of the stay until May 1 is widely expected, creditors' hopes are dimming that Puerto Rico can strike restructuring deals or line up financing before it runs out of cash and needs to seek protection under Title III, according to people familiar with the matter.

Lending to Puerto Rico may be tricky because the financing likely would require collateral that other creditors would say is theirs, said Gary Greendale, managing director of bond insurer Ambac Assurance Corp., which has guaranteed nearly $9 billion in Puerto Rico bonds. Moreover, as their price for providing financing, creditors are pushing to lock in debt-restructuring terms, something Puerto Rico may not be willing to provide this early in the restructuring process, according to people familiar with the matter.

"The currency of liquidity comes with some component of working out a deal," Mr. Greendale said. "Nobody wants to make an investment for investment's sake."

The group of senior Cofina creditors, led by Tilden Park Capital Management LP, Merced Capital LP, Whitebox Advisors LLC and Goldentree Asset Management LP, are proposing to let Puerto Rico access roughly $400 million in sales-tax revenue that has already been collected, according a person familiar with the matter. The creditors would then purchase another roughly $400 million in long-term sales tax bonds at market rates on the condition that Puerto Rico not seek additional concessions from holders of Cofina bonds.

The proposal also requires participation from subordinated sales-tax creditors, the people said. But floating new Cofina bonds may be difficult outside of Title III because a rival group of creditors holding general obligation debt has sued to invalidate the Cofina bonds and claim those sales taxes as their own, the people said. Puerto Rico owes roughly $17 billion in sales-tax bonds and another $13 billion in general-obligation bonds.

"Without commenting on prospective developments or undermining the process, we're continuing to pursue constructive, creative solutions that align creditor interests with those of our fellow citizens in Puerto Rico," said Susheel Kirpalani, a Quinn Emanuel Urquhart & Sullivan attorney advising the senior Cofina creditor group.

Creditors offered to provide financing during the prior gubernatorial administration, but none succeeded. The hedge funds who have challenged the Cofina structure offered last year to buy up to $750 million in new bonds as part of a restructuring offer. Those talks failed. In July, Puerto Rico didn't pay $780 million in general obligation debt service, the largest-ever U.S. municipal default.

THE WALL STREET JOURNAL

By ANDREW SCURRIA

Updated Jan. 23, 2017 6:54 p.m. ET

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

Welcome to the Virgin Islands, One of the Most Indebted Places in the U.S.

The U.S. territory is running out of options as it faces rising debt and pension obligations, a declining population and tepid response to proposed new bond offerings

A U.S. territory famed for its white-sand beaches and azure waters is in a precarious financial position. This time, it isn't just Puerto Rico.

The U.S. Virgin Islands shares many of the same fiscal problems as its Caribbean neighbor 80 miles to the west: high levels of debt, mounting pension obligations and a declining population.

Local legislators on Tuesday are expected to consider a new round of taxes as a way to shore up the Virgin Islands' $110 million budget deficit. That follows an unsuccessful attempt this month to sell about $220 million in bonds, the second time in two months the territory has called off a planned bond sale.

Virgin Islands Gov. Kenneth Mapp said the territory, with a population of some 105,000 people, has no problems making payments on its $2.2 billion in debt obligations. But he predicted widespread service cuts and layoffs if new bonds can't be sold.

Moody's Investors Service on Tuesday downgraded certain Virgin Islands bonds by three notches further into junk and cited "an increased possibility that the government may be forced to restructure its debt to address its financial problems."

"I think this is a critical juncture," said Nikolao Pula, director of the Office of Insular Affairs, which coordinates federal policy for several U.S. territories as part of the Interior Department. "We just hope whatever decision they make will be good moving forward."

Any failure by the Virgin Islands to pay back money owed to investors could intensify competition for limited government dollars inside the territory.

Virgin Islands bonds have traditionally appealed to mainland bondholders and U.S. mutual funds because they are exempt from state taxes. U.S. mutual funds hold nearly $1 billion in Virgin Islands bonds, according to research firm Morningstar Inc.

The mutual fund with the highest percentage of its portfolio invested in Virgin Islands debt is made up largely of Wisconsin investors. Wells Fargo Asset Management, which oversees the Wells Fargo Wisconsin Tax Free C fund, said it is protecting itself from the Virgin Islands' financial situation by holding debt that is either insured or coming due within the next 18 months. More than 8% of its holdings is debt issued by the U.S. territory.

At Western Asset Management, based in Pasadena, Calif., which also holds Virgin Islands bonds, senior analyst Fred Poon said he expects the Virgin Islands legislature will eventually enact a "sin tax" on cigarettes and alcohol, as well as other revenue-raising measures.

"Who wants to argue against taxes on sin?" Mr. Poon said.

Including the islands of St. Thomas, St. John and St. Croix, the Virgin Islands has long struggled with budget deficits, but its problems accelerated after the 2008 economic downturn.

First, the economy, long dependent on tourism, took a hit. Annual expenditures by visitors fell 19% in the period from 2007 to 2013, a drop of $280 million. The territory's population shrank by almost 9% over that period.

Another blow came in 2012 when one of the territory's biggest employers shut down. The Hovensa oil refinery on the island of St. Croix employed 1,200 workers and 960 contractors, according to a report by Fitch Ratings at the time. The closing was expected to deprive the government of an estimated $100 million in annual revenue, according to a 2012 report from the then-governor.

With less revenue, the territory has relied increasingly on bond proceeds to pay operating costs while contributing less to pension plans. That borrowing has increased its debt to a level similar to that of Puerto Rico, on a per capita basis.

The lower pension contributions widened the funding gap for a retirement system that covers 9,303 current workers and 8,465 retirees and past workers, according to the fund's 2015 financial reports.

That pension plan has only 27% of what it needs to pay future benefits, according to 2015 financial statements; a 2015 analysis by Segal Consulting predicted the fund would run out of money by 2024.

The governor said he plans to unveil proposed pension fixes this year and hold hearings on the topic. "We need to come up with a strategy," Mr. Mapp said.

Another strain is that U.S. territories, including the Virgin Islands, typically receive less federal money than U.S. states, according to Rep. Stacey Plaskett, the nonvoting U.S. congresswoman representing the Virgin Islands. For example, the federal government caps the amount of Medicaid payments the territories receive. "Our disparity of treatment is I believe what has caused these financial issues to occur," Rep. Plaskett said.

Some analysts expect the territory to eventually turn to Washington, D.C., for help, as Puerto Rico did in 2016. Congress last year passed legislation that provides Puerto Rico with a stay against creditor litigation in exchange for oversight from a seven-member board that controls the territory's finances and approves any court-supervised debt restructuring.

A similar solution for the Virgin Islands "is totally possible within the next five years," said Matt Fabian, a partner with research firm Municipal Market Analytics.

But a cash crunch could come much sooner. Ken Kurtz of Moody's predicts the territory will need to sell bonds within the next few months to keep from running out of operating cash.

Interest in Virgin Islands bonds has been scarce ever since Congress authorized debt-relief legislation for Puerto Rico last June. Bondholders showed lukewarm interest in a Jan. 11 offering, even after the governor requested that federal funds backing the bonds be wired directly to an escrow agent, to alleviate concerns that the Virgin Islands would divert the money if the financial situation worsens.

The Virgin Islands Public Finance Authority received orders for slightly more than 60% of the bonds after offering an interest rate "in the 6% range," according to Mr. Mapp. The authority opted to cancel the deal rather than reduce its size, he said. A spokesman for the authority said it is no longer trying to sell bonds and will assess whether to re-enter the market "when appropriate credit and acceptable interest rates are present."

About $55 million of the $219 million offering would have been used to close a gap in this year's $1.35 billion budget, the governor said. If the Virgin Islands can't close that gap, "this is not sustainable," Mr. Mapp said. "We can't continue doing this."

THE WALL STREET JOURNAL

By HEATHER GILLERS

Updated Jan. 26, 2017 3:22 p.m. ET

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

Puerto Rico Governor Weighs Asking Creditors for More Concessions.

Some investors fear shift by governor reflects higher chance of bankruptcy

Many bond investors have viewed Puerto Rico's new governor, Ricardo Rosselló, as a likely ally in their fight to get repaid. Now that hope is starting to dwindle.

Gov. Rosselló wrested control Friday of negotiations over the only bond restructuring agreement Puerto Rico has reached thus far, a $9 billion deal struck in 2015 covering a public electricity utility known as Prepa, and is preparing to change terms of the deal, people familiar with the matter said.

Prepa's board was on the verge of completing the settlement when representatives of the governor informed board members and their advisers on a phone call Friday morning that they were relieved of their negotiating duties and that the island's Fiscal Agency and Financial Advisory Authority, known as AAFAF, would take over, the people said. The governor made the move to consolidate the negotiation process under an entity that is fully empowered to approve a deal, a person involved in the process said.

The utility's bonds were unchanged Friday, but the decision rattled bondholders who had hoped the governor would quickly approve the Prepa agreement. That pact had been lauded as a road map for consensual restructurings of the island's other bonds. Campaign promises by Gov. Rosselló to mend fences with bondholders raised hopes among investors that they could avoid lengthy court fights to determine how much Puerto Rico will repay its various creditors.

But Gov. Roselló is evaluating potential changes to the settlement, a person familiar with the matter said. Getting more concessions from creditors could allow Prepa to moderate rate increases on customers, potentially offsetting politically unpopular fiscal tightening in other areas.

The governor also struck a populist tone in a recent public spat with the federal oversight board managing Puerto Rico's financial rehabilitation. Investors increasingly fear there will be a bankruptcy, which could mean deep losses for many holders of the commonwealth's approximately $70 billion of debt.

"We're legitimately concerned that the Commonwealth's administration and the oversight board may choose to let it fall apart on the 1-yard line," said Stephen Spencer, a banker advising bondholders of the Puerto Rico Electric Power Authority.

The governor hasn't decided whether to renegotiate the Prepa agreement and is waiting for more clarity on the fiscal plan for the island before making a decision, said Elias Sanchez, the governor's representative to the oversight board. The governor is committed to reaching consensual deals with creditors, he said.

Puerto Rico has time to reach a negotiated settlement. The U.S. Congress passed a debt-relief law in June granting the island a standstill on creditor litigation until Feb. 15, and the federal oversight board says it supports extending the stay until at least May 1.

Gov. Rosselló is trying to balance the demands of bondholders and his electorate while placating the oversight board, which is pushing for creditors and Puerto Rico's budget to share significant reductions, a bid to stabilize the economy.

"He seemed more creditor friendly in the campaign, but now that he's the chief officer of the island, he faces harsh realities and different pressures," says Joe Rosenblum, director of municipal research at investment firm AllianceBernstein, who has been bearish on Puerto Rico bonds for several years.

Complicating matters, Puerto Rico's bondholders are divided among themselves.

Gov. Roselló also is pushing for financial relief from the U.S. Congress with measures such as higher health-care funding that could mitigate the need for cost cuts.

The debt-relief law passed by Congress last year allows the commonwealth to restructure all its debts through consensual negotiations, while allowing for a switch to a bankruptcy-like process known as Title III that can bind all creditors should talks fail. Nevertheless, it remains unclear whether the new administration can reach a settlement with bondholders that voters and the oversight board would also accept.

"The numbers are so huge, it's hard to see how they're going to be able to negotiate a deal," Mr. Rosenblum said.

Tensions erupted into public view this month when the oversight board published a letter prodding Gov. Rosselló to make $4.5 billion in fiscal measures by 2019. It also projected a 79% shortfall in the island's funds for debt repayment. The governor responded with a letter calling the board's focus on budget cuts "unacceptable."

Friction also is growing between the new administration and Prepa and its bondholders, including mutual-fund companies OppenheimerFunds Inc. and Franklin Templeton Investments and hedge funds BlueMountain Capital Management LLC, Knighthead Capital Management LLC and Marathon Asset Management.

Bondholders had been working with Lisa Donahue, the utility's chief restructuring officer, to complete terms and have been asking the Rosselló team since December to confirm his support for the agreement but have received no response, people familiar with the matter said.

"We believe this is the best deal for Prepa and the island," said Ms. Donahue, before her removal form negotiations. "We will continue providing the governor and his advisers information to that effect."

To be sure, the new administration could still renegotiate Prepa's debts outside of bankruptcy court and may propose only modest changes to avoid alienating bondholders, especially Franklin and Oppenheimer, which own billions of dollars of the island's other municipal bonds.

But it may be far harder to reach out-of-court deals with large holders of Puerto Rico's $13 billion of general obligation bonds, such as Aurelius Capital Management LP, Autonomy Capital LP and Monarch Alternative Capital LP, as well as owners of $17 billion bonds backed by sales taxes, including bond insurers Ambac Financial Group Inc. and hedge funds like Whitebox Advisors LLC. The factions are already litigating over who should be repaid more.

THE WALL STREET JOURNAL

By MATT WIRZ and ANDREW SCURRIA

Updated Jan. 27, 2017 6:14 p.m. ET

Write to Matt Wirz at matthieu.wirz@wsj.com and Andrew Scurria at Andrew.Scurria@wsj.com

U.S. Governors Want Say on Trump's Infrastructure Plan.

CHICAGO — U.S. governors are flagging hundreds of “shovel-ready” projects they regard as high-priority for President Donald Trump’s plan to fix the nation’s infrastructure.

Scott Pattison, executive director of the bipartisan National Governor’s Association, said on Monday his group, at the request of the White House, has assembled a list of 300 projects costing billions of dollars from 43 states and territories, with more expected to come.

“The good part from a bipartisan standpoint is there seems to be full consensus that we have a lot of infrastructure problems in the U.S., a lot of maintenance issues, also things that need building,” he said in an interview.

In his inaugural address Friday, the Republican president said the nation’s infrastructure “has fallen into disrepair and decay.”

“We will build new roads, and highways, and bridges, and airports, and tunnels, and railways all across our wonderful nation,” Trump said.

White House Press Secretary Sean Spicer on Monday told reporters that “infrastructure continues to be a huge priority.”

The American Society of Civil Engineers’ infrastructure report card has estimated the United States needs to invest $3.6 trillion by 2020.

Pattison said while it was still early in the process, disagreements are likely over how to fund infrastructure. He added that governors want “all the tools” to be made available, including cash, municipal bonds, public-private partnerships and federal matching programs.

“One of the biggest issues that has to be faced is that the gas tax has been primarily the way in which we funded a lot of our transportation projects, and that’s a declining revenue source,” Pattison said.

Governors also want to make sure their project priorities are immune from congressional earmarking, Pattison said, adding that states have developed “robust” prioritization programs.

By REUTERS

JAN. 23, 2017, 6:06 P.M. E.S.T.

(Reporting by Karen Pierog; Editing by Matthew Lewis)

Judge Confirms San Bernardino, California's Plan to Exit Bankruptcy.

SAN FRANCISCO — San Bernardino, California, won final court approval on Friday for its financial restructuring plan, clearing the way for the city to wrap up the bankruptcy case it launched more than four years ago when its leaders learned it was facing insolvency.

“I look forward to the city having a prosperous future,” U.S. Bankruptcy Judge Meredith Jury said at the conclusion of a hearing in Riverside, California.

Jury said she would sign a confirmation order soon and issue a written opinion on her decision.

City Attorney Gary Saenz told Reuters he expects the city's plan to take effect in late March or early April.

"We're well on our way," Saenz said.

Jury's decision capped San Bernardino's efforts, including lengthy negotiations with its employees, retired employees and creditors, to repair its finances, Mayor Carey Davis said.

"It allows us to be free of the stigma of being in bankruptcy," Davis said.

In December, Jury had said she would approve San Bernardino's plan, the product of a bankruptcy that cost the Southern California city at least $25 million to press and litigate.

San Bernardino filed for Chapter 9 municipal bankruptcy in 2012, marking the third filing of its kind that year by a California city.

San Bernardino's filing came on the heels a report by city staff that said the city faced an imminent financial crisis because it had exhausted its reserves and projected spending for the looming new fiscal year would exceed revenue by $45 million.

The city's plan for mending its finances involves cutting costs by folding its fire department into San Bernardino County's fire services district.

Retiree healthcare costs will also get slashed while city employees' pensions will be protected, and San Bernardino will pay holders of its pension obligation bonds 40 percent of what they are owed to erase $45 million of the debt over time.

San Bernardino expects its restructuring to cut $350 million in spending over 30 years, according to a city spokeswoman.

The city's plan promises to restore financial stability, said Michael Sweet, a partner at the Fox Rothschild law firm in San Francisco who handles municipal restructurings.

"I like the fact that they just didn't budget their way through this, but made significant structural changes, which appears to have put them a much better footing," Sweet said.

"We'll have to see if it holds," Sweet added.

The case is In re City of San Bernardino, in U.S. Bankruptcy Court, Central District of California, No. 12-28006.

By REUTERS

JAN. 27, 2017, 5:54 P.M. E.S.T.

(Reporting by Jim Christie; Editing by Chris Reese and Tom Brown)

[SIFMA with Other Associations Submit Comments to the MSRB with Recommendations to Improve the EMMA Platform.]

SIFMA in a [joint letter] with other organizations provide comments to the Municipal Securities Rulemaking Board (MSRB) to offer suggestions that, we believe, would enhance the ability of issuers and users to more successfully utilize the MSRB's Electronic Municipal market Access (EMMA) platform.

SIFMA co-signed with:

- Bond Dealers of America
- Government Finance Officers Association
- National Association of Bond Lawyers
- National Association of State Auditors, Comptrollers and Treasurers
- National Association of State Treasurers
- National Federation of Municipal Analysts

January 23, 2017

[MSRB Hires Chief Economist.]

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) announced today that Simon Wu will become its Chief Economist on February 6, 2017. Wu, who has nearly two decades of experience applying economic expertise to securities policymaking, will oversee economic analysis of MSRB rulemaking and municipal market transparency initiatives, and lead related statistical, econometric and financial analysis.

"Simon brings a wealth of economic and regulatory experience with him to the MSRB," said MSRB Executive Director Lynnette Kelly. "He will help the MSRB continue to apply its policy on the use of economic analysis in rulemaking and provide quantitative support to the MSRB's efforts to increase transparency and efficiency in the municipal market."

Wu comes to the MSRB from Berkeley Research Group (BRG) where as Director he provided financial economic expertise on many aspects of securities and banking issues. Prior to BRG, Wu was Vice President at NERA Economic Consulting where he served as a financial economic expert on securities trading, market structure, best execution, investment management, and financial institution risk management. Wu also served as Chief Economist at the Federal Housing Finance Agency, Office of Inspector General, where he won the Inspector General Award in 2012 and 2014. Wu began his career as senior economist at the Financial Industry Regulatory Authority (FINRA) where he led economic studies in support of securities rule proposals and policy impact analysis.

Mr. Wu has a bachelor's degree from Belmont University and master's and doctorate degrees from Vanderbilt University.

Date: January 24, 2017

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

- Updated GASB Codification and Other Publications Available to Assist State and Local Stakeholders.
- SEC Approves New Complaint Process for MAs; Update for Dealers.
- MSRB to Apply Customer Complaint Rules to Municipal Advisors and Modernize Existing Rules for Dealers.
- The Hidden Risks of P3s.
- Breaking News: Rev. Proc. 2017-13 Released
- IRS Releases Interesting Private Letter Ruling on Build America Bonds.
- NASACT Webinar – GASB's Financial Reporting Model.
- S&P U.S. Municipal Water Utility Sector 2017 Outlook: Potholes, Policies, And Pensions.
- And finally, Crime and Punishment: The Playground Years is brought to us this week by *O'Brien v. City of Mentor*, in which a group of teenagers decided to play "cops and robbers" in a city park. In a desperate flight from justice, one of the robbers guillotined himself when chased into a wire the city had strung up across two tennis courts. Let that be a lesson to you, fledgling felons. We expect this dispatch to result in a City of Mentor population spike, now that we know there's still a place where teenagers play "cops and robbers." Thus may it always be.

PENSIONS - CALIFORNIA

Cal Fire Local 2881 v. California Public Employees' Retirement System

Court of Appeal, First District, Division 3, California - December 30, 2016 - Cal.Rptr.3d - 2016 WL 7488338

Union petitioned for writ of mandate and injunctive relief to compel California Public Employees' Retirement System (CalPERS) to continue to apply prior state law that provided eligible public employees the option to purchase at cost up to five years of nonqualifying service credit.

The Superior Court denied petition. Union appealed.

The Court of Appeal held that:

- Legislature's elimination of public employees' option to purchase nonqualifying service credit did not violate the contracts clause, and
- Modifications of vested contractual pension rights that result in disadvantage to employees need not be accompanied by comparable new advantages.

Legislature's elimination of public employees' option to purchase nonqualifying service credit after five years of service did not violate the contracts clause of the state constitution, even though a Public Employees' Retirement System (CalPERS) publication stated that employees without five years of service had a vested right to purchase the credit upon completing five years, since the prior statute did not preclude a change in the law in stating that the credit could be purchased "at any time," and since the option to purchase service credit was detrimental to the successful operation of the pension system.

Where modifications of vested contractual pension rights of an employee prior to retirement result in disadvantage to employees, the state constitution's contracts clause does not require the modifications to be accompanied by comparable new advantages.

SPECIAL ASSESSMENTS - IDAHO

Hoffman v. Board of the Local Improvement District No. 1101

Supreme Court of Idaho, Boise, November 2016 Term - January 4, 2017 - P.3d - 2017 WL 33717

Landowners appealed assessments by county board for water system in local improvement district. Parties entered mediation and signed memorandum of settlement. Landowners then filed notice of settlement seeking enforcement of memorandum.

The District Court denied landowners' summary judgment motion, granted unopposed motion by district and county board, and required landowners to pay attorney fees. Landowners appealed.

The Supreme Court of Idaho held that:

- District Court could treat memorandum as non-integrated and consider extrinsic evidence in determining that landowners' execution of release of claims was material term, and
- Landowners could be required to pay attorney fees for appeal without reasonable basis in fact or law.

Trial court could treat as non-integrated handwritten memorandum of settlement following mediation and consider extrinsic evidence in determining that landowners' execution of release of claims was material term and memorandum was not enforceable settlement of landowners' claims against improvement district and county board to challenge assessments. Court did not look to extrinsic evidence in order to interpret terms of the memorandum, but was attempting to determine whether an enforceable contract had been formed.

Statute providing exclusive remedy of appeal by person who had filed objections to assessment roll or any other person aggrieved by confirmation of assessment did not preclude district court from requiring landowners to pay attorney fees to county board and local improvement district under statute entitling prevailing party to reasonable attorney fees, unless otherwise provided by statute, in any proceeding involving state agency or a political subdivision, if non-prevailing party acted without reasonable basis in fact or law.

Supreme Court would affirm award of attorney fees to county board and local improvement district for landowners' appeal challenging assessments without a reasonable basis in fact or law, where landowners made no effort to identify objections and grievances which prompted appeal and did not attempt to address district court's reasons for awarding fees, but contended that broad scope of statutory right to appeal created a low bar for reasonableness of an appeal.

IMMUNITY - MINNESOTA

O'Brien v. City of Mentor

Court of Appeals of Minnesota - January 3, 2017 - Not Reported in N.W.2d - 2017 WL 24686

Teenager, who was playing in city park and was injured when he ran into two metal cables stretched taut between a set of tennis courts owned by city, brought personal injury action against city.

The District Court entered summary judgment for city, and teenager appealed.

The Court of Appeals held that trespasser exception to recreational-use immunity statute was not applicable.

Cable setup, whereby two metal cables were stretched taut between a set of tennis courts owned by city, constituted a condition likely to cause death or serious bodily harm for purposes of determining whether trespasser exception to recreational-use immunity statute was applicable in personal injury action brought against city by teenager, who was injured when he ran into cables. There was a serious potential for injuries involved with running into cables that were difficult to see, children and adults were known to run at high speeds around tennis courts, and thus, metal cables at head or body level were inherently dangerous, and light on the tennis courts was not working.

City did not have actual knowledge that cable setup was likely to cause death or serious bodily harm, and thus, trespasser exception to recreational-use immunity statute was not applicable, and as such, city was immune with respect to injuries that teenager sustained when he ran into two metal cables stretched taut between a set of tennis courts owned by city. Cables had been set up in the same manner for ten years without any complaints or reports of injury, and there was no indication that anyone knew that the cable setup was likely to cause death or serious bodily harm before teenager's injury.

ZONING & PLANNING - NEW JERSEY

In re Declaratory Judgment Actions Filed By Various Municipalities

Supreme Court of New Jersey - January 18, 2017 - A.3d - 2017 WL 192895

After the Supreme Court declared the Council on Affordable Housing (COAH) defunct for failing to enact new regulations relating to construction of low- and moderate-income housing in municipalities for over 16 years, 13 municipalities filed declaratory judgment actions to ascertain their fair share obligation for affordable housing.

The cases were consolidated, and the Superior Court issued an interlocutory order regarding the municipalities' obligations relating to the need that arose during gap period. Township appealed, and the Superior Court, Appellate Division, reversed. Housing center sought leave to appeal, which was granted.

The Supreme Court of New Jersey held that:

- Municipalities were required to address need for low- and moderate-income housing that arose during period during which COAH failed to promulgate viable rules for construction of such housing;
- Towns were constitutionally obligated to provide a realistic opportunity for their fair share of affordable housing for low- and moderate-income households formed during gap period and presently existing; and
- In determining municipal fair share affordable housing obligations after gap period, the trial courts were required to employ an expanded definition of present need.

Needs of presently existing low- and moderate-income households formed during period during which Council on Affordable Housing (COAH) failed to promulgate viable rules for construction of such housing were required to be captured and included in setting affordable housing obligations for towns that sought to be protected from exclusionary zoning actions while COAH was defunct; attending to that need was part of the shared responsibility of municipalities.

Towns were constitutionally obligated to provide a realistic opportunity for their fair share of affordable housing for low- and moderate-income households that presently existed and were formed during period during which Council on Affordable Housing (COAH) failed to promulgate viable rules for construction of such housing.

In determining municipal fair share affordable housing obligations after 16-year period during which Council on Affordable Housing (COAH) failed to promulgate viable rules for construction of such housing, the trial courts was required to employ an expanded definition of present need. The present-need analysis was required to include, in addition to a calculation of overcrowded and deficient housing units, an analytic component that addressed the affordable housing need of presently existing low- and moderate-income households, which formed during the gap period and were entitled to their delayed opportunity to seek affordable housing, and the trial courts was also required to take care to ensure that the present need was not calculated in a way that included persons who were deceased, who were income-ineligible or otherwise were no longer eligible for affordable housing, or whose households may have been already captured through the historic practice of surveying for deficient housing units within the municipality.

MUNICIPAL ORDINANCE - NEW YORK

NYC C.L.A.S.H. v. City of New York

Supreme Court, Appellate Division, First Department, New York - January 3, 2017 - N.Y.S.3d - 2017 WL 21505 - 2017 N.Y. Slip Op. 00042

Advocacy organization and individual brought action seeking declaration that city ordinance that imposed the same restrictions on the use of electronic cigarettes as on the use of conventional cigarettes was unconstitutional for violating the single subject rule of state constitution, state law, and city charter.

The Supreme Court, New York County, granted state’s motion to dismiss. Plaintiffs appealed.

The Supreme Court, Appellate Division, held that:

- Constitution’s one-subject rule was inapplicable to city ordinance, and
- Ordinance did not violate single subject rule in Municipal Home Rule Law or city charter.

State constitution’s one-subject rule was inapplicable to city ordinance that imposed same restrictions on the use of electronic cigarettes on the use of conventional cigarettes, where rule applied only to bills passed by state legislature.

City ordinance imposing same restrictions on the use of electronic cigarettes as on the use of conventional cigarettes did not violate the single subject rule in Municipal Home Rule Law or city charter. Regulation of electronic cigarettes was only subject of bill with single purpose to amend existing smoking legislation, subject was clearly stated in bill’s title and adequately apprised the city council and members of the public of its contents and purpose, and bill was and openly debated before city council.

CONSTITUTIONAL LAW - NORTH CAROLINA

Town of Boone v. State

Supreme Court of North Carolina - December 21, 2016 - S.E.2d - 2016 WL 7422420

Town brought action against State, alleging that an act that withdrew extraterritorial jurisdiction from town and returned governance of areas to county was an unconstitutional local act.

After county intervened, the Superior Court for a three-judge panel, granted summary judgment in favor of town. State and county appealed.

The Supreme Court of North Carolina held that the act was not an unconstitutional local act.

Legislature's act that withdrew extraterritorial jurisdiction from town and returned governance of areas to county fell squarely within legislature's plenary authority to provide for organization and government and fixing of boundaries of local government, and thus was not an unconstitutional local act. Extraterritorial jurisdiction was inextricably tied to a municipality's authority to enforce its zoning and development ordinances within certain geographic boundaries, and legislature was only body politic uniquely qualified to oversee local government and set jurisdictional lines that divided town and county.

BONDS - PUERTO RICO

Peaje Investments LLC v. García-Padilla

United States Court of Appeals, First Circuit - January 11, 2017 - F.3d - 2017 WL 104826

Beneficial owner of bonds issued by Puerto Rico Highways and Transportation Authority (PRHTA) moved to lift temporary stay of debt-related litigation against Puerto Rico government, imposed by Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), so that bond owner could challenge the diversion of PRHTA toll revenues pledged as collateral for bonds.

Holders of bonds issued by Puerto Rico Employees Retirement System (ERS) separately moved to lift PROMESA stay to challenge suspension of required transfers to fiscal agent of employer contributions pledged as collateral for bonds.

Actions were consolidated. Financial Oversight and Management Board for Puerto Rico moved to intervene. The United States District Court for the District of Puerto Rico denied intervention and denied lift-stay motions. Beneficial owner and holders of bonds appealed.

The Court of Appeals held that:

- Beneficial owner of bonds issued by PRHTA failed to sufficiently allege that its interest in repayment was inadequately protected, as required to demonstrate cause required to lift PROMESA stay;
- Holders of bonds issued by ERS sufficiently alleged that their interest in repayment was inadequately protected, and thus district court was required to hold hearing to determine whether holders demonstrated cause required to lift PROMESA stay; and
- District court abused discretion in denying motion to intervene.

Beneficial owner of bonds issued by Puerto Rico Highways and Transportation Authority (PRHTA) failed to sufficiently allege that its interest in repayment was inadequately protected, as required to demonstrate cause required to lift temporary stay of debt-related litigation against Puerto Rico government, imposed by Puerto Rico Oversight, Management, and Economic Stability Act

(PROMESA), so that beneficial owner could challenge diversion of PRHTA toll revenues pledged as collateral for bonds. Beneficial owner alleged Puerto Rico stopped making required deposits of monthly toll revenue with fiscal agent, but it did not claim that future toll revenues would be inadequate to repay debt owed.

Holders of bonds issued by Puerto Rico Employees Retirement System (ERS) sufficiently alleged that their interest in repayment was inadequately protected, and thus district court was required to hold hearing to determine whether holders demonstrated cause required to lift temporary stay of debt-related litigation against Puerto Rico government, imposed by Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), so that holders could challenge suspension of required transfers to fiscal agent of employer contributions pledged as collateral for bonds. Holders alleged, based on statement by ERS, that uncertainty about future contributions from municipalities and Puerto Rico could affect repayment of bonds.

District court abused discretion in denying motion to intervene by Financial Oversight and Management Board for Puerto Rico for failure to attach pleading to motion, in action by holders of bonds issued by Puerto Rico Employees Retirement System (ERS) to lift temporary stay of debt-related litigation against Puerto Rico government, imposed by Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), so holders could challenge suspension of required transfers to fiscal agent of employer contributions pledged as collateral for bonds. No other pleadings were pending when Board moved to intervene, and it could hardly have been expected to respond to complaint that had not yet been filed, additionally, Board did attach to its motion an opposition setting forth its position against lifting stay.

PUBLIC UTILITIES - TEXAS

Oncor Electric Delivery Company LLC v. Public Utility Commission of Texas

Supreme Court of Texas - January 6, 2017 - S.W.3d - 2017 WL 68858

Electric utility, state universities, and cities sought review of decision of the Public Utility Commission (PUC) in ratemaking proceeding.

The District Court affirmed in part. Parties appealed. The Austin Court of Appeals affirmed in part, reversed and remanded in part, and reversed and rendered in part. Utility, State, and cities petitioned for review.

The Supreme Court of Texas held that:

- Statute requiring electric utilities to discount charges for service provided to state college and university facilities does not apply to transmission and distribution utilities (TDU) in deregulated areas;
- Statute requiring an electric utility's income taxes to be computed as though it had filed a consolidated return with a group of its affiliates eligible to do so under federal tax law did not require a utility to adopt a corporate structure so as to be part of a group; and
- Expiration of a franchise agreement existing on September 1, 1999 was not a condition to agreeing to a franchise charge.

STORM WATER REGS - WASHINGTON

Snohomish County v. Pollution Control Hearings Board

Supreme Court of Washington, En Banc - December 29, 2016 - P.3d - 2016 WL 7495874

Municipal storm water permittees appealed Pollution Control Hearings Board's order holding that the vested rights doctrine did not apply to storm water regulations that the Department of Ecology required permittees, as owners or operators of large and medium municipal separate storm sewer systems, to adopt and apply to completed development applications as part of the National Pollutant Discharge Elimination System (NPDES) permitting program.

The Superior Court consolidated the appeals. Permittees sought direct review, which the Court of Appeals granted. The Court of Appeals reversed finding that vested rights doctrine excused compliance with storm water regulations. Department filed petition for review, which the Supreme Court granted.

The Supreme Court of Washington held that:

- Storm water regulations that permittees were required to implement and apply to completed development applications as part of NPDES permitting program were not "land use control ordinances" subject to vesting statutes requiring building permits and subdivision applications to be considered under land use control ordinances in effect when application was filed, disapproving of *Adams v. Thurston County*, 70 Wash.App. 471, 855 P.2d 284 and *Victoria Tower Partnership v. City of Seattle*, 49 Wash.App. 755, 745 P.2d 1328, and
- Storm water regulations did not violate doctrine of finality of land use decisions.

MSRB Announces Regulatory Topics to be Discussed at January Board Meeting.

The Municipal Securities Rulemaking Board will host a meeting of its Board of Directors on January 24-26, 2017, in Washington, DC. The board will participate in a strategic planning session and discuss the following topics: continuing education requirements for municipal advisors, advertising rules, CUSIP numbers, and continuing disclosure. Additional rulemaking and policy topics will also be addressed.

MSRB Board of Directors Meeting Discussion Items

Updated GASB Codification and Other Publications Available to Assist State and Local Stakeholders.

Updated versions are available of the Governmental Accounting Standards Board's (GASB's) Codification of *Governmental Accounting and Financial Reporting Standards, Original Pronouncements*, and the *2016–2017 Comprehensive Implementation Guide*.

These authoritative sources of Generally Accepted Accounting Principles (GAAP) for state and local governments equip preparers, auditors, and financial statement analysts with resources needed to stay current with the evolving governmental accounting environment.

***Codification of Governmental Accounting and Financial Reporting Standards** — an* *integrated view of the current version of accounting and financial reporting standards for state and local governments, organized by: General Principles, Financial Reporting, Specific Balance Sheet and Operating Statement Items, and Stand-alone Reporting—Specialized Units and Activities.*

Original Pronouncements — incorporates a robust topical index, a paragraph-by-paragraph cross-reference to material in the GASB Codification, and the following authoritative pronouncements:

- GASB Statements, Interpretations, Technical Bulletins, and Concepts Statements
- NCGA Statements and Interpretations currently in force
- AICPA 1974 Industry Audit Guide and related Statements of Position continued in force when the GASB began operations.

Comprehensive Implementation Guide — an integration of authoritative questions and answers and glossary definitions from GASB Implementation Guides issued since June 2015 when Statement No. 76, *The Hierarchy of Generally Accepted Accounting Principles for State and Local Governments*, was issued.

The GASB's Governmental Accounting Research System Online (GARS Online) provides direct access to all of this content, plus superseded Implementation Guides for reference and comparison. GARS Online is updated twice a year.

There are two ways to access GARS Online: through a free *Basic View* at https://gars.gasb.org or a paid *Professional View* with enhanced functionality including:

- Advanced navigation
- Powerful search features including suggested terms, faceted search, ability to save searches, and more
- Cross references allow users to compare, link, and analyze the relationship between two documents
- Open multiple documents
- Add personal annotations and bookmarks
- Archive feature shows detailed differencing between versions
- Ability to print documents and share content on social media sites.

The enhanced *Professional View* of GARS Online can be ordered at the GASB Store; a single-user annual subscription costs $430, with discounts for volume orders.

All of the contents of GARS Online (except superseded Implementation Guides) are also available in bound editions updated annually; current editions reflect GARS Online as of June 30, 2016. The *Codification* (two-volume set), the *Original Pronouncements* (two-volume set), and the *Comprehensive Implementation Guide* (one volume) can be ordered online at the GASB Store for $115.00 each.

The Hidden Risks of P3s.

They are an important part of the infrastructure toolkit, but they can't replace tax-exempt debt.

State and local governments are eager to find ways to address the infrastructure deficit. While both the Obama administration and the incoming Trump White House have promoted a greater use of public-private partnerships (P3s), government officials are well advised to bring rigorous analysis and staff expertise to the negotiating table to avoid costly mistakes and minimize risks for taxpayers.

Recent news coverage highlights the importance of careful analysis. A recent article in the New York Times reported on a long-term deal that Bayonne, N.J., cut with a private equity firm in 2012 to manage the city's water system. While the city got an immediate infusion of investment in its ailing water system, residents have since seen their bills rise by 28 percent. City officials had expected rates to be frozen for four years after an initial bump. The rate freeze did not occur, in part because residents had conserved more water than expected, which reduced the amount of revenue the private-sector partner had negotiated.

And in Virginia, the Washington Post reported that one of the state's top transportation priorities has run into a financial hurdle. The state seeks to expand a tunnel in the notoriously congested Hampton Roads region. The project could be costlier than expected due to a non-compete clause negotiated in a 2011 agreement with Elizabeth River Crossings , a partnership between a Swedish construction company and an Australian finance group. The 58-year agreement stipulates that if ERC's toll revenue falls after the tunnel project is built, the state might be required to make up the difference.

Of course, some P3 projects work out well for both the public and private sector. Can Chen and John Bartle describe the successful Port Miami Tunnel project in a new policy white paper written for the International City/County Management Association (ICMA) and the Government Finance Officers Association (GFOA). The tunnel opened in August 2014 and features a 35-year concession agreement, service-quality standards and milestone payments to the concessionaire during the construction period by the Florida Department of Transportation, in partnership with Miami-Dade County and the city of Miami. The tunnel will be returned to the Florida DOT in 2044.

Clearly, P3 projects can be a good way to leverage advanced technology and innovation in the private sector, and they have the potential to bring greater efficiency to an operation. On the other hand, complete project costs and risks often are not anticipated, and many do not factor in the range of equity issues related to service provision and fees. Some states and localities acknowledge the need for more staff and outside expertise to develop and manage P3s. Recognizing that some P3 projects pose a significant risk to public-sector entities — sometimes for decades — GFOA last year issued an advisory to exercise caution when considering a P3 arrangement.

As useful as public-private-partnerships are, they still represent a small part of the infrastructure investment toolkit in the United States. Tax-exempt municipal bonds top the list, paying for everything from roads and bridges to schools, airports, water and wastewater projects, parks, sidewalks, infrastructure repairs, and public transportation. Between 2003 and 2014, states, counties, cities and other local governments invested \$3.5 trillion through municipal bonds, while the federal government provided \$1.46 trillion. And tax-exempt bonds are on a path to finance another \$2 trillion in infrastructure over the next 10 years. In all, debt financing accounts for 90 percent of state and local capital spending, according to a 2015 ICMA policy paper.

None of this is to suggest that alternative financing tools shouldn't have a place in the toolkit. It's no secret that our investment in roads, water systems and just about every other critical infrastructure priority has fallen behind in recent years. Having a reliable revenue stream to finance the most pressing projects is essential. But while P3s and other financing tools are welcome additions, they cannot replace the role of municipal bonds in financing public projects.

GOVERNING.COM

BY ELIZABETH K. KELLAR | JANUARY 18, 2017

The Economy's Expanding. So Why Aren't Tax Revenues?

There are a couple of major reasons that the frustration is likely to continue for revenue estimators and policymakers.

It may still not feel like it to everyone, but we are at or near the top of the business cycle. By all definitions, we have been in expansion for nearly eight years, the third-longest period of expansion in modern American history. Gross Domestic Product growth is tracking at more than 2 percent, the unemployment rate is under 5 percent, and wage gains have finally begun to accelerate. But if you work for a state or a local government, you may not have noticed.

The same GDP reports that have shown such progress recently also show that states and local governments have subtracted from the pace of real economic growth in three of the past four quarters, and it doesn't take much detective work to find out why. That same year of strengthening growth coincides with five consecutive quarters of weak state tax-revenue growth, including an outright year-over-year decline in the second quarter of 2016. Combined, state tax revenues were unable to clear the pace of inflation in the past year, their worst performance since the Great Recession.

How can state taxes be in recession when the rest of the economy is in expansion? This has been the biggest puzzle for policymakers this year, and the leading cause of subnational budget weakness throughout the country. The growing disconnect is twofold and attributable to both structural and one-time factors.

The first source of frustration for revenue estimators and policymakers is temporary and has to do with prices. This is particularly relevant to sales taxes, which have been the largest underperformer for most states over the past year and a half. Price levels impact sales taxes because sales taxes are levied as a percentage of overall taxable value. Thus, even though consumers may have more money in their pockets and are buying a greater number of goods, the value of those goods may not be growing in line with expectations. In fact, the taxable value may be declining.

Typically, at this point in the business cycle, low unemployment and rising wages push prices — and therefore tax collections — higher. However, the extraordinary strength of the U.S. dollar and the energy bust are holding prices well below expansionary levels. Headline consumer prices are increasing in line with the business cycle at around 1.7 percent annually, but the components of the Consumer Price Index tell a more nuanced story. Looking solely at goods prices, which make up the lion's share of all taxable sales, we actually still see deflationary pressures weakening sales-tax collections.

Take homebuilding as an example. Housing construction is a major driver of sales taxes because of the large durable-goods purchases that go into building and furnishing a new home. Last year the number of housing starts increased significantly, which should have resulted in stronger sales-tax collections. However, the prices of most goods used in new-home construction declined significantly. Lumber prices, for example, were down by more than 10 percent at one point in 2016. So even though more housing units were being built, the sales-tax collections from each unit were much less than the year before.

With inflation expectations rising, this dynamic will only prove temporary. However, a second and more structural consideration will continue to give revenue estimators fits for some time to come.

Over time, state tax revenues have generally grown more disconnected from the underlying economies upon which they're levied. A study we performed several years ago found that state tax revenues in the first decade of the 2000s had become three times more volatile than the underlying economy. This was orders of magnitude larger than anything states had experienced before, and it led to state tax revenues underperforming nominal GDP for the first time since records have been kept.

This dynamic has progressed in line with two growing influences on state taxation over the past few decades. First, states have become increasingly reliant on highly progressive personal income taxes. This isn't necessarily a bad thing — an efficient tax structure should have at least some progressivity — but a side effect is increased volatility. By making their tax structures more progressive, states are relying on a smaller set of higher-income taxpayers for a larger portion of their revenues. This set of taxpayers typically has some of the most volatile incomes. A taxpayer in the top 1 percent of the income distribution can make $10 million one year and very easily lose $10 million the next. It is no anomaly then that some of the states with the biggest income-tax surprises are also those with some of the most progressive tax codes.

Adding to this disconnect is the growing number of targeted tax incentives being put to use by state and local governments for economic development. This isn't necessarily a bad thing either, as these incentives can be effective at spurring local growth. But these rarely tracked incentives can also create a scenario in which the fastest-growing parts of an economy are growing tax-free. This distorts the relationship between broad-based economic statistics and tax revenues, making life very difficult on revenue estimators.

As a result, revenues become more unpredictable and policymakers have to become more cautious. Unfortunately, it looks like that dynamic is here to stay.

GOVERNING.COM

BY DAN WHITE | JANUARY 19, 2017

The Week in Public Finance: Hartford in Crisis, Pension Rates Move Down and More.

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

GOVERNING.COM

BY LIZ FARMER | JANUARY 20, 2017

Why Urban Parks Are Essential Infrastructure.

As we talk about rebuilding our public works, we need to remember that parks are as important to our cities as roads and bridges.

The new presidential administration has signaled a strong desire to rebuild our infrastructure, especially in our cities. This is sparking a renewed and welcome national conversation on how to make it happen. But along with roads, rails, bridges and water systems, let's remember the profound role that city parks play as a necessary ingredient in those plans. Urban parks are not luxuries; they are essential infrastructure for 21st century cities.

Nearly 80 percent of Americans live in urban areas. Increasingly, many of our cities are challenged by aging water and transportation systems that are nearing or exceeding their designed capacity. Complicating the picture, a new focus on environmental resilience to flooding and other natural disasters is driving city planners to more strongly consider "mixed-use" infrastructure. Urban parks are the very definition of mixed use.

So strong is the case for urban parks in America's future that the bipartisan Mayors for Parks coalition wrote a letter to the Trump transition team calling for parks to be prioritized among its infrastructure plans. These mayors, and other leaders at the municipal, state and federal levels, know that community parks can grow local economies and attract businesses, workers and investment. And numerous studies have shown that the presence of a nearby park adds 15 to 20 percent to residential and commercial property values.

That's not all. Investment in mixed-use infrastructure projects — those that include both parks and green space — is building a strong track record of leveraging public funds with private capital to address many of our most vexing urban challenges, including those relating to transportation, stormwater management and access to recreation. Beyond the economic and environmental benefits of mixed-use infrastructure, there are the well documented human health benefits of proximity to nature. Studies show that people exercise more if they have access to parks, and including nature in the built environment improves quality of life and sense of community.

The outcome of this renewed emphasis on city parks is remarkable. The Historic Fourth Ward Park and Reservoir in Atlanta is a prime example of what is possible. Atlanta's Department of Watershed Management saved $16 million by constructing a water-retention pond to mitigate flooding, rather than tunneling and installing a single-use network of pipes to deal with the problem.

The park is one of many that are linked to the Atlanta BeltLine, which has been described as the most comprehensive transportation and economic-development effort ever undertaken by the city. This visionary project includes a 22-mile network of parks and trails connecting 45 neighborhoods and providing new transportation options. The park and the nearby Ponce City Market have attracted an additional $600 million in commercial investment and residential construction. Quality of life has surged and community services have improved dramatically.

Atlanta is not alone. Over the next quarter-century, Philadelphia's Green City, Clean Waters program will invest $2 billion in parks and green infrastructure to capture 85 percent of the city's stormwater runoff. The program not only will lead to green jobs but also will save billions that would otherwise be spent on underground pipes and tunnels. And Philadelphians will enjoy beautiful parks for decades to come.

While city parks are a clear win for everyone, they are not a new cause. For three years running, the U.S. Conference of Mayors has had the foresight to adopt resolutions calling for permanent and full funding of the federal Land and Water Conservation Fund, whose goal is to conserve land and improve outdoor recreation opportunities nationwide, and to emphasize parks in comprehensive urban policy and community development.

Americans are taking note. In poll after poll, voters agree that fixing our aging transportation and water infrastructure is a priority. As the new Trump administration promises to deliver infrastructure investment, parks deserve a prominent place in the mix of options to help revitalize our urban communities.

This summer, from July 29 through Aug. 2, more than 1,000 global park leaders will gather at the Greater & Greener 2017 conference in Minneapolis and Saint Paul to explore the power urban parks have to support healthy, resilient and sustainable cities.

GOVERNING.COM

BY CATHERINE NAGEL | JANUARY 23, 2017

NASACT Webinar - GASB's Financial Reporting Model.

GASB’s Financial Reporting Model Improvements – Governmental Funds

Event Details

Start Date: 2/23/2017 2:00 AM
End Date: 2/23/2017 3:50 PM
Event Website: http://www.nasact.org/webinars

Organization Name: NASACT
Contact: Pat Hackney
Email: phackney@nasact.org
Phone: (859) 276-1147

OVERVIEW
GASB’s Financial Reporting Model Improvements – Governmental Funds

Has it really been over 17 years since GASB 34 was issued? It’s hard to believe, but true! GASB is again turning its attention to the government reporting model with the release of an invitation to comment document entitled *Financial Reporting Model Improvements – Governmental Funds.*

This highly-anticipated reporting model project begins with a focus on accounting and reporting of governmental funds. This phase of the project addresses several potential improvements to governmental fund reporting, including:

- Recognition approaches (measurement focus and basis of accounting).
- Format of the governmental funds statement of resource flows.
- Specific terminology.
- Reconciliation to the government-wide statements.
- For certain recognition approaches, a statement of cash flows.

GASB believes this project will have a significant impact on the foundation of state and local governments’ accounting and financial reporting. Please join us for this informative webinar!

COST
$299 per group (unlimited attendance)
$50 per person – Use promo code INDWEB to receive individual discount pricing with CPE.

$25 per person – Use promo code INDNOCPE to receive individual discount pricing with no CPE required.

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Click HERE to see the full registration brochure.

DeLauro Reintroduces National Infrastructure Development Bank Act.

WASHINGTON, DC (January 13, 2017) — Congresswoman Rosa DeLauro (CT-03) reintroduced the National Infrastructure Development Bank Act today with 73 original cosponsors supporting the legislation. DeLauro's bill would create and fund a public bank to leverage public and private dollars to help rebuild roads, highways, bridges, and environmental and energy projects of national or regional significance.

"With the nation's infrastructure in dire need of rebuilding and reinvestment, a National Infrastructure Bank would allow Congress to pursue a clear, comprehensive infrastructure policy that addresses the scope of the issue. Now is the time to invest in our nation, building better infrastructure systems and a stronger economy," said DeLauro. "Through this bill, we can take a step forward that addresses the tremendous shortfall in infrastructure investment, creates jobs, spurs long-term economic growth, and improves our competitiveness across the globe.

"Congress should work together to pass my National Infrastructure Development Bank Act and send it to President-elect Trump as soon as he is sworn into office," continued DeLauro. "Mr. Trump advocated for investment in our nation's infrastructure on the campaign trail, and this legislation is an opportunity for him to build on his promises."

The legislation, modeled after the European Investment Bank, would leverage private sector dollars from institutional investors, such as pension funds, to supplement current funding in our nation's infrastructure. It would provide loans and loan guarantees to projects, and issue Public Benefit Bonds with proceeds to fund projects, and make payments to help states and localities cover their bond interest payments.

The National Infrastructure Bank would finance surface transportation projects, as well as energy, environmental, and telecommunications projects. The bank would consider each project's economic and environmental impacts, social benefits, and costs objectively before selecting projects to finance.

Neal: Tax Reform Should Preserve Tax Exemption, Reinstate BABs.

WASHINGTON – Tax reform legislation should preserve the tax exemption for municipal bonds and reinstate Build America Bonds for infrastructure financing, Rep. Richard Neal, the top Democrat on the House Ways and Means Committee, told reporters Thursday.

But tax reform may have to wait until Republicans complete their repeal and replacement of the Affordable Care Act as they have proposed, the Massachusetts Democrat said.

Speaking at a news conference at the National Press Club here, Neal said he is “skeptical” that Congress can simultaneously tackle two projects of the magnitude of tax reform and the ACA.

Republican leaders in Congress as well as President-elect Donald Trump and Vice President-elect Mike Pence have made repealing and replacing Obamacare the top priority at the start of the new administration.

Neal said he met with House Ways and Means Committee Chairman Rep. Kevin Brady, R-Texas, last week, who told him that the GOP blueprint for tax reform released last June would be rolled out as formal legislation this year. Neal said he could not provide a more specific timeframe, but added that Brady made it clear he wants to get through tax reform “vigorously.”

He said he hopes the blueprint, which does not mention munis directly but proposes to generally repeal deductions, maintains the tax-exempt standing.

The former Springfield, Mass. mayor and longtime advocate of munis cited his municipal experience, calling himself a “pro-growth believer.”

“My DNA is in the mayor’s office and I know how we used tax-exempt bond financing,” said Neal, who was named ranking minority member of the House Ways and Means Committee in December. “It worked quite well.”

Although roads, bridges and other public use projects “beg” for a large infrastructure program, Neal said, infrastructure spending is not as easy to pass as it once was. That could mean reintroducing BABs, which were a “stunning success” when they were created and used in 2009 and 2010.

Neal introduced the Build America Bonds Act of 2015 two years ago, which would have permanently reinstated and expanded the BAB program.

About $181 billion of BABs were issued before the bonds expired at the end of 2010.

“I think investing in those sorts of initiatives can return us to a connection with … the middle class,” he said.

Neal also opposes the Republicans’ plan to concentrate tax cuts at the top, a move that could raise taxes on the middle class. Although tax policy is complicated and consequential, he said, he suggested bipartisan efforts should be made, similar to those of former Michigan Republican Rep. Dave Camp several years ago when he included Democratic suggestions in his tax reform proposal.

“There could be an appetite here for some common ground on tax reform,” Neal said, adding that the current system is underproductive and inefficient. “It’s stuck in the eighties. It’s a rotary phone in a smartphone world.”

However, he is critical of what he believes are GOP tax cuts that could increase the federal budget deficit.

“All of this is being done without deficits in mind,” Neal said. “I want our Republican friends to hold their party and president-elect to the same standard they held Barack Obama. Do deficits only count when there is a Democrat in office?”

Meanwhile, Brady and Neal have announced the tax policy subcommittee members for the 115th Congress. The Republicans include: Reps. Peter Roskam from Illinois; Dave Reichert from Washington State; Pat Tiber from Ohio; Tom Reed from New York; Mike Kelly from Pennsylvania;

Jim Renacci from Ohio; Kristi Noem from South Dakota; George Holding from North Carolina; and Kenny Marchant from Texas.

Democrats on the subcommittee include ranking member Lloyd Doggett from Texas, as well as: Reps. John Larson from Connecticut; Linda Sanchez from California; Mike Thompson from California; Suzan DelBene from Washington State; and Earl Blumenauer from Oregon.

The Bond Buyer

By Evan Fallor

January 12, 2017

Green Bonds Rise as Tool for Water Infrastructure, Resilience.

Environmentally conscious green bonds are a tool more issuers use to finance various means of purifying drinking water and buffering against rising seas.

Municipal issuers from transit agencies to small cities and towns have sought to manage water more effectively — notably after Hurricane Sandy struck in 2012 – with varying degrees of success.

Larger agencies with bonding capability, such as New York's Metropolitan Transportation Authority, have earned praise from climate experts and municipal analysts alike.

Other municipalities are still struggling.

"Municipalities have not figured that out yet," said storm financing expert Alan Rubin. "Unlike municipalities, the MTA can do it because they have their metrics and their own bonding without having to go through a referendum.

"Municipalities can use green bonds to purchase this kind of equipment," said Rubin, nicknamed the "Hurricane Czar" after working extensively in Miami-Dade County, Fla., when Hurricane Andrew caused more than $30 billion in damage in 1992. While working in Lehman Brothers' investment banking division, Rubin also helped design and underwrite the catastrophe fund for hurricane relief.

According to Rubin, municipal options include partnering with corporations and manufacturing firms, or working with other communities under shared-services arrangements.

Also on the table is matching state and federal grant and loan money. "[Andrew] Cuomo's got a lot of money available," Rubin said of New York's governor, who on Jan. 9 called for spending $2 billion to improve the state's water infrastructure.

According to S&P Global Ratings' Boston-based credit analyst Kurt Forsgren, water projects still represent about half of all par issued for green bonds as well as half of all issues in 2016 from January through August.

"One challenge is balancing the need for global consistency across and within asset categories while serving the often unique features of local infrastructure providers in different markets," said Forsgren. "For example, many U.S. municipal water utilities operate as combined enterprises with water, wastewater and storm water assets as part of an integrated system. Other water and wastewater utilities operate as separate enterprises."

London-based Climate Bonds Initiative is working to group similar asset classes into broader categories.

MTA post-Sandy initiatives included the issuance of a $200 million catastrophe bond late in 2013, the first bond that covered storm-surge risk arising from named storms.

The MTA, which operates New York City's subway, bus and commuter rail systems plus several bridges and tunnels, has beefed up capital spending, including $2 billion alone to seal off water entry points. Other actions have included launching a catastrophe fund, repairing several tunnels and rebuilding the South Ferry station in lower Manhattan – built below the water table, renovated in 2009, and which Sandy hammered in 2012. MTA officials expect to reopen South Ferry later this year.

"The MTA has figured it out. It has done a very, very good job," Rubin said of the authority, one of the largest municipal issuers with roughly $37 billion in debt.

In addition, the MTA took proactive steps by shutting down in advance of the storm and moving subway trains, commuter rail cars and buses to safe storage locations.

Water management includes preserving the quality of drinking water to buffering against sea surge. The sea level rose to 14 feet during Hurricane Sandy.

Municipal management of water is a different story, according to think tank Brookings Institution.

Only a handful of drinking water utilities in the largest cities performed well across six indicators of financial health, Brookings said in a report. Metrics, culled from American Water Works Association data, included operating and debt-to-asset ratios, and monthly residential water rates.

Brookings examined local water infrastructure investment in the U.S., notably large drinking water facilities. "As concerns continue to ripple from incidents in Flint, Mich., and beyond, cities remain at the forefront of many investment challenges, yet they often do not have a clear sense of where they stand relative to it."

Brookings cited a disconnect between investment demand and institutional capacity. According to Brookings, while more than 88% of Americans believe some kind of action is necessary to grasp the country's water infrastructure challenges and many analysts agree that the time is ripe for more infrastructure investment, only 17% of utilities are confident that they can just cover existing service costs – let alone necessary upgrades — through rates and fees.

"Publicly owned and operated utilities are increasingly running up against tight budgets, debt obligations and other barriers to investment as user charges, municipal bonds and traditional financing tools fail to keep up with the level of need," said Brookings.

Sea level rise, meanwhile, continues to threaten the tri-state New York region, which holds about 23 million residents with roughly 3,700 miles of tidal coastline.

"Relatively little has been done to address the inevitable permanent inundation of buildings, infrastructure and communities," transit-oriented organization Regional Plan Association said in its own report. According to RPA, the region could realize one foot of sea-level rise by 2050, possibly by the 2030s. Six feel of sea-level rise is possible early next century, the report said.

That, said RPA, could threaten the region's three major airports plus Teterboro Airport in northern New Jersey.

For MTA, the surprise nature of Sandy – the eye of the storm veered from sea and right-angled into metro New York – provided opportunity on two fronts: to improve its water resilience and to grasp overall operational flaws.

"My sense is that the structural deficiencies and other deficiencies were brought to light as a result of Sandy," Stuart Lerner, vice president of MTA contractor Stantec, said at a Jan. 10 workshop at the New York Transit Museum in downtown Brooklyn. "Sandy provided a whole new opportunity to solve two problems at once, which were water resilience and structural defects."

Compounding the MTA's difficulties was the corrosive salt in the water that gushed through the tunnels.

"Millions and millions of gallons of salt water are a bad thing for a 110-year-old legacy system," Iain Watt, director for recovery and resiliency at the MTA's New York City Transit unit, told the Transit Museum gathering.

Much of the damaged equipment was deep in the bowels of the subway tunnels. "Pumps, fan controls, signal systems, emergency equipment … much of it dates back longer than anyone in this room," he said.

According to Watt, the MTA is spending $2 million of its capital funds to seal off 3,600 water entry points, basing its work as suitable for a Category 2 flood zone, based on a National Weather Service model.

Entry points, beyond the obvious subway entrances, include "stairwells and manholes, some of them with our name on it, some with Time Warner's," said Watt, while structures also varied widely by nature of abutting property.

New equipment, said Watt, was tailored for MTA contemporary needs. "Nothing off the shelf," he said. "All of it was designed for us."

The Bond Buyer

By Paul Burton

January 17, 2017

U.S. Voters Approve Billions for Transit and Green Space.

In November, voters across the United States endorsed numerous state and local ballot measures approving additional funding for green space, land conservation, and public transportation. Notably, voters also approved minimum-wage increases in four states and legalized medical or recreational marijuana ballot initiatives in eight states.

According to the Center for Transportation Excellence, which follows ballot measures related to public transportation, "November 8 was a historic day for public transportation in the United States as voters approved 34 of 49 public transit measures for an election-day passage rate of 69 percent." The success rate for transit ballot measures throughout 2016 was 71 percent. In 23 states and communities of all sizes, voters considered nearly $200 billion in local and state support for public transportation.

The largest ballot measures were in California, where San Francisco Bay area voters approved $3.5 billion for the Bay Area Rapid Transit (BART) regional transit system, while Los Angeles voters approved Measure M, a 0.5 percent sales tax increase that will generate an estimated $100 billion over 40 years, including $860 million a year for a big expansion of bus and rail transit.

It wasn't just in politically progressive California where voters endorsed transit funding. Voters in Atlanta approved $2.5 billion for transit including rail extensions, bus upgrades, and streetcar extensions. Voters also approved an additional $379 million over five years for bike trail and sidewalk improvements.

In Indiana, Indianapolis voters approved a 0.25 percent income tax increase that will fund a regional rapid transit network of expanded bus and bus rapid transit lines, including the next phase of the existing Red Line. Similarly, voters in Raleigh, North Carolina, and Columbus, Ohio, approved ballot measures providing additional funds ($1 billion over ten years for Raleigh) for expanded transit services.

Active transportation including bike trail development and sidewalk improvements also got a boost in several communities, including Atlanta; Portland, Oregon; Charleston, South Carolina; and Maine.

While transit measures received widespread support, park and open space measures received even stronger support. For example, Los Angeles Measure M passed with 70 percent approval, but another proposition, Measure A, passed with an even higher margin, earning nearly 73 percent of the vote. Measure A will boost investments in park space and will accelerate plans to open much of the Los Angeles River to public access for bicycling and outdoor recreation.

According to the Trust for Public Land, which follows state and local ballot measures for land conservation and parks, voters approved 68 of 86 ballot measures, providing $6.3 billion for conservation. Many of these measures involved tax increases or bonds. Will Rogers, president of the Trust for Public Land, said, "Tonight, we saw again that while American voters are divided on many issues, parks and natural areas are an issue that we can agree on. Whether they were voting for 'red' or 'blue' candidates, voters are 'green' when it comes to parks and close-to-home places for outdoor recreation."

Earlier in 2016, voters approved 14 of 17 land conservation ballot measures, approving an additional $3.3 billion for parks and open space. This means that in 2016, voters endorsed 82 of 103 ballot measures for land conservation, allocating a total of $9.6 billion. Some of the green space initiatives approved by voters include the following:

- In Boston, by a margin of 48 percent, voters opted to join the Massachusetts Community Preservation Act, a statewide program that provides matching funds for local park, open space, historic preservation, and affordable housing projects.
- In Florida, voters in Lee, Alachua, and Brevard counties all gave approval to ballot initiatives providing upwards of $450 million in funding for land conservation and restoration.
- In Colorado, conservation ballot measures were approved in Boulder, Grand, and Pitkin counties.
- In Ohio, voters in four communities including metro Cincinnati and Columbus overwhelmingly approved new funding for parks.
- In New Jersey, voters in 13 of 16 towns or counties approved property tax increases for parks, open space, and farmland protection.
- Even in deep-red Alabama, voters overwhelmingly (80 percent to 20 percent) endorsed a constitutional amendment that prohibits the state from reallocating state park funds for other purposes.

The high approval rate (79 percent) for land conservation ballot measures is not surprising given the fact that over the last 25-plus years, 75 percent of all state and local ballot measures for conservation have also been approved. Since the Trust for Public Land started tracking ballot measures on land conservation in 1988, voters have approved nearly 2,000 ballot measures allocating more $75 billion for parks and open space.

ULI members should pay particular attention to measures supporting transit and parks because both are key drivers of real estate investment and community revitalization. In 2014, when the Institute surveyed industry leaders and public officials on infrastructure's role in shaping the competitive city, "infrastructure quality" emerged as the top factor driving where real estate development happens. What's more, "upgrades to public transit systems"—including bus and fixed-rail systems—emerged as the top infrastructure funding priority. Transit- and park-oriented development have both emerged as major forces shaping the cities of the future.

Urban Land Institute

By Edward T. McMahon

November 28, 2016

***Edward T. McMahon** holds the Charles E. Fraser Chair on Sustainable Development and Environmental Policy at the Urban Land Institute in Washington, D.C.*

A Tax Credit Turns 30.

The low-income housing tax credit (LIHTC) has helped house millions, and it remains a vital driver of development. The 30-year track record of the LIHTC offers compelling evidence that affordable housing is good business, a stable asset class, and a strong driver of economic activity and neighborhood improvement.

Among the myriad ways the U.S. Internal Revenue Code affects commercial real estate is through a federal tax incentive that has become the most important tool to develop and rehabilitate affordable housing: the LIHTC. Since 1986, it has attracted enough private equity to produce nearly 3 million apartments for working-class families, seniors, and formerly homeless individuals. When one looks back over a generation of housing tax credit activity, several themes of importance to the entire real estate industry emerge:

Affordable housing can be a smart real estate investment. A 2015 survey of the housing credit throughout its history by New York City–based professional services firm CohnReznick found that equity investors have realized 98 percent of their anticipated federal tax credits (dollar-for-dollar reductions in federal income taxes owed) through calendar year 2014. The report also noted that yields on housing credit fund investments have maintained a healthy premium over yields on ten-year Treasuries, "with an approximate 400-basis-point buffer since 2011."

Affordable housing can be a viable development opportunity. Contrary to popular perception, most LIHTC-supported and other affordable developments are delivered by for-profit firms. According to a 2016 paper from Harvard University's Joint Center for Housing Studies, for-profit companies among the largest 50 developers were responsible for 79 percent of all affordable housing starts between 2009 and 2014. Nonprofit developers also are important players in LIHTC-supported development. Various studies have shown that both for-profit and nonprofit sponsors execute LIHTC-supported developments of similarly high quality and financial performance.

Affordable housing is a significant driver of overall multifamily construction activity. The housing tax credit drives the creation of roughly 50,000 new units per year—a significant share of overall multifamily development activity even during the current boom in new apartment construction. The LIHTC also supports the rehabilitation of another 50,000 existing units. The Washington, D.C.–based National Association of Home Builders estimates that the LIHTC annually generates 95,700 jobs; $3.5 billion in federal, state, and local tax revenue; and $9.1 billion in wage and business income.

Affordable housing development can strengthen struggling areas. Housing credit properties are found in many types of neighborhoods and usually—if not always—provide higher-quality housing than their residents could otherwise afford or access. A working paper from the National Bureau of Economic Research found that LIHTC-supported development delivers significant impact at the community level as well: each LIHTC-supported development in a low-income area generates aggregate benefit in the neighborhood of $116 million, increasing surrounding home prices by 6.5 percent (which boosts the local tax base) and lowering crime rates.

Housing credit development and management face challenges, however. Industry participants agree that total development costs for LIHTC-supported properties in some markets are high in relation to existing affordable units, and even some market-rate homes, for reasons that include higher construction quality and excessive state and local regulatory requirements.

The CohnReznick report found that 17 percent of LIHTC-supported properties operated below breakeven (a debt-coverage ratio less than one), but noted that this percentage is way down from ten years prior and that “the great majority of properties that did not achieve breakeven operations in 2014 failed to do so by relatively modest amounts.” Analysis by certified public accountants Novogradac & Company, based in Bethesda, Maryland, has shown that net operating income as a percentage of total rental income had declined annually from 2010 through 2013 for LIHTC-supported units, with a small upward rebound in 2014, which slightly reversed a negative trend.

The biggest challenge facing the housing tax credit, though, is the overwhelming demand for the housing it enables developers to produce, which vastly exceeds the amount of tax credit authority available to states every year. In a broader housing market where supply is probably 3 million units short of demand, according to industry estimates, low-income renters—including millions filling critical jobs in the workforce such as teachers, nurses, firefighters, and police officers—are paying half or more of their income for housing, living in substandard units, and sacrificing on other basic needs to pay their rent.

An expanded LIHTC would help ease that crunch. Senators Maria Cantwell (D-Washington) and Orrin Hatch (R-Utah) have introduced a bill to increase credit authority by 50 percent. The proposed legislation would help create or preserve approximately 1.3 million affordable homes over a ten-year period—an increase of 400,000 more units than is possible with current authority. Efforts expected by Congress next year to reform the tax code could create an opportunity to enact the proposal. Tax reform could also endanger the credit or weaken its effectiveness, according to industry experts.

The 30-year track record of the LIHTC offers compelling evidence that affordable housing is good business, a stable asset class, and a strong driver of economic activity and neighborhood improvement. Regrettably, it is also a basic foundation for family success that a growing number of Americans cannot access.

Urban Land Institute

By Stockton Williams

December 13, 2016

Stockton Williams *is the executive director of the ULI Terwilliger Center for Housing.*

IRS Releases Interesting Private Letter Ruling on Build America Bonds.

On January 13, 2017, the Internal Revenue Service released Private Letter Ruling 201702009. The IRS held in this private letter ruling that the existence of unspent "available project proceeds" would not cause an issue of Build America Bonds ("BABs") to lose their status retroactively when they are redeemed with the proceeds of tax-exempt bonds.[1] The IRS further held that the issuer of the BABs would not lose any subsidy paid to it in respect of the BABs for the period that ends on the BABs' redemption date. This private letter ruling is most interesting for an opinion that the IRS expressly said that it was not giving but that is unavoidably implicit in the holding of the private letter ruling.

Continue Reading

By Michael Cullers on January 18, 2017

Squire Patton Boggs

Breaking News: Rev. Proc. 2017-13 Released

The IRS has released Rev. Proc. 2017-13, which provides updated safe harbors from private business use for management contracts. Click here for a copy; we will have more on this soon.

By Alexios Hadji on January 17, 2017

Squire Patton Boggs

SEC Approves New Complaint Process for MAs; Update for Dealers.

WASHINGTON – The Securities and Exchange Commission has approved Municipal Securities Rulemaking Board changes to complaint processes for dealers and municipal advisors, saying they are consistent with the MSRB's authority and are not overly burdensome for market participants.

The changes to MSRB Rules G-10 on investor brochure deliveries, G-8 on books and records, and G-9 on preservation of records will take effect on Oct. 13, according to the MSRB. The self-regulator had originally proposed setting an effective date of six months after approval but decided on nine months after dealers raised concerns.

The changes amend the current complaint process for dealer customers and then extend that process to municipal advisor (MA) clients.

“These positive changes will improve the ability of investors and state and local governments to understand what to do if they have a complaint about their municipal finance professional,” said MSRB executive director Lynnette Kelly. “They also align the MSRB’s customer complaint requirements more closely with those of other regulators and provide greater regulatory consistency for dealers and municipal advisors.”

However, the changes did not come without some criticism from market participants. Groups and firms, including the National Association of Municipal Advisors, Bond Dealers of America, and non-dealer advisory firm The PFM Group, complained about the MSRB’s decision to directly file the changes with the SEC before obtaining public comments. NAMA also characterized the extension of dealer rules to MAs in this case as “trying to fit a square peg into a round hole” because of the differences in the relationships between dealers and their customers and MAs and their clients.

The commenters also said the changes lacked some necessary detail and would be difficult to comply with if more guidance wasn’t provided. In response, the MSRB made several technical changes in an amendment that will, among other things, clarify the definition of “municipal advisory client” for solicitor and non-solicitor MAs as well as the definition of “complaint.”

The SEC, in its approval order, found that despite some of the concerns, the changes were reasonably designed to achieve the MSRB’s goals and did not impose an undue burden on competition that would conflict with the Securities Exchange Act of 1934. The commission also concluded that the rule “does not impose a regulatory burden on small municipal advisors that is not necessary or appropriate” to the public interest.

“Although the proposed rule change would affect all municipal advisors, including small municipal advisors, the proposed rule change is a necessary and appropriate regulatory burden in order to protect municipal entities and obligated persons,” the SEC wrote in its order.

The changes to Rule G-10, which currently requires dealers to send complaining customers a brochure with information about how to file a complaint, eliminates the need to send a brochure and instead requires other disclosures for dealer customers and MA clients. Dealers and MAs are required to give notification of: their registration with the MSRB and the SEC; the MSRB’s website address; and the brochure available on the MSRB’s website that describes the protections available under MSRB rules and how to file a complaint with financial regulatory authorities.

Dealers will be required to notify customers with that information annually and MAs will have to share the information promptly, but no less than once a calendar year over the course of the MA relationship. The MSRB defined “promptly” as “promptly, after the establishment of a municipal advisory relationship.”

While the rule does not require the notifications to come in any specific documents, the MSRB said MAs can include them along with the conflicts of interest and disciplinary disclosures required under MSRB Rule G-42 on core duties of municipal advisors.

The changes to Rule G-8 require dealers and MAs to keep an electronic log of all written complaints from customers or municipal advisory clients as well as any person acting on behalf of the customers or MA clients. The log will have to include: the identities of the dealer customer or MA client; the date the complaint was received; the date of the activity that gave rise to the complaint; and the person whom the customer or client names in the complaint. The log would also have to include a description of the complaint and the action, if any, the dealer or MA has taken in response.

The codes will be based on FINRA's codes but will be tailored to municipal securities and municipal advisory activities, according to the MSRB. The board will coordinate with FINRA about the codes and will make them available by posting them on its website.

The changes to Rule G-9 will require both dealers and MAs to retain their complaint records for six years. MAs would have otherwise only had to keep records for five years. MAs had urged the MSRB to keep the MA requirement at five years, but the MSRB defended its proposed amendments by saying the changes would level the playing field and help regulators with their inspections and surveillance of MAs.

The Bond Buyer

By Jack Casey

January 19, 2017

Pence Touts Big Infrastructure Bill; Poll Finds Tolls Not Supported.

DALLAS – Vice President-elect Mike Pence tried to sell to the nation's mayors on the infrastructure plan to be proposed by the new Trump administration, just before a national poll showed there is little support for the tolls on which the plan would rely.

Speaking at the US Conference of Mayors' winter meeting in Washington, D.C., Vice President-elect Mike Pence said the new Trump administration will propose a robust infrastructure bill with the ample funding needed for large projects. "I called him [President-elect Donald Trump] this afternoon to tell him I was coming by," Pence told the approximately 300 mayors on Tuesday. "In addition to urging me to send along greetings, he said, 'Tell 'em we're going to do an infrastructure bill, and it's gonna be big.' "

Pence provided no additional details to Trump's proposal from late October that would use $137 billion of federal tax credits to leverage $1 trillion of private investments in infrastructure over 10 years.

"It will have the funding to help communities and states all across America meet the needs that face too many communities and often times stifle growth," he said of the infrastructure bill.

Trump's proposed reliance on tolls from revenue-producing infrastructure projects to provide an attractive return on investment for private investors found scant support in a new Washington Post-ABC News poll of 1,005 respondents carried out from Jan. 12 to Jan. 15.

The tolling plan was strongly opposed by 44% of those polled and somewhat opposed by 22%. Only 11% said they strongly supported the Trump proposal and 18% were somewhat supportive.

The new administration will work with city and state officials to fund infrastructure projects that deliver results, Pence said.

"This administration is going to be a friend to America's mayors," he said. "I can assure you, our president-elect understands that America's mayors are facing serious challenges you can't always solve on your own."

Trump's experiences as a developer showed him the significant economic benefits that can result from large infrastructure projects, Pence said.

"Our president-elect believes, as I do, that the federal government can play a critical role in helping our cities thrive," he said.

"That's probably why he spent so much time in the campaign highlighting many issues that are facing America's cities," Pence said. "Remember, after all, he's a New Yorker, through and through."

Trump last week appointed two well-known New York City developers to leadership of a panel that would oversee the nationwide infrastructure plan.

Steven Roth of Vornado Realty and Richard LeFrak of LeFrak Organization have agreed to head up the infrastructure council, Trump told the Wall Street Journal last week.

"They're pros," Trump said. "That's what they do. All their lives, they build. They build under budget, ahead of schedule."

Vornado will merge this year with The JBG Cos to form JBG Smith, which is one of four groups to be short-listed by the General Services Administration for redevelopment of the FBI headquarters in downtown Washington.

The GSA intends to pay for a new FBI building in part through the swap of the 6.7-acre J. Edgar Hoover Building site to a private partner who would build a larger, more secure facility on one of three sites outside the city.

The total federal contribution to the project has been capped at $2.11 billion, which does not include the estimated $500 million value of the Hoover Building.

Mick Cornett, the Republican mayor of Oklahoma City who is president of the mayors group, said infrastructure funding is a bipartisan issue.

"Our nation's highways need work," he said. "America's people deserve an investment in their infrastructure. We're ready to go."

Transportation Secretary-designate Elaine Chao said at her Senate confirmation hearing last week that Trump would be agreeable to more direct federal funding of state and local projects than is contained in the five-year Fixing America's Surface Transportation Act adopted in 2015.

The Bond Buyer

By Jim Watts

January 18, 2017

US Mayors Raise Concerns Over Threats to Municipal Bonds.

US mayors have reiterated the importance of federal infrastructure investment and their concerns over the threat of municipal bonds losing their tax-exempt status, as Donald Trump takes office.

Three hundred mayors gathered in Washington DC at the US Conference of Mayors Winter Meeting with some using the platform to express their fears that the new administration will remove the exemption on one of the most important tools for funding infrastructure.

“We are fighting to protect [the tax exemption] so that we can build schools, roads, hospitals and protect jobs without costing middle-class taxpayers billions of dollars that they cannot afford,” said Steve Benjamin, Mayor of Columbia, and Second Vice President of the US Conference of Mayors.

Other concerns discussed over the three days of the conference included immigration reform, policing, and the repeal of the Affordable Healthcare Act, otherwise known as Obamacare.

Mitch Landrieu, Mayor of New Orleans and Vice President of the US Conference of Mayors, spoke out against any new plans for immigration reform that would force cities to become a “deportation force for federal government”.

“Everyone is welcome in our cities–they are not the dark foreboding places that people have talked about,” said Landrieu. “The President-elect paints with too broad a brush.”

Playing on Trump’s campaign slogan, Landrieu added: “Investment needs to take place in policing for safety and infrastructure for jobs. We need to make America safe again.”

But while the mayors are keen to air their views on what works best for US cities, they are looking to establish consensus with the new administration. Last month, Mick Cornett, Mayor of Oklahoma City and President of the US Conference of Mayors, took comfort in the fact that President-elect Trump expressed his support for continuing the tax-exempt status of municipal bonds when they met in Trump Tower.

Mike Pence, the Vice President-elect of the US joined a lunch meeting this week, the first time a Vice President-elect has attended a US Conference of Mayors meeting before being sworn in.

Although short on detail, Pence emphasised the importance of infrastructure, public safety and education.

“This administration is going to be a friend to America’s mayors,” he added saying that he and “Donald Trump are going to work in partnership with city halls all across America”.

Earlier Cornett had added that relations with the incoming Trump administration were “so far so good” and paid tribute to treatment received from the outgoing Obama administration over the past eight years.

“Although many of us mayors may differ on some of the policies of the administration we had good access to the executive branch and we were treated well and respected.”

CitiesToday

by Jonathan Andrews

17th January 2017

Chicago's Poor Credit Rating Boosts Taxpayer Tab for Borrowing by Tens of Millions.

Chicago taxpayers are on the hook for tens of millions of dollars in additional borrowing costs over the next two decades, after interest rates on nearly $1.2 billion in city bonds Thursday came in several percentage points higher than comparable issues in cities with solid credit ratings.

The interest rates on the bulk of the bonds — $887.5 million in tax-exempt borrowing — ranged from 5.8 percent to 6.2 percent, municipal bond analysts said. That's more than 3 percentage points higher than rates typically paid by cities with benchmark AAA ratings, they said.

Interest rates came in even higher on about $275 million in taxable bonds also priced Thursday. Experts said those rates were more than 4 percentage points above those on Treasury notes, which is the benchmark used because cities rarely use that type of borrowing.

The so-called spread between what the city will pay to borrow and ideal market rates was greater than many analysts expected, said Matt Fabian, a partner at Concord, Mass.-based Municipal Market Analytics. Part of the reason is that interest rates on municipal bonds have risen in the past six months, but investors also are worried about a number of financial uncertainties in the city's future, he said.

"I think that in general the market sees the city as on the right track, but there still is a lot of work to do," Fabian said. "The city still has problems."

In recent years, Emanuel and the City Council have approved a series of substantial tax increases, including a record-high property tax hike, to increase contributions to the long-neglected city worker pension systems. Nevertheless, in the early to mid-2020s the city will have to come up with hundreds of millions of more dollars a year to meet the mayor's goal of making sure those systems are 90 percent funded in 40 years.

Investors also are concerned about even more troubled finances at Chicago Public Schools and how that affects City Hall, as well as the state's partisan budget stalemate. Meanwhile, in its latest round of borrowing that was priced Thursday, the city is taking out hundreds of millions of dollars in new debt to pay off old debt, borrowing money to pay legal settlements and judgments, and taking out loans to pay initial interest costs — all of which push city debt out into the future at a higher cost.

As a result, "the market is still skeptical about Chicago bonds," said Richard Ciccarone, president and CEO of Merritt Research Services. Although the city in recent years has taken steps to address its financial woes, "they're not finished," Ciccarone said.

The spreads on the interest rates were about a percentage point higher than they were a year ago, when the city issued $500 million in bonds. That was before a pair of Wall Street ratings agencies further downgraded Chicago city creditworthiness. The lower ratings typically result in higher borrowing costs.

In response to the pricing Thursday, Emanuel administration officials reiterated the mayor's pledge that the city will not again issue bonds to pay off old bonds or cover routine legal settlements and judgments. "The city continues to address our financial challenges and work to end bad financial practices of the past," city Chief Financial Officer Carole Brown said in a statement.

The bond deals priced Thursday are expected to close Feb. 1. After that, the city doesn't plan to issue further bonds until 2019, officials said.

January 19, 2017

by Hal Dardick

Chicago Tribune

hdardick@chicagotribune.com

U.S. Muni Bond Market Sales Pegged at $7 bln Next Week.

U.S. states, cities, schools and other issuers in the municipal market are expected to sell about $7 billion of bonds and notes next week after muni prices dropped sharply on Thursday and Friday.

The price fall boosted the 10-year yield on Municipal Market Data's benchmark triple-A scale 17 basis points over the week to 2.33 percent. The 30-year yield rose 15 basis points to end Friday at 3.06 percent.

Peter Block, a muni market strategist at Ramirez, said tax-free bonds were following a slump in U.S. Treasuries.

"It's really driven by Treasuries. It's hard to say what will happen next week," he said, adding that much depends on what messages emerge from Washington under President Donald Trump's new administration. Topping next week's negotiated calendar is a $486 million new and refunding city of Baltimore water and wastewater revenue bond issue pricing through Citigroup on Thursday after a retail presale period on Wednesday.

San Francisco's Bay Area Toll Authority will sell $450 million of toll bridge revenue bonds through Bank of America Merrill Lynch on Thursday.

In competitive bidding, the Metropolitan Government of Nashville and Davidson County will sell $457 million of general obligation bonds on Tuesday. The bonds carry serial maturities between 2018 and 2036, according to the preliminary official statement.

The Los Angeles County Metropolitan Transportation Authority has set a $455.7 million sales tax revenue bond sale for Tuesday. The bonds mature in 2018 through 2042.

U.S. municipal bond funds reported a second straight week of net inflows, indicating investors were seeing relative value in munis, according to Block. Lipper reported $511.7 million of inflows in the week ended Jan. 18, down from $974 million in the prior week.

Reuters

Fri Jan 20, 2017 | 3:53pm EST

(Reporting By Karen Pierog; Editing by Chizu Nomiyama)

Why Muni Experts Need a New Crystal Ball.

Looking back, municipal experts compared the tax-exempt bond market in 2016 to a white-knuckle thrill ride – without seat belts.

“I would describe 2016 as a ride on a roller coaster – there were some wonderful highs and some very painful lows,” Dan Heckman, senior fixed income strategist at U.S. Bank Wealth Management, said in an interview on Thursday.

Tax-exempt professionals were caught off guard by three events in 2016: the consecutive inflows into municipal bond mutual funds, the spike in volume, and the selloff following the presidential election.

They were otherwise largely on target with most of their other expectations about the economy, demand, and credit spreads just as 2016 was getting under way a year ago. In retrospect, though, they said they couldn’t have predicted the volatility that surfaced by year end.

“The market initially expected at the start of 2016 that bond rates were likely to move higher in line with the Fed’s expectation for better U.S. growth,” Rich Ciccarone, president and chief executive officer of Merritt Research Services LLC, said in an interview on Wednesday.

“That trajectory was derailed just weeks later as evidence of subdued global prospects and weak oil prices appeared to suggest an unforeseen negative correction,” he said. “Bond rates fell and the stock market subsequently languished for much of the year as low inflation expectations, oil, Brexit and politics provided fertile ground for volatility and being defensive.”

Heckman said the market saw its share of major ups and downs along the way, starting with a dismal forecast.

“The market set up not to do that well after two previous strong performance years in 2015 and 2014,” Heckman said. However, the market “took a strong bid and saw lower interest rates from February through June.”

Many of the surprising events took place in the second half of the year, Heckman said.

“In July the market saw signs of weakening, and stayed weak as we went through September, October, and through November,” he said. “In November, the market got sold off and the severity of it took us all by surprise,” before rebounding in December, Heckman said.

Municipals were flat and total returns were zero heading into year-end as the post-election dip erased earlier gains.

Some analysts were on the right track when it came to their general predictions, but admitted they were off when it came to volume and the impact of the election.

“With the benefit of hindsight, as the year unfolded it largely went in the direction we thought it would, but we certainly didn’t anticipate it would take the roller coaster ride it did,” said Jim Grabovac, who co-manages portfolios with Dawn Mangerson at McDonnell Investment Management.

He was referring to the plunge in municipals following Donald Trump’s victory in the Nov. 8 presidential election.

“Our fundamental outlook worked very well for us, but we certainly did not anticipate those deviations on the political front that took place” in the fourth quarter, Grabovac said in an interview on Tuesday.

Muni yields, which move inversely to price, surged on concern that Trump's victory in the presidential race and Republican control of the House and Senate would open the way to tax reforms that dissipate the value of – or eliminate – the bonds' tax exemption.

Muni yields rose by as much as 55 basis points a week after the election amid uncertainty over government spending and inflation, including a one-day jump in yields by 22 basis points in a single trading session on Nov. 14.

"We turned bullish on the market because we thought things had gotten very extreme," Heckman said. "Yields had gotten too high and prices too low" over concerns of personal income tax reform under the Trump administration as well as the expectations of the Fed's December rate hike and prospects for ratcheting up the pace of tightening with further increases in 2017.

The S&P Municipal Bond Index finished down 3.46% in November, the worst monthly total return since September 2008, according to S&P Dow Jones Indices.

"What I didn't predict was the big sell-off in the Treasury market," Heckman said. "People were positioned for rates to drop" under a Trump victory, but instead, the opposite occurred, he said.

Further significant market impact after the election surfaced when municipal mutual funds reported the biggest outflow in more than three years as investors withdrew $3.011 billion out of the industry in the week ended Nov. 16. That came on the heels of $62.837 million of inflows in the previous week.

Some of the unexpected activity arrived in the first half of the year – well before the election and the market sell-off.

"The number one surprise for everyone was the consecutive flows into muni bond funds," Heckman said. "It ran much longer than we anticipated and that consecutive streak set a record," he said of the 54 consecutive weeks of inflows into municipal bond mutual funds.

That streak came to a close in the week ended Oct. 19 when $135.9 million fled the industry for the first time in over a year. It was the second longest stretch after weekly reporters saw 63 weeks of consecutive inflows back in 2010.

Meanwhile, Heckman was among those market participants that were off target with their predictions for volume – which turned out to be larger than he and others estimated. He assumed supply would total just over $400 million — but his guess was well under where it ended at approximately $446 billion.

Due to concerns over the Fed's rate policy, issuers raced to market to get deals done – particularly between September and November, Heckman noted.

"The issuance total for 2016 took us a little off guard – it was larger than we expected and also broke a record set back in 2010," he said.

As a result, Heckman expects issuance to taper off in early 2017 given the late 2016 flurry.

The McDonnell team anticipated 2016 supply would be closer to the $375 billion total of 2015. However, lower interest rates after the British vote to leave the European Union helped swell refunding issuance, which drove the record municipal volume in 2016, Grabovac said.

Like Heckman, the McDonnell team didn't foresee the potential for interest rates to rise in 2016 as significantly and substantially beyond the general level the market had seen in the last few years, Grabovac said. That volatility was politically driven and changed the rate scenario dramatically through the year.

“It drove rates lower than they should have, and then the reaction to the election took them higher than we warranted,” Grabovac said.

In addition, he and Mangerson were surprised by the fluctuation in municipal valuations compared with their expectations for valuations to remain relatively stable over the year.

In late November, ratios of triple-A municipals to Treasuries soared above 100% from 10 through 30 years, according to Municipal Market Data.

“Because of the big increase in supply last year, munis underperformed Treasuries,” Grabovac said. Ratios of municipal yields to Treasury yields spent most of 2016 at 100%, after hovering at 85% in the 10-year range heading into the year.

“It was a reflection of higher-than-anticipated new-issue supply, and as a consequence, munis underperformed and valuations cheapened relative to Treasuries,” he said.

So far early in 2017, there has been a decent amount of supply and demand has strengthened following the November market sell-off, Mangerson said.

“As we enter 2017, munis remain attractive relative to Treasuries,” Grabovac said, adding that ratios across the yield curve are currently hovering around 90%.

“Right now, if we continue to see strong demand, valuations are likely to richen up from here,” Mangerson said.

She said overall the team’s fundamental outlook panned out in the end, but there was a little more volatility than they expected.

Aside from the effects of the political storm, Grabovac and Mangerson were close to their target predictions. McDonnell oversees $11.5 billion in client assets, 63% of which are tax-exempt municipal assets, including separately-managed accounts and two sub-advised municipal mutual funds.

The team anticipated that economic expansion would continue in 2016, although it ended up growing slower than they anticipated last year, Grabovac said.

“We thought inflation was well contained and in the process of drifting back toward the Fed’s 2% goal – and we believe the same in 2017 – largely driven by shelter cost and medical care inflation,” he explained.

They also predicted the Federal Reserve Board would continue to normalize rates at a gradual pace.

They believed the Fed would continue to raise short-term interest rates, but felt it penciled in too aggressive a rate path in the beginning of 2016. The Fed at that time had announced its plans for three rate hikes in 2016 – yet only accomplished one by yearend.

“Going forward we continue to think the rate path will be more gradual than the Fed’s summary of economic projections,” Grabovac said.

The firm's other predictions – such as increasing exposure to spread sectors, such as hospitals, transportation, and power — worked in its favor.

"We thought the credit fundamentals were still solid and we felt comfortable going into sectors that offered more yield, but are historically more volatile," Mangerson said.

The strategy allowed more yield into the portfolios from the hospital sector, for instance, where there was healthy issuance and attractive yields versus the plain-vanilla state general obligation sector — which underperformed for the year, Ms. Mangerson explained.

"Anything with yield performed better," she said, noting that single-A and triple-B paper outperformed higher-quality paper in 2016.

For example, an A-rated hospital versus an A-rated GO – both due in 10 years – offered a 50 basis points yield pick up as spreads widened toward the end of the year, after compressing in the first two quarters, she added.

"Overall, the compression over the year helped performance," as did the firm's prediction that lower-quality sectors would outperform in a low rate environment with investors reaching for yield.

Heckman was more cautious and avoided some of the riskier outliers as he predicted some continued credit turmoil in 2016.

"I think we continued to be negative on Chicago, Illinois, and many of the states in the Northeast Corridor as we continued to see credit downgrade actions," he said. "I believe we were spot on in 2016, and those things did occur," he said.

He said troubled credits will gather more spotlight in 2017 – especially state pension funds will continue to raise a red flag due to liabilities growing faster than assets.

"We see that getting worse over the next few years if they are not addressed," Heckman said.

Meanwhile, analysts, like Ciccarone, said years like 2016 are an example of why investor's should always expect the unexpected.

"Economic and bond rate forecasts proved once again how difficult it is to confidently foresee the future when there are so many moving pieces that don't always play out as expected," Ciccarone said.

The Bond Buyer

By Christine Albano

January 20, 2017

S&P U.S. Public Power Sector 2017 Outlook: Low Natural Gas Prices And Increasing Renewables Drive Stable Outlook.

The public power sector in the U.S. has long been characterized by solid and stable ratings, as credit quality has been bolstered by widespread rate-setting autonomy and a lack of competition for retail customers.

Continue reading.

Jan. 19, 2017

S&P U.S. Municipal Water Utility Sector 2017 Outlook: Potholes, Policies, And Pensions.

In addition to saying that the outlook is stable, every year S&P Global Ratings anticipates the most likely drivers of credit quality for municipal waterworks and sanitary sewer utilities in the United States. While we always note that the sector carries relatively very low risk, we add that it is not without risk.

Continue reading.

Jan. 18, 2017

Pirates in the Desert: Oakland Raiders Charging Toward Biggest Taxpayer Subsidy in NFL History.

If the relocation is approved, a Las Vegas hotel tax hike would fund nearly 40 percent of the Raiders' new stadium

The Oakland Raiders moved one step closer this week to leaving the San Francisco Bay Area for Las Vegas. If the relocation deal is approved, a hotel-room tax increase at the nation's gambling hub would help pay for a shiny new $1.9 billion stadium.

The team filed its paperwork to win approval for the move from the National Football League, the NFL announced Thursday.

"The application will be reviewed in the coming weeks by league staff and the stadium and financing committees," the league said in a statement. The deal also requires the support from at least 24 of the 32 NFL team owners in a vote that would take place during a meeting in Phoenix on March 26-29.

If the relocation is approved (and Bay Area investors fail to entice the team to stay), then the new home of the Las Vegas Raiders would become the largest taxpayer-subsidized stadium deal in NFL history, blowing past the $600 million in public money used to build the Atlanta Falcons' $1.5 billion Mercedes-Benz Stadium and the nearly $500 million the public is picking up for the U.S. Bank Stadium in Minneapolis, the future $1.06 billion home of the Minnesota Vikings.

State officials have said the team would bring more tourists to Las Vegas, but critics question whether the benefits outweigh the costs.

"The big carrot being held out to Vegas residents is that it will bring in new tourism that will help pay for the hotel-tax increase," Neil deMause, co-author of the book "Field of Schemes," told Salon in an email. "The notion that there are currently tourists who aren't going to Vegas but will start to do so once there are Raiders games to be seen is, let's say, unproven at best — it's far more likely that existing visitors will just reschedule their planned trips around what NFL games they want to see, but the NFL boosters don't want to hear that."

With the help of Goldman Sachs, the NFL and Raiders owner Mark Davis would arrange $500 million in financing to fund the new Vegas stadium. Another $650 million would come from billionaire casino magnate and major Republican Party donor Sheldon Adelson, one of the richest men in America. The rest, $750 million, would come from a lodging tax paid primarily by tourists that was approved by state lawmakers in October. The subsidy deal explicitly excludes the public from sharing in the future profits from the stadium and would lock in the hotel tax even if the project comes in under budget, according to the San Francisco Chronicle.

Local officials and team backers often argue that deals like this ultimately benefit the public by creating jobs and generating peripheral economic activity and tax revenue. Yet the immense wealth of team owners and stakeholders has critics questioning why public funds are needed when the primary individual beneficiaries are private citizens with enough financial clout to fund and build these projects on their own. Adelson's net worth is estimated to be about $31 billion, according to Forbes, and Davis, who inherited the Raiders from his father, is worth an estimated $500 million.

The biggest issue for critics like DeMause is the sheer amount of public money going to stadium projects. Pitching in a few tens of millions of dollars on a big project that would benefit private investors might be justifiable if there's a proven net increase in jobs and tax revenue to help fund truly public projects like road maintenance and schools.

But evidence is scant about the long-term benefits (not just temporary spikes in construction jobs and other project-related economic activity) and the so-called multiplier effect, the claim that publicly-subsidized megaprojects increase incomes and therefore create more spending and economic activity. A study by economists Roger Noll and Andrew Zimbalist in the late '90s concluded that backers of these types of deals often radically overstate the long-term benefits.

"A new sports facility has an extremely small (perhaps even negative) effect on overall economic activity and employment," the authors wrote. "No recent facility appears to have earned anything approaching a reasonable return on investment."

Bay Area proponents of keeping the Raiders in Oakland are offering a new $1.25 billion stadium, but so far that proposal would be privately funded, and smaller. If business executives like Adelson believe in the magic of capitalism, perhaps they should play ball on a level playing field by declining handouts to subsidize their investments.

SALON.COM

ANGELO YOUNG

SUNDAY, JAN 22, 2017 06:00 AM PST

New York's Cuomo Proposes Doubling Bond Sales in Borrowing Blitz.

- Governor proposes $153 billion budget for 2018 fiscal year
- Budget calls for $7.1 billion of bond sales, jump of 131%

New York Governor Andrew Cuomo proposed selling $7.1 billion of bonds in the fiscal year beginning April 1, more than twice as much as the current fiscal year, as the Democrat boosts spending on infrastructure.

The $153 billion budget includes $14.5 billion in capital spending for projects including the transformation of a landmark Manhattan post office into a railway station, improvements to highways to John F. Kennedy International Airport and grants to facilitate hospital mergers.

The New York governor is joining other state and local governments that have been issuing debt at a record pace while interest rates in the municipal market remain not far from the record lows hit last year.

Cuomo has jump-started projects, including a new $4 billion span to replace the Tappan Zee bridge, and provided record funding for roads, bridges and the New York City region's Metropolitan Transportation Authority. His job has been made easier because of $9.4 billion in monetary settlements from banks and insurance companies for offenses including executing transactions on behalf of countries like Iran and Sudan that are subject to U.S. sanctions.
Despite the increase in next year's budget, capital spending is projected to decline to $11.4 billion in fiscal 2022, according to the state's capital program and financing plan, while state-related debt outstanding is projected to rise to $61.8 billion in fiscal 2022.

State debt had been on the decline, falling from $56.4 billion in fiscal 2012 to $50.8 billion in the current year.

New York's outstanding debt at the end of the current year is on track to be lower than when the governor took office in 2011, marking the first time in "modern history" that it has declined for five consecutive years, said Morris Peters, a spokesman for the state Division of Budget.

State debt measured as a percent of personal income has decreased from 5.9 percent in fiscal 2011 to 4.2 percent in 2017. That's "the most favorable debt to income ratio since the 1960s and is expected to remain relatively constant over the plan period, even as the state makes targeted capital investments for housing, health care, transportation, and economic development," Peters said.

Cuomo's budget proposes extending the 8.82 percent personal income-tax bracket for three years. The bracket is scheduled to sunset on Dec. 31, 2017, reducing the top rate to 6.85 percent.

The budget estimates total tax revenue will grow 5.6 percent to $79.5 billion.

Bloomberg Markets

by Martin Z Braun

January 18, 2017, 7:26 AM PST

[Bloomberg Brief Weekly Video - 01/19]

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

[Watch the video.]

January 19, 2017

Bond Dealers of America 2016 Year in Review.

Read the Review.

JANUARY 17, 2017

Court Orders N.J. Towns to Allow Affordable Housing.

New Jersey towns and cities must accommodate unmet affordable-housing needs, the state Supreme Court said Wednesday in a unanimous decision that could greatly expand housing options for the state's low- and moderate-income residents.

In a 6-0 decision written by Justice Jaynee LaVecchia, the Supreme Court ruled that towns and cities are constitutionally required to allow enough affordable housing to be built to satisfy needs that arose during a 16-year period when a state agency charged with enforcing housing laws failed to do its job.

"Municipal responsibility for a fair share of the affordable housing need of low- and moderate-income households formed during that period was not suspended," Justice LaVecchia wrote.

New Jersey's Council on Affordable Housing was created in 1985 to monitor and enforce constitutionally mandated affordable-housing requirements, but the agency has been plagued by bureaucratic and legal problems since 1999. In 2015 the state Supreme Court stripped it of its powers after determining that it had failed to enforce state housing laws.

The case was brought by the southern shore town of Barnegat, which had argued that it was unfair to hold towns and cities responsible for affordable-housing requirements that accrued between 1999 and 2015 when the state failed to enforce them. Barnegat was joined by nearly 300 other municipalities.

Wednesday's Supreme Court decision didn't address the scope of the affordable-housing obligations towns and cities will now be required to meet.

Kevin Walsh, executive director for the affordable housing advocacy group Fair Share Housing Center, said his analysis shows that about 200,000 affordable housing units are needed to fulfill obligations spanning from 1999 to 2025, but the exact number likely will be worked out through litigation.

"The municipalities don't have to build the homes, the municipalities don't have to fund the homes," Mr. Walsh said. "All the municipalities have to do is remove the local red tape that prevents starter homes and apartments from being built."

In some cases, Fair Share Housing Center and local officials already have reached agreements on the number of affordable housing units.

The Somerset County town of Bridgewater, which had about 17,000 housing units as of 2010, has agreed to allow the building of 1,414 affordable units. Affordable-housing eligibility in Bridgewater, where the annual median household income is about $115,000, ranges from $22,050 in annual income for a single person to $97,440 for a family of six, according to the town's website.

Jeffrey Surenian, who represented Barnegat in the case, didn't immediately return a call for comment. In previous interviews with The Wall Street Journal, Mr. Surenian said that towns and cities shouldn't be held responsible for state government dysfunction, and said that requiring them to meet the retroactive obligations would infringe on local zoning powers.

State Sen. Steve Oroho and Assemblyman Parker Space, both Republicans, said the Supreme Court's ruling will force towns to conduct expensive housing studies, spur further litigation and increase property taxes.

"This court-ordered overdevelopment will change the landscape of many communities," Messrs. Oroho and Space said in a joint statement. "It will decimate open space while forcing taxpayers to pay for additional services to handle the increase in population."

Len Albright, an assistant professor at Northeastern University and co-author of Climbing Mount Laurel, a 2013 book about New Jersey's affordable housing laws, countered by saying his research found affordable housing didn't increase crime rates or drive increases in property taxes. Low-income residents experienced rising incomes and were able to depend less on government assistance once they found stable housing, he said.

"Families that were able to move into subsidized housing in the suburbs became more economically self-sufficient," Mr. Albright said. "We also found people's health was better and their education levels went up."

THE WALL STREET JOURNAL

By KATE KING

Jan. 18, 2017 5:57 p.m. ET

Write to Kate King at Kate.King@wsj.com

Puerto Rico Needs Urgent Congress Action: U.S. Treasury, Health Chiefs.

(Reuters) – The secretaries of the U.S. Treasury and Health and Human Services called for fast congressional action to help Puerto Rico out of its economic mess, and said a bipartisan task force report failed to go far enough on recommending a low-income tax credit for the commonwealth.

In a letter to U.S. House Speaker Paul Ryan on Tuesday, Treasury Secretary Jacob Lew and Health and Human Services Secretary Sylvia Burwell reaffirmed calls to step up healthcare funding for Puerto Rico.

"We write to underscore the need for additional legislation early in this (congressional) session to address the economic and fiscal crisis in Puerto Rico," the letter said.

They noted that 900,000 Puerto Ricans could risk losing healthcare unless Congress took action by April.

The U.S. territory is hampered by $70 billion in debt, unemployment more than twice the U.S. average, a 45 percent poverty rate and a decreasing population as locals flock to the U.S. mainland.

A congressional task force of U.S. senators and congressmen in December recommended several fixes for Puerto Rico, including boosting healthcare funding and exploring giving the island access to the federal Earned Income Tax Credit.

The benefit for low- to moderate-income workers has been used to combat poverty, and the Obama Administration has proposed expanding it to Puerto Rico. If the credit exceeds a worker's income tax liability, the government will refund the balance.

The report did not go far enough with the tax credit, Lew and Burwell said, calling the benefit a "powerful economic driver."

The task force report described healthcare in Puerto Rico as "a serious and urgent issue," but did not agree on solutions.

For decades, the United States offered lower payments to most island residents under the federally sponsored Medicare and Medicaid insurance programs. Funding for the Medicaid program for the poor, for example, has been capped by Washington, spurring island officials to borrow heavily through municipal bonds.

Read the Special Report here.

By REUTERS

JAN. 17, 2017, 7:24 P.M. E.S.T.

(Reporting by Nick Brown in New York and Robin Respaut in San Francisco; Editing by Richard Chang)

MSRB to Apply Customer Complaint Rules to Municipal Advisors and Modernize Existing Rules for Dealers.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) has received approval from the Securities and Exchange Commission to apply its customer complaint rules to municipal advisors while also modernizing the rules, which currently apply to municipal securities dealers. The updated rules, which take effect in nine months, will more clearly focus on customer and municipal advisory client education and protection.

"These positive changes will improve the ability of investors and state and local governments to understand what to do if they have a complaint about their municipal finance professional," said MSRB Executive Director Lynnette Kelly. "They also align the MSRB's customer complaint requirements more closely with those of other regulators and provide greater regulatory consistency for dealers and municipal advisors."

The MSRB's updated MSRB Rule G-10 and related interpretive guidance require dealers and municipal advisors to provide annual written notifications to customers and municipal advisory clients about their registration status, the MSRB's website address, the availability of a brochure that describes regulatory protections in place under MSRB rules and how to report a complaint to a regulator. Those notifications may be made electronically and may be included with other materials. The updates include changes to MSRB recordkeeping rules, and both dealers and municipal advisors will be required to retain an electronic complaint log of written complaints from customers or municipal advisory clients for six years.

Updates to the MSRB's customer complaint and related recordkeeping rules are part of its ongoing effort to promote regulatory efficiency, consistency and clarity in municipal securities regulation. With many MSRB rules in place for more than 35 years, the MSRB recognizes the need to regularly review rules to identify potential changes to ensure that they function as efficiently as possible, reflect current market practices and are consistent with rules of other regulators, where appropriate.

Date: January 18, 2017

Contact: Jennifer A. Galloway, Chief Communications Officer
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- Forecasting the Bond Market in 2017: CDFA // BNY Mellon Development Finance Webcast
- Student Housing: Comparing Options for Tax Exempt Financing – Orrick
- GOP Expected to Take Aim at Local Tax Deductions.
- Slowing of Muni Tax Regs Seen in 2017, But Three Projects Watched.
- GFOA and Issuer Groups' Message to Congress: Munis Build Infrastructure.
- New York Federal Reserve Staff Report on Regulation and Bond Market Liquidity.
- *Tutor Perini Corporation v. Banc of America Securities LLC* – Court of Appeals holds that genuine issues of material fact remained as to whether broker-dealer acted unfairly or deceptively by making material omissions regarding nonviability of auction rate securities market during time that broker-dealer was specifically recommending and selling student loan auction rate securities to investor while market teetered on brink of collapse, thus precluding summary judgment on investor's state securities law claims against broker-dealer. Beautifully-written opinion, if you got the time.
- And finally, Great Moments in Deadpan Understatement is brought to us this week by *Torres v. Faxton St. Lukes Healthcare*, in which police were summoned to a home where a violently psychotic Paul Bumbolo was accosting his uncle on the front porch of the family home. Paul had just killed the family dog, because it was "the devil." After taking this all in, including the fact that Paul couldn't remember his own name and referred to himself as, "the god of war", the police reached the conclusion that his behavior was, "abnormal." The police report also states that the aunt found her nephew's behavior, "unusual." This became important after Paul was summarily released from the hospital, only to return home and slaughter the entire family. Which we conclude was "unfortunate".

STATE MANDATES - CALIFORNIA

County of San Diego v. Commission on State Mandates

Court of Appeal, Fourth District, Division 1, California - December 28, 2016 - Cal.Rptr.3d - 2016 WL 7448783

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

The Superior Court, San Diego County, denied petition. Counties appealed.

The Court of Appeal held that spending mandates in SVPA provisions amended by Jessica's Law were reimbursable state mandates.

The issue of whether the Sexual Predator Punishment and Control Act (Jessica's Law) negated part of the state mandate to carry out activities required of local governments by the Sexually Violent Predator Act (SVPA), under the state constitutional provision precluding a shift of financial responsibility for carrying out state mandates to local agencies, was a legal question subject to independent review by the Court of Appeal, since it required no reliance on disputed facts.

A ballot initiative that modifies statutes previously found by the Commission on State Mandates to impose a state mandate only changes the source of the mandate, as required to exclude the mandate from the coverage of the state constitutional provision precluding a shift of financial responsibility for carrying out state mandates to local agencies, if the initiative changes the duties imposed by the statutes.

The Sexually Violent Predator Act (SVPA) provisions that imposed on counties the costs of providing legal representation, mental health expertise, housing, and transportation in sexually violent predator (SVP) commitment proceedings were reimbursable state mandates, even though the provisions had been amended by ballot initiative in the Sexual Predator Punishment and Control Act (Jessica's Law), and even though Jessica's Law expanded the definition of "SVP," since Jessica's Law did not change the duties that had been imposed on counties by the Legislature prior to Jessica's Law.

EMINENT DOMAIN - CONNECTICUT

Dattco, Inc. v. Commissioner of Transportation

Supreme Court of Connecticut - December 27, 2016 - A.3d - 324 Conn. 39 - 2016 WL 7375330

Bus companies brought separate actions against Commissioner of Transportation for injunctive relief to prevent Commissioner from condemning their certificates of public convenience and necessity.

After the actions were consolidated, the Superior Court granted summary judgment to Commissioner. Companies appealed.

The Supreme Court of Connecticut held that statute delegating eminent domain power did not permit Commissioner to take intangible operating rights.

Statute delegating to Commissioner of Transportation power to condemn "facilities," as well as land, buildings, and equipment, did not permit Commissioner to take intangible operating rights like those reflected in bus companies' certificates of public convenience and necessity, which granted them authority to operate bus services, despite contentions that "facilities" included something that promoted ease of any action and that condemnation power was implicit. Certificates provided fundamental authority to conduct service, but were not something that promoted ease of action, and "facilities" referred to tangible objects other than land, buildings, and equipment.

REFERENDA - ILLINOIS

Johnson v. Ames

Supreme Court of Illinois - December 30, 2016 - N.E.3d - 2016 IL 121563 - 2016 WL 7480391

Proponent of referendum regarding term-limits for village president sought judicial review of the decision by village's electoral board that the referendum was vague and ambiguous.

The Circuit Court reversed the decision of electoral board and ordered that the referendum question appear on the ballot. Objector's motion for an expedited appeal was granted. The Appellate Court affirmed. Objector petitioned for leave to appeal, which was denied, and the Appellate Court filed a certificate of importance.

The Supreme Court of Illinois held that the referendum was not vague or ambiguous.

Referendum that asked voters whether persons elected village president on specific election date or after should be subjected to term limits was not vague or ambiguous, and thus was not defective, despite contentions that referendum was ambiguous as to when prior service must have started to trigger ineligibility to serve as president. Even though referendum did not provide express date marking relevant timeframe for prior terms of office, when read in its entirety, referendum explained that initial starting point for determining whether candidates were "previously elected" village president was specific election date.

ZONING & LAND USE - MAINE

Beal v. Town of Stockton Springs

Supreme Judicial Court of Maine - January 12, 2017 - A.3d - 2017 WL 117293 - 2017 ME 6

Landowner sought review of decision of the town's board of selectman, determining that a structure owned by landowner was a dangerous building or nuisance.

The Superior Court affirmed, and landowner appealed.

The Supreme Judicial Court of Maine held that:

- Landowner did not demonstrate that she was denied due process, and
- Substantial evidence supported board's finding that structure owned by landowner was a dangerous building or nuisance.

Landowner did not demonstrate that she was denied due process or that she was subjected to a decision by a biased decisionmaker when town's board of selectman found that a structure owned by landowner was a dangerous building or nuisance. Although one member of board stated that he thought that house should be condemned, he and another board member also stated several times that there was a process that had to be followed, and at the time that those statements were made, board was anticipating an informal resolution of the matter, and when landowner presented her motion for recusal, the board members, acting in adjudicatory capacity, stated that they had not prejudged case and that their decision would be based upon testimony and evidence presented at the hearings.

Substantial evidence supported town's board of selectman's finding that a structure owned by landowner was a dangerous building or nuisance. Town's code enforcement officer provided detailed testimony about the interior and exterior conditions of the house—including major structural deficiencies, plumbing issues, and fire hazards—and presented photographs to support his observations.

AUCTION RATE SECURITIES - MASSACHUSETTS

Tutor Perini Corporation v. Banc of America Securities LLC

United States Court of Appeals, First Circuit - November 21, 2016 - 842 F.3d 71

Investor in student loan auction rate securities sued broker-dealer and its parent company, asserting securities fraud claims under federal and state law, by alleged misrepresentations and omissions regarding auction rate securities market that eventually collapsed, and asserting various state law claims.

The United States District Court for the District of Massachusetts granted defendants summary judgment. Investor appealed.

The Court of Appeals held that:

- Parent company was not liable for securities fraud as control person;
- Summary judgment was precluded on state securities fraud claim;
- Summary judgment was precluded on federal securities fraud claim;
- Investor waived any objection to summary judgment on federal securities fraud claim based on unsuitability;
- Summary judgment was precluded on state negligent misrepresentation claim;
- Investor waived any argument regarding state intentional misrepresentation claim; and
- Summary judgment was precluded on state unfair business practices claim.

Parent of subsidiary broker-dealer, that allegedly engaged in securities fraud in violation of federal and state securities laws in connection with sales of student loan auction rate securities to investor, was not liable as control person, due to actions of two employees of parent and two dual employees of parent and subsidiary who analyzed maximum rate waivers and liquidity risks for deciding which auctions to fail, since investor never in four years of litigation ever alleged any facts indicating that parent actually exercised control over subsidiary.

Investor waived argument that parent of subsidiary broker-dealer, that allegedly engaged in securities fraud in violation of federal and state securities laws in connection with sales of student loan auction rate securities to investor, was liable as control person due to broker-dealer needing parent's approval to expand its inventory of auction rate securities, since investor failed to bring that argument to district judge's attention, and made no argument that any exception to raise-or-waive rule applied.

Investor waived arguments concerning many instances of allegedly material misstatements by broker-dealer that sold student loan auction rate securities to investor, in violation of Massachusetts securities fraud law, since investor had not raised arguments before district court.

Investor waived argument that municipal securities rulemaking board issued rule creating independent disclosure duty for broker-dealers, where investor failed to raise argument in district court.

Genuine issues of material fact remained as to whether broker-dealer made material omissions regarding nonviability of auction rate securities market during time that broker-dealer was specifically recommending and selling student loan auction rate securities to investor while market teetered on brink of collapse, thus precluding summary judgment on investor's securities fraud claim against broker-dealer under Massachusetts law.

Genuine issues of material fact remained as to whether broker-dealer made material omissions regarding nonviability of auction rate securities market during time that broker-dealer was specifically recommending and selling student loan auction rate securities to investor while market teetered on brink of collapse and whether investor reasonably relied on outdated information that broker-dealer disclosed regarding state of auction rate securities market, thus precluding summary judgment on investor's securities fraud claim against broker-dealer.

Investor waived any objection to district court's ruling that investor's suitability claim, under § 10(b), against broker-dealer that sold student loan auction rate securities to investor was barred due to investor holding non-discretionary brokerage account in which investor directed all investments made, since investor cited no authority to support its view that nondiscretionary account holders could bring unsuitability claims and investor's appellate pleadings failed to offer any convincing explanation of what law should be, assuming investor found no on-point authority.

Genuine issues of material fact remained as to whether broker-dealer made material omissions regarding nonviability of auction rate securities market during time that broker-dealer was specifically recommending and selling student loan auction rate securities to investor while market teetered on brink of collapse, thus precluding summary judgment on investor's claim against broker-dealer for negligent misrepresentation under Massachusetts law.

Investor waived any arguments regarding dismissal of intentional misrepresentation claim against broker-dealer, under Massachusetts law, in connection with auction rate securities market during time that broker-dealer was specifically recommending and selling student loan auction rate securities to investor while market teetered on brink of collapse, where investor's opening appellate brief suggested district judge erred in dismissing claim, but investor's appellate papers never explained how that was so.

Genuine issues of material fact remained as to whether broker-dealer acted unfairly or deceptively by making material omissions regarding nonviability of auction rate securities market during time that broker-dealer was specifically recommending and selling student loan auction rate securities to investor while market teetered on brink of collapse, thus precluding summary judgment on investor's claim against broker-dealer for unfair business practices in violation of Massachusetts law.

LIABILITY - NEW YORK

Torres v. Faxton St. Lukes Healthcare

United States District Court, N.D. New York - January 3, 2017 - F.Supp.3d - 2017 WL 24774

Administrators of estates of family who were killed by a family member with mental illness brought separate actions in state court against city, city police department, responding officers, hospital, hospital staff, provider of security services to hospital and security guard, after police officers responded to a violent incident involving family member, transported family member to local hospital for mental health evaluation, and when family member was released several hours later, family member returned home and killed his sister, uncle, and aunt.

On removal to federal district court and following consolidation of the cases, defendants moved to dismiss for failure to state a claim and failure to join an indispensable party.

The District Court held that:

- Police did not have a special relationship with family members;
- Administrators stated § 1983 state-created dangers claims against police department and police officers;
- Administrators sufficiently alleged that police officers' conduct was objectively unreasonable, as would preclude qualified immunity;
- Administrators sufficiently stated § 1983 claims against city under Monell;
- Administrators sufficiently stated negligence claims against police officers;
- Administrators sufficiently alleged that emergency room physician had a duty to control family member to protect third-party family;
- Administrators sufficiently alleged that hospital and staff exercised authority and control over family member; and
- Administrators sufficiently alleged that hospital security guard exercised authority and control over family member.

EMIENT DOMAIN - TEXAS

[Denbury Green Pipeline–Texas, LLC v. Texas Rice Land Partners, Ltd.]

Supreme Court of Texas - January 6, 2017 - S.W.3d - 2017 WL 65470

Pipeline company petitioned for a temporary restraining order and temporary and permanent injunction to prevent property owner and its tenant from interfering with company's alleged right to enter the property as a common carrier for construction of carbon dioxide (CO_2) pipeline.

After granting the request for a temporary injunction, the District Court entered summary judgment permanently restraining owner and tenant from interfering with company's survey rights. Owner and tenant appealed.

The Court of Appeals affirmed. Petition for review by owner and tenant was granted. The Supreme Court reversed and remanded. On remand, the District Court granted summary judgment to company. Owner appealed. The Court of Appeals reversed and remanded. Company's petition for review was granted.

The Supreme Court of Texas held that:

- Court of Appeals improperly focused on company's intent at the time of its plan to construct the pipeline;
- Company's post-construction contracts for transporting other company's CO_2 were relevant;
- Company was "common carrier" with right to eminent domain; and
- Reasonably probable future use of pipeline did not need to serve a substantial public interest.

Prefatory phrase "for a person intending to build" demonstrated who had to prove common carrier status in test stating requirements for a person intending to build carbon dioxide (CO_2) pipeline to qualify as a common carrier with power of eminent domain, and the phrase thus did not make central inquiry company's intent at the time of its plan to construct the pipeline.

Pipeline company's post-construction contracts for transporting other company's carbon dioxide

(CO_2) were relevant to analysis of whether company was common carrier with right to eminent domain and were properly considered by trial court granting summary judgment in favor of company.

Reasonable probability existed that, at some point after construction of pipeline for carbon dioxide (CO_2), it would serve the public by transporting CO_2 for one or more customers who would either retain ownership of their gas or sell it to parties other than the carrier, and, thus, company was “common carrier” with right to eminent domain. Company built pipeline along Gulf Coast in close proximity to potential customers and entered post-construction contract to transport CO_2 for another company.

Reasonably probable future use of carbon dioxide (CO_2) pipeline did not need to serve a substantial public interest in order for pipeline company to qualify as common carrier with right of eminent domain.

Establishing a reasonable probability that the pipeline will, at some point after construction, serve even one customer unaffiliated with the pipeline owner is substantial enough to satisfy public use necessary to qualify owner as common carrier with right to eminent domain.

TAX - OREGON

Village at Main Street Phase II, LLC v. Department of Revenue

Supreme Court of Oregon, En Banc. - December 30, 2016 - P.3d - 360 Or. 738 - 2016 WL 7488855

Taxpayers challenged county assessor’s real market value of improvements on their real property.

Assessor sought preliminary ruling that it had statutory right to pursue counterclaims alleged in its proposed amended answers challenging value of taxpayers’ land.

The Tax Court granted preliminary ruling in favor of taxpayers. Department of Revenue and assessor appealed. The Supreme Court reversed and remanded. After taxpayers served notices of voluntary dismissal before assessor could file amended answers, the Tax Court entered judgment of dismissal, over assessor’s objection, and denied subsequent motions for relief from judgment filed by Department and assessor. Department and assessor appealed.

The Supreme Court of Oregon held that as matter of apparent first impression, Supreme Court’s remand following its determination that assessor had statutory right to pursue counterclaims required Tax Court to allow pending amended answers to be entered before turning to taxpayers’ subsequently filed notices of dismissal.

Supreme Court’s remand, which followed its determination that county assessor had statutory right to pursue counterclaims alleged in its proposed amended answers challenging value of taxpayers’ land, required Tax Court to allow pending amended answers to be entered before turning to taxpayers’ subsequently filed notices of dismissal of property tax appeals challenging assessor’s value of improvements on their land. Although remand made no statement about Tax Court’s dismissal rule, Tax Court’s dismissal failed to implement Supreme Court’s decision, which reversed Tax Court’s only basis for denying entry of amended answers, and action was remanded for “further proceedings,” which included implied directive to enter assessor’s answers

TAX SALES - UTAH

Jordan v. Jensen

Supreme Court of Utah - January 10, 2017 - P.3d - 2017 WL 104642 - 2017 UT 1

Purported owners of severed mineral interest brought quiet title action against successors to purchaser of real property at tax sale, and successors counterclaimed to quiet title and brought third-party complaint against lessor.

The Eighth District Court granted summary judgment to owners and lessor. Successors appealed.

The Supreme Court of Utah held that four-year statute of limitations could not be applied after tax sale was conducted in violation of owners' due process rights, overruling *Hansen v. Morris*, 3 Utah 2d 310, 283 P.2d 884.

Four-year statute of limitations applicable to challenges to tax titles could not be applied to bar quiet title action brought by mineral interest owners after tax sale was conducted in violation of owners' due process rights, despite contention that constructive notice of tax sale was sufficient to trigger statute of limitations without violating due process. Statute was not self-executing time bar, but was limitations period that was triggered by county's adversarial action and sale of property at tax sale, and names and addresses of owners were reasonably ascertainable, rendering constructive notice insufficient; overruling *Hansen v. Morris*, 3 Utah 2d 310, 283 P.2d 884.

Student Housing: Comparing Options for Tax Exempt Financing - Orrick

This book is designed for use by colleges and universities, developers, underwriters, direct purchase lenders and others involved in the financing of student housing.

Download the Green Book.

by Charles C. Cardall, John Wang and Roger Davis

The Orrick Public Finance Green Book Series | 01.09.17

Nothing in this book should be construed or relied upon as legal advice. Instead, this book is intended to serve as an introduction to the general subject of financing student housing, from which better informed requests for advice, legal and financial, can be formulated.

S&P Charter Schools Sector 2017 Outlook: Continued Growth And Stability.

S&P Global Ratings' outlook for the charter school sector in 2017 is stable. While the general charter school movement has seen growth over the past year and appears poised to continue that trend in 2017, we expect this growth to have little if any impact on the underlying credit quality of charter schools.

Continue reading.

Jan. 12, 2017

Municipal Finance Gains Traction at Smaller Banks.

Hire a talented executive and then find a business for him or her to run.

This method has worked well for David Becker, First Internet Bancorp's (INBK) chairman, president and CEO, over his nearly 18 years at the helm of the $1.8 billion-asset institution.

That credo was on display earlier this month when the company hired Timothy Dusing to lead its municipal lending team.

The Fishers, Ind., company has never been a prominent lender to local governments, but that did not stop Becker from adding an executive with a long track record in the business.

The decision to hire Dusing "wasn't a planned play," said Becker, who was introduced to the executive by another First Internet employee. "My mantra has always been, if you run across a good employee, find a home for him."

In doing so, First Internet joins a growing list of banks that are either entering municipal finance or significantly raising their profile in the space.

HomeTrust Bancshares (HTBI) in Asheville, N.C., earlier this month bought United Financial of North Carolina, a municipal lease finance company. Opus Bank (OPB) in Irvine, Calif., formed a public finance division last summer after hiring an executive from Umpqua Holdings (UMPQ).

Municipal lending is gaining broader traction. The number of municipal loans on banks' book increased by 10% over the first nine months of 2016, to $169 billion at Sept. 30, based on data from the Federal Deposit Insurance Corp.

Government finance can benefit banks in several ways, industry experts said.

Loans to municipalities typically have better credit quality compared to private-sector loans and they provide a way to diversify beyond areas such as commercial real estate. Those relationships could also pave the way for banks to bring in more municipal deposits, which could have greater importance in a rising interest rate environment.

"It's a new opportunity to generate quality assets for the bank," Becker said.

Municipal loans, however, tend to have lower yields compared to other types of credits, said Jerry Johnson, a former chairman and CEO of Mercantile Bancorp in Grand Rapids, Mich.

"We never made a municipal loan," Johnson said. Publicly traded banks "live and die by analysts' estimates, so return on assets and equity are very important."

First Internet found a banker with extensive experience in the municipal finance field.
Dusing previously spent 24 years at City Securities, an Indiana investment firm, where he focused on public finance. He cut ties with the company after it sold in September to Stifel Financial (SF).

While this is its first formal foray into public finance, First Internet has made municipal loans in the past. At Sept. 30, the portfolio had $8.1 million of loans, or less than 1% of the company's $1.2

billion in total loans, based on FDIC data.

Becker said the municipal book was built on an ad hoc basis as lenders came across deals for fire trucks, garbage trucks and other heavy equipment used by local governments in the course of their normal commercial lending activities.

Dusing now must boost that number, though he has largely been given autonomy when it comes to charting a course. Specific goals and strategy for the municipal operation are "TBD," Becker said.

"He'll take it to whatever level he can," Becker said. "He's certainly got the skill set."

Dusing plans to leverage his "experience and network of investors, public finance professionals and financial advisors," to expand the business, First Internet said in its release announcing his hiring.

BY SOURCEMEDIA | MUNICIPAL | 01/12/17 07:18 PM EST

By John Reosti

GOP Expected to Take Aim at Local Tax Deductions.

State and local governments are fighting to avoid becoming big losers in tax reform — and they hope President-elect Donald Trump will be an ally.

Trump and congressional Republicans are aiming to pass tax-reform legislation this year that lowers rates and curbs and eliminates tax breaks.

In the process, two key preferences important to state and local governments, the deduction for state and local taxes and the tax exemption for municipal bonds, may be on the chopping block.

The two preferences are among the most expensive provisions in the tax code. They are also viewed as disproportionately benefiting upper-income people.

Of the two, the state and local tax deduction, which tends to benefit areas that lean Democratic, looks to be more endangered.

A 2015 paper from the Tax Foundation found that the 10 counties that benefit the most from the deduction are located in New York, New Jersey, California and Connecticut.

House Republicans are currently drafting a bill based on a tax-reform blueprint they released in June. That plan would eliminate the state and local tax deduction, since it does away with all itemized deductions except those for mortgage interest and charitable giving.

House Ways and Means Committee Chairman Kevin Brady (R-Texas) said at a Heritage Foundation event in December that he thinks there's "merit" to eliminating the deduction while also lowering rates.

"The added benefit here is that the federal tax code will no longer subsidize higher taxes at the local level," he said. Brady acknowledged that eliminating the deduction would be a big change and asked the public to look at his plan and provide feedback.

The tax plan Trump released in September did not specifically mention the deduction but would cap itemized deductions at $100,000 for individuals and $200,000 for married couples.

Groups representing state and local governments are concerned about the elimination of the deduction because it could reduce the government's flexibility to make tax changes.

“We're big proponents of federalism and we feel this strikes at the heart of it,” said Brett Bolton, principal associate for federal advocacy at National League of Cities.

Emily Brock, director of the Government Finance Officers Association's federal liaison center, said her group is asking Congress “to honor the commitment they've made which is the partnership between the federal government and state and local governments.”

Max Behlke, director of budget and tax policy at the National Conference of State Legislatures, said states with high income taxes are “very wary” about the deduction being eliminated. If the deduction is eliminated, the states could face pressure to lower their taxes.

It's “definitely possible” that Trump could be sympathetic to keeping the deduction because he's from a state with a high income tax. However, Trump may defer to Congress on taxes, Behlke said.

The municipal bond tax exemption is more likely to be preserved than the state and local tax deduction, and its preservation is the top tax reform priority for state and local governments.

The exemption allows state and local governments to have lower borrowing costs when they issue debt to finance infrastructure projects.

The House Republicans' tax-reform blueprint and Trump's tax plan are both silent on the municipal bond tax exemption, though the blueprint discusses eliminating tax breaks that benefit special interests.

But during a meeting at Trump Tower last month, Trump told a group of mayors that he supports the tax exemption.

While state and local governments are encouraged by Trump's comments, they are still concerned that changes to the tax exemption will be made. Many of the details about what will be included in tax-reform legislation is unknown, and many of the policy positions of the incoming administration are not firm.

“It's positive, but again, tax reform still has to go through Congress,” said David Parkhurst, general counsel of the National Governors Association.

Groups held a briefing for Capitol Hill staff on the municipal bond exemption in late November, and they are meeting with lawmakers on the Hill to educate them about the importance of the exemption.

On Tuesday, groups in a public-finance network sent lawmakers a letter in support of tax-exempt bonds.

“They are the best way to implement the infrastructure needs of each community effectively, as the decision to issue bonds for various projects is determined and approved by either the citizens themselves through bond referenda or their elected legislative bodies,” the groups said.

The exemption does have support on Capitol Hill, including from some Republicans. Last year, Reps. Randy Hultgren (R-Ill.) and Dutch Ruppersberger (D-Md.) launched a municipal finance caucus.

“Tax reform is complex and wrought with many pressures,” Hultgren said in a statement. “I hope to see this key financial tool, which has worked for more than a century, maintained in a much-needed comprehensive tax reform package.”

THE HILL

BY NAOMI JAGODA – 01/10/17
